



UK Modern Slavery Act 2015 Transparency in Supply Chains: The First Year of Reporting by Universities

Olga Martin-Ortega

Rahima Islam

ABOUT US

Since 2013, the Business, Human Rights and Environment Research Group has brought together the expertise and research interests of several leading academics in the field of Business and Human Rights, International Environmental Law and International Criminal Law. Our current research focuses on the roles and responsibilities of public buyers regarding their own supply chain. In particular, we have focused on the implementation of the Transparency in Supply Chains provision of the Modern Slavery Act (MSA) 2015 by the public sector. We are also supporting Parliamentary initiatives in amending the law to include obligations for public authorities to report on their efforts to identify, prevent and mitigate modern slavery, and to increase accountability for human rights violations in global supply chains and have contributed to the debate to create similar rules in Australia. We have produced, in collaboration with CIPS, LUPC and AUPC specific guidance for practitioners on protecting human rights in the supply chain.

ABOUT THE TRANSPARENCY IN SUPPLY CHAINS PROVISION

On 29th October 2015, the Transparency in Supply Chains Provision (TISC, s.54) came into force. The provision requires commercial entities to report annually on their actions to identify, prevent and mitigate modern slavery in their supply chain. It aims to engage commercial organisations in the fight against slavery, human trafficking and forced labour by producing an annual Modern Slavery and Human Trafficking Statement (the statement). The legislation defines 'commercial entities' as suppliers of goods or services with a total annual turnover currently set at £36 million or more.

This has included certain public bodies who are subject to the UK Public Contracts Regulations (2015). The main group of reporters from the public sector are Universities and

other Higher Education Providers. Other public buyers, which in principle are not caught by s.54, have chosen to voluntarily report. These includes six purchasing consortia, eleven local authorities, and other authorities such as Transport for London.

In 2015, the government published a guide on how to complete the statement for all commercial organisations (the government Guidance). This has assisted our analysis on compliance with the act, especially in terms of entities which follow best practice.

ABOUT THIS REPORT

This report analyses the first round of statements published by universities and universities purchasing consortia, for the financial year 2015-16.

Our research has undertaken a qualitative analysis of seventy-three universities (including three university hospitals) who are caught by the legislation, as well six higher education purchasing consortia. The statements were found using the Google search tool and the registry kept by the Business and Human Rights Research Centre. Our analysis includes the statements comprised within the first year of reporting and up to 31st March 2017. This report highlights examples contained in the statements with particular focus on best practice but also signalling poorer and less effective examples in order to encourage improvement through a valuable learning process.

THE FIRST YEAR

The first year of reporting (2015/2016) has provided an intense learning period for public bodies, in terms of their obligations and responsibilities under the MSA in particular - and more generally regarding the human rights of those in their supply chains. This learning process has also even been apparent for those who are not actually obligated by the act, but have voluntarily chosen to report.

One of the earliest entities to report was the **London Universities Purchasing Consortium (LUPC)**, a professional buying organisation whose members consist mostly of London universities, as well as several colleges, museums, galleries, and cultural institutions. The Consortium is not required to report by the MSA, as it does not achieve the £36m threshold. By publishing a statement, it illustrates one of the merits of the TiSC provision: incentivising good practice and providing institutions with the opportunity to reflect on their social impact in society, beyond mere compliance exercises. Several universities have used the LUPC statement as a sort of template, in occasions even reproducing its text literally. This defeats the purpose of defining each institutions' commitments, undertaking risk assessments and developing processes which will allow an institution to understand its supply chain and provide adequate responses to risks.

The rest of this section contains our analysis of the statements from universities. First, we consider the mandatory requirements and then the suggested criteria set out in s.54 and the government's Guidance, pointing at the reporting trends and examples in both categories.

Mandatory (Formal) Requirements

The MSA makes it mandatory for entities to publish their Slavery and Human Trafficking statements on their website via a link located on a prominent place on their homepage or in a relevant and obvious dropdown menu. These statements must be approved at the highest level of governance of the institution and signed by one the most senior member of the organisation i.e. by a director or chief executive officer.

