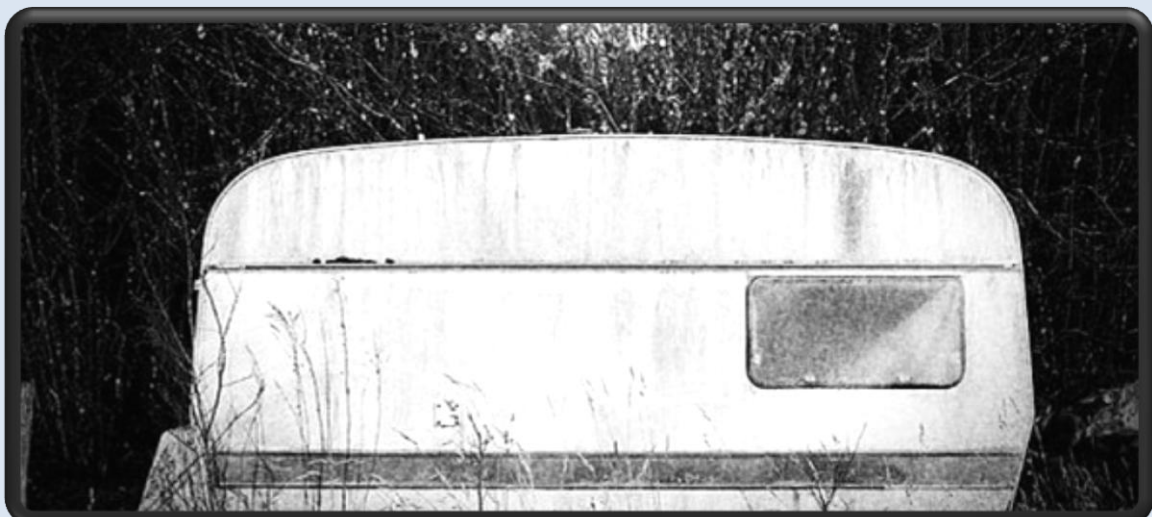




**Supply Chain Sustainability Procurement
Guidance – How to embed best practice in
your procurement when combating
modern slavery**

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Foreword

It has been my great pleasure in recent weeks to re-read Douglas Adams' Hitch Hikers Guide to the Galaxy – A trilogy of five. Among the totally bizarre ideas coming from that fertile mind was the idea of a SEP Field. This stands for Somebody Else's Problem. The idea is to create a sort of psychological force field around an object so everybody believes it is Somebody Else's Problem and they don't see it. This enabled Slartibartfast (his name is not important) to park a space ship in the middle of Lord's cricket ground during an Ashes test match and nobody saw it.

Denial of one person's human rights in the interests of profitability of another person or organisation has been Somebody Else's Problem throughout my career and beyond. Today we call it modern slavery. It has always existed but we don't see it because it is Somebody Else's Problem. I hear things like "It doesn't happen in my country". Yes it does. This guide provides clear evidence and I have experienced many examples personally. "It's about exploitation of people in the sex worker sector, nothing to do with me". Not necessarily. Although it is a problem in this area, many other sectors are affected. "It is a developing world problem". Maybe, but if it exists in your supply chain, you are complicit whether you like it or not. "It doesn't happen on my contracts". Are you sure? Have you checked? I know of numerous examples where the media have found out about workforce exploitation before the main contractor, I hear recent accounts of illegal workers climbing over the fence of construction sites when government inspectors turn up.

Legislation is usually the last resort of British governments so the introduction of the Modern Slavery Act can be seen as a failure by our industries to self-regulate. You and your organisation are now at risk both at a criminal and civil level if exploitation, forced labour or

modern slavery is found anywhere in your supply chain, regardless of its geographical location, regardless of the size of your business.

It is no longer Somebody Else's Problem.



Shaun McCarthy OBE
Chair – Supply Chain School

Introduction

Since the publication of the Modern Slavery Act in March 2015, there has been a lot written and reported about the subject. Advice has been wide ranging and varied in both tone and specificity. There is one consistent message that has prevailed in all of the written and spoken content however; modern slavery, forced labour, bonded labour or any form of labour exploitation is simply unacceptable in today's society. The premise for the act has been around for over 100 years. This piece of legislation was created and implemented by the UK Government with a view to bringing together the threads of all of the various pieces of legislation into one clear act therefore tackling the issues relating to exploited labour being utilised by organisations and their supply chains.

When asking your customers, your stakeholders and even members of your workforce whether they think that employing an enslaved and exploited workforce or purchasing goods that have been produced as a result of exploitation is acceptable, the majority of them would say no it's not.

Kevin Hyland the Independent Anti Slavery Commissioner published his strategic report *2015 – 2017 in 2014 where he reported that there were an estimated 13,000 individuals subjected to exploitation in the UK today. He also targeted specific sectors that needed to focus on tackling the issues. Construction and agriculture were amongst them.

