The Modern Slavery Act – are company responses helping consumers?

Heather Webb

1 Research Director, Ethical Consumer Research Association, Manchester.

Abstract

In 2015, the UK Government passed the Modern Slavery Act which required most medium to large UK companies to publish a statement on their websites explaining what they were doing to combat any modern slavery that may be occurring in their supply chains. Since then, more than three thousand companies have produced statements, and civil society groups have begun to analyse and comment on what is emerging. The main purpose of this paper is to look at these analyses by civil society groups and to reflect on the extent to which they are helping to inform ethical consumers.

From the analyses featured in this article, only one third of companies required to report meet the legal minimum requirements and over a third of the estimated companies required to submit statements have failed to comply. Civil society organisations agree that the regulations need to be tightened to ensure all companies actively address this issue and a number of suggestions and campaigns have been forthcoming. In the section entitled ‘Upgrading the MSA’ below, we look at calls for the government to publish lists of companies required to report and to use its own procurement budgets to drive change.

Encouragingly, a consortium of civil society organisations have established a UK Modern Slavery Act Registry, and one organisation has published a report comparing companies supplying the same sectors. But more needs to be done to digest the data created by the MSA to make it practically useful to most consumers. We explore some options for developing a rating and suggest a simple score or traffic light system which might help ordinary people differentiate bad from good in this complex environment.

Keywords: Modern Slavery, consumers, trafficking, forced labour, supply chains, CORE coalition, jewellery, transparency

Introduction

The Modern Slavery Act (MSA) 2015 is an Act of the Parliament of the United Kingdom and was was the first piece of UK legislation focusing on the ‘prevention and prosecution of modern slavery and the protection of victims’ (Kelly, 2015). Section 54 of the MSA requires companies carrying out business in the UK with a total annual turnover of £36m or more to prepare slavery and human trafficking statements explaining what, if anything, they are doing to ensure slavery and trafficking are not taking place in their supply chains and businesses.

Now that the MSA has been in force for a couple of years, company statements are being published in their thousands.
The government was clear that the purpose of the act was to ‘encourage businesses to do the right thing, by harnessing consumer and wider stakeholder pressure’ (Home Office 2015). And while civil society groups have been critical of this approach (see below), they have nonetheless embarked on attempts to analyse and comment on the quality of these statements and we look at these in more detail below.

The purpose of this article is first to outline what modern slavery is in order to understand what the MSA was trying to address. It then sets out to look at the civil society responses which are beginning to take stock of progress under the MSA. Finally it seeks to address the questions, where do consumers fit into all this, and what could be improved to make progress more effective?

**What is modern slavery?**

Modern slavery is an umbrella term that covers the offences of human trafficking and slavery, servitude and forced or compulsory labour. Campaign groups working in this area tend to define it as including the following:

- Bonded labour: when a person is forced to work to pay off a debt.
- Forced labour: when a person is coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration authorities.
- Descent-based slavery: when a person is born a slave because their family belongs to a class of ‘slaves’ within a society.
- Trafficking: the transport or trade of people from one area to another and into conditions of slavery.
- Child slavery: is the enforced exploitation of a child for their labour for someone else’s gain.
- Early and forced marriage: when a woman is married without consent, often while still girls, and forced into sexual and domestic servitude, (see e.g. Anti-slavery 2018, ETI 2018).

In 2014 a Guardian investigation found that Asian migrant workers were brutally enslaved during the production of seafood for several major UK and US supermarkets (Hodal, Kelly & Lawrence 2010). Thailand-based CharoenPokphand (CP) Foods, the world’s largest prawn farmer, admitted to sourcing fishmeal used to feed prawns sold on the international market from boats manned by modern slavery victims. A follow up investigation by Human Rights Watch in January 2018 found that migrant fishermen from south-east Asia continue to be routinely trafficked onto fishing boats; prevented from leaving or changing employers; and are often not paid for their work or paid less than the minimum wage (Kelly, 2018).