Forty-three of the seventy-three universities' statements are signed by a director or senior member of the institution. Members include the Chairman of the Board of Governors or Council, Vice Chancellors, Chief Executive Officers, Chief Operating Officers, Vice Provost and Head of Procurement. Thirty-nine of the universities have published a link to their statements on their websites. A majority of twenty-three provide this at the bottom of their homepages, whilst seven do so using relevant menus such as the 'About' link. Five of the statements however, could only be found using the websites search bar, and four could not be found without using the Google Search Tool. Only three **purchasing consortia** statements have been approved by their board, one has been signed by the Chief Operating Officer and the

remaining two do not mention their approval process nor are they signed.

Substantive Content

Paragraph 5.2 of s.54 provides a non-exhaustive list of information that may be included in statements:

- (a) *The organization's structure, its business and its supply chains;*
- (b) *its policies in relation to slavery and human trafficking;*
- (c) *its due diligence processes in relation to slavery and human trafficking in its business and supply chains;*
- (d) *the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;*
- (e) *its 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;*
- (f) *the training and capacity building about slavery and human trafficking available to its staff.*

Our analysis does not strictly follow this categorisation, as we consider the distinction to be somewhat artificial; with some categories overlapping in content. Instead we have divided the reporting analysis into four sections: 1) the organization's structure, its business and its supply chain; 2) organisational policies; 3) due diligence, risk assessment and response, including effectiveness of such response, and; 4) training.

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

Effective reporting can only be achieved if organisations have good knowledge and understanding of their own supply chain and how their businesses are structured in terms of suppliers, contractors and subcontractors, as well as the origin of the products, materials and services which are used in their business activities. This allows for understanding of the level of risks within the sector, business model and specific activity of an organisation. The government Guidance highlights that a greater level of detail is likely to be more helpful but prevents from too much technical or legal information to be included in the statements to allow accessibility to the public.

The statements produced by universities and analysed here are inconsistent when reporting on the structure of the

organisation and activities, and clearly insufficient in illustrating their supply chain.

Six of the statements contain no information on organisational and business structure, and the rest are very brief, sometimes only mentioning that they operate in the educational sector. Several of those that do make such reference provide some detail on the organisational structure and business operations in terms of procurement teams' responsibilities. The majority of these reporting statements also tend to state employee and student numbers.

Whilst most statements provide lists of categories of products that the universities purchase, there is no real insight into supply chains and existing business relationships. This points at institutions not enabling themselves to assess their supply chains properly, and therefore not having 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.

2. Organisational Policies

Section 54 suggests that companies may report on "b) [...] policies in *relation* to slavery and human trafficking." [emphasis added]. The governments Guidance further clarifies that commercial organisations need not have a standalone policy in place. Instead they may develop one or explain how current policies and practices are relevant to the cause; either through their existing state or after having undergone modification by the organisation. Many reporting universities reflect their strong commitments towards human rights and the respect of others.

Anglia Ruskin University

"Our commitment

Anglia Ruskin University is committed to acquiring goods and services without causing harm to others."

Some organisations have chosen to develop specific modern slavery policies, such as the **University of East London**, **London Metropolitan University** and **Manchester Metropolitan University**. For example, the **University of East London** anti-slavery policy, sets out sets out obligations on the institution, staff, students, suppliers,

business partners and agents to ensure modern slavery is not taking place in its business or supply chains.

University of East London

"... all staff, suppliers, business partners, agents and any students involved in academic activities which require them to engage with third party organisations will receive a copy of, and be required to comply with, our anti-slavery policy".

However, most reporting entities refer to pre-existing policies on sustainable procurement or social and ethical buying. In occasions, these policies have been amended to include reference to modern slavery, as stated, for example, by the **University of Leicester**. **Brunel**, **Cranfield University**, **Oxford Brookes**, **UCL** and **Surrey** mention that preliminary work is underway to develop dedicated policies. Seven others express general intentions to create a standalone policy in future. The **University of York** reports on its Code of Practice and Principles for Good Ethical Governance. Whilst it does not refer specifically to modern slavery and human trafficking it highlights that the Code considers activities conducted overseas or in collaboration with overseas partners in countries or under regimes with poor human rights records or those which have been identified as dangerous by the Foreign & Commonwealth Office.

