

# Corporate Non-Compliance With Section 54 Modern Slavery Act 2015: “Nobody’s kicking our ass”

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## Abstract

Section 54 of the UK’s Modern Slavery Act requires certain companies to publish annual statements, detailing steps taken to manage risks of modern slavery. However, many companies still have yet to fulfill their most basic legal requirements. Prior research has largely examined the quality of published statements; thus, the reasons and remedies for non-compliance are not wholly understood. The present study directly sought the views of non-compliant companies, finding apathy and the lack of repercussions for non-compliance as central to their continuing inertia. We also argue for a number of measures, including stronger penalties and enforcement, to increase compliance rates.

**Keywords:** Modern slavery; Modern Slavery Act; Section 54; non-compliance; enforcement

## 1. Background to the study

Due to the concealed nature of the crime, the precise number of victims of modern slavery in the UK is difficult to estimate. Yet, it is feared that the figure might be at least 136,000<sup>1</sup> with many of those enslaved involved in labour exploitation. Given that the global number of individuals in forced labour has increased by 2.7 million since 2016,<sup>2</sup> that UK figure could be an under-estimate. In countering the crime, the UK government’s ruling Conservative party introduced legislation. The Modern Slavery Act (MSA) 2015 not only addresses the criminal aspects of modern slavery, but also introduced a new legal requirement on companies intended to improve corporate accountability for modern slavery and labour exploitation in their

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<sup>1</sup> Walk Free Foundation (2019). *The Global Slavery Index 2018*, 94 <https://www.globalslaveryindex.org/2018/methodology/prevalence/> Accessed on 17.9.21

<sup>2</sup> International Labour Organisation, Walk Free and International Organisation for Migration, *Global Estimates of Modern Slavery Forced Labour and Forced Marriage*, (September 2022).. Available from [https://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_854733/lang--en/index.htm](https://www.ilo.org/global/topics/forced-labour/publications/WCMS_854733/lang--en/index.htm) Accessed on 15.9.2022

global supply chains.<sup>3</sup> Under section 54 of the MSA, commercial organisations with a turnover of £36 million per year,<sup>4</sup> must prepare a statement which details the steps the organisation has taken to manage effectively the risks in avoiding occurrence of slavery in its own business or its supply chains.<sup>5</sup> The rationale for requiring companies to prepare a s54 statement is that this will offer an assurance to consumers and other businesses that their efforts to prevent modern slavery and exploitation are “*fully embedded throughout the company’s operations.*”<sup>6</sup>

Other research examining s54 has almost exclusively examined the quality of published statements, and making recommendations, where appropriate, for their improvement. In contrast, since the rate of companies still failing to publish any annual statements is reckoned to be around 40%,<sup>7</sup> our study examined the reasons for continuing company failure to comply with s54 by speaking (for the first time as far as we understand) to these companies. We also examined the legal framework of s54 and the current enforcement regime, before making recommendations to drive up compliance.

Section 54 (4) of the MSA sets out the information the statement should include, but this is non-binding guidance rather than mandatory.<sup>8</sup> The statement can even consist of the organisation simply stating that they have taken no steps to prevent modern slavery.<sup>9</sup> As the UK’s Independent Anti-Slavery Commissioner (‘IASC’) stated in 2020 “*This light touch legislation sets a low bar for compliance.*”<sup>10</sup> It should come as no surprise then that previous research studies of completed s54 statements often find them of mediocre quality.<sup>11</sup> That is, these statements have been found as often failing to fully follow Government guidelines as to what the statement should contain. Such guidelines cover six areas, such as a company’s modern slavery policies, their due diligence processes of their suppliers and the steps they have taken to measure

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<sup>3</sup> Baron, Genevieve Le ‘The domestic politics of corporate accountability legislation: struggles over the 2015 Modern Slavery Act’ (2019) 17 Socio – Economic Review 715

<sup>4</sup> Modern Slavery Act 2015 (Transparency in Supply Chains) Regulations 2015/1833, Regulation 2,

<sup>5</sup> Collins, Hugh. Ewing, Keith D and McColgan, Aileen. *Labour Law*, 2<sup>nd</sup> edition (Cambridge University Press 2019), 75

<sup>6</sup> CORE (Corporate Responsibility) Coalition, *Modern Slavery Reporting: Weak and Notable Practice*, published June 2017 at page 2. Available from <https://respect.international/cores-short-guides-on-modern-slavery-reporting/> Accessed on 21.9.2020

<sup>7</sup> Business and Human Rights Resource Centre. *Modern Slavery Act: Five Years of Reporting 2.* [https://media.business-humanrights.org/media/documents/Modern\\_Slavery\\_Act\\_2021.pdf](https://media.business-humanrights.org/media/documents/Modern_Slavery_Act_2021.pdf) Last accessed on 18.11.21

<sup>8</sup> Collins, Hugh. Ewing, Keith D and McColgan, Aileen. *Labour Law*, 2<sup>nd</sup> edition (Cambridge University Press 2019) 75

<sup>9</sup> Collins, Hugh. Ewing, Keith D and McColgan, Aileen A. *Labour Law*, 2<sup>nd</sup> edition (Cambridge University Press 2019) 75

<sup>10</sup> The Independent Anti-Slavery Commissioner *Annual Report 2019-20*, (2 Independent Anti-Slavery Commissioner 20) 8

<sup>11</sup> Business and Human Rights Resource Centre (2021) <https://www.business-humanrights.org/en/from-us/modern-slavery-statements/> Accessed 9<sup>th</sup> April 2021

the effectiveness of procedures.<sup>12</sup> Many of these statements were said to provide little confidence that companies would effectively manage risks of labour exploitation.<sup>13</sup>

Prior research studies have therefore provided a barometer of those companies, who to one extent or another are compliant with the legislation. For example, the report by the Modern Slavery Policy and Evidence Centre (‘MSPEC’)<sup>14</sup> makes recommendations to increase the effectiveness and quality of s54 statements. However, they offered little to explain continued non-compliance by so many companies. Furthermore, negligible in the prior academic research have been any attempts to understand directly from those companies themselves why they have still yet to fulfil their legal obligations under s54.

Section 54 was based on the *Californian Transparency in Supply Chains Act 2010 (CTSCA)* which had become law in the USA in 2012.<sup>15</sup> The concept behind CTSCA was that companies would be compelled to act because the transparency requirement would lead them to being judged by “*the court of public opinion.*”<sup>16</sup> Accordingly, by requiring commercial organisations to publish modern slavery statements it would be consumers, rather than governments, whose purchasing decisions would prevent slavery and trafficking from taking place.<sup>17</sup> Such a ‘soft law’<sup>18</sup> approach does displace the locus of responsibility towards customers, and away from their rightful onus (i.e., corporate and governmental), however it is often attractive to governments because the costs to the state are very low.<sup>19</sup> Another problem with such an approach is that, regardless as to whether the consumer elects to purchase or not, the exploitation of labour has already taken place. Further, such laws rely on the active participation

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<sup>12</sup> The Home Office ‘Transparency in Supply Chains: A practical guide’. <https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide/transparency-in-supply-chains-a-practical-guide> 16

<sup>13</sup> The Home Office, ‘Transparency in Supply Chains: A practical guide’ 2017 <https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide/transparency-in-supply-chains-a-practical-guide> 16

<sup>14</sup> Modern Slavery Policy and Evidence Centre Effectiveness of Section 54 of the Modern Slavery Act. Available from <https://modernslaverypec.org/resources/tisc-effectiveness>.