However, this is only a drop in the ocean as far as the scale of slavery found in consumer supply chains. According to the Global Alliance to Eradicate Forced Labour, Modern Slavery, Human Trafficking and Child Labour (also known as Alliance 8.7), an estimated 40.3 million people were victims of modern slavery in 2016 (Donger 2018). 24.9 million of those were in forced labour and 10 million were children. Alliance 8.7 said in its report in 2017 that domestic work accounted for a quarter of forced labour followed by the construction (18 per cent), manufacturing (15 per cent), and agriculture and fishing (11 per cent) sectors (ILO 2017).

A common misconception is that slavery only occurs in distant supply chains. The UK government, in its 2017 UK Annual Report on Modern Slavery however estimates that there are potentially between 10,000 and 13,000 victims of slavery...
in the UK (HM Government 2017). It states that the “complex and hidden” nature of slavery makes it impossible to accurately estimate the prevalence but has found that, in its own words, the most common type of ‘exploitation’ is ‘labour exploitation’ (HM Government 2017). In January 2018 a woman and man were jailed under modern slavery legislation for forcing children trafficked from Vietnam to work in nail bars in the UK (Morris 2018).

Latest figures from the National Crime Agency said British nationals made up the highest number of cases for the first time, followed by people from Albania and Vietnam. With over 5,000 potential victims of modern slavery and trafficking were referred to UK authorities in 2017 (BBC 2018).

Civil society responses to the MSA?

There are two legal requirements of a Modern Slavery Statement. Firstly it must be published on the organisation’s UK website with a link in a prominent place on the UK homepage. And secondly a company’s statement should be approved by the board or directors and signed by a director. Aside from these two legal requirements the actual content of a statement is left up to the company.

Carrier and Bardwell (2017) from the Business Human Rights Resource Centre (BHRRC) summarise criticism from civil society groups which complain that the MSA has:

- no monitoring mechanism to verify whether companies that are meant to report do so;
- no enforcement mechanism for those companies that fail to report; and
- no legal consequence for reporting that no steps have been taken to address modern slavery.

The Government’s own reports show that civil society asked for: “the Government or one of its partners...to launch a central database, the purpose of which would be to act as a comparison site to consumers as well as a league table of compliant companies. It would streamline the reporting process as consumers and the general public would be able to see which businesses have published an annual statement for their reporting period.” (Home Office 2015) It however declined to provide one.

In response to the lack of monitoring and the lack of a government database, the BHRRC has set up its own UK Modern Slavery Act Registry where companies can submit their statements. The registry is a free, public and transparent database of company statements which can be searched by company name, headquarters and sector. The registry is ‘guided and supported by a group of partner organisations that includes: Freedom Fund, Humanity United, Ethical Trading Initiative, CORE Coalition, Focus on Labour Exploitation (FLEX), Walk Free, Anti-Slavery and UNICEF UK’ (Carrier & Bardwell 2017). It does not accept funding from companies.

The fact that only 3,800 statements had been submitted to the registry by January 2018 (Modern Slavery Registry 2018) - a third of the companies expected to report under the Modern Slavery Act (CORE 2018a) - highlighted the lack of enforcement, and the lack of incentive for companies, to comply.
Benchmarking Modern Slavery Statements

The main organisations working to benchmark modern slavery statements have been CORE and BHRRC (CORE 2017b). In their reports they have checked that Modern Slavery statements comply with the legal requirements (signed by a director and have a link on their homepage) and whether they address the six suggested topics. Perhaps unsurprisingly, what they have found has been mostly weak statements with some examples of good practice.

BHRRC first report (2016) looked at the FTSE 100 and analysed the 27 statements available at the time. It found that most companies provided very little information “on the structure and complexity of their supply chains” with even less information “available on specific risks in the supply chain, both with regard to the type of risk and where in the supply chain the risk was identified (sector or location).” It also found that only 15 out of 27 fully complied with the Act (i.e. they had explicit board approval, were signed by the appropriate person and a link to the statement was found on the company homepage). However it did find examples of good practice. M&S and beverage company SABMiller provided ‘details on their risks, detail instances of modern slavery and explain how these have been addressed’.

In September 2017 CORE produced a detailed report called “Risk Averse? Company reporting on raw material and sector-specific risks under the Transparency in Supply Chains clause in the UK Modern Slavery Act 2015.” The report focused on companies which sourced raw materials associated with a risk of modern slavery - cocoa from West Africa, mined gold, mica from India, palm oil from Indonesia, and tea from Assam - and companies operating in sectors that are widely recognised as being at heightened risk: garment production; hotels and accommodation; construction; football clubs; and outsourcing companies. It found that compliance with the Modern Slavery Act was low.

