

FOCAL POINT

MODERN SLAVERY AND THE SUPPLY CHAIN

By Michael Littlechild*



■ In March 2015, the Modern Slavery Act received Royal Assent in the UK. This imposes an obligation on UK businesses “over a certain size threshold to disclose each year what action they have taken to ensure there is no modern slavery in their business or supply chains.” It is an initiative that takes the normal discourse about supply chain management, third party risk and procurement responsibilities to a new, and very specific level. Modern slavery, and all it entails such as human trafficking, debt bondage and child abuse, is of a natural concern for us all – but we might ask ourselves what we do about it as individuals; let alone at a corporate level. Indeed, with our usual tendency to attribute fault to others, it is easy to be outraged at the failure of politicians and society, but what can we actually do about it? Have we even taken the time to consider what *we* might do to help change things? In this article, Littlechild starts that confrontation. We hope it might start a discussion as to what actually can and should be done on this subject.

■ Over 35 million people currently live in some form of slavery, according to the 2014 Global Slavery Index, with over 60 per cent subject to forced labour. The International Labour Organization estimates that 90 per cent of those in forced labour are exploited in the private economy, with the majority of victims of forced labour engaged in economic activities such as agriculture, construction, manufacturing or domestic work. Annual estimated profits generated as a result

of forced labour amount to \$US150bn, despite slavery being illegal the world over.

Today, the term slavery covers a variety of human rights violations. In addition to the more conventional definition of slavery as forced labour for no payment through the use of violence or intimidation, modern day slavery also encompasses bonded labour, descent-based labour, child slavery, forced marriage and trafficking.

* Michael Littlechild is Director of business ethics advisers, GoodCorporation.

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

It is the state's duty to protect its citizens by the enforcement of appropriate regulation and laws that guarantee fundamental freedoms

In deciding on their approach to tackling modern slavery, businesses need to understand what it is, where it is most likely to occur and what kind of practices might conceal such abuses and lead to slavery occurring somewhere deep in the supply chain. Scandals such as the treatment of migrant workers in Qatar, slavery in the Thai fishing industry and slave labour-picked Uzbek cotton have revealed the extent of the problem and how far down the supply chain it can occur.

Businesses should see slavery as the most acute form of human rights abuse. In our view, the rational approach for most companies is to tackle the problem as part of their broader management of human rights risks.

According to the United Nations, an accountability gap has been part of the problem: is it the role of the state to protect the rights of its citizens through human rights legislation or the role of business to ensure that internationally recognised standards of best practice are applied throughout its operations?

In his [Guiding Principles on Business and Human Rights](#)¹, UN representative John Ruggie proposed a framework based on three pillars: Protect, Respect and Remedy. According to Ruggie, it is the state's duty to protect its citizens by the enforcement of appropriate regulation and laws that guarantee fundamental freedoms. It is the role of business to comply with all applicable laws and to respect human rights and the duty of both state and business to bring about an effective remedy should violations occur.

When the State fulfils its duty to protect, it is far easier for firms to uphold their side of the bargain. It is when the State fails that problems arise, particularly for transnational organisations trying to implement certain standards of behaviour throughout a multi-layered supply chain.

Four years on from the publication of the UN's Guiding Principles, momentum is now building behind the idea that corporates need to be proactively engaged with managing their human rights impact.

1 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

It is the role of business to comply with all applicable laws and to respect human rights

In addition to the broad desire to prevent abuse, a growing number of human rights reporting requirements is focussing attention on the need to scrutinise international operations, in particular the supply chain, for human rights abuses.

The UK has taken a proactive stance. In 2012, the Companies Act was amended to require quoted companies to include information in their annual reports that provides an understanding of any human rights risks and how these are managed by the organisation. A year later, an action plan on business and human rights was launched making the UK the first country to set out guidance to companies on integrating human rights into their operations. The plan was the UK's response to the UN's Guiding Principles and made clear the expectations being placed on UK companies.

This year, the UK Modern Slavery Act² was passed. In addition to life sentences for the most serious offenders, the Act will require all companies doing business in the UK, with a turnover of £36m or more,

to publish an annual statement outlining the steps they have taken to eradicate slavery in the supply chain. An estimated 12,000 companies will have to meet this requirement. Many will also be required to publish a report on their human rights risks and the policies and steps being taken to mitigate those risks as part of the EU Directive on Non-Financial Reporting coming into force. The Directive applies to EU companies with 500 or more employees and it should be legislation in EU Member States by December 2016.