<sup>15</sup> Rao, Sunil. *Modern Slavery Legislation Drafting History and Comparisons between Australia, UK and the USA* (Routledge 2020), 8

<sup>16</sup> Rao, Sunil. *Modern Slavery Legislation Drafting History and Comparisons between Australia, UK and the USA* (Routledge 2020), 8

<sup>17</sup> Rao, Sunil. *Modern Slavery Legislation Drafting History and Comparisons between Australia, UK and the USA* (Routledge 2020), 27

<sup>18</sup> Boesrma, Martijn and Nolan, Justine ‘Modern slavery and the employment relationship: Exploring the continuum of exploitation’, *Journal of Industrial Relations*, 2022, 1-12 at page 6 DOI: <https://www.doi.org/10.1177/00221856211069238>

<sup>19</sup> Slaughter, H. *No shame, no gain? The role of reputation in labour market enforcement*, Resolution Foundation, November 2021 at page 4 Available from <https://www.resolutionfoundation.org/publications/no-shame-no-gain/> Accessed on 16.8.2022

of consumers to enforce the law<sup>20</sup> but there is evidence both that they are unaware of the MSA 2015, and also considerations of labour exploitation do not tend to pre-occupy consumer thinking in their decisions concerning whether to purchase (or when it does it is a matter nullified in their considerations).<sup>21</sup> In short, ethics criteria do not predominate purchasing decisions, a matter that has been long understood.<sup>22</sup> As such, it is far from clear how effective this reliance on consumer power is for prompting companies to make changes to their supply chains. As the former Chair of the Gangmasters and Labour Abuse Authority (the UK agency chiefly responsible for tackling modern slavery) put it “*Do those who purchase cheap clothes, cheap food, cheap services really care whether workers are being exploited to deliver the goods?*”<sup>23</sup>

Parallels here can reasonably be made with findings from the criminological literature, when that examined the behaviour of consumers of stolen goods. In particular, people asked few questions about the origins of unrealistically priced cheap consumer goods when making purchases (it being assumed that the only ‘victim’ was a company). However, consumers displayed much less enthusiasm for similar priced goods which were more likely the product of household burglaries, where victims of such crimes were more easily identifiable. We would argue that this suggests consumers can remain oblivious or ambivalent when purchasing cheap goods that may have involved such criminality as labour exploitation, as modern slavery victims are only rarely identified or exposed as being involved in the production of low-priced items.<sup>24</sup>

In addition, there are a number of barriers which limit businesses from taking greater responsibility for tackling modern slavery. For instance, some businesses are particularly resilient to any pressures to adopt more ethical practices, and indeed their business models are such that they are motivated to tolerate or even encourage exploitation in their supply chains in, say, the context of their lowering market prices to remain competitive, to prevent their production costs from rising and the need for their business survival in the face of such tensions.<sup>25</sup>

Given such fundamental conditions, an emphasis on self-regulation that is less interventionist, may well be thus more welcomed by the business sector, avoiding the perceived

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<sup>20</sup> Harris, Hannah. and Nolan, Justine. ‘Outsourcing the enforcement of modern slavery: Overcoming the limitations of a market-based disclosure model’, *Journal of Industrial Relations*, (2021), pages 1-15 at page 12 s DOI: <https://www.doi.org/10.1177/00221856211051431>

<sup>21</sup> Carrington, Michael. Chatzidakis, Andreas. and Shaw, Deirdre. ‘Consuming Worker Exploitation. Accounts and Justification for Consumer (In)Action to Modern Slavery’ (2021) 35 *Work, Employment and Society* 432.

<sup>22</sup> Carrigan, Marilyn. and Attala, Ahmad. ‘The myth of the ethical consumer - do ethics matter in purchase behaviour?’ (2001) 18 *The Journal of Consumer Marketing* 560

<sup>23</sup> Beels, Margaret. *Preventing Labour Exploitation*, (Warwick Papers in Industrial Relations 2017) available from [https://warwick.ac.uk/fac/soc/wbs/research/irru/wp/irru\\_wp\\_107.pdf](https://warwick.ac.uk/fac/soc/wbs/research/irru/wp/irru_wp_107.pdf) accessed on 25-10-2020, 10

<sup>24</sup> Sutton, Mike. ‘Tackling the roots of theft: Reducing tolerance towards stolen goods markets’. In Hopkins Burke, R; *Hard cop, soft cop: Dilemmas and debates in contemporary policing* 135-149. (2004). London; Routledge.

<sup>25</sup> Crane, Andrew. ‘Modern slavery as a management practice: Exploring the conditions and capabilities for human exploitation’ (2013) 38 *Academy of Management Review* 49.

stifling of innovation and financial burdens associated with enacted centrally-controlled policies.<sup>26</sup> However, such self-regulation has often resulted in the failure of business (particularly smaller ones) to undertake meaningful self-monitoring or remedial measures.<sup>27</sup> Indeed, a recent study of the construction industry found the conditions therein (e.g., frequent short-term sub-contracting) made it quite demanding for risks of modern slavery to be effectively monitored and identified.<sup>28</sup>

Further, the Independent Anti-Slavery Commissioner (the government appointed official responsible for scrutinising official responses to modern slavery) lamented, in her 2020-2021 annual report, both the inconsistent quality of many published statements and the matter that too many companies were still failing to meet even the basic s54 requirements.<sup>29</sup> While suggestions were offered in her report to improve the quality of published statements, less was stated concerning increasing compliance from those companies yet to engage, nor any explanations given for corporate non-compliance with s54. Given the high rate of non-compliance,<sup>30</sup> the matter of investigating reasons for such a widespread breach of the law is neither one of niche or marginal interest.

The focus on transparency as the main enforcement tool in s54, is in stark contrast to the ‘failure to prevent’ model used in the UK’s Bribery Act, where companies have a duty to prevent alongside a defence of ‘due diligence’.<sup>31</sup> In the modern slavery context, this would mean that companies could only escape liability if they can demonstrate they had a robust system of human rights due diligence in place.<sup>32</sup> Furthermore, the Bribery Act has much stronger enforcement

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<sup>26</sup> Fairman, Robyn. and Yapp, Charlotte. ‘Enforced Self-Regulation, Prescription, and Conception of Compliance within Small Businesses: The Impact of Enforcement’ (2005) 27 *Law & Policy* 491.

<sup>27</sup> Cooke, Bill. ‘The denial of slavery in management studies’ (2003) 40 *Journal of Management Studies* 1895.

<sup>28</sup> Trautrim, Alexander. Gold, Stefan. Touboulic, . Anne. Emberson, Caroline. and Carter, Helen. ‘The UK construction and facilities management sector's response to the Modern Slavery Act: An intra-industry initiative against modern slavery’ (2021) 4 *Business Strategy and Development* 279 DOI: <https://www.doi.org/10.1002/bsd2.158>

<sup>29</sup> Independent Anti-Slavery Commissioner *Annual Report 2020-2021*, 32

<sup>30</sup> Business and Human Rights Resource Centre. *Modern Slavery Act: Five Years of Reporting 2*. [https://media.business-humanrights.org/media/documents/Modern\\_Slavery\\_Act\\_2021.pdf](https://media.business-humanrights.org/media/documents/Modern_Slavery_Act_2021.pdf)  
Last accessed on 18.11.21

<sup>31</sup> Modern Slavery & Human Rights Policy and Evidence Centre, *Policy Brief: Effectiveness of mandatory human rights and environmental due diligence* (May 2022). Available from <https://modernslaverypec.org/resources/effectiveness-mandatory-human-rights-due-diligence>. Accessed on 6.5.2022 at page 9

<sup>32</sup> Modern Slavery & Human Rights Policy and Evidence Centre, *Policy Brief: Effectiveness of mandatory human rights and environmental due diligence* (May 2022). Available from <https://modernslaverypec.org/resources/effectiveness-mandatory-human-rights-due-diligence>. Accessed on 6.5.2022 at page 11

provisions,<sup>33</sup> including an unlimited fine.<sup>34</sup> In contrast, the only enforcement action under the MSA that is currently available for failing to publish a s54 statement is for the Secretary of State to commence civil proceedings to obtain an injunction under section 54 (11). However, as the Independent Anti-Slavery Commissioner (IASC) noted in her report for 2021-22, the government has “*never used its powers of injunction*”<sup>35</sup> against organisations that have failed to comply with section 54, despite it being a legal obligation for the past seven years. It is, perhaps, striking to note that the Californian Attorney General has a similar power to enforce compliance with *CTSCA*, but this too has never been used.<sup>36</sup>

In sum, (i) no companies have been penalised for their non-compliance with s54; (ii) the rate of non-compliance remains stubbornly and unacceptably high; and (iii) neither self-regulation nor civil society oversight has been found effective in ensuring company compliance. Reasons for such continuing unacceptable levels of non-compliance remain insufficiently explored and understood. As we have noted, while there have been several studies concerning how to improve the quality of submitted s54 reports,<sup>37</sup> there has been little corresponding research scrutinising continuing non-compliance. In brief, more is known about what can be seen (i.e., in published statements), and much less about what is not (i.e., in the absence of published statements). Our study set out to remedy this situation by exploring the reasons for the continuing failure to comply with s54, both in terms of reasons given by the companies themselves and in terms of the legal framework within which s54 operates. We also sought to consider what changes made to the legal framework might increase compliance.