Out of the 50 companies CORE analysed:
- only 45 had statements;
- 20 out of the 45 had not been signed in accordance with the legislation (by a director and on behalf of the board).
- two-thirds of the statements made no reference to specific risks of slavery and human trafficking in relevant raw material supply chains or specific sectors.

Marilyn Croser, Director at CORE, spoke to Ethical Consumer in January 2018 and said that the lack of detail in statements was “disappointing” although there were some sectors and companies that were better at mapping their supply chains than others. “It seems that many companies have adopted a lowest common dominator approach in order to comply the regulation. In most of the statements there was very little detail. This might be because companies are have decided to wait and see how others in their sector respond, or it may be that they are nervous about releasing data. We’re in the first year of the requirement so we’d hope to see companies adding more detail to their next statements”. (Croser 2018).

CORE also chose to highlight how, in many industries, exploitative labour practices existed alongside positive policies. Their report went on to say that: “While we found that several companies are beginning to integrate their approach to addressing the risks of slavery and human trafficking in the context of wider human rights and labour rights risks, few are making the link to risks that can be generated by their own business models, such as the price paid for an agricultural/mined product or the low wages that characterise certain sectors.”
Table 1 shows the headline conclusions from the report for each sector. It highlights that many companies working in areas of high risk fail to understand what is required of them and there was little leverage to force them to do more.

<table>
<thead>
<tr>
<th>Issue</th>
<th>Companies</th>
<th>CORE Summary</th>
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<tbody>
<tr>
<td>Cocoa from West Africa</td>
<td>Ferrero UK; Hershey; Lindt &amp; Sprüngli; Mars; Mondelez</td>
<td>Of the cocoa companies, only Mars specifically acknowledges that severe human rights risks including forced labour may be present in the cocoa supply chain. Hershey expresses its commitment to eliminating ‘illegal and forced child labour’ from its supply chain, but it does not provide information on its supply chain or source countries, and neither do Ferrero and Lindt &amp; Sprüngli, in spite of all three companies acknowledging in other publicly available documents that they source from West Africa. Mondelez (Cadbury’s) has not published a stand-alone statement.</td>
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<td>Mined Gold</td>
<td>Cartier (Richemont); Goldsmiths (Aurum Group); Pandora; Signet; Tiffany</td>
<td>None of the jewellery companies provide any substantive information in their statements on their supply chains and the risks of slavery and trafficking associated with gold mining, even though risks to human rights related to gold sourcing are mentioned in other documents. All companies appear to rely on certification schemes and audit to assess supply chain risk. There is limited discussion of due diligence.</td>
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<td>Mica</td>
<td>Boots (Walgreen Boots Alliance); Dior / LVMH; Estée Lauder; L’Oréal; Revlon</td>
<td>A number of the cosmetics companies are members of the Responsible Mica Initiative, a multi-stakeholder effort intended to address issues in the mica supply chain. In spite of this, none of the companies provide any substantive information in their statements on their supply chains and the risks of slavery and trafficking associated with mica from India. We could not find a statement from Dior/LVMH.</td>
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<td>Palm oil</td>
<td>Colgate Palmolive; Kellogg; Nestlé UK; Procter &amp; Gamble; Reckitt Benckiser</td>
<td>All five companies featured in the palm oil chapter have published statements. Kellogg and Procter &amp; Gamble do not mention raw material sourcing. Colgate reports on the scale of its business and provides a link to its policy on palm oil sourcing. Nestlé reports on the scale of its raw materials sourcing and lists palm as one of 12 priority categories for its responsible sourcing activities. Reckitt Benckiser’s statement includes a case study on its efforts to improve palm oil traceability, but general information on its supply chain is not provided.</td>
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<td>Tea from Assam</td>
<td>Bettys &amp; Taylors; Fortnum &amp; Mason; Tetley (Tata Global Beverages); Typhoo; Unilever</td>
<td>The only tea company to specifically reference sourcing risks related to Assam in its statement is Bettys &amp; Taylors. Of the other three companies that have published statements, two do not go beyond making general references to human rights issues and conditions on tea estates. Unilever’s 2015 Human Rights Report notes low minimum wages as an issue in many tea producing companies, but does not reference Assam specifically. We could not find a statement from Fortnum &amp; Mason.</td>
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<td>Apparel &amp; footwear retailers</td>
<td>Aldi UK; Foot Locker; Lidl UK; Matalan; Sports Direct</td>
<td>Of the apparel and footwear retailers, Aldi and Matalan briefly describe their supply chains and Aldi provides information on identified risks. Lidl has published a list of tier-one production facilities for all its own-brand textiles and footwear and provides information on its due diligence processes. Sports Direct’s statement gives no substantive detail on the supply chain or the company’s own operations, and no information on identified risks. We could not find a statement from Foot Locker.</td>
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<tr>
<td>Hotels and Accommodation</td>
<td>Airbnb; Hilton; Hyatt; InterContinental; Marriott</td>
<td>The four hotel companies provide an overview of the scale of their operations but only InterContinental provides any information on its supply chain and is the only one of the four to provide details on identified risks. We could not find a statement from Airbnb. There is little discussion of labour conditions in hotel operations and in other published documents. Hilton and Hyatt describe collective bargaining agreements as a risk to their business.</td>
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Table 1. Headline findings relating to Slavery and Human Trafficking Statements. Risk Adverse CORE.

