

Title: Human Rights Risks in Global Supply Chains: Applying the UK Modern Slavery Act to the Public Sector

Short title: Applying the MSA to the Public Sector

Abstract

Global supply chains (GSCs) are organised through complex networks which leave workers vulnerable to exploitation and unprotected against abusive labour practices including modern slavery. However, attention has focused on business responsibilities for the impact of commercial activities on human rights with little focus on the role of states as economic actors and their duties regarding their own supply chain, including through public procurement. This article is the first to analyse the application of the Transparency in Supply Chains provision (TiSCs) of the UK Modern Slavery Act (2015) to the public sector. The TiSCs oblige commercial organisations are obliged to report on efforts to identify, prevent, and mitigate modern slavery in their supply chain. This article finds that whilst most reporting in the first year by public buyers, the bulk of which have been universities, fall short of what is expected of institutions according to Government guidance the exercise of reporting has initiated an important process of awareness. The public sector faces a steep learning curve to develop effective human rights due diligence in their supply chain. However, the TiSCs obligation has proved a catalyst for a wider process of understanding human rights risks and responsibilities in public supply chains.

Policy implications:

- Box-ticking exercises do not represent the spirit and ultimate aim of the regulation. The *Slavery and Human Trafficking Statement* (the statement) should be a live document, which should drive policy change, commitments and behaviours to guarantee that purchasing choices do not contribute to the violation of the rights of labourers. Public bodies should have the necessary support and guidance to comply with their obligations.
- Through due diligence processes, public buyers should establish systematic ways to access and assess information on their supply chain, and avenues for effective dialogue and engagement with suppliers. Preventing, mitigating and remediating human rights risks in supply chains does not necessarily imply terminating relationship with suppliers. Universities need to develop adequate due diligence processes to satisfy their responsibilities under the MSA and transform the way they think about procurement. They need to devote the necessary resources and human capital to them; public procurement teams alone cannot undertake such responsibilities.
- Public buyers have a heightened responsibility to combat human rights violations in their supply chain and as such it should be reflected in the MSA. New obligations to reflect this responsibility and social expectations should be introduced and effective guidance should be developed, as well as sanctions for non-compliance. Public buyers are key actors in bringing positive change and transforming GSCs to minimise and address the impact of modern slavery. Considerations to amend the MSA to include specific provisions for public authorities should be taken seriously in order to guarantee an appropriate role of public buyers in the combat against modern slavery in the GSC.
- Several states are considering the development of UK-style modern slavery legislation. They should establish clear obligations for public buyers in these normative developments and provide the necessary guidance to guarantee the fulfilment of the state obligation to protect human rights when acting as an economic agent, beyond the ad hoc inclusion of some public buyers among the reporting organisations, as it has happened in the UK.

Transparency in Supply Chains as a Means to Promote Respect for Human Rights

Global production of goods is organised in complex global supply chains (GSCs) which involve hundreds of suppliers (companies) scattered around the globe and connected through advanced information and communication technologies. (Locke, 2013:3; Martin-Ortega et. al 2015:341).

These production systems are highly volatile, as they are very dependent on a constantly changeable consumer demand, which makes planning for production, and therefore planning for investment in materials, technologies and workforce difficult. This has led to the flexibilization of the workforce through subcontracting, the use of temporary and casual workforce and adding overtime to address changing demand requirements (Locke, 2013:13; Berliner et al., 2015:7). Preference of short-term and temporary contracts expands the scope for labour broking, attracting migrant workers, increasing both voluntary migration and illegal smuggling of people. In turn, this leaves workers vulnerable to human rights abuses, from labour related violations to human trafficking for the purpose of labour exploitation. It also adds layers to the employment relationship that can further obscure exploitation (Berliner et al., 2015:7). Human rights violations are present in most industries, especially in the lower tiers of the supply chain, where manual and unskilled labour is more common (Verité, 2014).

In past decades, greater awareness of companies' responsibility towards the human rights of those working in their supply chains has led to demands for responsible commercial behaviour. These expectations - which found a business response in the form of corporate social responsibility (CSR)- have only recently being linked with legal obligations. The United Nations Guiding Principles on Business and Human Rights (SRSG, 2011) (UNGPs) establish a tripartite framework for policy and legal regulation development, based on: the *state duty to protect* the human rights of those under their jurisdiction; the corporate responsibility to respect the human rights of those affected by their activities and business relationships; and the need for effective remedies for the victims of corporate related human rights violations.

