Britain's Modern Slavery Act: Flies in the Ointment

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In 2015, the UK Modern Slavery Act was enacted, with parallel and slightly differing legislation coming into force in Scotland and in Northern Ireland at the same time. An earlier article by the present author in E-IR, 'Britain's Modern Slavery Act: world-leading or a timid start?' examined the political and policy process leading up to the passage of the Act and set out elements of a developing critique of the Act. This critique was somewhat speculative although some elements were grounded in the development of actual practice. Three years on, we revisit that early critique and assess the extent to which the claims made by government that the Act is 'world-leading' stand up to close scrutiny. The Act itself reflected a substantial amount of unfinished business, some of it explicit and some implicit or contested, in part because it was finally rushed through ahead of a General Election. The earlier article concluded that 'there is little doubt that it will be considerably less than 200 years before it is subject to further scrutiny and revision', a prophecy which has substantially come true in the last three years.[1]

Readers wanting the detail of that earlier critique are referred to the 2015 article. In summary, the most significant elements of it were as follows:

- The Act was too heavily focused on the issue of human trafficking for sexual purposes and largely overlooked the many other dimensions of what has been come to be known as 'modern slavery'[2] which were then apparent or since identified.
- The remit of the Gangmasters' Licensing Authority, charged with licensing labour suppliers to certain industrial sectors, was felt to be far too narrow. Responding to pressure from outside Parliament, the Act did at least require the government to complete an early review.
- The independence of the Anti-Slavery Commissioner was questioned given that the appointee was required to report not to Parliament, as had been intended by the Palermo Protocol, but to government, through the Home Secretary.
- The system constructed to help identify and support victims of slavery, the National Referral Mechanism (NRM), was criticised as being cumbersome and inaccessible.
- The requirements for companies with substantial annual turnover (£36M+ in the event) to report publicly on actions taken to identify and remove slavery practices from their supply chains were thought to be very weak and unlikely to shift the practice of recalcitrant companies.

We can review each of these issues in turn.

Forms of slavery and the focus of the Act

As noted above, up to seventeen forms of offence have now been grouped under the heading of 'modern slavery' by the Home Office. The major forms include human trafficking for sexual exploitation, trafficking for labour exploitation, forced labour, cannabis farming, child exploitations, domestic servitude, forced marriage and forced criminal acquisition through, for example, shoplifting, begging and pickpocketing. Organ trafficking has also been included which, whilst few offences have yet to be identified, is a new and potentially growing and highly exploitative form of trafficking. The focus on human trafficking for sexual exploitation has now, from the National Crime Agency's (NCA) data, been shown to be inappropriate as trafficking for labour exploitation is now the single most frequent case reported to the NRM. Of the 5145 adult and child cases reviewed by the NCA in 2017, 2352 were for labour

exploitation and 1744 for sexual exploitation. This reflects a trend observable both within the UK and in other European countries. It also suggests that the focus, in policy and practice, on human trafficking for sexual exploitation should not be the dominant driver for anti-slavery work. During the period under review, the number of those thought to be in slavery within the UK at any one time was initially estimated by government to be around 10,000-13,000; this figure was rapidly challenged by many activists, and more recently, based on NCA intelligence, is said to be to be in the 'tens of thousands'.

The Gangmaster's Licensing Authority

The review of the GLA's powers and remit, required by the Modern Slavery Act, did indeed take place in 2016 but within the context of a new Immigration Act (2016). Whilst most commentators welcomed the extension of the GLA's (now to be called Gangmaster and Labour Abuse Authority – GLAA) remit (to include other – potentially all – industrial sectors) and powers (including new quasi-police powers of search and arrest) there was dismay at the linking of this to immigration powers since it flagged up a clear message that modern slavery was effectively an immigration offence and not primarily a criminal offence. This seemed likely, in the view of many, to discourage those seeking recognition as a victim of slavery from entering the NRM process as it might be associated with the prospect of deportation if their claim to be a victim was challenged and it is known from the experience of many NGOs that potential victim are refusing to enter the NRM for this reason. Even given the enlargement of the GLAA's resources, the sums available only allowed for about a 40% increase in staffing compared with, potentially, a 400% increase in the size of the workforce it was now responsible for monitoring. The GLAA was to be part of a tripartite arrangement involving two other regulatory bodies, all overseen by a new Director of Labour Market Enforcement. These changes may make the GLAA less accountable to public pressure which would be unfortunate since the more public profile of the GLA had led to its early work being generally held in high regard.