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. Other universities take the opportunity to showcase a range of policies which are unrelated to modern slavery. In other cases, such as the **University of Glasgow**, claims are made that compliance with the MSA is part of its sustainability strategy but links provided on the website make no actual reference to it. **Open University** and the **University of London** report on their procurement policies as specifically addressing modern slavery, however, the policies could not be found on their websites to confirm this.

Many of the reporting universities express commitments to implementing and enforcing effective systems and controls to minimise risk. The government Guidance states that for policies to have the desired impact, they must be supported through effective communications and, where appropriate, training, resourcing and collaboration of effort by

appropriately skilled personnel. Clear policy circulation is essential in any organisation, but specially with regards to an issue such as modern slavery which has only recently become a public policy priority. In order to become embedded as standard practice all staff needs to be aware of the responsibilities of the university regarding its supply chain and incentivised to be part of the challenge which the institution as a whole faces.

On the contrary, there seems to be little done to raise general awareness by universities among staff, suppliers and stakeholders. Instead, training is usually targeted primarily at procurement staff, whilst exposure for all other staff exists only during general inductions. This would inevitably lack focus on modern slavery issues (see below on training).

Overall, the statements fail to demonstrate how the institutional policies, including the targeted ones, specifically address the risks to modern slavery in their supply chain and the role and responsibility of the institution in the context of overall efforts to combat modern slavery.

3. Due diligence, risk assessment and response, including effectiveness

This category of analysis includes three of the Act's suggested elements which could be included in the report: 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 chain, measured against performance indicators as it considers appropriate.

We have classified the most relevant elements cited by universities regarding due diligence as follows: a) whether they report to have a specific due diligence procedure or they refer explicitly to their due diligence; b) how do they report that they identify, prioritise and monitor risk; c) which tools or specific instruments do they refer to, in order to help engagement with their suppliers to identify risks, respond and monitor them; d) collaboration with external stakeholders or organisations; and e) measuring effectiveness.

a) Do statements contain specific references to due diligence?

The government Guidance mentions that for many business due diligence in relation to modern slavery is likely to form part of a wider framework around ethical trade, corporate social responsibility and human rights. This is definitively the case with universities. Most of them 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. Surprisingly, nine statements do not report on due diligence processes at all.

For all of the statements, the information provided is quite vague and general. Fifteen universities merely state that they have, or will put in place systems to identify and assess risk, mitigate and monitor them. Some of these statements do provide some more detail, but such information is generally minimal.

Most statements refer only to 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 the due diligence that they take during it. Two of them also refer to the risk to students, highlighting that it is extremely low.

University of the Arts London

"Temporary staff and other staff recruited indirectly by the University are only recruited through established and accredited sources who can provide assurance that they fully comply with the requirements of all legislation relating to the rights and welfare of their candidates and employees. Agencies provide assurance that the appropriate checks have been made on the temporary staff being supplied to the University."

Reference to risk to those working on the supply chain of the institution beyond staff and students is very limited. This 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.

b) How do they prioritise risks?

The first step within a human rights due diligence process should be to identify potential risks within the supply chain, and prioritise action over them. It is not possible to map all supply chains and identify all risks at once, and public bodies do not have sufficient resources to do so. Therefore, prioritisation in risk identification and response is essential.

The government Guidance indicates that modern slavery risk assessment should be part of an organisation's wider approach to risk management and could form part of a more general risk assessment. It suggests considering risks according to country risks, sector risks, transaction risks and business partnership risks. The **University of East London** reports it has established a modern slavery working group with representatives from different departments of the organisation, to identify risk areas and decide on best ways to deal with them. **Bournemouth University** provides detail on the causes of vulnerability and how it proposes to mitigate the risk of each category. **LUPC** has published two statements (2016 and 2017) and in them it distinguishes its members' main purchasing categories: laboratory consumables and equipment; library resources; professional services; ICT equipment and services and; estates goods and services. Out of these categories the principal ones which carry material risks of human rights violations are office supplies, laboratory consumables, ICT equipment and some estates services, such as cleaning and security services, and contains action to mitigate such risk for each of them. Many other institutions have followed this categorisation when identifying their main risk categories.