The corporate responsibility to respect human rights is based on the need for companies to exercise due diligence over their supply chain to identify, prevent, mitigate and remediate risks of human rights violations (UNGP 17; Martin-Ortega, 2014: 44-74). One of the ways in which states are articulating the corporate responsibility to respect is by demanding non-financial reporting creating transparency in supply chains through disclosure of information. The first one of these normative instruments based on corporate transparency to address human rights risks was Section 1502 of the US Dodd Frank Act on conflict minerals in 2010. It has since been followed by the California Transparency in the Supply Chain Act (2010), the EU Non-Financial Reporting Directive (2014), Section 54 Transparency in the Supply Chains of the UK Modern Slavery Act (2015), and the very recent French Duty of Care Law (2017). All impose obligations on businesses to disclose and report their efforts to exercise due diligence in their supply chain. These expectations have been more limited towards states' own supply chains, as is analysed in the next section exploring the state business nexus. The following sections of this article analyse the UK MSA and its Transparency in Supply Chains provision (TiSCs); how this provision applies to public buyers, in particular to universities and finally the article provides a detailed analysis of the first year of reporting by these intuitions.

State-business nexus: Roles and Responsibilities of Public Buyers

The nature of GSCs have important consequences for the rights of workers, including susceptibility to abuse of human rights, forced labour, human trafficking and slavery. This is true for private commercial activities and for public supply chains. However, private companies and public bodies do not share the same obligations and have, until recently, not received the same public demand to address violations in their supply chains.

States have an *obligation to protect* the human rights of those under their jurisdiction from third party interference, including private companies. This has been established in international human rights law and has been reinforced by the UNGPs. However, this obligation has not succeeded in having extraterritorial influence in demanding states to protect those beyond their borders. The role of the 'home' states where brands and large retailers are domiciled has therefore been limited. The debate continues as to whether their human rights obligations may have extraterritorial reach and how to assign accountability for failing to protect those individuals (see for example Vandenhole, 2015). An important and complementary, rather than alternative, approach to consider though is through the development of responsibilities within the so called state business nexus, which the UNGPs have contributed to bring to the international policy and normative agenda.

Principles 4 to 6 of the UNGPs stipulate that state duty to protect extends to such nexus, this is, when the state acts as a commercial actor. Therefore, the obligation to protect human rights should also include public authorities entering commercial relationships, whether through public procurement or contracting out of public services. Arguably then, we are witnessing a widening of the spectrum of responsibility towards the rights of those working in supply chain, and that public supply chains should also be caught by these demands.

The role of states as economic actors, particularly through public procurement, has become a focal point for debate on sustainable and socially responsible buying and carries potential to become a powerful instrument to respect, protect and promote human rights in GSCs.

Whilst procurement policy has long been used to pursue social goals, it has been limited to domestic policies such as confronting discrimination at work (Arrowsmith, 2010; McCrudden, 2013). Public buyers have also engaged in "green", "sustainable", "social" and "ethical" procurement" for several years now. Sustainable procurement practices (SPP) are becoming more and more prominent, especially in Europe. D'Hollander and Marx apply the term SPP as a broad concept covering a variety of practices that aim to integrate social and environmental criteria in purchasing decisions of government actors, but acknowledge that the definition can vary between countries and organisations (2014:5). However, when referring to SPP there is a strong focus on environmental impact and applying environmental policies. Recently, the potential for public procurement to positively influence working conditions in GSCs is being explored (Martin-Ortega et. al, 2015; Methven O'Brien et. al, 2016; Outhwaite and Martin-Ortega, 2016). An increased awareness and responsibility to consider human rights and working conditions when procuring goods by public buyers has a great potential to transform not only public buying but also conditions in GSCs, by creating market demand for responsibly manufactured goods. This is particularly true considering that public procurement globally accounts for one-thousand-billion euros annually, and governments in OECD member states spend on average just above 19% of their GDP on public procurement (OECD, 2015) and an average of 16% in the EU (European Commission, 2014).

This comes too in a moment of reform of public procurement regimes both at national and European level. As mentioned, public procurement has been used to promote social inclusion and the employment of disadvantaged groups, as well as for the achievement of environmental sustainability goals for a long time. New developments have made regulatory regimes more receptive to the insertion of social conditions in procurement processes, including the new EU normative framework (Martin-Ortega et. al, 2015; Methven O'Brien et. al, 2016; Outhwaite and Martin-Ortega, 2016). The UK has had a strong tradition of sustainable procurement. This is sustainability in its broad sense of encompassing economic, social and environmental dimension (Adams, 2006; United Nations, 2012), albeit with a stronger focus on the environmental elements. Since 2005 sustainable procurement has

been considered as part of the UK government sustainable development strategy (UK DEFRA, 2005; 2011) and there are several sustainable procurement tools available. A strong social connection is made for example in the Public Services (Social Value) Act 2012, which requires that those who commission public services must contemplate that they can also secure wider social, economic and environmental benefits. However, the long-standing principle of “value for money” in procurement has usually encroached on the wider application of social considerations when purchasing. By requiring transparency in private as well as public supply chains, the MSA, is challenging this restrictive way to measure value and the first year of practice shows that it could prove a key element in promoting and protecting human rights of those who make products or provide services purchased.