The Home office published “Demolish Slavery in Construction[†]” in 2015 which stated that in 2013, 53 potential victims of slavery were identified as coming from the construction industry. This could be the tip of the iceberg but without a better understanding of recruitment practices and the supply chains conduct it is difficult to know the true figure within the industry. The facilities management sector has similar issues to worry about within its supply chain with 30 migrant workers being liberated from egg farms in Kent in 2012. FM organisations have to therefore ask themselves whether the eggs produced there have ended up in any of their food and catering supply chains.

The UK tomato supply chain has already had cases of exploitation exposed at a European level as the case study below illustrates.



Italy's Tomato Problem...

Enslaved workers have been linked with tomato farms in Italy. Workers in a number of areas of Italy have been subjected to severely unethical working practices as well as forced and bonded labour conditions. 40% of the tomatoes consumed in the UK are produced in Italy.

Yvan Sagnet, a young Cameroonian who led a revolt of migrant workers in 2011, has written two books relating to labour exploitation and now works as an advocate with the Italian General Confederation of Labour union. He was quoted in Gulf News – Italy 1st April 2016 saying:

“...if nations like Britain and Australia that import Italian tomatoes begin to demand proof that they have been picked and produced by people treated with dignity and paid properly, this too is hugely important - and will save human lives”

We now live in a global society with the workforce and products used in our industries coming from across the globe. So even though the UK has identified a potential figure of 13,000 individuals subjected to exploitation and trafficking, our industries and related supply chains have a link to a proportion of the 29.8million [†]individuals exploited and trafficked globally. Organisations now need to start opening their eyes to the risks within their supply chain and take responsibility for the impact their demand has on individual human rights.

Purpose of this guide

The aim of this guide is to help organisations identify their risks, embed the modern slavery requirements within the prequalification and contracting process and finally support the

auditing and supply chain management processes.

It has been written for procurement professionals, sustainability advisors and individuals who make procurement decisions as well as those who support them. It provides guidance on how to address the issues relating to modern slavery through everyday procurement activities and has been specifically written for sectors covered by the Supply Chain Sustainability School.

Please note that this document has not been written to provide legal advice. It draws upon best practice examples and guidance collated from industry. When adopting any of the information within this guide it is recommended that you engage your sources of legal advice to ensure it complies with your own company policies, terms & conditions, requirements etc.

This guide compliments or builds on existing guidance that has been published to date. Where it is felt that other resources already provide sufficient and detailed information these will be referenced in the guide as a place to go to along with the relevant web links. Guidance on areas such as policy creation at corporate level can be found in “CIPS guidance – Tackling Modern Slavery in Supply Chains – A Guide 1.0⁵” which is a source of useful tools for the procurement community.

It is also important to understand that this is specifically written for sectors covered by the Supply Chain Sustainability School** (Construction, Facilities Management, Infrastructure, Homes and Off Site) so information relevant to these particular industries will be included where applicable.

What is modern slavery & the Modern Slavery Act?

Key themes from the act are summarised below. However, the Supply Chain Sustainability School has produced a number of summary papers as well as e-learning modules to help you understand in more detail the legalities. It would be useful to read these to get a better understanding before you delve straight into the procurement activity. You can find them on the modern slavery resources ^{††}page within the Supply Chain Sustainability School website

Modern Slavery Act – Key themes

- ✓ It is an offence to hold a person in slavery or servitude or to require a person to perform forced or compulsory labour.
- ✓ It is an offence to arrange or facilitate the travel of another person with a view to them being exploited.
- ✓ It is an offence to commit an offence with a view to committing a trafficking offence.
- ✓ Provides a defence for slavery of trafficking victims, intended to encourage victims to come forward and give evidence without fear of being convicted to offences connected with their slavery or trafficking.
- ✓ A slavery or human trafficking order requires the defendant to pay compensation to their victim(s) for the harm the victim has suffered from the relevant offence
- ✓ Individuals found guilty of exploitation and/or trafficking can be sentenced to a maximum of life imprisonment
- ✓ Organisations with a global turnover of £36million plus are required to produce a statement that sets out what an organisation has done to prevent modern slavery in their own business and supply chain

The International Labour Organisation (ILO) ^{††}identifies a number of indicators of forced labour which are all covered under the Modern Slavery Act 2015:

- ✓ Abuse of vulnerability
- ✓ Deception
- ✓ Restriction of movement
- ✓ Isolation
- ✓ Physical and sexual violence
- ✓ Intimidation and threats
- ✓ Retention of identity documents
- ✓ Withholding of wages
- ✓ Debt bondage
- ✓ Abusive working and living conditions

Whilst most of us think of Modern Slavery in terms of sexual exploitation, which makes up 33% of the cases identified, even more incidences (37%) are linked to labour exploitation. “Modern Slavery: A briefing for Construction^{§§}” identifies that victims in the UK are traditionally being trafficked from countries such as Slovakia, Hungary, Lithuania, Poland and Romania. Current statistics show that 80% of individuals subjected to labour exploitation are male.

