

Modern Slavery Unit

Home Office
4th Floor
Peel Building
2 Marsham Street
London
SW1P 4DF

17 September 2019

Transparency in Supply Chains

Dear Sir/Madam

The British Medical Association (BMA) is an apolitical professional association and independent trade union, representing doctors and medical students from all branches of medicine across the UK and supporting them to deliver the highest standards of patient care.

The Association welcomes the opportunity to respond to the Home Office Transparency in Supply Chains consultation. Please find enclosed the BMA's submission. In summary:

- we have long argued for the introduction of a central, Government repository for modern slavery statements and are pleased that the Home Office intends to introduce this measure
- we believe that the requirement to publish a modern slavery statement should be extended to large public sector organisations, including in the NHS.

We hope that our submission is useful – please do not hesitate to contact us for more information if required.

Yours sincerely



Stella Dunn

Head of Professionalism and Guidance

Chief executive officer: Tom Grinyer

Registered as a Company limited by Guarantee. Registered No. 8848 England.
Registered office: BMA House, Tavistock Square, London, WC1H 9JP.

Listed as a Trade Union under the Trade Union and Labour Relations Act 1974.



Home Office consultation – Transparency in Supply Chains

BMA response

Introduction

The BMA is a professional association and trade union representing and negotiating on behalf of all doctors and medical students in the UK. It is a leading voice advocating for outstanding health care and a healthy population. It is an association providing members with excellent individual services and support throughout their lives.

We welcome the opportunity to respond to the Home Office Transparency in Supply Chains consultation.

For over a decade we have campaigned for fair medical trade and ethical public procurement across the healthcare industry. The procurement of healthcare tools and instruments is big business, and the market for such commodities is global. We want to see medical product supply chains free from modern slavery and exploitation, including forced and compulsory labour.

The BMA has an established track record of pursuing policies and legislation to tackle labour rights abuses of a global workforce who provide vital goods and services to the health and care systems in the UK and elsewhere. Our investigative work has shone a light on modern slavery in the global medical manufacturing industry, including surgical instruments in Pakistan and rubber gloves manufacturing. Sadly, recent media investigations into the treatment of migrant workers in rubber glove and condom factories in Malaysia have highlighted that more work is needed to be done to tackle this issue.

The BMA welcomed the introduction of the Modern Slavery Act (MSA) in 2015 and in particular the transparency provisions in Section 54 (s54). The MSA was ground-breaking when it was published, and has been the template for similar legislation in other jurisdictions. However, it is important that the legislation evolves to meet new challenges, addresses any omissions from when it was originally introduced, and keeps pace with legislation in other countries.

The independent review of the MSA published earlier this year made a range of recommendations in relation to public sector procurement, which we believe could make an important contribution to helping tackle modern slavery in medical supply chains and consequently improve the lives of workers. We are pleased to see the Government consult on two of these in this consultation: extending the s54 reporting requirements to the public sector; and creating a Government-controlled centralised repository for modern slavery statements. The BMA has lobbied extensively for these provisions to be incorporated into the MSA.

We produce our own modern slavery statement¹. However this response mainly focuses on our calls for medical supply chain procurement in the NHS that is fair, ethical and free from modern slavery.

¹ BMA Modern Slavery Statement, <https://www.bma.org.uk/about-us/legal-policies/modern-slavery-policy>

Section 1: Content of statements

1a) Are you an organisation which currently publishes a statement? If so, which of the following areas do you currently report on:

- A. Your organisation's structure, its business and its supply chains;
- B. Your organisation's policies in relation to slavery and human trafficking;
- C. Your due diligence processes in relation to slavery and human trafficking in your business and supply chains;
- D. The parts of your business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps taken to assess and manage that risk;
- E. Your effectiveness in ensuring that slavery and human trafficking is not taking place in your business or supply chains, measured against any performance indicators as considered appropriate;
- F. Training and capacity building about slavery and human trafficking available to your staff.

Yes. The BMA has a zero-tolerance approach to modern slavery and are committed to acting ethically and with integrity in all our business dealings and relationships. We produce an annual modern slavery statement that covers all the areas above and we implement and enforce effective systems and controls to ensure modern slavery is not taking place anywhere in our own business or in any of our supply chains.

1b) How many individuals, for how many days, were involved in collecting the information included on your statement?

For the purposes of preparing our most recent statement, there were two individuals involved, which took a day to produce. This does not include the development of policy or activities related to due diligence, training or having a strategic overview of the issue within the organisation.

1c) If you were to report on all of the 6 areas set out above, how many individuals do you think would be needed over how many days to collect the information required for the statement?

Based on the experience of producing our most recent statement, it would take two individuals a day to produce. However, this is subject to caveats outlined in the response to 1b.

2) Would mandating the areas that statements must cover encourage organisations to take effective action? Please explain your answer and include details of any alternative proposals to encourage further action.