## 2. The study

Having received funding from the Higher Education Innovation Fund (HEIF) and, in turn, ethical clearance from the authors’ home university, we identified from three regional newspaper listings that together identified 353 companies whose cited turnover in their preceding accounting year meant that they should be in compliance with s54. From that list, we examined their websites and found that 77 of them were yet to comply with s54 (that is, they had not

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<sup>33</sup> Le Baron, Genevieve. and Rühmkorf, Andreas. ‘Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance’. (2017). 8 *Global Policy* 15

<sup>34</sup> LeBaron, Genevieve. and Rühmkorf, Andreas. ‘The domestic politics of corporate accountability legislation: struggles over the 2015 UK Modern Slavery Act’, *Socio-Economic Review*, 2019. Vol.17, No. 3, pages 709-743 at page 725

<sup>35</sup> The Independent Anti-Slavery Commissioner’s Annual Report 2021-22 (2022) at para 3.4.1

<sup>36</sup> Harris, Hannah. and Nolan, Justine. ‘Outsourcing the enforcement of modern slavery: Overcoming the limitations of a market-based disclosure model’, *Journal of Industrial Relations*, (2021), pages 1-15 at page 11 DOI: <https://www.doi.org/10.1177/00221856211051431>

<sup>37</sup> Phillips, Andrew. and Trautrim, Alexander *Agriculture and Modern Slavery Act Reporting: Increasing engagement but poor quality from a high-risk sector* (University of Nottingham Rights Lab/Independent Anti-slavery Commissioner 2019)



posted their statement there in accordance as required by the legislation, and thus apparently had yet to make an annual statement, several years after the introduction of the MSA 2015). We subsequently conducted telephone interviews with 72 of these companies to enquire the reasons for their continuing non-compliance. Interviews were conducted with key personnel in the company being those individuals who identified themselves as responsible for the construction of the annual report, such as company Directors, but also company secretaries, accountants or human resource managers.

When familiarising ourselves thoroughly with the data gained from the interviews, and inductively coding them from identified repeated patterns and themes, we followed the guide provided by Braun and Clarke (2006).<sup>38</sup> Working with an academic colleague familiar both with this method of data analysis and the area of study, the second author classified over 100 first-order categories, before condensing these down, firstly to 28 themes, and then to three distinct topic areas categorised as (i) businesses indifference to modern slavery; (ii) lack of consequences to ongoing business as reasons for non-compliance to s54; and (iii) the absence of scrutiny, and legal repercussions, when failing to comply with s54. A sample of 12 interviews were examined by an academic colleague, familiar with modern slavery compliance as well as this research methodology for the purposes of examining the reliability and validity of the coding of the 28 themes and also for the classification of the three dominant ones, finding strong Kappa inter-rater agreement at 0.83 and 0.80 (both  $p < .05$ ), respectively (Cohen, 1988).<sup>39</sup>

The three key reasons offered by companies for their continuing failure to comply with s54 are now discussed below from a legal compliance and modern slavery perspective. An assessment of the underlying motives for non-compliance from a criminological perspective can be found in fuller detail in Walsh, D. & Pajon, L. (In submission).<sup>40</sup>

### **(i) Indifference to modern slavery**

Indifference (i.e., moral apathy) was present with many companies with whom we engaged. By speaking directly to the participants involved in our study to find out the reasons for their non-compliance, we discovered that there remained a significant cohort that express indifference to the possibility that labour exploitation exists either in their workplace or in their supply chains. For example, one representative from a motor sales company said forthrightly when reasons for the enquiry were first made clear that “*we don’t have modern slavery here*”. However, when this response was later probed concerning whether that company had made checks on their supply chains an admission was made that they had not “*cared to consider that*”. This indifference was also identified at a later stage following production of the annual statement

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<sup>38</sup> Braun, Virginia and Clarke, Victoria. ‘Using thematic analysis in psychology’. *Qualitative Research in Psychology*, 3(2), 77–101 (2006).

<sup>39</sup> Cohen, Joseph. *Statistical power analysis* (2nd ed.). Laurence Erlbaum Associates (1988).

<sup>40</sup> Walsh, D. & Pajon, L. (In submission). Neutralisation as a response to corporate non-compliance with the UK’s modern slavery legislation.

where shortfalls in the quality of the statement were recognised by the researchers. In response to offers of help to upgrade the statement, we were met with responses such as “*well, we think it looks OK*” (from a logistics company), and “*as far as we are concerned it meets the requirements*” (from a construction company), though they could not offer insight into what the requirements actually involved.

### **(ii) Lack of ‘business’ consequences**

Amongst the companies spoken to in our study, there was often found little recognition that non-compliance could have detrimental effects on their business. No company suggested non-compliance with s54 was a threat to their contracts, expressing that there had never been any questions made by buyers (for example) regarding how they manage risks of exploitation or had been asked to provide s54 statements for scrutiny. Our participants stated they had well-established relationships with those to whom they supplied goods and services, dependent on them meeting their contractual obligations of supplying services and goods to the expected quality and costs. None of the companies we spoke to appeared overly concerned that the non-production of a s54 statement would affect their business through customers (whether individual consumers or business customers) electing to either purchase or use other suppliers elsewhere. As one company (who were in waste management industry) put it “*....this matter just never crops up in discussions or negotiations; it’s just not on the radar, we’re aware of what the government wants us to do, but we just don’t see it as a priority...*”. Indeed, none of our participants reported to us that they examined other company’s websites to see if they had a modern slavery statement when making their own purchasing decisions, either as individuals or when doing business with suppliers.

Some participants passed the onus to consumers, advising that if they felt strongly enough about modern slavery, they would exercise that choice when making purchasing decisions and that may then act as a pressure on companies to pay more attention to this matter. They also told us that they did not feel customers were basing their buying decisions on whether any labour exploitation was involved in the production of goods. As one participant (a supplier of agricultural machinery) put it “*nobody cares why that t-shirt is so cheap, as long as it is*”.

### **(iii) Lack of ‘legal’ consequences**

A few of the companies we spoke to further stated that if the government were serious about the problem of modern slavery, they would invest more resources into its prevention. When we asked whether they would be comfortable with more red tape and law enforcement scrutiny of their business, they acknowledged that they would not mind this provided they were allowed to get on with their business. When we asked our participants if such increased law enforcement might mean that companies are prosecuted in the criminal courts, or penalised for their failures to meet legal requirements, they advised that such legal penalties probably would have an effect of increasing compliance, provided “*that any enforcement regime was more than*



*just a token one*” (stated by a recruitment agency). A few participants also acknowledged that a public registry making their non-compliance widely known might change their attitudes. As one of our participants explained; “*yeah, if it were known that we weren’t doing what we should, that might make us think twice*”. Our participants reported that they had not heard of companies being prosecuted or penalised for non-compliance with S54. As one participant put it “*nobody’s kicking our ass*”. In conclusion, we found that most companies felt at ease with breaching their obligations under s54 because they knew they would not face any legal consequences.

### **3. Discussion of the data gathering phase of the present study**

Our findings suggest that there remains a significant cohort of companies that express indifference to the possibility that labour exploitation and/or modern slavery exists either in their workplace or in their supply chains. As companies are an important constituent in identifying modern slavery, such apathy raises concerns as to the effectiveness of s54 and the ‘transparency model’ of regulation and enforcement. We learnt in our study that companies believed that their breach was also unlikely to result in either criminal/civil sanctions, or negative reactions by business or private customers, both of whom it was felt prioritised low cost over moral issues such as modern slavery.

The MSA requires UK companies with significant annual turnovers to undertake a responsibility in the fight against modern slavery. What we found in our study was a reluctance to accept that responsibility or possess particular concern for modern slavery. However, they conceded that a public register broadcasting their non-compliance and/or the possibility of facing either civil or criminal penalties might lead to their becoming compliant. It is to these matters that our article now turns.

### **4. Compliance and enforcement**

Our research regularly found that companies appear untroubled with non-compliance with s54, often because they know that no legal action will be taken against them. Given that we also learnt from our study that companies felt no moral obligation to comply with s54 and were not suffering any ‘business’ consequences, such as a fall in consumer support or other businesses refusing to work with them, we would argue that this means governments cannot rely on voluntary or moral means to ensure business compliance. Indeed, in other research undertaken by the authors of the present study, which examined senior business views as to the likelihood of increased labour exploitation following the UK’s decision to withdraw from the EU, we found universal concern that risks of labour exploitation would increase since businesses would probably forego due diligence checks on their suppliers when confronted with threats to their

own commercial survival<sup>41</sup> As such, we contend that the lack of compliance by companies in preparing s54 statements stems from the lack of monitoring, enforcement and penalties for non-compliance with s54. This was also a key finding of the Independent Review of the Modern Slavery Act (the ‘Independent Review’).<sup>42</sup> We argue that four key components of an effective enforcement strategy are necessary to achieve increased levels of compliance with s54 by businesses. These are the presence of (i) a mandatory central registry; (ii) monitoring; (iii) meaningful and applied penalties; and (iv) an independent employment focused enforcement body. In the UK, all these components were missing at the time of our study and the position has not changed since then. Each of these will now be examined in turn.