In December 2017 human rights specialist consulting firm, Ardea International, published a report “All that glitters is not gold: Shining a light on supply chain disclosure in the jewellery sector. Has the Modern Slavery Act had an impact?” (Theron 2017). In Ardea International’s report it examined eight jewellery companies operating in the UK. Again, the research found poor compliance with the MSA with only 50% of the companies producing statements on their websites and only 37% being fully compliant with the MSA. These were disappointing results for a sector which has been heavily criticised for labour practices during the mining process and which subsequently set up initiatives – the Kimberly Process and The Responsible Jewellery Council – to improve practices within its supply chains.

The theme of companies failing to identify in their statements the areas of risks they face in their supply chain was also found by US based corporate social responsibility research organisation Know The Chain (2018). Their report, released in March 2018, focused on the electronic industry and companies which are required to produce a statement under the MSA. It found that “The majority of company statements did not address forced labour risks specific to the electronics sector, even
though risks such as exploitation of migrant workers through recruitment agencies are well documented.” In 2014 a Verité study found nearly a third of migrant workers in Malaysia’s electronics sector were in situations of forced labour (Verite 2014). More formal academic research into this area, particularly around reporting, would certainly be useful.

Upgrading the MSA?

In 2017 The Modern Slavery (Transparency in Supply Chains) Bill Amendment, promoted by civil society organisations, had its first reading in the House of Lords. This private members bill called on the Secretary of State to publish a full list of all companies required to comply with the MSA. It also asked that local authorities exclude sub contractors which have not prepared statements in accordance with the MSA. In January 2018 the Government appeared to quash any hopes of the MSA Amendment receiving support after it published its response to parliament’s Joint Committee on Human Rights report. It stated that it stood by its decision not to be prescriptive about what MSA statements contain and felt that the need for a central list of companies required to report under the Act could be better met by the private sector which holds more comprehensive and easily accessible data (Rutledge 2018).

Nevertheless many civil society organisations still argue that for the MSA to be effective in addressing the issue of modern slavery in supply chains the requirements on companies need to be tightened. In February 2018 CORE submitted evidence to the Public Accounts Committee Inquiry into Reducing Modern Slavery where it argued that five amendments should be made to the MSA: They asked that the government:

- publish a list of companies covered by TISC
- create and maintain a registry of statements
- require companies to report on all six areas (see below)
- mandate a public authority to deal with reports of non-compliance and sanction non-reporters;
- extend the reporting requirement to the public sector (Core 2018b).

Are MSA statements helping consumers to take action?