Yes. We believe that mandating all the specific areas the government currently expects an organisation to report on would help to improve the quality and consistency of the statements, allowing easier comparison of the actions taken by different organisations.

3a) If the legislation was amended to mandate the areas that statements must cover, which of the six areas currently set out in Home Office guidance should be required?

- A. Your organisation's structure, its business and its supply chains;
- B. Your organisation's policies in relation to slavery and human trafficking;
- C. Your due diligence processes in relation to slavery and human trafficking in your business and supply chains;

- D. The parts of your business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps taken to assess and manage that risk;
- E. Your effectiveness in ensuring that slavery and human trafficking is not taking place in your business or supply chains, measured against any performance indicators as considered appropriate;
- F. Training and capacity building about slavery and human trafficking available to your staff.

As per our answer above, we believe that requiring organisations to report on all the specific areas the government currently expects an organisation to include in its modern slavery statement would be beneficial.

3b) Are there any further areas not mentioned above that should be required? If yes, please state which.

The Home Office may want to consider including a requirement for organisations to report on any improvements or progress that has been made since the previous statement was published.

3c) Should any of the six suggested areas (and any additional areas suggested) be combined? Please explain your answer.

In addition to any new requirements we suggest that the Home Office review the wording of the current requirements to ensure they are unambiguous. It should also provide detailed guidance for organisations on what they are required to do to fulfil their obligations under s54. For example, the reference to “capacity building” in F needs further clarification, while the requirement to report on an “organisation’s structure” could be open to interpretation.

4) Should organisations be able to choose not to report on one or more of the required areas if they provide an explanation for omitting this area? Please explain your answer.

As per our answer above, we believe that requiring organisations to report on all the specific areas the government currently expects an organisation to include in its modern slavery statement would be beneficial.

5) Would organisations face any challenges if it became mandatory to report on specific areas? If so, what would you consider these to be?

No comments

Section 2: Transparency, compliance and enforcement

6) Would there be any challenges associating with requiring organisations (including businesses) in scope of the Act to publish their modern slavery statement on the Government registry? Please explain your answer.

The BMA has long argued for the introduction of a central, Government repository for modern slavery statements. A single publicly-owned registry to report on modern slavery would send a clear signal that the requirements under section 54 are mandatory. It will also help to quickly and easily identify whether a particular body has complied with the Act, rather than having to search individual company websites. We are therefore pleased to see the Government commit to this measure.

We cannot foresee any specific challenges that organisations in the scope of the Act would face in publishing a modern slavery statement on a Government registry. Organisations already report centrally on other business activities or data, including through the Government's Gender Pay Gap Reporting Service. Centralised reporting may also help to remove any confusion amongst businesses on where statements should be published.

7) In addition to the ability to publish and view modern slavery statements, which features should a central registry should include?

- A. Modern slavery statements are accessible automatically through an application programme interface (for example to support analysis by third parties)
- B. Organisations who have reported are available as a downloadable list
- C. Guidance to help organisations to prepare more effective modern slavery statements
- D. Guidance to help consumers better understand modern slavery statements
- E. Functions to enable easier comparison of modern slavery statements
- F. Any other features - please specify

All the options A-E are sensible features to include as part of a central government registry.

A feature that supports the analysis of modern slavery statements (A), a downloadable list of the organisations that have reported (B), and functions that enable the easier comparison of statements (E), would increase opportunities to scrutinise reporting across and within specific sectors.

It is also imperative that organisations have clear guidance and support on what and how to report, including on the risks in their supply chains and what measures they have or can put in place to address or mitigate these. Similarly, guidance for the public on how to understand and interpret statements is essential to ensure that consumers and others can informatively compare and contrast the actions taken by organisations operating within similar sectors.

In addition to a downloadable list of organisations that have reported under the MSA s54, the Government should also consider providing lists that show the organisations who are in scope and those that have not published a statement. This would enable third parties to easily identify organisations who were not compliant with the Act.

8a) Would establishing a single reporting deadline make the reporting process clearer for organisations captured by the legislation?

No comments

8b) If you are an organisation required to publish a statement, what would be the challenges of publishing on a single reporting deadline, including any additional resource or cost implication? Please explain your answer.

No comments.

8c) Would single reporting deadline make it easier for external parties to scrutinise whether an organisation has published an up to date statement? Please explain your answer.

Yes. A single deadline would help to ensure that all modern slavery statements capture organisations' reporting at a single snapshot in time.

9) If a single reporting deadline is introduced, which annual date should be used?

- A. March 31 (most UK-registered companies' financial year end)
- B. 30 September (six months most UK-registered companies' financial year end)
- C. December 31 (the end of the calendar year)
- D. 30 June (six months after the end of the calendar year)
- E. 30 March for public sector organisations, and 4 April for other types of organisations (in alignment with Gender Pay Gap reporting deadlines)
- F. Other – please specify

No comments.

10a) Should any variable penalty for failing to publish a modern slavery statement or failing to publish a fully compliant statement be capped at a maximum prescribed amount? Please explain your answer.