To meet these new requirements and ensure that human rights risks are properly managed, companies need to implement a human rights framework encompassing policy development, due diligence, risk assessment, communication and training as well as performance measurement and reporting.

Guidance from the UK government on human rights reporting statements will be published, but addressing these issues requires more than just a statement. Best practice is still in its infancy, so what

2 <https://www.gov.uk/government/collections/modern-slavery-bill>

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

should businesses do to remove undesired work practices from the supply chain?

With human rights abuses and forced labour a potential problem in a number of major industries, companies should be aware of the following practices that could make them vulnerable:

- A heavy reliance on migrant workers recruited by agencies or brokers
- A multi-layered supply chain outside the company's immediate control
- Doing business in countries with a weak regulatory environment

Policy and Governance

Any business looking to manage human rights issues should begin with a clearly written policy or strategy outlining the company's commitment to respecting human rights. This needs board approval, should be driven by the CEO and championed by senior management.

In order to push the obligation throughout the many tiers of the supply chain, the principles outlined in the policy must

apply to suppliers, sub-contractors, business partners and other third parties, in addition, of course, to the company's own employees.

Best practice is just starting to emerge, but a robust human rights policy that incorporates anti-slavery measures will include the following:

- A statement of the company's commitment to legal compliance and ethical standards as defined by organisations such as the UN's Guiding Principles and the International Labour Organization's protocol on forced labour, including the Abolition of Forced Labour Convention and the Worst Forms of Child Labour Convention
- A prohibition on any indirect benefit from or contribution to modern slavery. This would include:
 - Charging workers a recruitment fee
 - Retaining workers identity documents such as passports
 - Requiring workers to lodge deposits or bonds
 - Contract substitution

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

A system of rewards and sanctions should also be put in place to incentivise suppliers who treat workers with dignity and respect

- Due diligence requirements on any employment agencies or brokers
- Refusal to use a particular raw material known to be associated with slave labour e.g. conflict minerals or Uzbek cotton
- An effective grievance process/ speak up system for raising concerns

Responsibility for any human rights and modern slavery issues that may arise must be clearly assigned and that person or committee should have a direct reporting line to the board to ensure that issues are raised at the highest level.

In addition, adequate resources need to be allocated to ensure that all necessary communication, training, monitoring and compliance with the company's policies can be implemented.

Ethical Procurement Practices

Critical to the effective implementation of policies is the establishment of ethical procurement practices that include human rights in the supply chain. As a buyer of services, companies should

remember that they are in a position to influence behaviour. Compliance with an organisation's human rights policy or stated ethical standards should be built into the tender process. A system of rewards and sanctions should also be put in place to incentivise suppliers who treat workers with dignity and respect. For example, preferred supplier status or incentive bonus payments could be given to those with a strong track record of social and ethical practices, with punitive measures such as penalty fines for breaches and contract termination as a last resort for those who do not.

Robust supplier contracts will also include the following:

- The right to request information that confirms compliance with the company's human rights and ethical policies
- The right to audit on demand if cause is given
- A requirement to evidence that the human rights and ethical policies are being implemented

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

- Key performance indicators to show progress on any corrective actions necessary
- Transparent reporting on labour standards

Equally important are the performance objectives for procurement professionals as well as contract managers once the business is awarded. Traditionally, the focus has been on purchase price, safety and technical capabilities, with procurement teams often evaluated on price, quality and delivery and contract managers judged on the contract being delivered to budget and a quality standard. By adding the acquisition of responsibly produced goods and services to the mix, ethical considerations remain at the forefront of purchasing decisions, contract management practices, and can be used to drive an improvement in working conditions and labour standards in the supply chain.

It should also be made clear what sanctions will be imposed for any breaches of the company's human rights policy or ethical standards and that this applies to new and

existing suppliers as well as to those in the second and third tiers etc; all the way down the supply chain. Adherence with these policies should also be applied as part of supplier retention.