### **1. The lack of a mandatory central registry for s54 statements.**

The initial proposals to have a central government registry were defeated during the Parliamentary stages of the MSA in 2015,<sup>43</sup> and the plans were subsequently dropped. However, without a central registry or repository it is difficult for anyone to establish whether an organisation has complied with its obligations under s54. Indeed, the Independent Review of the MSA in 2019 recommended introducing a central government run repository in order to bring “*clarity and consistency*”,<sup>44</sup> a recommendation then accepted by the government.<sup>45</sup> The repository (in the form of an online registry) was eventually established on 11<sup>th</sup> March 2021, although entries were to be made entirely on a voluntary basis.<sup>46</sup> The government acknowledged that having a registry is a “*key tool*”<sup>47</sup> in monitoring and driving up compliance<sup>48</sup> and The Modern Slavery Bill which was announced in the Queen’s Speech in May 2022 did state that it

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<sup>41</sup> Walsh, D., Pajon, L., Lawson, K., Hafeez, K., Heath, M. & Court, N. (2022) ‘Increased Risks of Labor Exploitation in the UK following Brexit and the Covid-19 Pandemic: Perspectives of the Agri-food and Construction Sectors’. *Journal of Human Trafficking*.

<sup>42</sup> Independent Review of the Modern Slavery Act 2015, (2019), 39

<sup>43</sup> Rao, Sunil *Modern Slavery Legislation Drafting History and Comparisons between Australia, UK and the USA* (Routledge 2020), 54

<sup>44</sup> Independent Review of the Modern Slavery Act 2015, *Final Report* (2019), 42-43

<sup>45</sup> Government response to the Independent Review of the Modern Slavery Act, (2019) at para 32, available from <https://www.gov.uk/government/publications/government-response-to-the-independent-review-of-the-modern-slavery-act> accessed 12 June 2020

<sup>46</sup> IDS Employment Law Brief *Modern Slavery statements registry* (2021), issue 1135, 31

<sup>47</sup> UK Government 2021 *UK Annual Report of Modern Slavery*, (October 2021) at page 27. Available from <https://www.gov.uk/government/publications/2021-uk-annual-report-on-modern-slavery> Accessed on 11.10.2022

<sup>48</sup> UK Government 2021 *UK Annual Report of Modern Slavery*, (October 2021) at page 27. Available from <https://www.gov.uk/government/publications/2021-uk-annual-report-on-modern-slavery> Accessed on 11.10.2022

would include a provision to make submission of s54 statements on the registry compulsory.<sup>49</sup> We suggest that this would likely lead to more companies submitting their statements, as this was the experience of Gender Pay Gap reporting in the UK in 2018.<sup>50</sup> However, the Modern Slavery Bill did not complete the 2022-23 Parliamentary session and it was not included in the King’s Speech of 7<sup>th</sup> November 2023.<sup>51</sup> Therefore, the submission of s54 statements on the registry continues to be on an entirely voluntary basis.

However, whether such a registry, even when made mandatory, affects consumer buying decisions remains highly debatable.<sup>52</sup> On the other hand, such a registry may provide an opportunity for, say, either the government or campaign groups to ‘name and shame’ those companies who have failed to lodge a statement. as has occurred with corporate breaches of the National Minimum Wage (resulting in adverse publicity for those companies identified).<sup>53</sup> Research by the Resolution Foundation suggests that this could be effective in encouraging compliance as few companies “*want to be on the ‘naughty step’*”.<sup>54</sup>

## 2. Monitoring and scope

At present, no single organisation has responsibility for monitoring compliance with s54. Instead, monitoring has been left to civil society organisations which has made it more difficult to establish accountability.<sup>55</sup> The Modern Slavery Policy and Evidence Centre (‘MSPEC’) argue that the lack of any official mechanism for monitoring compliance with s54 undercuts its potential for holding companies to account.<sup>56</sup>

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<sup>49</sup> Prime Minister’s Office, *The Queen’s Speech 2022*, at page 83. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1074113/Lobby\\_Pack\\_10\\_May\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074113/Lobby_Pack_10_May_2022.pdf) Accessed on 6.9.2022

<sup>50</sup> Department for Business, Energy and Industrial Strategy *Committee report on Gender Pay Gap reporting*, (2018), 10. Available from [www.parliament.uk/beis](http://www.parliament.uk/beis). Accessed on 10-11-2021

<sup>51</sup> Practical Law Commercial, ‘King’s speech 2023: commercial implications’, published 7<sup>th</sup> November 2023. Available from [https://uk.practicallaw.thomsonreuters.com/w-041-2656?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&ppcid=72a429f1fea2498ebdf080db67f400ba&comp=pluk](https://uk.practicallaw.thomsonreuters.com/w-041-2656?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&ppcid=72a429f1fea2498ebdf080db67f400ba&comp=pluk) Accessed 3<sup>rd</sup> February 2024

<sup>52</sup> The Independent Anti-Slavery Commissioner’s Annual Report 2020-21, (2021), 41

<sup>53</sup> Sillars, James. ‘*John Lewis fury as it heads latest ‘name and shame’ list for flouting wage rules*’, Available from <https://news.sky.com/story/john-lewis-fury-as-it-heads-latest-name-and-shame-list-for-flouting-wage-rules-12372661> Accessed on 10-11-2021

<sup>54</sup> Slaughter, H. *No shame, no gain? The role of reputation in labour market enforcement*, Resolution Foundation, November 2021 at page 3 Available from <https://www.resolutionfoundation.org/publications/no-shame-no-gain/> Accessed on 16.8.2022

<sup>55</sup> MSPEC, ‘Effectiveness of Section 54 of the Modern Slavery Act’, published February 2021 at page 16. Available from <https://modernslaverypec.org/resources/tisc-effectivenessn> Accessed on 30.9.2022

<sup>56</sup> MSPEC, ‘Effectiveness of Section 54 of the Modern Slavery Act’, published February 2021 at page 43. Available from <https://modernslaverypec.org/resources/tisc-effectivenessn> Accessed on 30.9.2022

The Independent Review recommended that monitoring compliance with s54 should be the responsibility of the Independent Anti-Slavery Commissioner (IASC).<sup>57</sup> Despite this recommendation the government has decided not to transfer the responsibility of monitoring away from the Home Office because this would sit alongside that government department’s power to take enforcement action for s54 non-compliance.<sup>58</sup> However, as noted earlier, the Home Office has failed to take any enforcement action against non-compliant companies since the MSA 2015 became law<sup>59</sup> which suggests, that modern slavery and s54 statements are not among their priorities.

An additional barrier to any effective monitoring is the lack of clarity over which companies fall within the scope of s54. This was identified as a problem by the Independent Review<sup>60</sup> who recommended the government establish a list of in scope companies. The government agreed and identified 17,000 companies.<sup>61</sup> However, given the regular occurrence of, say, mergers, acquisitions, company failures etc., it remains unclear whether the government is committing to maintaining that list or whether it was a ‘one-off’ exercise.<sup>62</sup>

### 3. Penalties

When the Modern Slavery Bill 2015 was at committee stage, the House of Commons was asked to consider making the failure to comply with s54 a criminal offence, a position advocated by Anti-Slavery International.<sup>63</sup> This was referred to as the ‘Bribery Act model’<sup>64</sup> and it was argued that companies should not have a less onerous obligation to report on modern slavery than they do for money laundering.<sup>65</sup> Under this model, organisations would be liable where

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<sup>57</sup> Independent Review of the Modern Slavery Act 2015, (2019) at pages 14-15 24 & 43

<sup>58</sup> Government response to the Independent Review of the Modern Slavery Act, (2019) at para 35 available from <https://www.gov.uk/government/publications/government-response-to-the-independent-review-of-the-modern-slavery-act> accessed 12 June 2020

<sup>59</sup> The Independent Anti-Slavery Commissioner’s Annual Report 2021-22 (2022) at para 3.4.1

<sup>60</sup> Independent Review of the Modern Slavery Act 2015, *Final Report* (2019), 40

<sup>61</sup> Government response to the Independent Review of the Modern Slavery Act, published 9 July 2019, at para 22, available from <https://www.gov.uk/government/publications/government-response-to-the-independent-review-of-the-modern-slavery-act> accessed 12 June 2020

<sup>62</sup> Government response to the independent review of the Modern Slavery Act, published 9 July 2019, at para 22, available from <https://www.gov.uk/government/publications/government-response-to-the-independent-review-of-the-modern-slavery-act> accessed 12 June 2020

<sup>63</sup> Rao, Sunil. *Modern Slavery Legislation Drafting History and Comparisons between Australia, UK and the USA* (Routledge 2020), 42

<sup>64</sup> Rao, Sunil. *Modern Slavery Legislation Drafting History and Comparisons between Australia, UK and the USA* (Routledge 2020), 42