The UK Modern Slavery Act and the Obligation to Report on Efforts to Combat Slavery and Human Trafficking

The UK Modern Slavery Act 2015 (MSA) primarily aims to establish a comprehensive legal framework to combat slavery, servitude and forced or compulsory labour and human trafficking, and to guarantee the protection of victims. Section 54 contains the TiCs provision, which obliges commercial organisations to report on their efforts to understand their own supply chain and business practices, prevent labour abuses from occurring and deal with those that do. Although the MSA received royal assent on 26 March 2015, Section 54 was introduced after a consultation process (UK Home Office, 2015), and came into effect on 29 October 2015.

What is modern slavery?

In the UK ‘modern slavery’ is an umbrella term used to encapsulate a series of different violations which go beyond slavery-like abuses, but all share a common intention to exploit individuals for the purpose of work or services, through abuse which violates their human rights. The violations contemplated in the term modern slavery -slavery, servitude, forced or compulsory labour and human trafficking (MSA, Part I)- are different offences defined in separate instruments of international law and national legislation. Some of these international conventions reflect the long-established commitment of the international community to combat some harmful practices, and they even predate the Universal Declaration on Human Rights (1948), such as the 1926 Convention to Suppress the Slave Trade and Slavery and the ILO Convention no. 29 on Forced Labour (1930) (which is also included in the 1998 Declaration on Fundamental Principles and Rights at Work). The more recent international instruments, i.e. the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (2000), the OSCE Action Plan to Combat Trafficking in Human Beings (2003), the EU Directive on Preventing and Combating Trafficking in Human Beings and Protecting Victims (2011) and the Protocol to ILO Convention No. 29 on Forced Labour (2014), all acknowledge the reality of how commercialisation of people has become a highly profitable transnational economic activity, which impacts people on a global level. The definitions of each offence contained in Part I of the MSA are based on these internationally agreed definitions.

Transparency in Supply Chains Reporting Requirement

After intense lobbying by civil society, s.54 requires commercial entities to produce annual Slavery and Human Trafficking Statements that state organisations’ efforts to identify and prevent modern slavery in their supply chain. This provision uses transparency as a tool to encourage informed business and procurement decision-making, and increase consumer choice by disclosing relevant information. It also aims to drive organisations to better understand their own risks and impacts in their supply chains. This is the rationale expressed in the *Government Guidance on Transparency in Supply Chains etc* published following the introduction of s.54 (the Guidance). This is generally the rationale behind the other international initiatives on disclosure and transparency requirements referred to above. The Guidance also makes a business case for reporting, focusing on business benefits (p. 4). Whilst all

these benefits are a plus associated to transparency, this article argues there is a risk that a strong focus on the business case deprives the exercise of human rights due diligence of its material element and turns it into a formal requirement, merely a compliance exercise. Equally, relying exclusively on consumer and stakeholder action, and their capacity to influence business behaviour, rather than establishing sanctions for non-compliance or even poor compliance, deprives these regulations of real teeth. Therefore, on the one hand, there is no direct right of action by consumers -in our case the public sector consumer- if information proves to be vague, inaccurate, or downright fraudulent. On the other, in the absence of close monitoring and state enforcement, intentional vagueness impairs the ability of consumers to influence corporate diligence (Stumberg, 2017). In the case of the MSA s.54 the only provision regarding enforcement refers to the competence of the Secretary of State to bring civil proceedings for an injunction to demand an organisation to publish a Slavery and Human Trafficking Statement, but no agency or body has been given the competence or capacity to monitor the content of the statements or even if such content reflects the reality of the organisation's practice.

The MSA defines a Slavery and Human Trafficking Statement for a financial year as: "(a)a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place (i)in any of its supply chains, and (ii)in any part of its own business, or (b)a statement that the organisation has taken no such steps." S. 54 contains two formal requirements in relation to the Statement but fails to give a prescriptive set of substantive elements for statements to include. The prescriptive, formal, requirements are for the Statement to be approved and signed at the highest level of management of the organisation and for it to be published in its website, including a prominent link on the organisation homepage. With regard to the substantive content the Act merely suggests six categories that could be included. These will be further analysed in the next sections of this article. Furthermore, as pointed out, the Act allows statements to declare that no steps have been taken by the organisation to identify and prevent modern slavery in its supply chain. No organisation has so far chosen to follow this path.