Culture and Awareness

Embedding the company's practice on human rights and modern slavery is vital and requires an integrated communications programme. All staff should be familiar with the company's principles in this area, but the facilities management, operations and procurement teams in particular need a thorough understanding in order to communicate the policy and ensure proper compliance. They need to understand the human rights abuses that could occur, what constitutes modern slavery, applicable legislation and relevant guiding principles. Site managers where one or more layers of subcontractors' employees are working should also have heightened awareness of the risks.

The policy should be included in all communications with new and existing suppliers and in particular any request for proposals, quotations or tender documents.

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

Compliance with the policy must form part of the supplier contract and suppliers must also be told how they will be assessed and how rewards and sanctions will apply. Training workshops and e-learning should also be offered to ensure that the policy is understood and that workers throughout the organisation and its supply chain know their rights.

Suppliers need to know that they are required to communicate the policy to their workers and all key stakeholders should be made aware of the company policy on human rights and modern slavery.

In addition, an effective grievance process needs to be introduced and communicated equally widely so that all staff, including migrant workers in the supply chain, know that they can raise any concerns without fear of reprisal.

Risk Assessment and Due Diligence

Inevitably, some businesses will be more vulnerable to human rights abuses than others. In order to be properly protected, organisations need a clear understanding at the outset of any human rights and modern slavery red flags. While abuses

may occur in any organisation, human rights and modern slavery abuses are more likely to occur in the labour cycle in particular industries and in certain locations.

Industries that are prone to human rights abuses include clothing and footwear manufacturing, agriculture, construction, mining, electronics, food processing and service work. Where these operations are carried out in parts of the world where legislation is poorly enforced, this is likely to increase the risk.

Organisations need to gather reliable information to form a risk profile of the areas in which they operate. The Global Slavery Index ranks 167 countries according to the numbers of enslaved people, what percentage that is of the total population together with a ranking of the government response to tackling the problem. According to the 2014 Global Slavery Index, the ten countries with the highest numbers of enslaved people are India, China, Pakistan, Uzbekistan, Russia, Nigeria, Democratic Republic of the Congo, Indonesia, Bangladesh and Thailand.

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

The first step should be an initial high-level risk assessment of the supply chain to divide suppliers into high, medium and low-risk categories. Due diligence should then be carried out on high and medium-risk suppliers to check for increased risks of human rights violations. This could take the form of a self-assessment questionnaire with on-site follow-up to mitigate any red flags raised by the questionnaire.

In high-risk industries and countries, organisations should look closely at the means used to recruit workers, the terms of employment and also any conditions that may prevent a worker from leaving their employ. This is vital where workers, especially migrant workers, are recruited by brokers or agents.

Companies need to be aware of the abusive practices that can occur, in particular:

- Illegal or excessive recruitment fees
- Workers uninformed or misinformed about terms of employment
- Lack of clear, compliant contracts
- Fraudulent charges for health checks, travel or work documentation, uniforms and equipment
- Underpayment, delayed or withheld wages
- Confiscation of identity documents
- Restriction of movement and requirement to stay in broker or company-controlled housing
- Excessive working hours
- Physical abuse including discipline and use of contract termination threats as coercion
- Restriction of work permits or visas to a single employer
- Withholding wages for early contract termination
- Fees demanded as “runaway insurance”
- Threats to notify authorities of undocumented migrants

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

A risk assessment for the business as a whole will also be key to public reporting. This reporting will not be convincing if it merely lists a series of standard policies which any company should have. It should show that the company has weighed up and identified the key risks and that the policies and processes are a direct response to this assessment.

Monitoring and Compliance

Having established clear principles and identified what to look out for, companies need a system for robust checks and monitoring that extends throughout the supply chain to ensure that human rights abuses and modern slavery risks are detected and properly mitigated. Understanding what is really happening on the ground is vital; however, this can be easier said than done. Abusive practices are routinely covered up.

Auditors need to be well trained, not just to identify the red flags, but to be wary of potential concealment. In some parts of the world ‘audit factories’ are used to ensure that all the boxes are ticked. Consultants also offer audit-passing

services to ensure that inspectors are deceived for long enough before normal service is resumed. Auditors need a skilful combination of sensitive questioning and appropriate scepticism.

Verification of information received against different sources is also good practice. In addition to management interviews, members of the workforce should be interviewed, ideally in the worker’s language and allowing sufficient time, in order to check information supplied by recruitment brokers and site or operation managers.