The Modern Slavery Act was created to help combat these issues and identifies its purpose as:

“.. to make provision about slavery, servitude, and forced and compulsory labour and about Human Trafficking, including the provision for the protection of victims; to make provision for an Independent Anti-Slavery Commissioner”

It is important to understand:

The act applies to you, your organisation and your supply chain

No matter how big or small your organisation is the act applies. The only distinction is the need to publish a statement if you have a global turnover of over £36million. It is illegal to be involved in people trafficking, forced labour and bonded labour regardless of who you are and how big or small your organisation is.

There is another aspect of the act that supports victims and allows them to claim compensation. In June 2016 a landmark ruling was applied in civil courts. It awarded compensation to 6 Latvian workers who were trafficked to the UK and employed by a Kent based gangmaster firm. Compensation was successfully sought against the gangmaster firm who employed them. Not the individuals who trafficked them. Therefore the financial and reputational risks associated with employing individuals who have been trafficked, forced or bonded in exploitative labour conditions could be substantial.

The Procurement Process

Supply chains in both construction and facilities management are long, complex and in most cases international. It is therefore very difficult for any organisation to stand up with their hand on their heart and make a bold claim that there is no slavery in their supply chain. The act through the publishing of a modern slavery statement requires your organisation to take a methodical and considered approach to opening up your supply chain and combating modern slavery practices if they are found.

So how can you start to understand your supply chains position on this and where are the logical interventions within the procurement process?

The diagram below has been constructed to illustrate where within the procurement process you can embed requirements to address the modern slavery issue and understand the capability of your supply chain.



Mapping your supply chain

The biggest risk of exploitation and modern slavery practices may not exist in your organisation but may be embedded somewhere within your supply chain. ETI have reported that 71% of businesses believe that there is a risk of modern slavery in their supply chain^{***}. CIPS reported in 2016 that 72%^{***} of businesses have no visibility beyond Tier 1. In order to combat the issues and/or assure yourselves that exploitation does not exist in your supply chain you need to focus on the biggest risks within your procurement portfolio. The initial process would be to map your supply chain in order to get a better understanding of where your goods and services are coming from.

Supply chain mapping is a process by which organisations determine the network structure,

business process and performance of products and services it procures. The process provides an opportunity not only to understand the exploitation risk associated with your supply chain, but can also identify inefficiencies and excessive costs in the supply chain therefore resulting in savings as well risk mitigation activities. As part of this process your organisation needs to understand the issues relating to country of origin, the extent of human processing and the logistics path used to deliver goods and services. This helps identify risk factors that exist such as goods supplied from countries with poor human rights and exploitation practices, logistics routes that go through countries with a history of trafficking, and processing in countries where exploitation is common practice.

The mapping process should ideally be conducted at client level or at least Tier 1 within the supply chain. If you sit further down the supply chain it is unlikely you will conduct an exercise this detailed. However you will need to understand your supply chain enough to inform your client's process and to help identify your own risks.

When conducting a supply chain mapping exercise CIPS provide 5 top tips^{***} to help inform the process:

- 1) **Recognise the risks** – specifically here you are looking to identify the risks associated with labour exploitation, trafficking and instances of modern slavery. Could it exist within the extraction, processing and or logistical function. Also consider countries of origin or where your goods are being processed
- 2) **Create visibility** – CIPS have reported that 72% of businesses do not have visibility of their supply chain past Tier 1. Consideration needs to be given to how increase that transparency.

- 3) **Build your map** – create a visual map of where your goods are coming from. Bring in your supply chain to help inform that map. Engagement will allow you to answer questions such as location, chances of exploitation within the work force etc
- 4) **Motivate your supply chain** – as you get further down the supply chain the risk will increase of modern slavery practices, not because it is common practice but because the knowledge and processes to combat the issues will not necessarily be in place. By engaging your supply chain within the mapping process you are not only increasing the transparency but you are also providing a platform for your suppliers to improve their resilience and mitigate risks that they hadn't considered.
- 5) **Collaborate** – Putting the map together is not a small and easy job and in a lot of cases the procurement team will not have immediate access to all the information necessary. Working with supply chain and external stakeholders is essential in order to produce the most accurate map possible. Organisations like Stop the Traffik, Walk Free Foundation and Stronger Together can provide information relating to risks of exploitation within supply chains.



Marks & Spencer Publishes Interactive Supply-Chain Map

Marks & Spencer have published their first interactive supply chain map which identifies 690 of its suppliers for its clothing and home goods. The map has been published as part of its annual reports and was created in order to support its commitment to 'embed respect for human rights' within its supply chain. This will now allow the procurement teams within the organisation to consider 7 key ethical requirements committed to by the organisation;

- ✓ Discrimination
- ✓ freedom of association
- ✓ living wages
- ✓ working hours
- ✓ forced labor
- ✓ health and safety
- ✓ water and sanitation

The Risk Assessment

Whilst organisations call for greater transparency and everyone grapples with how to respond, it is important to take a moment and understand that the best approach is a risk based approach. Clients, Principle Contractors and in some cases Tier 1 contractors should be analysing their supply chains and focusing on addressing modern slavery in high risk areas. You as buyers need to review your categories and map the risks in order to set the procurement strategy going forward.