Applying the Transparency in Supply Chains Provision to Public Buyers

Public supply chains are no different to private ones; what is different is the level of leverage public buyers may exercise over their own supply chain. Public buyers tend to procure in large volumes, through long term contracts and are valued consumers by their suppliers. Public buyers are as exposed to risks of encountering offences in supply chains as private buyers are. But as argued above, whilst corporations have a responsibility to mitigate the risk and prevent human rights violations in their supply chain, public buyers', as organs of the state, have heightened obligations in this regard. Public buyers were not the original target of the MSA. The Act defines commercial organisations as suppliers of goods or services which have a total annual turnover above the current government established threshold of £36 million or more (MSA Regulations, 2015). This provision was intended for private commercial organisations. However, the Guidance on s. 54 clarified that it refers to corporate bodies or partnerships, wherever incorporated and "it does not matter if [the organisation] pursues primarily charitable or educational aims or purely public functions" (p.8). The question of exactly which public institutions fall within the scope of the obligation is not resolved. Several public entities are incorporated as corporations and even if they exercise public functions they too develop commercial activities. The Guidance provided by the government is limited and this specific aspect will necessarily have to be addressed as the scope of transparency obligations expand (see below). The bulk of public sector organisations which have reported for the financial year 2015/2016 have been universities, as their activities are considered to be of a commercial nature. They charge fee to students and may provide commercial services but they are regulated by the Public Contracts Regulations 2015. Incorporated entities which perform public functions such as the BBC, are also captured by the MSA. Several other public authorities, such as local authorities, and statutory bodies such as Transport for

London, have also reported this year, even though, they do not explicitly fall within the remit of the law. Whilst many companies were already expecting this provision and had in fact participated in the Government consultation, public buyers have not been engaged in this process and are new to this kind of reporting.

Universities are generally sensitive towards the environmental impact of their procurement and sustainable procurement policies are common. Many institutions are making efforts to develop ethical procurement practices. However, the new MSA legislation have resulted in them having to go one step further: needing to devise policies, procedures and actions to ensure that they are not contributing to human exploitation through slavery, forced labour and human trafficking.

During 2016 Universities have had to undertake their first round of reporting under the MSA and should have published, their Slavery and Human Trafficking Statements through a direct link from their websites homepage. According to the Guidance reports are expected to be published within 6 months from the end of an organisation's financial year. Given that most universities' financial year ends on 31st July, all universities' statements should have been made public by 31st January 2017.

The First Year of Reporting for UK Universities

The first year of reporting, financial year 2015-2016, has been a success in terms of the reporting by public bodies, both those who must report and those who do not. There are, according to Government figures, 170 universities and colleges operating in the UK.ⁱ Our research has undertaken a qualitative analysis of seventy-two statements from universities, including university hospitals.ⁱⁱ

Interestingly, the first to produce a report was not a college or university, but a purchasing consortium and professional buying organisation in the sector: London Universities Purchasing Consortium (LUPC), whose members include most London Universities as well as several colleges, museums, galleries and cultural institutions. Even though LUPC does not produce the prescribed annual turnover, its statement provided some guidance to academic institutions, some of which have even reproduced some of its paragraphs. It also reinforced the idea that beyond a compliance process the MSA has brought an opportunity to reflect on institutions' social impact even if such institution is not obliged to report.

As mentioned, only the formal requirements are mandatory, this is to publish the Statement on the website of the organisation with a prominent link on the home page, and for it to be signed at senior level. Most Universities comply with these.ⁱⁱⁱ The signatories of the statements have included the Chairman of the Board of Governors or Council, Vice Chancellors, Chief Executive Officers, Chief Operating Officers, Vice Provost and Heads of Procurement Departments. With regard to the content, the government has only provided some guidance relating to the content, for example, it merely encourages clear, detailed and informative statements written in simple language. No particular length is required, probably to allow for flexibility, but this has created a disparate array of formats and lengths. Universities' statements have generally been brief and not reported extensively on current practice or plans for the future. Very few have structured their statements following the suggested substantive categories.

The next section presents the qualitative analysis of the statements from universities in the following subsections: 1) the organisation's structure, its business and its supply chain; 2) organisational policies; 3) due diligence, identification of risk and response, including effectiveness of such response; 4) training available to staff; and 5) collaboration with stakeholders and external organisations.

The organisation's structure, its business and its supply chain

Effective reporting can only be achieved if the organisation has a good understanding of its own supply chain, the organizational structure of suppliers, contractors and subcontractors, the origin of the products, materials and services which are necessary to conduct its activities. This a first and essential step for the reporting organisation itself, but also for stakeholders to understand the levels of risks within the sector, business model and specific activity of the organisation. The Guidance highlights that a greater level of detail is likely to be more helpful but suggests to avoid excessive much technical or legal information to allow accessibility to the public (p.27).