Where abuses are identified, these should be reported and a remedial action plan put in place with a clear timetable for implementation, regular progress updates and robust sanctions and penalties for any failures to do so.

Remedial Action Plans

Any action plans should be developed in conjunction with the supplier. A good plan will not only identify the problem, but the causes behind it and the actions required to remedy the situation and ensure there is no repetition.

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

Responsibility for implementing the action plan needs to be delegated with agreed deadlines and potential consequences for any actions not taken. Ideally suppliers and workers should be involved in this process to give broad ownership of the plan and as a demonstration of a real commitment to improving conditions for the workforce.

Where possible, companies are also moving towards direct recruitment to ensure greater control over policies and practices and in so doing, eliminate unscrupulous practices from the supply chain.

Where this isn't possible, companies need to ensure that the correct policies are embedded and applied rigorously to all contracts throughout the many tiers of the supply chain.

Dealing with Concerns

Grievance mechanisms and speak up lines are also important in eradicating abuses in the supply chain. They provide a formal mechanism whereby workers can raise complaints and problems can be resolved.

All workers need to be aware of the system, how to use it and importantly that it can be used without fear of reprisal or discrimination. Too often, such systems remain unused, as workers do not trust that complaints will be treated properly or that a remedy will be forthcoming.

Clear communication about the channel, which could be promoted via a workers' representative, can help. Open forums where issues can be raised help to create an open culture that takes problems seriously. Multi-lingual helplines should be employed to ensure that issues can be raised in a worker's first language. By empowering workers as far down the supply chain as possible to raise awareness of human rights abuses, companies are made aware of the problem and can address it before it becomes a reputation-damaging scandal.

A whistleblower or speak-up system should operate independently of the grievance process to ensure that serious issues that breach legislation are not obscured by lesser, more routine workplace grievances. This should be made available, not just to workers, but to all stakeholder groups.

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

Engagement

While all of the above are vital steps to be undertaken by any organisation seeking to eradicate abuses in the supply chain, the most successful way of changing behaviour is to engage with suppliers to build long-term partnerships that create shared ownership of expectations and in so-doing change behaviour.

In addition to training and regular communication on all company standards, companies could broaden their remit to share information on international labour standards and modern slavery issues. Practical workshops on how compliance with internationally recognised standards helps improve competitiveness can reduce the number and frequency of audits and lead to preferred supplier status.

Partnerships are also an effective way of leveraging greater compliance from suppliers in order to ensure that shared standards of best practice are implemented.

This also extends to collective action to set industry standards. In manufacturing this can be particularly important when

reputations can be damaged by the use of raw materials such as conflict minerals or Uzbek cotton. A good example is the Electronics Industry Citizenship Coalition which supports the rights and wellbeing of workers affected by the global electronics industry supply chain. It has developed the Conflict Free Smelting Initiative that offers EICC members an independent, third party audit that determines which smelters and refiners can be validated as conflict-free in line with global standards.

Conclusion

Most observers agree that human rights abuses have continued to rise despite a greater awareness of the problem globally. While some of this will be a state's abuse of its own people through conflict, supply chain abuses in a number of industry sectors show that businesses must share some of the responsibility. In a global world, it matters not where these abuses occur; it has never been easier to bring shocking treatment into the limelight.

While this may be easy, tackling the problem is not, as supply chains are extensive and often multi-layered. Just as with the UK Bribery Act, organisations

FOCAL POINT – MODERN SLAVERY AND THE SUPPLY CHAIN

need an understanding of the issues, a commitment to tackling them and the structure and resources to do so. No business wants to be exposed for slavery or human rights abuses in the far reaches of its operations. As best practice starts to emerge, responsible businesses are placing increased resources and attention on ensuring that adequate procedures are in place to prevent slavery and other human rights abuses from occurring anywhere in their operations. ■

Michael Littlechild is a director of business ethics advisers GoodCorporation. Michael heads GoodCorporation's ethics assessments and has worked in Europe, Africa, the Middle East, Asia and the US for a range of FTSE 100, CAC40 and international clients. Specialising in the oil and gas sector, Michael leads GoodCorporation's work in human rights and anti-corruption.
