Modern slavery in financial services: no room for complacency

On 18 January 2021, the UK's Independent Anti-Slavery Commissioner, Dame Sara Thornton, published a report on preventing modern slavery and human trafficking in the financial services sector. The report reveals that 36% of finance industry employees do not see the crimes and human rights breaches described in the Modern Slavery Act 2015 (2015 Act) as something that their companies can prevent.

The goals of the report are twofold: to dispel this misconception by raising awareness of modern slavery and human trafficking (modern slavery) threats in the UK finance industry and to highlight what businesses can do to prevent modern slavery. While the report focuses on the finance industry, its conclusions and recommendations are applicable to other sectors.

The report is timely. As the COVID-19 pandemic has forced companies into financial distress and insecurity, the number of potential modern slavery victims is likely to increase due to efforts by companies to remain profitable to the detriment of suitable working conditions. The report discusses how underestimating modern slavery risks affected the fast-fashion brand Boohoo in July 2020.

Key statistics on modern slavery

According to Dame Sara Thornton's report on preventing modern slavery and human trafficking in the financial services sector:

- Modern slavery is the third most profitable organised crime globally after drug trafficking and counterfeit goods.
- In 2012, the International Labour Organization estimated that modern slavery generated $150 billion annually in profits. This figure is likely to be much higher now.
- Over 40 million people were held in modern slavery on any day in 2016 and, of that number, 16 million were victims of labour exploitation in private business.
- An estimated 136,000 victims are currently caught up in conditions of modern slavery across the UK, including sexual, labour and criminal exploitation, and children being forced to traffic drugs along county lines.

Modern slavery and the financial sector

Modern slavery covers a range of crimes that involve multiple forms of exploitation, including human trafficking, slavery, servitude, and forced or compulsory labour. Contrary to what many assume, these crimes take place in every country, and in every industry and sector in the world (*see box "Key statistics on modern slavery"*) (*see feature article "Modern Slavery Act 2015: the impact on multinational businesses", www.practicallaw.com/2-623-9985*).

Financial institutions may be connected to several thousand companies directly through their corporate lending or investment portfolios, and those companies in turn may be connected to many more in supply chains (*see feature article "Supply chain reporting: complying with the Modern Slavery Act 2015", www.practicallaw.com/6-622-9282; and News brief "Transparency in supply chains: the latest UK developments", www.practicallaw.com/w-020-9323*). With each investment, investors, lenders and other stakeholders are exposing themselves to modern slavery risks as capital that is lent or invested may be contributing directly or indirectly to modern slavery.

In addition, illicit proceeds of modern slavery are likely to flow through banks and other financial institutions that are used by both perpetrators and victims of these crimes. Any criminal proceeds that are generated by modern slavery and channelled through banking systems will become criminal property and, therefore, may constitute a separate money laundering offence under the Proceeds of Crime Act 2002.

Actions for companies

The report highlights the keys actions that every company should take in order to curb modern slavery.

Tone at the top. Senior executives and directors can contribute by publicly acknowledging possible links between modern slavery and their business activities and supply chains.

Monitor and report. Section 54 of the 2015 Act requires commercial organisations with an annual turnover of £36 million or more that carry on business, or part of their business, in the UK to publish an annual slavery and human trafficking statement (section 54 statement) setting out the steps that they have taken to address modern slavery in their supply chain and in any part of their business operations (*see Briefing "Modern Slavery Act 2015 and beyond: putting the spotlight on human rights", www.practicallaw.com/5-620-4611*). Companies that are not currently required by law to publish a section 54 statement should consider doing so anyway, as the government indicated in September 2020 that it will widen the pool of companies obliged to do so (*www.gov.uk/government/news/new-tough-measures-to-tackle-modern-slavery-in-supply-chains*).

When compiling a section 54 statement, companies should monitor their supply chains, such as IT services, employment services, office supplies and construction, by undertaking appropriate due diligence, and should also monitor their activities across all operations. This will involve co-ordinating financial crime teams to detect signs of money laundering and other financial crimes. Investors and lenders should also carry out due diligence on prospective investments.

Detect and disrupt. Modern slavery detection should be an integral part of mandatory company training, which should include training on anti-money laundering, bribery and corruption that highlights modern slavery risks. Companies should conduct ongoing monitoring of customers, suppliers and staff using a risk-based approach.

Invest and engage. Investors, lenders and other stakeholders should seek anti-modern

Risks of non-compliance

Companies, investors, lenders and other stakeholders may be exposed to a number of different risks in relation to modern slavery.

Financial risk. In the UK, a failure to publish a satisfactory slavery and human trafficking statement under section 54 of the Modern Slavery Act 2015 can result in a High Court injunction requiring the company to comply, as well as an unlimited fine if compliance with the injunction is not achieved.

Legal risk. Many modern slavery activities can also be framed as employment violations, which can lead to individual, and potentially collective, employment action; for example, failing to pay the national minimum wage or breaching the Working Time Regulations 1998 (*SI 1998/1833*).

Regulatory risk. As modern slavery often contains elements of money laundering, any financial institution that is found to be holding the illicit proceeds of modern slavery will be liable for the criminal offence of money laundering.

Reputational risk. Investors, lenders and other stakeholders are exposed to reputational damage if the companies that they invest in are found to employ poor labour practices. There are websites that name and shame companies that fail to comply with business and human rights obligations.

slavery assurances as a precondition of any investment or lending terms. Companies should prepare a risk tolerance map outlining their acceptable level of modern slavery risk for their objectives and develop a scenario-based set of action protocols. This should include clear examples of when to accept or withhold funds, and should require sign-off from the board of directors. When modern slavery risks are identified within a company's business or supply chain, investors and lenders should be encouraged to work with the company to eliminate these risks, rather than immediately divest from the company (*see box "Risks of non-compliance"*).

Boohoo case study

The discovery of poor working practices within the supply chain of fast-fashion brand Boohoo showcases the extent of the potential reputational and financial risks to companies, and their investors, in relation to modern slavery. According to the report, in July 2020, Boohoo was found to have engaged with suppliers in Leicester that housed their staff in unsafe working conditions and paid them very low wages. Following these allegations, Boohoo's share price dropped by half.

In response to the allegations of modern slavery in its supply chain, Boohoo commissioned a barrister, Alison Levitt QC, to conduct an independent inquiry. Ms Levitt issued a report summarising her conclusions in September 2020 (the Boohoo report) (*www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf*).

The Boohoo report highlights that:

- Boohoo had failed to respond to repeated concerns raised over several years.
- Many of Boohoo's major investors had underestimated the modern slavery risks inherent in Boohoo's business model.

The statements of some of Boohoo's largest shareholders focused only on their own direct supply chain, with no mention of due diligence of the companies in which they invested, including Boohoo.

The Boohoo case study puts the report into perspective regarding the connection between modern slavery and the private sector. The report concludes that consumers of brands like Boohoo are driven by cost, meaning that ethical considerations do not have sufficient influence on their buying decisions. Therefore, the report suggests that it is important that investors and lenders use their position to push for higher standards.

Where consumers are unable to exert sufficient pressure on companies to encourage change, investors, lenders and governments must take a stand against abusive practices that ultimately indicate poor governance practices. The negative impact of the modern slavery allegations on Boohoo's share price shows that curbing modern slavery is not only the right thing to do for ethical, legal and regulatory reasons, but also an astute investment decision.

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The report is available at https://themisservices.co.uk/msht-full-report.