So how is this done? Below is a summary of the current ways available:

- 1) The Supply Chain Sustainability School has already analysed the trade categories contained within the assessment tool and identified those that have an increased or high risk of Modern Slavery within the supply chain.

If you are registered for one of those categories your organisations plan will be asking you to focus on modern slavery as one of your learning areas.

- 2) Chapter 02 - "Tackling Modern Slavery in Supply Chain" written by CIPS and the Walk Free Foundation provides a very detailed over view of the risk mapping process that could be applied to your spend categories and provides extensive examples and questions that could be used. In summary they provide information on:
 - a. Labour Cycle Risks
 - b. Country Specific Risks
 - c. Overview of Higher Risk Industries
 - d. Risk Assessment Steps
 - e. Example Risk Assessment tool
 - 3) Organisations like Achilles, Sedex and Greenstone and Software such as Made in a Free World are all currently offering their services or software to help you map your supply chains and identify risks relating to modern slavery and other human rights issues. These will come at a cost so you would need to understand each offering and whether it is right for your organisation
 - 4) Undertake your own risk assessment exercise. You may have existing risk management/assessment processes that can be adapted to support a modern slavery assessment. If you decide to use your own system there are a number of questions and areas that must be reviewed in order to inform that process.
- ✓ Visibility of the current supply chain – do you understand how products are made, where they are coming from, where labour is recruited from? Geography – are any of the products coming from countries that have a history of human rights abuses? Is labour sourced locally

or brought in from abroad? - You can refer to <http://www.globallslaveryindex.org/findings/> to get a better understanding of geographical and industry risks associated with your categories.

- ✓ Current activity – what actions and standards do you have in place that addresses issues relating to modern slavery?
- ✓ Capacity to do more – what else can be done that has not already been done to address these issues? Are there standards that can be adopted to help mitigate an element of the risk? Are there industry collaborations or bodies that are looking to share best practice or methods for managing risks?

Pre-qualification

Once you have mapped your supply chain you can include questions within your prequalification process to either select suppliers based on their attitude to modern slavery or alternatively help you establish both contract requirements and continuous improvement targets as part of the contract award.

As of July 2016, PAS91 does not have any reference to modern slavery, however the current question set will be reviewed and the supply chain school is supporting its future development so that questions will be included at a later date. Organisations like Achilles and Greenstone have added questions in their proprietary databases. If you use these systems or any other it would be advisable to check with the organisations what provisions they have included in their pre-qualification systems.

Whilst it is recognised that breaches in legislation can usually lead to exclusions and disqualification, care needs to be taken when adopting that approach with modern slavery. It

is recommended that organisations who find instances of exploitation within their supply chain are encouraged to share what steps they took to deal with them and how they have tightened their own processes to ensure that they do not happen again. This is a very immature subject matter and with global supply chains providing goods and services to the majority of the industries collaboration is essential to help eliminate the problem completely.

If your process uses gated question as part of your pre-qualification process we have provided some example questions that will still support a collaborative approach to dealing with the issue of exploitation within the supply chain.

A more open questioned approach helps you assess the supply chains capability and ensure that successful suppliers have a detailed and specific set of actions that they will need to take to improve their understanding and increase the transparency of the supply chain in order to address the issue.

Our recommendation would be to take a more open questioned approach however, whichever way your organisation runs its pre-qualification process we have provided examples for each.

These are suggestions only as to how PQQ's may be amended to incorporate the Modern Slavery Act 2015 and will help you take steps in order to meet the legal requirements of the act.

The relevant sections should be selected depending on whether the PQQ relates to a low, medium or high-risk product or service. Some of the wording will need to be modified to reflect the language of your existing PQQ.

Compliance – Closed Questions

Grounds for mandatory exclusion

You will be excluded from the procurement process if there is evidence of convictions relating to specific criminal offences including, but not limited to, bribery, corruption, conspiracy, terrorism, fraud and money laundering, human trafficking and slavery or if you have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security obligations (except where this is disproportionate e.g. only minor amounts involved).

Grounds for discretionary exclusion – Part 1

XXXXX may exclude any Supplier who answers 'Yes' to any of the following and do not provide sufficient evidence of actions taken to address the offence:

Within the past three years, please indicate if you have found evidence within your business or supply chain of human trafficking or slavery in breach of the Modern Slavery Act 2015

Self-cleaning'

Any Supplier that answers 'Yes' to any of the below questions should provide sufficient evidence that provides a summary of the circumstances and any remedial action that has taken place subsequently and effectively "self cleans" the situation referred to in that question. The Supplier has to demonstrate it has taken such remedial action in each case.