University statements are inconsistent when reporting on the structure of their own organisations and activities, and clearly insufficient in illustrating their own supply chain. Seventeen statements analysed contain no information on organisational and business structure, the rest are very brief. Several of those which make a reference to the structure provide some information on the organisational structure and business operations in terms of procurement teams' responsibilities. Most of the statements that do report on structure provide figures of the number of employees and students. Whilst most statements provide lists of categories of products that Universities purchase there is no real insight into supply chains and existing business relationships, as the government Guidance suggests. This suggests that institutions have not yet enabled themselves to assess their supply chains properly, and therefore do not yet have the basic information or capacity to put in place processes to identify both potential and actual occurrences of force labour, modern slavery and human trafficking in their supply chains.

Organisational Policies

Section 54 suggests to report on “b) [...] policies *in relation to* slavery and human trafficking” [emphasis added]. The Guidance adds that this need not be a standalone modern slavery policy, but the organisation could simply adapt or clarify how existing policies and practices, as well as programmes and management systems, may be used to prevent risks of modern slavery (p.28). Very few institutions have had time to develop specific policies on modern slavery and human trafficking in the supply chain, and this is even more salient in the case of universities, which had not paid attention (or very exceptionally) to human rights risks in their supply chain prior to the MSA been explicitly applicable to them. This meant many of the reporting institutions refer to pre-existing policies on sustainable procurement or ethical/social buying, but have not reflected on how they address and combat modern slavery. Several universities refer to their commitments to the UK (and Scottish) Sustainable Flexible Framework, which is a self-assessment exercise to measure sustainability performance in procurement, but does so far not include reference to human rights or working conditions in supply chains. In occasions, pre-existing sustainable procurement policies have been amended to include reference to modern slavery. Other universities list their employment policies, general commitments and other documents not directly related or which provide no reference to modern slavery. Even those statements mention that their policies incorporate the values and obligations under the MSA, tend to fail to explain how. Very few universities, only nine that we found, have standalone policies in place. Notable examples are the University of East London, London Metropolitan University and Manchester Metropolitan University. The University of East London which claims to have developed an anti-slavery policy which sets out a series of obligations on the University, staff, students, suppliers, business partners and agents to make sure modern slavery is not taken place in its business or supply chain. Seven others express intentions to create a standalone policy in the future. Several statements include the phrase “the University has a zero-tolerance approach to modern slavery”, which in itself, without the backing of appropriate policies and procedures, does not guarantee a proper understanding of the risks and robust responses.

The government Guidance states that for policies to have the desired effect they must be supported through effective communications and, where appropriate, training, resourcing and collaboration of effort by appropriately skilled personnel. Reports do not provide indication that efforts are being made to embed these policies in standard practices. Clear policy circulation is essential for anti-slavery activity within a company and its supply chain to become embedded as standard practice, which include creating staff awareness. On the contrary, there seems to be little done to raise such awareness. Instead, training is targeted primarily at procurement staff and exposure for other staff, when discussed, tends to be restricted to references during general inductions (see below on training).

Due diligence, identification of risks and response, including effectiveness of such response

This section includes the analysis of three of the Act's suggested categories: due diligence process in relation to slavery and human trafficking in its business and supply chains; parts of the business and supply chain where there is a risk of slavery and human trafficking taking place, and the steps taken to assess and manage that risk; and 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 (s.54, subsections 5.2. c, d and e).

Organisations have found it difficult to distinguish between these suggested categories. In fact, this is a somewhat artificial differentiation of content, as identifying risks and where in the supply chain they are present, defining steps to address them and manage them and reassuring their effectiveness are all part of human rights due diligence, as clearly stated in UNGP17.

Taking into account the most relevant elements which reporting universities have cited we divided our analysis as follows: a) specific references due diligence; b) identification and prioritisation of risks; and c) specific tools used to engage with suppliers, respond to risks, monitor them and to measure effectiveness of response.

a) Specific references to due diligence:

Most reports refer specifically to due diligence: whilst a quarter do so in separate headings, the rest refer to due diligence through the text of the statement. Fifteen universities merely state that they have or will put systems to identify and assess risks, mitigate and monitor it. Surprisingly several, nine that we found, of the reporting universities do not mention due diligences processes at all. For all the statements though the information provided is quite general and vague and there seems to be a general lack of understanding what a human rights due diligence process is. There is no mention in the statements to UNGP 17, even if the Guidance cites it when referring to how to develop these processes.

b) Identification and prioritisation of risks:

The first step within the due diligence process should be to identify potential risks within the supply chain, followed by the prioritisation of which of these risks can be tackled given their severity, urgency of the response needed and resources available. The Guidance suggests that modern slavery risk assessment should be part of an organisation's wider approach to risk management and could form part of more general risk assessment. Appropriate resources need to be deployed to ensure that risk assessment strategies can be effective (p. 34). Organisations can devise their own processes of prioritisation or rely on external actors to support them (see collaboration with stakeholders and

external actors below). The Guidance suggests one way to approach this: considering risks through assessing country risks, sector risks, transaction risks and business partnership risks (ibid).