Modern Slavery Statements have helped Ethical Consumer’s own research into the general ethical performance of companies since more of them are now having to disclose information on the management of workers’ rights issues in their supply chains. Some sectors, like the home appliance sector often had very few publicly available documents. Through the MSA, companies are now being required to produce, at least rudimentary, statements which is helping Ethical Consumer assess how well they are doing. Ethical Consumer is then passing this onto the tens of thousands of consumers which use its website buying guides, though it is just one element in a complex wholistic ranking system.

It also appears that ethical investment organisations, which often have relatively well-resourced research teams, are beginning to use modern slavery statements as a way of assessing ESG (Environmental Social and Governance) risks. CORE and its partners, for example, in June 2017 provided guidance to help investors raise modern slavery with the companies they invest in (CORE 2017a).
More direct consumer responses to either very poor or very good modern slavery statements are yet to hit the headlines however. It is likely that consumers will need civil society organisations to act as intermediaries to separate good from bad just as they do when they work, for example, to certify Fairtrade products. Like many issues addressed by ethical consumption campaigns, placing the responsibility solely at the feet of the consumer has not always brought the change hoped for.

The MSA expects consumers to understand the Act and what is required of companies. It also misses the point that consumer purchasing decisions take into account a multitude of factors: price, availability, quality, brand loyalty and a wide range of other sustainability criteria. The MSA is arriving in an already busy space. Modern slavery permeates every society in the world and consumers can act as global citizens in alerting authorities to suspected cases, but to use consumers as the sole motivation for companies to comply should not reduce the culpability of governments and companies in enabling conditions for slavery to occur.

However, more can be done by civil society organisations to engage consumers in the campaign. It does look as if some kind of simplified rating might be useful in this space. Commonly found in ethical ranking reports are, for example, ‘traffic lights’ - a three point scale using green for good and red for bad. Additionally there are sometimes five point scales used to produce more granularity in a rating.

The government’s own reports have issued recommended content for a modern slavery statement (CORE 2017c).
• Structure of the organisation and its supply chains;
• Policies in relation to slavery and human trafficking;
• Due diligence processes in relation to slavery and human trafficking;
• Risk assessment and management;
• Effective action taken to address modern slavery; and
• Training on modern slavery and trafficking.

It is possible that a simple six point scale might make interpreting these complex results more easy for ordinary consumers. The BHRRC (2016) Report, FTSE 100 at the Starting Line, made a first attempt at this kind of ranking, putting companies on a ten point scale. Consumers will need much more of this, potentially simplified even further. Benchmarking companies against competitors in the same product area or sector will also help.

Conclusions

The MSA has been broadly welcomed by civil society organisations as it has persuaded many companies to examine their supply chains with a different lens (Carrier & Bardwell 2017). As the BHRRC has explained “The process of a company producing a statement under the Act, if done in the right way, prioritises slavery and trafficking issues with the company’s senior management (Carrier & Bardwell 2017).

This has been positive step, but the poor quality of statements (lacking reference to specific risks for example) or lack of statements is a major concern at this early stage. From the studies featured in this article only a third meet the minimum
requirements – requirements that do not even include addressing the issue of modern slavery or the risk companies face within their supply chain. What is more troubling is that over a third of the estimated companies required to submit statements have failed to comply. The lack of enforcement mechanisms and oversight on who is required to produce statements is still a concern. If the goal of the MSA goal is to end slavery in supply chains then civil society organisations agree that the regulations need to be tightened to ensure all companies actively address this issue. A number of suggestions and campaigns have been forthcoming and most appeared in the 2017 The Modern Slavery (Transparency in Supply Chains) Bill Amendment mentioned above. It will be interesting to see if the inclusion of the registry and list of companies required under the Australian modern slavery act will ‘persuade’ the UK government to alter the current MSA if it leads to higher levels of compliance.

It is encouraging that a consortium of civil society organisations have established a UK Modern Slavery Act Registry. And a number of reports have been issued which benchmark and critically reflect on some of the statement already issued. But more needs to be done to digest the data created by the MSA to make it practically useful to most consumers. A simple score or traffic light system might help ordinary people (and institutional buyers) differentiate bad from good in this complex environment and therefore to factor this into their own buying decisions. As the BHRRC itself has said, 'The UK Modern Slavery Act can transform business action to eradicate slavery, but only if investors, civil society, consumers and companies use their leverage to ensure it’ (Carrier & Bardwell 2017).

References


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