In order for the evidence referred to above to be sufficient, the Supplier shall, as a minimum, prove that it has;

- paid or undertaken to pay compensation in respect of any damage caused by the criminal offence or misconduct;
- clarified the facts and circumstances in a comprehensive manner by actively collaborating with the investigating

- authorities; and
- taken concrete technical, organisational and personnel measures that are appropriate to prevent further criminal offences or misconduct.

particular circumstances of the criminal offence or misconduct. Where the measures are considered insufficient, the Supplier shall be given a statement of the reasons for that decision

The measures taken by the Supplier shall be evaluated taking into account the gravity and

1.	<p>Has your organisation been convicted of breaching The Modern Slavery Act 2015, or had any notice served upon it, by any regulator or authority (including local authority)?</p> <p>If your answer to this question is “Yes”, please provide details in a separate Appendix of the conviction or notice and details of any remedial Action or changes you have made as a result of conviction or notices served.</p> <p>XXXXX will not select bidder(s) that have been prosecuted or served notice under the Modern Slavery Act, unless satisfied that appropriate remedial Action has been taken to prevent future occurrences/breaches.</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	<p>If you use sub-contractors or suppliers of goods and services, do you have processes in place to check whether any of these organisations have been convicted or had a notice served upon them for infringement of The Modern Slavery Act 2015</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
3	<p>Does your organisation have a Anti-trafficking/slavery policy (or incorporated as part of another policy) which details your organisations and your supply chains obligations in regards of The Modern Slavery Act 2015, which is Actively promoted and adhered to within your organisation</p> <p>If you answer no please provide details of what plans you have to develop a policy</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
4	<p>If you use sub-contractors or suppliers of goods and services, do you have processes in place to check whether any of these organisations have an anti-trafficking/slavery policy (or equivalent) which is actively promoted and adhered to within its organisation</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No
5	<p>Does your organisation operate a whistle blowing process which is actively promoted within the organisation and suppliers (where applicable) to report any incidents of breaches or suspected breaches of the Modern Slavery Act 2015</p>	<input type="checkbox"/> Yes <input type="checkbox"/> No

6	If you use sub-contractors, do you have processes in place to check whether any of these organisations operate a whistle blowing process which is actively promoted within the organisation and suppliers (where applicable) to report any incidents of breaches or suspected breaches of the Modern Slavery Act 2015	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Capability Assessment through Pre-qualification

These questions should contribute to a scorecard approach. Insert your own definitions and scores as per your own pre-qualification process.

Question	Poor Response	Good Response	Best Practice
Please provide details of the approach your organisation has taken to addressing or exceeding the requirements of the Modern Slavery Act 2015	No demonstrable understanding of the Modern Slavery Act No supporting policies or commitments relating to addressing modern slavery No mention of how the organisation will work with contractors to manage the risk	Generic policy mentioning Modern Slavery and commitment to addressing the issue Have an Action plan on how to address the supply chain and some commitment to producing a risk assessment to identify areas of high risk Action plan will include, training, supply chain engagement, measurement and continuous improvement plans Tool box talks conducted with organizational employees to raise awareness	Policy created detailing commitment to addressing modern slavery both within the organisation internally as well as the supply chain Policy references whistle blowing facilities and addresses how victims can and will be supported should they be identified. Evidence of supply chain collaboration and procurement activity undertaken to address identified labour exploitation and modern slavery risks Evidence of measurement and engagement commitments Partnered with an NGO

Contract Requirements

Once the supplier has been selected you can embed clauses within your standard contract terms and conditions. We have provided a number of clause examples that can be selected from and provided an update on the current JCT form of contract and its recommendations. These suggestions are for guidance so it is recommended that you review the clauses with your legal advisors

and understand which are relevant and the implications of execution within the contract.

The clauses can be used collectively or individually depending on your existing contracts. Definitions such as Supplier and Customers will need to be modified to reflect the language of your existing contracts. Clauses will need to be inserted into the appropriate place in existing contracts and renumbered accordingly.

It is important to remember that this is a risk base approach exercise so these contract clauses need to be adjusted to reflect the level of risk.

Your Company may also have other alternative or additional policies which should be referred to which have implications on the Modern Slavery Act.

General Contracts

Definitions

Anti-slavery Policy: the Customer's anti-slavery policy [attached], as amended by notification to the Supplier from time to time.

1. Compliance with Laws & Policies

In performing its obligations under the agreement, the Supplier shall and shall ensure that each of its subcontractors shall comply with:

- (a) all applicable laws, statutes, regulations from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) the anti-slavery policy.

2. Due Diligence

2.1 The Supplier represents and warrants that at the date of this agreement:

- (a) its responses to the Customer's slavery and human trafficking due diligence questionnaire are complete and accurate; and
- (b) neither the Supplier nor any of its officers, employees or other persons associated with it:
 - (i) has been convicted of any offence involving slavery and

human trafficking;
and

- (ii) having made reasonable enquiries, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

2.2 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

3. Country Specific Clauses

The Supplier undertakes not to purchase any [[RESOURCE] **OR** [RAW MATERIALS] **OR** livestock **OR** products] [from [COUNTRY]] that has been sourced from [producers **OR** farmers **OR** manufacturers] using forced labour in its [operations **OR** [farming] practices].