Fifteen of the seventy-two statements analysed did not report on risks or risks assessment processes. Most statements which do refer to risk only consider the risks of abuse regarding their own staff, either recruited directly or through recruitment agencies. Nearly all of the statements mention their recruitment processes and steps taken during them, which include choosing reputable recruitment agencies, checking prospective employees' documentation and work permits. Two of statements also refer to the risk to students, highlighting that it is extremely low. But generally, those who refer to risks in their supply chain beyond direct and subcontracted employment, report on potential risks in the industries which produce the purchased products. LUPC 2016 statement was the first one to specify the industries which carry material risks of human rights violations among its members' largest purchasing categories: office supplies, laboratory consumables, ICT equipment and some states services, such as cleaning and security services. These appear in several other statements, which followed the publication of the LUPC one, as high risks categories. A series of universities mention that they use DEFRA Sustainable Procurement Prioritisation Tool. As has been discussed when analysing the organisational policies, universities are used to using sustainable procurement tools but these are not really prepared for identifying the kinds of human rights risks the MSA aims to deal with.

No statement mentions actual instances where modern slavery, human trafficking or any other human rights violation has been identified in the organisation supply chain. The fact that reference to risk to those working on the supply chain of the institution beyond staff and students is very limited and no actual instances of violations can be identified demonstrates that there is a significant number of institutions are still not aware of the impact that their purchasing decisions may be having beyond their own gates and how the products they buy may be produced in conditions of abuse.

c) Specific tools used to engage with suppliers, respond to risks, monitor them and to measure effectiveness of response:

As is evident from the analysis so far, most of the statements are vague, which is also reflected in the fact that they do not contain references to specific tools used during due diligence processes. One of the most important elements when articulating due diligence processes is the engagement with suppliers. For most institutions include informing suppliers of their zero-tolerance policy and seeking assurance from high-risk suppliers as to steps being taken to prevent modern slavery and human trafficking. The majority of the universities which report engaging with suppliers do so by obtaining pre-contractual assurances through questionnaires which require potential suppliers to confirm that they have arrangements in place to prevent incidences of modern slavery. Several specify how they have amended their questionnaires to include potential ground for rejections related to modern slavery, such as the University of Oxford. Several universities in Scotland report using the Advanced Purchasing University Consortium (APUC) standard template for tendering and award of a contract, which includes a pass/fail question which asks whether the tender meets its obligations under the MSA. The effectiveness of seeking such assurances is, however, questionable, and risks becoming merely a "tick-box" exercise rather than a substantial engagement between contracting authorities and their suppliers.

Also regarding the pre-contractual stage of procurement, several institutions report that they would exclude bidders convicted of modern slavery related offences from their tendering processes. Several universities mention using, or intending to use, the Netpositive Supplier Engagement (HE) Tool, to

engage both contracted and non-contracted suppliers, including in relation to issues of modern slavery, track suppliers' progress and share best practice. Collecting data on suppliers and keeping a constant communication with them regarding the expectations on this area is especially important as part of the due diligence process. Anglia Ruskin University, for example, reports that it will collect data on a quarterly basis from its supply base to ascertain awareness levels and commitments to the Act. A particularly powerful tool to manage relationships with suppliers and exercise leverage over the supply chain is the introduction of contract clauses regarding modern slavery. This allows institutions to have contractual rights over their suppliers to demand collaboration, disclosure of information, the setup of mitigation processes or any other procedures that the university considers relevant to fulfil its own modern slavery responsibilities. Twenty-two universities will or have incorporated anti-slavery clauses into standard terms and conditions of agreements. They vary in content, providing more or less leverage to the contracting authority over the supplier. The University of Reading reports to have introduced standard form contractual clauses requiring suppliers to comply with all relevant laws combatting modern slavery and human trafficking; confirm that they have not breached such laws and requiring them to notify of any breach or potential breach and to ensure that these obligations are flowed down to sub-contractors of suppliers. LUPC has introduced supplier due diligence and monitoring clauses in new IT hardware and servers as well as in cleaning and security agreements. In the latter, these clauses require suppliers to demonstrate their ongoing commitment to ensuring that they take steps to guard against modern slavery in their supply chains, throughout the term of the agreement.