<sup>65</sup> Rao, Sunil *Modern Slavery Legislation Drafting History and Comparisons between Australia, UK and the USA* (Routledge 2020), 42

forced labour was used by their supplier unless they could prove they had ‘adequate procedures’ in place designed to prevent this.<sup>66</sup> However, as noted earlier, the MSA 2015 eschewed the Bribery Act model in favour of one similar to the *Californian Transparency in Supply Chains Act*. Accordingly, liability is civil rather than criminal and the only penalty available under the MSA is for the Secretary of State for the Home Office to seek an injunction, which has never been used. Furthermore, even were such an injunction to be obtained it would only require the company to comply with s54 and issue a statement, rather than face any financial or other penalty.<sup>67</sup>

The Independent Review called for the sanctions for non-compliance to be “strengthened”,<sup>68</sup> proposing a range of penalties which ranged from warnings and fines to court summons and directors’ disqualification.<sup>69</sup> The government’s initial response was that any penalties should be proportionate and accordingly it would be consulting further on the options for penalties for non-compliance.<sup>70</sup>

The government subsequently undertook a consultation on the option of introducing civil penalties for non-compliance which would consist of a variable monetary penalty subject to a cap.<sup>71</sup> However, in its response to that consultation published in 2020 the government noted that views on the “*nature and level* [of the penalty]...*were mixed*.”<sup>72</sup> The key sticking point appears to have been whether any civil penalty should be subject to a cap.<sup>73</sup> Rather than taking a decision on the cap in light of the responses or even consulting further on the level of the cap, the government kicked the whole issue of penalties into the ‘long grass’ by linking “*enforcement*

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<sup>66</sup> Le Baron, Genevieve. and Rühmkorf, Andreas. ‘Steering CSR Through Home State Regulation: A Comparison of the Impact of the UK Bribery Act and Modern Slavery Act on Global Supply Chain Governance’. (2017). 8 *Global Policy*, 725

<sup>67</sup> MSPEC, ‘Effectiveness of Section 54 of the Modern Slavery Act’, published February 2021 at page 24. Available from <https://modernslaverypec.org/resources/tisc-effectivenessn> Accessed on 30.9.2022

<sup>68</sup> Independent Review of the Modern Slavery Act 2015 *Final Report* (2019), 15

<sup>69</sup> Independent Review of the Modern Slavery Act 2015, *Final Report*, (2019), 24

<sup>70</sup> *Government response to the Independent Review of the Modern Slavery Act*, published 9 July 2019, at para 36, available from <https://www.gov.uk/government/publications/government-response-to-the-independent-review-of-the-modern-slavery-act> accessed 12 June 2020

<sup>71</sup> *Government Transparency in Supply Chains consultation*, (2019), 10. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919940/Transparency\\_in\\_supply\\_chains\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919940/Transparency_in_supply_chains_consultation.pdf) accessed 13 June 2020

<sup>72</sup> *Home Office Transparency in Supply Chains consultation government response*, (2020), 14. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) accessed on 23 September 2020

<sup>73</sup> *Home Office Transparency in Supply Chains consultation government response*, (2020), 13. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) accessed on 23 September 2020

*options*”<sup>74</sup> to the establishment of the Single Enforcement Body (‘SEB’) for employment rights.<sup>75</sup> The government’s response to establishing the SEB in 2021 confirmed that financial penalties for non-compliance with s54 will be introduced, but failed to set out the level; what such penalties would consist of or a timescale for their implementation.<sup>76</sup>

The information published on the Modern Slavery Bill referred to in the Queen’s Speech in May 2022, did include a brief reference to “introducing civil penalties” for organisations that fail to comply with their s54 obligations.<sup>77</sup> However, since neither the 2022 Queen’s Speech or the 2023 King’s Speech included an Employment Bill, which is necessary for establishing the SEB which the government intended to enforce s54, it is not clear how such penalties would be enforced or who would be responsible for enforcing them. As one organisation working in the sector commented “*Civil penalties will only be a useful deterrent if this is enforced*”.<sup>78</sup>

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<sup>74</sup> *Home Office Transparency in Supply Chains consultation government response*, (2020), 14. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) accessed on 23 September 2020

<sup>75</sup> *Home Office Transparency in Supply Chains consultation government response*, (2020), 14. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) accessed on 23 September 2020

<sup>76</sup> Department of Business, Energy & Industrial Strategy ‘*Establishing a new single enforcement body for employment rights, Government response*’ (2021), 14

<sup>77</sup> Prime Minister’s Office, The Queen’s Speech 2022, at page 83. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1074113/Lobby\\_Pack\\_10\\_May\\_2022.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074113/Lobby_Pack_10_May_2022.pdf) Accessed on 6.9.2022

<sup>78</sup> Hope for Justice, *Queen’s Speech: Modern Slavery Bill – Reaction from Hope for Justice*, published 10<sup>th</sup> May 2022. Available from <https://hopeforjustice.org/news/queens-speech-modern-slavery-bill-reaction-from-hope-for-justice> Accessed on 11.5.2022



#### 4. Enforcement

Enforcement of the requirement to publish a s54 statement currently rests with the Home Office.<sup>79</sup> As has been discussed, the Home Office has never exercised its powers of enforcement against non-compliant companies. The Independent Review noted that both businesses and civil society agreed that the lack of any penalties or enforcement were “core reasons” for the lack of compliance. It has also been argued that it is the risk of enforcement by the state which drives the change in company behaviour as they wish to avoid the financial cost of defending any enforcement action.<sup>80</sup> Research on this issue has reached a similar conclusion, with concern about possible fines and court cases being a key driver for compliance.<sup>81</sup> Furthermore, the lack of enforcement action also means that consumers are not alerted to the risk that their purchasing decisions could be supporting instances of modern slavery.<sup>82</sup> The Independent Review also recommended that an enforcement body should be either established or given the power to impose penalties on companies which failed to comply with s54 requirements.<sup>83</sup>

In the government’s response to the consultation on transparency in supply chains, they noted that respondents had been clear about the need for “*greater enforcement of the current requirement.*”<sup>84</sup> As referred to above, the government’s conclusion on this issue was that the new proposed Single Enforcement Body (‘SEB’) for employment rights could take on this responsibility.<sup>85</sup> The government’s intention that the SEB will be given powers to impose financial penalties on non-compliant companies was confirmed by them in its October 2021

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<sup>79</sup> *Government Transparency in Supply Chains consultation*, (2019), 9. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919940/Transparency\\_in\\_supply\\_chains\\_consultation.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919940/Transparency_in_supply_chains_consultation.pdf) accessed 13 June 2020

<sup>80</sup> Harris, Hannah. and Nolan, Justine. ‘Outsourcing the enforcement of modern slavery: Overcoming the limitations of a market-based disclosure model’, *Journal of Industrial Relations*, (2021), pages 1-15 at page 14 DOI: <https://www.doi.org/10.1177/00221856211051431>

<sup>81</sup> Slaughter, H. *No shame, no gain? The role of reputation in labour market enforcement*, Resolution Foundation, November 2021 at page 9 Available from <https://www.resolutionfoundation.org/publications/no-shame-no-gain/> Accessed on 16.8.2022

<sup>82</sup> Carrington, Michael. Chatzidakis, Andreas and Shaw, Deirdre. ‘Consuming Worker Exploitation. Accounts and Justification for Consumer (In)Action to Modern Slavery’ (2021) 35 *Work, Employment and Society* at 446

<sup>83</sup> Independent Review of the Modern Slavery Act 2015, *Final Report*, (2019), 24 and 43

<sup>84</sup> *Home Office Transparency in Supply Chains consultation government response*, (2020), 12. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) accessed on 23 September 2020.

<sup>85</sup> *Home Office Transparency in Supply Chains consultation government response*, (2020), 14. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) accessed on 23 September 2020



Annual Report on Modern Slavery.<sup>86</sup> Although the government recognised that enforcing compliance with s54 is different to the other areas of enforcement being proposed for the SEB, it viewed this as part of the overall “*spectrum of labour exploitation*”.<sup>87</sup>

The current enforcement regime in respect of employment rights is focused on protecting vulnerable workers and is split across 3 agencies - HMRC, the Gangmasters and Labour Abuse Authority (GLAA) and the Employment Agency Standards (EAS). Each agency is responsible for a different area. That is, HMRC is responsible for enforcing employer compliance with payment of the National Minimum Wage and their inspectors have powers to enter premises, inspect records and interview employers.<sup>88</sup> Next, the GLAA operates a licensing scheme for gangmasters and covers modern slavery offences and labour exploitation and, finally, the EAS focuses on the regulation of employment agencies and businesses.<sup>89</sup>

The idea of establishing a SEB to replace the three existing enforcement agencies (HMRC, GLAA and EAS) was received positively by many organisations, with Citizens Advice responding that the proposal was long overdue.<sup>90</sup> Having a single centralised authority responsible for the enforcement of employment rights is also in line with Article 4 of the International Labour Organisation convention No. 81.<sup>91</sup> However, despite the consultation ending in October 2019, progress on establishing the SEB then stalled with the government not even publishing its response to the consultation until June 2021. Although this confirmed that the SEB would be given responsibility for enforcement of s54,<sup>92</sup> no timescale was given by the government as to when the SEB would be set up. The Government then failed to include an Employment Bill in the Queens Speech in May 2022, a pre-requisite for the establishment of the SEB. On the 13<sup>th</sup> December 2022, the Business Secretary told the House of Commons business committee that plans for establishing the SEB had been put on hold and that the government was instead “*more interested in making sure that the bodies that are already there are operating*

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<sup>86</sup> UK Government 2021 *UK Annual Report of Modern Slavery*, (October 2021) at page 26. Available from <https://www.gov.uk/government/publications/2021-uk-annual-report-on-modern-slavery> Accessed on 11.10.2022

<sup>87</sup> *Good work plan: establishing a new Single Enforcement Body for employment rights*, (2019),39. Available from <https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights> accessed on 21 September 2020.