NOTE: This clause would only be used if high risks have been identified in a certain country it can also be modified for high-risk products and services

4. Subcontracting

- 4.1 In order to help the Customer reach a decision on a proposed subcontract, the Supplier shall provide the Customer [with a copy of any proposed subcontract, together] with any other information that the Customer may reasonably require about the proposed subcontractor.
- 4.2 If the Customer agrees that the Supplier may subcontract its obligations, the Supplier shall implement an appropriate system of [due diligence,] [audit,] [and] [training] designed to ensure compliance with the Modern Slavery Act 2015 and the Anti-slavery Policy.

5. Reports

- 5.1 The Supplier shall notify the Customer as soon as it becomes aware of:
- (a) any breach, or potential breach, of the Modern Slavery Act or Anti-slavery Policy; or
 - (b) any Actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.
- 5.2 The Supplier shall prepare and deliver to the Customer no later than [DATE] each year, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

6. Audits

The Supplier shall:

- (a) maintain a complete set of records to trace the supply chain of all [Goods] [and] [Services] provided to the Customer in connection with this agreement; and
- (b) implement annual supplier [and subcontractor] audits[, either directly or through a third party auditor to monitor compliance with the Anti-slavery Policy, the first of which shall be completed by [DATE].

7. Training

- 7.1 The Supplier shall implement a system of training for its employees [,suppliers and subcontractors] to ensure compliance with the Anti-slavery Policy.
- 7.2 The Supplier shall keep a record of all training offered and completed by its employees[, suppliers and subcontractors] to ensure compliance with the Anti-slavery Policy and shall make a copy of the record available to the Customer on request.

8. Grievance Procedure

- 8.1 The Supplier shall implement a grievance procedure to ensure compliance with the Anti-slavery Policy.
- 8.2 The Supplier shall keep a record of all grievances logged and action taken to address the grievances and shall make a copy of the record available to the Customer on request.

9. Indemnity

The Supplier shall indemnify the Customer against any losses, liabilities, damages, costs (including [but not limited to] legal fees) and expenses incurred by [, or awarded against,] the Customer as a result of any breach of Anti-slavery Policy.

10. Warranties

The Supplier represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Anti-slavery Policy.

11. Termination

The Customer may terminate the agreement with immediate effect by giving written notice to the Supplier if the Supplier commits a breach of the [Anti-slavery Policy **OR** [COMPLIANCE WITH LAWS AND POLICIES CLAUSE] [DUE DILIGENCE CLAUSE] [COUNTRY SPECIFIC CLAUSES] [SUBCONTRACTING CLAUSE] [REPORTS CLAUSE] [AUDIT CLAUSE] [TRAINING CLAUSE] [WARRANTIES CLAUSE]].

JCT Contract

JCT have proposed the following amendment to cover the Modern slavery Act

Add a new sub-clause 2.1.5:

"In performing his obligations under this Contract, the Contractor shall [and shall ensure that each of its sub-contractors shall] comply with the Modern Slavery Act 2015 [and the Anti-slavery Policy]."

It is suggested however that you add additional clauses such as the ones set out above, or add modern slavery principles into the employers' requirements or obligations to sub-contractors.

Supplier Auditing & Collaboration

As with all pieces of legislation there is a very loud call for audit protocols to be produced with the common misconception that this will catch the organisations guilty of poor and illegal practices. Auditing is one tool available to any organisation when understanding its supply chain risks and impacts and care needs to be taken to not engage in audit fatigue within your supply chain. Other tools such as ***supplier relationship management and performance management should be added to the arsenal as well.***

Whatever approach you adopt, as part of the supplier monitoring process it would be advisable to embed the requirement for an action plan which identifies key steps you would expect your successful organisation to have in place and evidence delivery of through the life of the contract

Auditing/Check Lists

There are a number of areas you may decide you want to audit. These can be broken down into material supply, site auditing and organisational management systems. Whichever area you want to focus on it is important to understand that there are organisations out there auditing already. So investigating trade bodies, standards and auditing organisations who are already undertaking audits should be your first port of call. There is usually a price associated with these schemes but sometimes it sits with the suppliers rather than you. Whichever scheme you decide to adopt ensure your understand

the scope of their audit and the protocols they use. Note: ***Third party audit schemes should form part of your due diligence process, not replace it.***

Materials

There are a number of responsible sourcing standards that have been designed to focus on addressing issues relating to environmental and social performance within certain material supply chains. When specifying your materials and interviewing your suppliers try and understand what standards are common place and the areas of sustainability they cover.

Some of these standards started by looking at environmental issues and have added over time questions relating to ethics and human rights. If using any of them as part of your contracting it would be advisable to use the reports and evaluations to satisfy yourselves that the organisations you are contracting with are addressing human rights issues and are able to evidence this.