Fifteen of the seventy-three university statements analysed do not report on risks or risk assessment processes and those who do mention potential risks fail to provide specific details. Several reports do state the industries or categories of products which have been flagged up as being high risk in assessments. However, none mentions actual instances where modern slavery, human trafficking or any other human rights violation has been identified in its supply chain.

As the government Guidance points out, appropriate resources need to be deployed to ensure that risk assessment strategies can be effective. This is always difficult, especially considering competing social demands public institutions must tend to and the limitations and constraints that the public procurement legal regime

establishes on secondary priorities and particularly regarding socially responsible procurement.

c) Which tools or specific instruments are reported to be used in identifying, monitoring and responding to risks?

Some of the statements mention specific tools. These mainly revolve around engaging with suppliers to identify, respond to, and monitor risks.

For most, due diligence involves informing suppliers of their policies and seeking some sort of assurance from new suppliers, usually during the tendering process. **Anglia Ruskin University** states that it will collect data on a quarterly basis from its supply base to ascertain awareness levels and commitments to the Act. This is a good way to gather evidence and highlight trends in compliance.

The most common way of obtaining pre-contractual assurances is through questionnaires which require potential suppliers to confirm that they have arrangements in place to prevent incidences of modern slavery. For the majority of institutions, a quick checklist during the tendering process seems to be sufficient. The **University of Huddersfield** provides potential suppliers with a strategy checklist and pre-qualification documents. The **University of Oxford** and others report to have amended their questionnaires to include potential ground for rejections related to modern slavery. Several universities in Scotland, including the **University of Highlands and Islands** use the 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 public authorities and their suppliers.

Several institutions report that they would exclude bidders convicted of modern slavery related offences from their tendering processes. **Edinburgh Napier University** and the **University of Edinburgh** report that their procurement process will exclude any bidder who has been subject to a conviction for any offence under Part 1 of the Human Trafficking and Exploitation (Scotland) Act 2015. **Goldsmiths University, SOAS** and the **Universities of London and Oxford** will exclude from tendering process, any bidder convicted of an offence under S. 2 or 4 of the MSA.

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. **Bournemouth University, University College London, the University of Glasgow** and five **purchasing consortia** mention using DEFRA Sustainable Procurement Prioritisation Tool to assess, monitor and mitigate potential risk areas in supply chains.

A particularly powerful tool to use in order to manage relationships with suppliers and exercise leverage over the supply chain is the introduction of contract clauses regarding modern slavery.

University of Reading

"We have introduced standard form contractual clauses requiring suppliers to the University to comply with all relevant laws combatting modern slavery and human trafficking; to 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".

Introducing contract clauses 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.

London Universities Purchasing Consortium

"During 2016, LUPC successfully secured the inclusion of supplier due diligence and monitoring clauses in new agreements for Apple products and for server and storage solutions." [...] "In October 2016, LUPC awarded new supply agreements for cleaning and security services that include new clauses requiring our suppliers to demonstrate their ongoing commitment to ensuring that they take steps on our behalf to guard against modern slavery, human trafficking, forced and bonded labor and labor rights violation in their supply chains, throughout the term of the agreement."

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.

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 procedures to monitor risks externally, in their supply chains. 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.

As a response to violations many of 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.

d) Collaboration with external organisations

Beyond their engagement with their own suppliers, several organisations report on their collaboration with external actors. The most cited non-governmental organisations in the statements are Electronics Watch or the Ethical Trading Initiative. Some refer to seeking advice from the Chartered Institute of Procurement and Supply (CIPS). And most also refer to their own purchasing consortia and their expectation that they would support and guide them.

Collaboration with external actors is essential, not just because universities do not have the expertise and capacity to assess every sector from which they purchase goods and contract services, but because these organisations have established practices, relationships and procedures which can multiply the effect of one single institution and, in time, galvanise the energy and leverage of the university sector as a whole.

e) Measuring effectiveness

The government Guidance encourages organisations to report on the effectiveness of their measures by providing information on existing or additional Key Performance Indicators (KPI's) related to anti-slavery actions.