<sup>88</sup> IDS Employment Law Brief, ‘Enforcement agencies: an overview’, (2018), issue 1096, 2

<sup>89</sup> *Good work plan: establishing a new Single Enforcement Body for employment rights*, (2019) 9. Available from <https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights> accessed on 21 September 2020

<sup>90</sup> IDS Employment Law Brief, ‘Single enforcement body – a step in the right direction’, (2019), issue 1118, 2

<sup>91</sup> *Good work plan: establishing a new Single Enforcement Body for employment rights*, (2019), 14. Available from <https://www.gov.uk/government/consultations/good-work-plan-establishing-a-new-single-enforcement-body-for-employment-rights> accessed on 21 September 2020

<sup>92</sup> Department of Business, Energy & Industrial Strategy ‘*Establishing a new single enforcement body for employment rights, Government response*’ (2021), 7 and 14

*effectively*.”<sup>93</sup> Therefore, it appears that the establishment of the SEB, remains, in the words of the IASC, “*in the distant future*”.<sup>94</sup> In the meantime, enforcement of s54 stays with the Home Office who, we argue, do not have the appropriate enforcement powers, nor do they view enforcement of s54 as being amongst its priorities.

Furthermore, since the idea of a SEB was first proposed by the Theresa May government, we have had several changes in Prime Minister. We suspect that the volatility in government over recent years has contributed to the delays in bringing forward legislation to introduce the SEB. It has also not been clear to what extent subsequent Prime Ministers (including Rishi Sunak) are committed to the establishment of the SEB and the principle of state enforcement of employment rights. An added complication to the possible establishment of the SEB is that on the 22nd May 2024, the UK Prime Minister Rishi Sunak announced that a General Election will be held on the 4th July to elect a new government.<sup>95</sup> Given that the Labour party has been ahead of the governing Conservative party in the opinion polls since 2022 and continues to lead them by an average of 20%<sup>96</sup> there is, at the time of writing this article, the possibility of a change of government. The Labour Party publicly committed to the establishment of the SEB in their ‘New Deal for Working People’, but this is expressly stated to be to “*enforce workers’ rights*”.<sup>97</sup> It is therefore not clear at this stage, whether a SEB established by a future Labour Government would have the enforcement of s54 statements within its remit.

There was also a long delay in appointing a replacement IASC, following the resignation of Sara Thornton on the 30<sup>th</sup> April 2022, leaving the post vacant for 18 months.<sup>98</sup> The new IASC appointed, Eleanor Lyons, is a former special advisor to Boris Johnson who was appointed without having a pre-appointment hearing before a select committee, as recommended by the

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<sup>93</sup> Omoigui, Nosa ‘Government stalls proposed workers’ rights watchdog’, *HR Magazine*, published 15<sup>th</sup> December 2022. Available from <https://www.hrmagazine.co.uk/content/news/government-stalls-proposed-workers-rights-watchdog> Accessed on 14.2.2023

<sup>94</sup> The Independent Anti-Slavery Commissioner’s Annual Report 2020-21, (2021), 41

<sup>95</sup> BBC News, ‘Rishi Sunak announces 4 July general election’, published 22 May 2024. Available from <https://www.bbc.co.uk/news/live/uk-politics-69042935> Accessed on 31-5-2024

<sup>96</sup> BBC News, ‘General election 2024 poll tracker: How do the parties compare?’ published 31 May 2024. Available from <https://www.bbc.co.uk/news/uk-politics-68079726> Accessed on 31-5-2024

<sup>97</sup> The Labour Party, ‘Employment Rights Green Paper: A New Deal for Working People’, at page 11, published 1<sup>st</sup> January 2024. Available from <https://labour.org.uk/updates/stories/a-new-deal-for-working-people/> Accessed on 3.2.2024

<sup>98</sup> Dugan, Emily. ‘Home Office accused of deliberately leaving anti-slavery post unfilled’, *The Guardian*, published 29<sup>th</sup> August 2022. Available from <https://www.theguardian.com/world/2022/aug/29/home-office-accused-of-deliberately-leaving-anti-slavery-post-unfilled> Accessed on 15.9.2022; and Syal, Rajeew and Taylor, Diane. ‘Labour accuses new antislavery watchdog of being ‘Conservative patsy’’, *The Guardian*, published 11.10.2023. Available from <https://www.theguardian.com/politics/2023/oct/11/labour-accuse-new-anti-slavery-watchdog-of-being-conservative-patsy> Accessed on 17 .10. 2023

2019 Independent Review of the Modern Slavery Act.<sup>99</sup> We suggest that leaving the post vacant for such a long period and then appointing an IASC who does not have the expertise in the field of modern slavery held by her predecessors, illustrates this government’s lack of commitment to tackling modern slavery and gives the impression that they do not consider modern slavery a priority. Following the new IASC’s appearance before the Home Affairs Select Committee on the 6<sup>th</sup> February 2024, this view appears to be shared by the new IASC herself. Eleanor Lyons told the Select Committee that the IASC’s budget had been cut by over £100,000; that the Home Office had informed her that the IASC’s budget would be further reduced by 5% for every year that she is in post and that she only has two members of staff, both of whom are on fixed term contracts which are due to end in the next couple of months.<sup>100</sup> The new IASC commented that “*I think I could say that modern slavery and human trafficking was more of a priority back in 2015 and I think it is less of a priority now.*”<sup>101</sup>

Furthermore, the absence of an IASC between April 2022 and December 2023 meant that there was no independent person who could have highlighted the government’s continued inaction on establishing the SEB or introducing a new penalty and enforcement regime for s54.

The persistent failure to act by the government in respect of s54 now stands in stark contrast to legal developments on the issue of modern slavery elsewhere in Europe. In February 2022 the European Commission adopted a proposal for a new EU Directive on corporate sustainability and due diligence (‘CSDD Directive’). The CSDD Directive not only imposes obligations on a company’s own operations, but also their subsidiaries and supply chains (referred to as ‘value chains’).<sup>102</sup> To comply with the new corporate due diligence duty companies will need to take active steps to identify and prevent adverse human rights impacts (including modern slavery) and monitor the effectiveness of their due diligence policies<sup>103</sup> Furthermore, member states will be expected to appoint national authorities to supervise adherence to the CSDD Directive’s requirements (which can include the imposition of fines for

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<sup>99</sup> Syal, Rajeev and Taylor, Diane. ‘Labour accuses new antislavery watchdog of being ‘Conservative patsy’, *The Guardian*, published 11.10.2023. Available from <https://www.theguardian.com/politics/2023/oct/11/labour-accuse-new-anti-slavery-watchdog-of-being-conservative-patsy> Accessed on 17 .10. 2023

<sup>100</sup> Bancroft, Holly, ‘Modern slavery ‘less of a priority for Sunak’s government’ as watchdog budget cut by £100,000’, *The Independent Newspaper*, Published 7<sup>th</sup> February 2024. Available from <https://www.independent.co.uk/news/uk/home-news/modern-slavery-commissioner-home-office-b2491348.html> Accessed on 12 February 2024

<sup>101</sup> Bancroft, Holly, ‘Modern slavery ‘less of a priority for Sunak’s government’ as watchdog budget cut by £100,000’, *The Independent Newspaper*, Published 7<sup>th</sup> February 2024. Available from <https://www.independent.co.uk/news/uk/home-news/modern-slavery-commissioner-home-office-b2491348.html> Accessed on 12 February 2024

<sup>102</sup> European Commission ‘Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains’, published 23<sup>rd</sup> February 2022, Available from [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145) Accessed on 6.9.2022

<sup>103</sup> European Commission ‘Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains’, published 23<sup>rd</sup> February 2022, Available from [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_1145](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145) Accessed on 6.9.2022

non-compliance) and give victims the option to pursue a legal action for damages against companies who fail to comply with their obligations.<sup>104</sup> On the 14<sup>th</sup> December 2023 the Council of the EU and the European Parliament announced a provisional political agreement on the CSDD Directive, paving the way for its formal adoption in early 2024.<sup>105</sup>

Although the UK is no longer a member of the EU, UK companies who do business with the EU’s Single Market will still be within the scope of the CSDD Directive and therefore will be expected to comply with it as will UK companies who form part of a European supply chain.<sup>106</sup>

It is important to note that the requirements of the CSDD Directive go much further than the current obligations imposed on UK companies by s54 MSA 2015. Whereas s54 is essentially a reporting obligation, the CSDD Directive requires companies to actively undertake due diligence measures.<sup>107</sup> Yet, the UK government has continued to delay enacting the necessary changes to ensure that there is compliance with, and enforcement of, even the minimal reporting requirements under s54.