It is important to remember that the use of these standards does not guarantee that the supply chain will be exempt from any risks of modern slavery but will ensure that a number of principles are in place and risk assessments made. The possibility of having some sort of exploitation within the supply chain may still exist, especially for complex products and supply chains. Although they are not the ultimate pledge of an irreproachable supply chain, the use of materials complying with relevant standards will go some way to preventing numerous risks.

Within the Food & Catering industry, covered under facilities management some standards such as Fair Trade, Rain Forest Alliance, and the Ethical Trading Initiative amongst others,

champion the human rights workers on farms and production plants for key materials and food supplies. They help validate standards and working conditions within the supply chains. Again these can be used as a starting point when deciding where and how you should audit the long global supply chains of the food sector but do not eliminate the risk of modern slavery and labour exploitation completely.

Sedex provides a platform that allows key suppliers to share ethical audits and therefore reduce the burden of audits on the supply chain and allow your organisation to focus in on specific areas of concern.

It is important to understand that the use of these facilities and compliance with some of these standards will incur costs and will vary in scope and quality. So as procurement teams it is essential that you understand the financial implication on the supply chain and cater for this accordingly.

Site Labour

It would be useful to distinguish at this point between site audits and system audits. In terms of site audit it would be useful to create a site checklist that can be used by construction managers, site managers and other key individuals responsible for recruiting individuals.

When putting together a site checklist for an operative, consideration should also be given to checks that support other legal requirements such as right to work and compliance with the Immigration Act. For the purposes of modern slavery however the following can be included:

- 1) Checking of passports and visa to determine country of origin – in some

instances the victim may not have access to them. This check also supports the right to work check

- 2) Bank account details and access to bank cards – individuals may not have access to methods of withdrawing cash as these will be kept with the gang leaders or multiple potential employees may have the same bank account number
- 3) Home address – do a number of people have the same address or is the same address used consistently – some organised gangs keep their victims in squalid and cramped living conditions so the same address may be used for a large number of individuals
- 4) Guidance for the site operative providing details of physical and mental signs to look out for including individuals who appear to be:
 - a. Working against their will
 - b. Having their movements controlled
 - c. Subjected to violence, threats
 - d. Distrustful of authorities
 - e. Unable to communicate freely with others
 - f. Unsure of where they are
 - g. Not integrated with the local community
 - h. Have little or no time off and are working excessive hours
 - i. Bruises, or unexplained injuries
 - j. Subject to security at 'home' or work
 - k. In a situation of dependence

It is recommended that you include awareness raising activities within your induction programmes and that site operatives are educated on the signs. This will ensure that where buying decisions are

made, outside the control procurement, risks are minimised.

The Framework Standard for Ethical Labour in Construction

Developed by BRE, this is a means for companies to evaluate their credentials under a third party verification scheme and go further than the requirements of the act, to move towards exemplar practices.

The standard has been designed to be applicable across all part of the construction industry value chain and therefore must be able to relate to a wide and varied group of markets, organisations, and supply chains. Over each of the twelve issues the organisation can determine its maturity of action and identify opportunities for continuous improvement. This enables a risk based approach for companies of different sizes, supply chains and whether they are a contractor, client, product manufacturer or designer.

The standard is split into twelve requirements categories:

- Company structure
- Management Systems
- Certification Management Systems/Standards
- Assurance, Compliance and Auditing
- HR Practices
- Immigration
- Bribery and Corruption
- Supply Chain
- Procurement
- Learning and Development
- Forums, Committees and Best Practice
- Reporting

Management Systems

If you are looking to vet your suppliers at their offices then there are a number of key areas you can review as part of a system audit. The Home Office recommends that the following checks are undertaken (*please note that for the purpose of the recommendations below, the definition of workers includes the entire workforce regardless of how they are employed*):

- 1) All workers have a written employment contract and they have not paid fees to work (including fees for essential equipment such as PPE)
- 2) All workers should be legally eligible to work in the UK and evidence of checks should be available for the auditor
- 3) All workers should know their statutory rights, including sick pay and holiday pay and evidence should be available that staff have been briefed and are updated regularly
- 4) A system where addresses of employees should be checked to ensure that an unrealistic number of individuals are all registered to the same address
- 5) Where fees are very low against industry standards ensure there is a process by which this is investigated

Action plans are a good source of continuous improvement. Encouraging your suppliers to produce an action plan starts to go some way to opening up the supply chain and improve awareness and the systems required to manage the risks where they exist. They can be produced as a result of the auditing process or as part of the supplier management process. The plan should focus on the following areas:

- 1) Understanding and awareness raising of the act and its implications
- 2) The creation or modification of existing policies in relation to ethics and labour issues
- 3) The updating of internal HR systems to comply with the acts requirements
- 4) The existence or need to create a whistle blowing facility for employees to use should they find any evidence of slavery practices
- 5) Training and awareness campaign within the organisation
- 6) Evaluation and prioritisation of supply chain spend relating to risks of instances of modern slavery
- 7) Creation or modification of systems that understand how the organisations suppliers are addressing this issue

As with any action plan the requirements should be SMART and illustrate the journey the organisation is willing to take to embed a culture that is willing to address modern slavery within its own organisation and its supply chain.