10b) If yes, what do you think the maximum sum should be? Please explain your answer.

The current level of compliance among private businesses currently within the scope of s54 is disappointingly low. The provision enabling the Government to issue injunctions to non-compliant companies has never been used. Fines that would affect profit are an appropriate tool to enforce compliance of businesses with the Act. We therefore welcome the Government reviewing its options to sanction financially organisations that fail to publish a statement.

11) If the reporting requirements are extended to the public sector, should a civil penalty scheme also apply to public sector organisations? Please support your view.

Public bodies do not operate under the same model as businesses and public services are already suffering from significant budgetary constraints. The NHS, for example, has experienced years of underfunding. Therefore, we have reservations over the use of fines for non-compliance with the Act for NHS bodies, particularly if there is a risk that this could affect the ability of organisations to provide quality care to patients.

We recommend that the Government explores other tools to enforce compliance with s54 in the public sector. It should then consult on a range of different options, including financial penalties, to identify an appropriate mechanism to enforce compliance. As many public bodies would not have previously published a modern slavery statement, a further option is to review compliance with the Act after a pre-determined number of reporting cycles and consider any next steps on the basis of the results.

Section 3: Public sector supply chains

11a) Should the requirement to publish a modern slavery statement be extended to large public sector organisations that are not currently captured by the legislation?

Yes. UK organisations, whether public or private, should have a responsibility to outline the steps they have taken to promote ethical procurement and ensure labour rights abuses are not taking place within their supply chains. This includes large organisations in the health service.

There is an uncomfortable paradox in providing healthcare in the NHS at the expense of workers' health in its supply chains. Extending the transparency clause of the MSA to NHS organisations would ensure the same standards of ethical procurement are applied to health and social care organisations.

NHS foundation trusts and NHS trusts that purchase medical goods are be required to comply with the Modern Slavery Act, as they are established as corporate bodies under the NHS Act 2006. However, we understand that this is only if they have a profit-making arm that meets the

turnover threshold. There are also other parts of the health and care system that are not captured by the Act. We believe these standards should be applied across the NHS's supply chains – so that all workers involved in the provision of goods and services to the UK's health and care system are protected against labour rights abuses.

The BMA believes that the health service has a responsibility to ensure that its practices do not negatively impact on the health and wellbeing of workers globally. The NHS should lead the way in campaigning for ethical procurement.

11b) What would the benefits of extending the reporting requirements to large public sector organisations not currently captured by the legislation be?

If major manufacturers and suppliers of healthcare products strove to ensure fair and ethical practices in the production of their products, the potential impact on global supply chains would be vast. The NHS spends more than £40 billion per year on the procurement of goods and services. Many of the supply chains that provide these commodities are global and employ hundreds of thousands of people worldwide. Greater transparency on the actions of NHS bodies within scope could be a driver for change. The scale of the NHS's procurement footprint makes it well placed to lead by example and leverage its purchasing power by sourcing NHS supplies ethically and transparently.

It is imperative that the public has confidence that NHS procurement is doing all it can to ensure its supply chains are free from modern slavery. An explicit requirement for NHS bodies to comply with the transparency requirements will focus the mindset of the key decision-makers as to the importance of taking action, but also provide reassurance to the public that the issue is being taken seriously and that steps are being taken where there is a high risk of modern slavery in supply chains.

11c) What challenges could public sector organisations face in producing a modern slavery statement?

As stated above, public sector bodies are underfunded and face significant budgetary constraints. It is important therefore that they are properly resourced to carry out duties under s54. Consideration must also be given to any guidance or support that the Government needs to provide to organisations to help them meet any new duties or responsibilities. A statutory requirement, backed up with clear guidance on the content of statements, as suggested in questions two and three, would also help to assist with focusing, streamlining and facilitating responses.

12a) Should budget be used to determine the threshold for which large public-sector organisations should be required to publish a modern slavery statement?

No comments

12b) If yes, should the budget threshold should be £36 million? Please explain your answer.

No comments

12c) If no, what alternative metric should be used to determine the threshold for reporting?

No comments

13) Should public sector organisations be able to publish a 'group statement'? Please explain your answer and if you are a public sector organisation please include any relevant

examples of the group structure which you might report under.

We would like to see more detail on how this would work in practice. While we can see potential benefit to introducing group reporting initially, we are sceptical about the use of group reporting as an ultimate tool, as it may not be robust enough to bring about change or provide sufficient transparency.

14) Should public sector modern slavery statements be approved by the most senior managing body and signed off by the accounting officer, Chief Executive or equivalent role? Please explain your answer.

Yes. As the consultation document states, senior leadership buy-in is crucial to changing culture and driving action, it is also already a legal requirement under the current Act for companies that are within scope. Similarly, requiring that a statement is signed by the appropriate leader of a public sector organisation would signify commitment from the top-level decision makers. This will help to ensure the issue is prioritised within the organisation and the implication of taking little or no action in response to the legislation is recognised.