## 5. Discussion

The requirement for companies to produce an s54 statement continues to be routinely ignored by a hard core of companies who have not engaged year after year with their legal responsibilities. In fact, in the 5 years to 2021 the rate of compliance has consistently been lower than 50%.<sup>108</sup> Monitoring of compliance is largely left to civil society and academics with no state body having any responsibility for this basic oversight, whilst submission of statements to the government run registry remains voluntary. Companies who do not comply know they will not face any penalties because there is no independent employment focused enforcement body who monitors compliance or who will take action against them and the only penalty for non-compliance is unwieldy and impractical. Reliance on consumers to exert pressure seems illusory, and thus unlikely to result in increased rates of compliance. Our study, which involved us

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<sup>104</sup> European Commission ‘Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains’, published 23<sup>rd</sup> February 2022, Available from [https://ec.europa.eu/commission/prescorner/detail/en/ip\\_22\\_1145](https://ec.europa.eu/commission/prescorner/detail/en/ip_22_1145) Accessed on 6.9.2022

<sup>105</sup> Practical Law Commercial, ‘CSDDD: Council of the EU and European Parliament reach provisional agreement on Corporate Sustainability Due Diligence Directive’, *Practical Law Commercial*, published 15.12.2023. Available from [https://uk.practicallaw.thomsonreuters.com/w-041-7264?originationContext=document&transitionType=DocumentItem&contextData=\(sc.Default\)&ppcid=7c0bf51000364d7887edfe0516693ced&comp=pluk](https://uk.practicallaw.thomsonreuters.com/w-041-7264?originationContext=document&transitionType=DocumentItem&contextData=(sc.Default)&ppcid=7c0bf51000364d7887edfe0516693ced&comp=pluk) Accessed on 3.2.2024

<sup>106</sup> Johnstone, Owain. and Hesketh, Olivia. ‘Effectiveness of mandatory human rights and environmental due diligence’, MPSEC Policy Briefing, published 5.5.2022. Available from <https://modernslaverypec.org/resources/effectiveness-mandatory-human-rights-due-diligence> Accessed on 6.5.2022 at pages 9 and 15

<sup>107</sup> Johnstone Owain., and Hesketh, Olivia. ‘Effectiveness of mandatory human rights and environmental due diligence’, MPSEC Policy Briefing, published 5.5.2022. Available from <https://modernslaverypec.org/resources/effectiveness-mandatory-human-rights-due-diligence> Accessed on 6.5.2022 at page 6

<sup>108</sup> MSPEC, ‘Effectiveness of Section 54 of the Modern Slavery Act’, published February 2021 at page 21. Available from <https://modernslaverypec.org/resources/tisc-effectivenessn> Accessed on 30.9.2022

speaking directly with those companies, who had still failed to produce a s54 statement, found that one of the main reasons used to justify their non-compliance, was the absence of any official monitoring, penalties, or enforcement regime. Self-regulation has thus failed.

Given the scale of corporate non-compliance, we make the following recommendations, argued as essential to drive up rates of corporate compliance. First, the government must introduce legislation to make the depositing of statements in the central registry mandatory rather than voluntary as soon as possible. Until companies are legally required to submit their s54 statements to a central registry there will continue to be a lack of transparency around compliance which will hamper monitoring and enforcement. Secondly, monitoring compliance with s54 should be removed from the Home Office and given to an independent body which has either modern slavery or employment law enforcement as its primary function and focus. The Independent Review of the MSA noted that the evidence they heard about the operation of the Act suggested that monitoring by a public organisation would “*carry more weight*”.<sup>109</sup>

Despite this suggestion, the government has decided that responsibility for monitoring compliance with s54 via the government registry of statements will remain with the Home Office.<sup>110</sup> It is unclear why the government has decided to split monitoring and enforcement of s54 statements between the Home Office and the proposed new SEB (if and when established). The risk with doing so is that the SEB will be reliant on information from the Home Office concerning compliance with s54 in order to fulfil its enforcement role. Given the Home Office’s failure to enforce s54 thus far, we are concerned that it will adopt a similar lacklustre approach to monitoring compliance which will hamper any efforts by the SEB to take enforcement action. We would argue that the same body which is responsible for enforcement of s54 should also be responsible for monitoring compliance with s54 and that body should be independent of government and have employment law and labour exploitation as its primary focus.

The recent experience of company compliance with the Gender Pay Gap reporting regulations (GPGR) demonstrates the effectiveness of having a separate employment-focused public body monitoring compliance. For the GPGR, the Equalities and Human Rights Commission (EHRC) possesses statutory powers of investigation and legal sanctions if non-compliance with GPGR persists.<sup>111</sup> Such monitoring by the EHRC was able to secure a 100% compliance rate before the pandemic,<sup>112</sup> indicating the impact a monitoring, enforcement, and penalty regime can have on company compliance with reporting obligations.

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<sup>109</sup> Independent Review of the Modern Slavery Act 2015, *Final report*, (2019) 43.

<sup>110</sup> Department of Business, Energy & Industrial Strategy ‘*Establishing a new single enforcement body for employment rights, Government response*’ (2021),<sup>14</sup>

<sup>111</sup> EHRC *Our litigation and enforcement policy 2019-2022* (November 2019), at pages 14-17. Available from <https://www.equalityhumanrights.com/sites/default/files/our-litigation-and-enforcement-policy-2019-2022> Accessed on 23-11-2021

<sup>112</sup> Hilsenrath, Rebecca. *Gender pay gap reporting: no excuses* (14 Aug 2019) Available from <https://www.equalityhumanrights.com/en/our-work/blogs/gender-pay-gap-reporting-no-excuses> Accessed on 21-9-2020



Thirdly, a greater range of penalties for non-compliance with s54 should be introduced and these should not be dependent on the establishment of the SEB. This recommendation is particularly important, given that the establishment of the SEB was effectively dropped by the Conservative Government at the end of 2022. Furthermore, given the impending General Election, it is therefore now unlikely that the SEB will be established before 2025.

However, it is clear that the issue of penalties and enforcement are two sides of the same coin. This leads to the fourth recommendation that a new enforcement regime for s54 statements is needed. The fact that a better enforcement regime is required does not seem to be in dispute. The Independent Review of the MSA stated that there was a “*general agreement between business and civil society that lack of enforcement and penalties.....are core reasons for poor quality statements and the estimated lack of compliance*”.<sup>113</sup> Our study also found that the frequent apathy towards s54 by non- participants who had failed to comply with it, was reinforced by the absence of any enforcement (a point also observed by the IASC).<sup>114</sup> The government’s response to the transparency in supply chain consultation also noted that respondents were clear that greater enforcement of s54 is needed<sup>115</sup> and the government,<sup>116 117</sup> GLAA<sup>118</sup> and the CIPD<sup>119</sup> have all agreed that the SEB should take on this role.