It is difficult for public authorities to directly monitor and audit their supply chains. Monitoring the supply chain is complex and expensive, but it is essential to understand whether the risks materialise and actual violations are occurring in one's supply chain. Even in the private sector, with more experience and resources, this is a challenging endeavour. Most organisations are only just beginning to consider how they can effectively monitor potential risk areas to ensure compliance. Universities are having to take decisions over how they will audit their own supply chains and processes without any previous experience or existing guidance. Only a few universities report on monitoring efforts and procedures. Of these most are using traditional internal auditing systems. Cardiff University reports to work with contracted suppliers to implement and commit to new monitoring regimes where corporate codes of conduct and social auditing policies and practices are failing in their transparency and effectiveness. The University of Northampton states that the head of procurement may at his own discretion audit suppliers to ensure compliance. The University of Kent also expresses an intention of effective monitoring as it intends to review the ability inside a contract to perform an unannounced audit of any supplier location of work or manufacturer to ensure no breaches are taking place. Effective auditing processes, such as planned audits combined with unannounced visits to suppliers, would allow institutions to be able to react to actual violations, but they normally require the intervention of specialist organisations, as discussed below in the section on collaboration.

Once risks identified and monitored it is important to have procedures in place to respond to them, address violations and establish plans for corrective action. As a response the analysed statements only mention the possibility of terminating agreements with suppliers who are found to be non-compliant with the MSA, rather than engaging with suppliers to develop corrective action plans and remedial processes.

Directly related to the lack of provisions on how to respond to risks is the fact that effectiveness of the measure taken appears to be the least reported on category among those suggested by the Act. The Guidance suggests that organisations report on effectiveness in two ways: a) provide information on existing Key Performance Indicators (KPI's) and set out whether they have considered them to make the business and supply chain vulnerable to modern slavery and b) outline any additional KPI's which

the company has introduced to measure the performance of anti-slavery actions undertaken. Only eight statements mention modern slavery related KPI's . The University of Northumbria briefly states that it will develop and enhance the systems which may include the formulation of subsequent risk assessments and KPI's, and the University of Bristol informs that it will develop a set of KPI's such as effective use of recruitment and selection process. The four Universities (York, Leicester, London, and Hertfordshire) which claim to already have KPI's in place all state reviewing and monitoring their supply chains and contract management as a performance indicator. Leicester University reports that it will measure how effective it has been to ensure that slavery and human trafficking is not taking place in any part of its business or supply chain by measuring remedial action taken when instances of non-compliance are identified.

Training available to staff

Most universities mention the training provided generally during induction processes, when the institutional policies are presented to staff. However, as indicated in the policy section very few organisations have modern slavery-related policies. More focused training is necessary and is in fact key in order for institutions to stand up to their responsibilities. The introduction of s.54 has created intense activity of training and consultancy in the private sector, which has generally served as an awareness raising exercise but also, to some extent, an outsourcing of responsibility to consultants. There has also been a strong interest in the public sector, particularly in the Higher Education sector as procurement departments have sought training. The Higher Education Procurement Academy (HEPA) has run several training workshops, attended by over 100 staff. These efforts to attend external training, or develop internal ones, is reflected in many statements. One third of the statements refer to training and over half of those reported training to be targeted at those in the procurement teams, management or involved in the recruitment and selection processes. Only two universities report that they provide specific training for all staff. Several universities report on their plans to introduce future training and declare their commitments to make it available to all staff.

Collaboration with stakeholders and external organisations

Beyond their engagement with their own suppliers several organisations report on their collaboration with external actors. Whilst s.54 does not specifically suggest that organisations report on engagement with stakeholders and collaboration with external organisations, the fact that universities have chosen to do so is interesting. The most common reference is to their own purchasing consortia, to which they are members, using some of their resources, including as mentioned the APUC's Supply Chain Code of Conduct. Other statements refer to collaboration with non-governmental organisations such as Electronics Watch and the Ethical Trading Initiative, or seeking advice from the professional body Chartered Institute of Procurement and Supply (CIPs). As mentioned, several universities have subscribed to the NetPositives Futures package which enables it to have up to date information on suppliers' credentials for monitoring purposes. There is much wider scope for reaching out to external organisations and stakeholders, which is more common in the private sector, especially among large corporations. It is an important element in the process to understand and address responsibilities in GSCs and in the case of the public sector essential given the current lack of practice, established internal processes and overall capacity to face their own impact on the human rights of those who produce their products and provide services to them.

Conclusions

This article has analysed the first year of reporting under the MSA for universities, which has been the main group of public buyers having to report on their efforts to prevent, identify and mitigate modern slavery in their supply chain.