Performance Indicators

Once the contract has been established there needs to be some process of monitoring to support both the auditing regime and the supplier management regime.

Government guidance recommends that you to embed a number of performance indicators that illustrate training and awareness raising activities within your organisation.

There are no standard measurements yet and there is a varied opinion as to whether the measures should be output measure for example number of prosecutions, number of whistle blowing occurrences etc or management measures focusing on improving

understanding and encouraging collaboration. In order to increase awareness of the issue within the supply chain and your supplier community it would be advisable to initially focus on management measures.

Some examples are included below – but your final set of indicators should reflect your own action plans when trying to raise awareness and combat exploitation within your procurement activity:

Performance Indicator	Description	Owner
%age of relevant suppliers with published statements	%age all the key suppliers identified within the contracting organisations and are eligible who have issued their modern slavery statement	Contracting Organisation
%age of suppliers attending awareness raising events	%age of all the relevant suppliers/subcontractors who have attended an awareness raising event organised either by the contracting organisation or an external third party	Contracting Organisation
%age of workforce undertaking a training session or e-learning module relating to modern slavery	%age of the workforce who have attended either a specific training course or utilised e-learning resources such as those available through the school	Contracting Organisation/Supplier/Sub-Contractor
%age of key spend with supply chain map	%age of key trade spend with a supply chain map supporting the identification of locations and potential for exploitation	Contracting Organisation
%age of Tier 1 suppliers undergoing a full audit	%age of suppliers identified, undergoing a full audit in relation to complying with Modern Slavery Act requirements	Contracting Organisation
%age of the supply chain with grievance mechanisms	Sub-contractors/suppliers with grievance mechanism in place	Contracting Organisation
%age of open grievances within organisation	Number of open grievances as percentage of total grievances raised	Contracting Organisation
%age of workforce employed through an agency	Number of workforce employed through an agency as a percentage of the total workforce	Contracting Organisation

Case Study – Marshalls

In 2016 Marshalls released their Modern Slavery and Anti Human Trafficking Policy and Disclosure Statement. Within it they detailed their commitment to operating business to high ethical standards as well as outlining their mapped supply chain and areas of risk.

They outlined the processes they adopt to identify and illuminate instances of exploitation within their supply chain.

To support the delivery of this policy they created 6 areas of measurement that will evidence successful delivery these are detailed below

Modern Slavery KPI's for 2016/17



Deliver an internal awareness campaign throughout UK operations to all employees regarding modern slavery.



Modern Slavery training for all employees involved directly in supply chains and procurement.



Supplier communication and verification programme which confirms that suppliers have received and understood Marshalls' position regarding modern slavery and are aware of Marshalls Modern Slavery Policy & Disclosure Statement.



Report on its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains including the due diligence processes outlined in Marshalls Modern Slavery Policy & Disclosure Statement.



Further develop the organisations supply chain due diligence, related human rights programme and external auditing process in order that instances of modern slavery can be identified, remedial action undertaken, the victims supported and that all of this is transparently reported.



Develop, in conjunction with appropriate partners, a process of remediation and support for victims of modern slavery identified within the organisations operations and supply chains.

Conclusions

It is accepted by most civilised societies that utilising forced, bonded or trafficked labour is unethical, inhumane and evidence of the worst aspects of human nature. This is supported by a comprehensive range of global legislation and policy making it illegal.

That being said there is still an issue and 13,000 people in the UK do not seem to be feeling the arm of protection that this legislation has been designed to provide.

The Modern Slavery Act 2015 has successfully provided focus and a voice to the issue and has resulted in getting the Construction, FM, Infrastructure and Homes sectors to take a good hard look at themselves.

The premise for the act itself has been around in one form another for over 100 years. It has been and still is illegal to own slaves and force and exploit people in the labour market. Voluntary agreements such as the ETI base code and UN Global compact have also gone some way to highlight the issues from a wider global perspective.

If you or anyone in your organisation is found guilty of trafficking or being involved in forced or bonded labour then penalties are strong. Life imprisonment is the maximum sentence. Also with the precedent now set for victims to claim compensation from employing organisations the financial implications at

organisational level are all too real as evidenced in June 2016. Add to that the fact that the reputational risk and loss of future business being a real threat where organisations fail to show due diligence and management of risk. Failure to ensure that you are putting in place the right checks and balances as well as engaging with your supply chain could be costly both on a personal and organisational level.

This is a large and complex issue. You as individual procurement professionals cannot take on the responsibility for combating the issue. However you are the guardians to the supply chain gates. By raising awareness, understanding the where the risks exist and asking some hard questions you can feel a small piece of pride that you are doing your bit to reduce slavery within the your industry.



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