While it is acknowledged there are different degrees of seriousness as it concerns labour exploitation, there is a rationale to having one body to be responsible for the enforcement of all its manifestations, not least to better understand and track how apparent minor violations either

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<sup>113</sup> Independent Review of the Modern Slavery Act 2015, *Final report*, (2019), 39

<sup>114</sup> The Independent Anti-Slavery Commissioner’s Annual Report 2020-21, (2021), 33

<sup>115</sup> *Home Office Transparency in Supply Chains consultation government response*, (2020), 12. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) accessed on 23 September 2020

<sup>116</sup> *Home Office Transparency in Supply Chains consultation government response*, (2020), 14. Available from [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf) accessed on 23 September 2020

<sup>117</sup> *The Good Work Plan: establishing a new Single Enforcement Body for employment rights*, (2019), 38 and 39, available from [www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/817359/single-enforcement-body-employment-rights-consultation](http://www.assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/817359/single-enforcement-body-employment-rights-consultation) accessed on 21-9-2020

<sup>118</sup> Gangmaster Labour and Abuse Authority response to consultation on the “Good Work Plan: establishing a new Single Enforcement Body for employment rights”, Summary of their letter, Available from <https://www.gla.gov.uk/who-we-are/glaa-response-to-single-enforcement-body-consultation/> Accessed on 21-9-20

<sup>119</sup> Chartered Institute of Personnel and Development *Revamping labour market enforcement in the UK*, (October 2020, 21), available from [www.cipd.co.uk/knowledge/fundamentals/emp-law/employees/labour-market-enforcement-uk](http://www.cipd.co.uk/knowledge/fundamentals/emp-law/employees/labour-market-enforcement-uk)

sit alongside (or develop toward) more serious levels of exploitation.<sup>120</sup> The government itself has justified the enforcement of s54 statements being within the remit of the new SEB because it will provide them with a “*better overview of the spectrum of non-compliance on labour market related issues.*”<sup>121</sup>

However, the Conservative government’s failure to introduce an Employment Bill in the last two Parliamentary sessions, its confirmation that it had effectively shelved plans for establishment of the SEB and the forthcoming General Election, means that the ongoing failure to enforce s54 is likely to continue unless responsibility for enforcement is given to another body.

As Alison Levitt QC, who conducted the independent review into the boohoo company’s supply chain in Leicester, concluded in her report, “*If the law is not enforced, this sends a clear message that the violations are not important and the people affected do not matter.*”<sup>122</sup> Accordingly, we advocate that not only should a new civil penalty regime along the lines proposed in the 2022 Modern Slavery Bill be introduced, but that as the SEB is unlikely to be established for some time, the GLAA should be given powers to monitor compliance with s54 and, where a breach has been identified, to apply any new civil penalties. Since 2016, the GLAA’s remit has expanded to include “*labour abuse across the entire labour market*”.<sup>123</sup> Therefore, enforcement of any new s54 civil penalty regime could easily sit within the GLAA’s existing remit, even if only on a temporary basis until the SEB is established.

## 6. Conclusion

When s54 of the MSA 2015 was introduced, it was hailed as a “*ground breaking piece of legislation*”.<sup>124</sup> The point of s54 was to encourage companies to take steps to identify and prevent modern slavery in their workplace and supply chains and to embed efforts to prevent modern slavery “*throughout the company’s operations*”.<sup>125</sup> As the Independent Review of the MSA commented “*modern slavery reporting needs to move from being perceived as a Corporate*

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<sup>120</sup> Focus on Labour Exploitation, *Seeing through transparency: A FLEX blueprint for worker-centred corporate accountability to prevent human trafficking for labour exploitation*, (2018), 2, available from [www.labourexploitation.org/publications/seeing-through-transparency-flex-blueprint-worker-centred-corporate-accountability?s=D3](http://www.labourexploitation.org/publications/seeing-through-transparency-flex-blueprint-worker-centred-corporate-accountability?s=D3) accessed 22 – 9 -2020

<sup>121</sup> Department of Business, Energy & Industrial Strategy ‘*Establishing a new single enforcement body for employment rights, Government response*’ (2021), 14

<sup>122</sup> Levitt, Alison. *Independent Review into the boohoo Group PLC’s Leicester supply chain report*, (open version) published 24<sup>th</sup> September 2020, 220 available from [www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020](http://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020) accessed on 27 - 9 - 2020

<sup>123</sup> IDS Employment Law Brief, *Enforcement Agencies: an overview*, (2018) issue 1096, 11

<sup>124</sup> The Independent Anti-Slavery Commissioner’s Annual Report 2021-22, (2022), 35

<sup>125</sup> CORE report *Modern Slavery Reporting: Weak and notable practice*, published June 2017, at page 2. Available from [www.corporate-responsibility.org/wp-content/uploads/2017/06/core\\_ExamplesFINAL](http://www.corporate-responsibility.org/wp-content/uploads/2017/06/core_ExamplesFINAL) Accessed on 21-9-2020



*Social Responsibility “tick-box” exercise to being regarded alongside other serious regulatory and governance obligations.”<sup>126</sup>*

However, the lack of a mandatory register, effective monitoring, penalties or enforcement has led to many companies failing to engage with even the bare minimum of their legal obligation under s54. We found in our study that non-compliance continues to be frequently present amongst the companies we surveyed, a finding supported by other research that up to 40% of companies have failed to comply with their obligations under s54.<sup>127</sup> Moreover, the failure to follow legal requirements was found in our research not related to any one industry or sector. That is, neither when first identifying the non-compliant companies, nor when establishing during the interview as to why they were non-compliant was there found a trend pertinent to any one sector or industry. In sum, this is a problem across the range of businesses.

Our study sought to find out not only the extent of company non-compliance, but the reasons for it. What we learnt from speaking to companies who had failed to produce a s54 statement is that the lack of any enforcement action against companies who had failed to comply with s54 since its introduction was a key driver of non-compliance. Contrary to what was hoped when the legislation was enacted, we found that there was an apparent lack of moral compunction amongst businesses to voluntarily comply with s54. We fear that without a civil penalties regime and an independent employment law focused state body such as the GLAA or SEB having the power to enforce those civil penalties, then a significant minority of companies will continue to flout their legal obligations under s54 safe in the knowledge that their failure to comply will never be enforced.

Furthermore, if the government continues to be inert, then the current legal framework risks looking even more impotent compared to the more stringent requirements of the EU CSDD Directive on due diligence, which has the potential to make the parent company legally liable for failing to exercise due diligence in its supply chain.<sup>128</sup> The UK will go from “*being a world leader in tackling modern slavery in supply chains.... [to] lagging behind other global legislation that is coming into force*”.<sup>129</sup>

In conclusion, the weak penalty and enforcement regime around s54 statements has enabled a significant minority of companies to escape liability so that the intentions of introducing the legislation have not been fulfilled. We urge further research to be undertaken examining whether (i) the current and proposed enforcement policies, as they relate to S54, offer

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<sup>126</sup> Independent Review of the Modern Slavery Act 2015, *Final report*, (2019), 42

<sup>127</sup> Business and Human Rights Resource Centre, ‘Modern Slavery Act: Five years of reporting’, published February 2021 at page 2. Available from [https://media.business-humanrights.org/media/documents/MSR\\_Embargoed](https://media.business-humanrights.org/media/documents/MSR_Embargoed) Accessed on 2.3.2021

<sup>128</sup> Muskat-Gorska, Zuzanna . ‘Human Trafficking and forced labour: Mapping Corporate liability’ in *Revisiting the law and governance of trafficking, forced labor and modern slavery*, ed by Prabha Kotiswaran (2017) at pages 448-9

<sup>129</sup> Hope for Justice, *Queen’s Speech: Modern Slavery Bill – Reaction from Hope for Justice*, published 10<sup>th</sup> May 2022. Available from <https://hopeforjustice.org/news/queens-speech-modern-slavery-bill-reaction-from-hope-for-justice> Accessed on 11.5.2022

victims of modern slavery sufficient protection; and (ii) a comparison of the effectiveness of s54 with the EU CSDD Directive on due diligence and how the two regimes will interact, as recommended by the MSPEC.<sup>130</sup>

Failure to comply with s54 is neither a victimless offence nor simply a corporate reporting requirement, but a key tool to prevent modern slavery taking place both within the UK and abroad.<sup>131</sup> The aim of s54 was to drive structural changes in the operations of companies and their supply chains to prevent the occurrence of serious labour abuses.<sup>132</sup> Without the introduction of meaningful civil penalties enforced by an independent employment law focused state body, the present levels of non-compliance will continue and s54 will simply become a failed “*experiment in ‘nudge’ strategies*”.<sup>133</sup>

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<sup>130</sup> MSPEC, ‘Effectiveness of Section 54 of the Modern Slavery Act’, published February 2021 at page 48. Available from <https://modernslaverypec.org/resources/tisc-effectivenessn> Accessed on 30.9.2022

<sup>131</sup> Mantouvalou, Virginia ‘The Modern Slavery Act three years on’. 2018 81 *Modern Law Review* 1017. <https://doi.org/10.1111/1468-2230.12377>

<sup>132</sup> Business and Human Rights Resource Centre, ‘Modern Slavery Act: Five years of reporting’, published February 2021 at page 3. Available from [http://media.business-humanrights.org/media/documents/MSR\\_Embargoed](http://media.business-humanrights.org/media/documents/MSR_Embargoed) Accessed on 2.3.2021

<sup>133</sup> Business and Human Rights Resource Centre, ‘Modern Slavery Act: Five years of reporting’, published February 2021 at page 3. Available from [http://media.business-humanrights.org/media/documents/MSR\\_Embargoed](http://media.business-humanrights.org/media/documents/MSR_Embargoed) Accessed on 2.3.2021

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