There was no previous experience of this kind of non-financial disclosure among these institutions and no specific guidance for the public sector has been produced. Public buyers, and universities in particular, have had to draft their statements with little knowledge of the problem itself, their legal requirements and the social expectations placed on them. Whilst some have made impressive efforts to undertake this process, in general statements show that there is a steep learning curve ahead before we can claim institutions have understood and taken effective action over their human rights impact.

The *Slavery and Human Trafficking Statement* is intended to be a live document, based on a process of discovery, commitment and acknowledgement of responsibility within each institution. It is an organic document which should reflect a process of human rights due diligence which deepens every year. The statement is not the outcome; its publication on the website is not the aim in itself. The statement is the vehicle to commence, strengthen and own a sound due diligence process which allows institutions to know the risks their activities pose on human rights, modify their practices to prevent such risks, establish procedures to react to violations, mitigate their impact and when possible remediate them.

Much of the responsibility for the statement has fallen on the staff at procurement departments. They may be ones who know what is bought and who from, however, understanding the supply chain, and more importantly the human impact of the purchasing choices of an institution goes beyond the people in the front line of buying. Procurement departments need support and commitment from senior management to perform this task, foster a new culture within institutions and open them to external collaboration. Statement needs to be signed and approved by the persons at the highest level of management (s. 54, subsection 6), therefore, it is not a one person, or one department task: it is a whole institution commitment and challenge to raise up to this responsibility that universities, and public buyers in general, are faced with.

The new requirement under the MSA should be greeted as an opportunity to review existing policies and enhance social and ethical commitments. Universities in particular, and public buyers in general, cannot elude their new legal responsibilities towards their own supply chains, and their obligations to identify and prevent human rights risks associated with their purchasing decisions are only likely to increase in the future. Public buyers have a heightened responsibility to combat human rights violations in supply chains and as such it should be reflected in the legislation. An extension to the obligation to report to all contracting authorities is necessary, and in fact it may only be a matter of time for this to happen. There has already been an (unsuccessful) attempt to amend the MSA to widen its application to public entities through a Private Members Bill^{iv} and others will follow. In fact, the need for public buyers to be accountable for their purchasing decisions is entering the public agenda beyond the UK, as demonstrated by recent consultations to establish modern slavery legislation in Australia.^v However, as this happens and in order to make reporting an effective tool for policy and practice change within public institutions and making these a key element in the efforts to protect human rights in the supply chain public buyers also need that the requirements are clearly set. Guidance to the extent of their obligations and social expectations needs to be developed specifically for the public sector. Equally, consequences for non-compliance need to be established, monitored and sanctioned.

Whilst reporting is not the panacea, and transparency on its own cannot bring meaningful change to current abuses in GSCs, s. 54 of the MSA has proved a catalyst for a wider process of understanding the human rights risks attached to institution's commercial relations. Further reporting practice will allow organisations to develop and their own due diligence processes, learn the right questions to ask to their suppliers, provide the right answers to their stakeholders and become accountable for their own impact on human rights.

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Notes

ⁱ The government Universities and Colleagues website list 170 institutions, <https://www.gov.uk/check-a-university-is-officially-recognised/recognised-bodies>.

ⁱⁱ Our analysis includes seventy-two universities with a financial year ending on 31st March, which have published their statements for the financial year 2015/16 within the 6-month period indicated by the Guidance. The statements have been collected from the Business and Human Rights Resource Centre (BHRRC) MSA Registry of Statements website and the university own websites found through the Google search engine. No quantitative analysis has been developed. References to the number of statements with specific content are only done for illustrative purposes.

ⁱⁱⁱ Whilst most Universities provided a link to the statement at the bottom of the home page (33), 19 did it via links from a relevant dropdown menu (i.e. 'about us' or 'Governance'), the statements of 11 universities needed the use of the websites search tool to be found and another 11 could only be found using the Google Search Engine.

^{iv} The Private Members Bill to amend the MSA to widen its application to public buyers was approved in the House of Lords in second reading but failed to be passed in the House of Commons in April 2017, see <http://services.parliament.uk/bills/2016-17/modernslaverytransparencyinsupplychains.html>.

^v See for example the submissions of written evidence by the International Learning Lab on Procurement and Human Rights to the Australian Inquiry into the Commonwealth Procurement Framework and Australian Parliament Joint Standing Committee on Foreign Affairs, Defence and Trade inquiry into establishing a Modern Slavery Act in Australia, available at <http://www.hrprocurementlab.org/blog/articles/learning-lab-submits-written-evidence-to-the-australian-inquiry-into-the-commonwealth-procurement-framework/> and <http://www.hrprocurementlab.org/blog/articles/learning-lab-submission-to-the-australian-parliament-joint-standing-committee-on-foreign-affairs-defence-and-trade-inquiry-into-establishing-a-modern-slavery-act-in-australia/>, respectively.