Effectiveness appears to be the least reported on with only twenty-four of the seventy-two universities analysed having reported. Only eight university statements mention any KPI's. The **University of Northumbria** briefly states that it will develop and enhance its systems, which may include the formulation of subsequent risk assessments and KPI's. The **University of Bristol** informs that it will develop a set of KPI's such as effective use of recruitment and selection processes.

Four Universities (**York, Leicester, London,** and **Hertfordshire**) which 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. The **University of East London** has introduced an MSA record keeping book whereby the Secretary and Registrar will maintain a central record of any modern slavery issues which have been reported, to monitor compliance and support continuous improvement.

4. Training about slavery and human trafficking available to staff

The introduction of section 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.

In the public sector, particularly among universities, procurement departments have sought training. The Higher Education Procurement Academy (HEPA) has run several training workshops in the country, attended by over 100 staff. These efforts to attend external training, or develop internal ones, is reflected in universities' 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. Most universities mention training in their induction processes, but these tend to focus on institutional policy in general, and lack a focus on modern slavery. Several universities mention that their staff has already received training, whilst most express their plans to introduce it in the future.

Training is essential, however this issue is complex and the responsibilities within institutions related to it are diverse, which needs to be reflected in the support given to staff.

CONCLUSIONS

On the whole, the first year of reporting has been successful in raising awareness over the shared responsibility public authorities have with regard to preventing and mitigating human rights violations in global supply chains. Whilst the reporting public buyers are yet to take significant steps to develop human rights due diligence procedures and act on risks and potential violations, it is encouraging to see such level of organisational commitment, both of those entities which are obliged by law to report and those which have chosen to do so voluntarily. It is however, also worrying to see the level of reproducing and use of templates that some institutions have resorted to.

The coming years will be crucial in demonstrating the effectiveness of organisations' policies, procedures and engagement processes, both with suppliers and external organisations, which are currently being designed. We expect the quality of the reports to improve as capacity building increases and the know-how and best practices are shared both among public buyers and the private sector.

ABOUT THE AUTHORS

Dr. Olga Martin-Ortega is Reader in Public International Law at the School of Law, University of Greenwich (UK) and leads the BHRE. She has been researching business and human rights for over fifteen years. She has also undertaken extensive research in the areas of post-conflict reconstruction, transitional justice and international criminal law.

Olga is a member of the Board of Trustees of Electronics Watch and a member of the Board of Directors of the London Universities Purchasing Consortium. She is also a member of the Steering Committee of the International Learning Lab on Procurement and Human Rights and leads its Electronics Hub.

Olga has conducted numerous trainings for public authorities on their legal obligations under the UK Modern Slavery Act and performing human rights due diligence on their supply chain in the framework of the Higher Education Procurement Academy (HEPA).

Rahima Islam is a Research Assistant at the BHRE. She is currently involved in the Modern Slavery and Public Procurement Project and coordinates the analysis on the MSA Slavery and Human Trafficking statements.

Rahima has experience within the NGO sector and has coordinated projects on topics such as employability and health with a specialisation in domestic violence.

The authors acknowledge the support of the Peter Harris Trust in the development of this research.

GUIDANCE AND BHRE RESEARCH SERIES

- Olga Martin-Ortega and Andy Davies (2017), [Protecting Human Rights in the Supply Chain. A Guide for Public Procurement Practitioners](#), CIPS Knowledge.
- Opi Outhwaite and Olga Martin-Ortega (2017), [Monitoring Human Rights in Global Supply Chains. Insights and Policy Recommendations for Civil Society, Global Brands and Academics](#). BHRE Research Series. Policy Paper n.3.
- Olga Martin-Ortega (2016), [Modern Slavery and Human Rights in Global Supply Chains: Roles and Responsibilities of Public Buyers. Policy and Practice Insights for Higher Education Institutions in the Framework of their Obligations under the UK Modern Slavery Act](#). BHRE Research Series. Policy Paper n.2.
- Olga Martin-Ortega and Opi Outhwaite (2014) [Promoting Responsible Electronics Supply Chains through Public Procurement](#), BHRE Research Series. Policy Paper n. 1.

For more information, visit www.bhre.org