The 'Independent' Anti-Slavery Commissioner (IASC)

In terms of the level of activity of the IASC since his appointment in late 2014 (controversially, ahead of the passage of the Modern Slavery Act which was to give formal authority to his appointment), there can be little doubt of the commitment of the incumbent, a former senior Metropolitan Police Officer Kevin Hyland. Although doubts remained about his independence from government, he frequently rejected such claims robustly. On the face of it, the government was prepared to support his office with a growing budget allowing for the appointment of a number of staff, and the commissioning of research both in-house and out on a variety of topics, such as the growth of modern slavery partnership working within the UK, the range of research being undertaken on modern slavery in the UK, and the trafficking activity associated with Vietnam. The IASC lent the influence of his office to a range of activities and events, often in conjunction with the Catholic Church to which he was personally committed, a notable achievement in this context being to ensure that the United Nations Sustainable Development Goal 8.7 explicitly focused on the eradication of slavery in all its forms across the world. However despite a sometimes frenetic level of activity, all was clearly not well politically and in May 2018, the IASC announced his impending resignation, citing in particular interference from the Home Office: 'At times (he said) independence has felt somewhat discretionary from the Home Office rather than legally bestowed' and in a direct comment to the Prime Minister, who continued to associate herself strongly with anti-slavery work, he noted 'I hope that any future incumbent can be assured the independence I am sure you intended as the author of the legislation'. Whether that is the case remains to be seen as no new Commissioner has yet been appointed.

National Referral Mechanism

This is probably the single aspect of the legislation which has come under the most sustained criticism since the Act became operational. Criticism of aspects of the NRM have both deepened and widened since 2015 and at the time of writing, three years on, the government is still experimenting with a second tier of pilot projects in four local authority areas (the first pilot project being deemed ineffective, as well as a 'failed' pilot project for child advocates) to test a new and allegedly simplified system. There is not space here to detail the range of critiques mounted but essentially the NRM has been seen to be cumbersome, inaccessible, structurally racist, slow and (presumably for staffing reasons) overloaded, and confusing potential immigration status (especially for those claiming asylum) with potential

slavery status. The proposed new structure will consolidate final decision-making into a single body within the Home Office. The Independent Anti-Slavery Commissioner also published a scathing criticism of the NRM which he regarded as not fit for purpose and requiring radical change. In his letter to the Home Office Minister, he particularly criticised the need for a two-stage process for validating claims made by victims, other difficulties of accessing the NRM and the failure to provide adequate support for victims. The last point, which has become a focus for campaigning including parliamentary action in a Private Member's Bill, was particularly stressed in a report produced by a coalition of NGOs.

Clause 54: The Supply Chains Requirement

Last minute lobbying from NGOs and academics and, more surprisingly, from some companies, had led to the insertion of Clause 54 in the Act which required companies based in or active in the UK with an annual turnover of £36M+, to publish an annual Modern Slavery Statement (MSS) prominently on its website, signed off by a senior director and indicating the steps the company was taking to ensure the elimination of modern slavery from its supply chains. This provision was widely regarded as weak and unlikely to lead to a change in company behaviour despite the government's hope that it might lead to a process of 'naming and shaming', where companies concerned about their public reputation might take remedial action. Subsequent research from a number of quarters suggest that these concerns were entirely valid: it appears that only around 20% of the roughly 30,000 liable companies have published an MSS, and that many of these have either not been updated annually, do not appear prominently or in other ways fail to meet the legal requirements of the Act. Even prominent UK-headquartered international companies such as John Lewis, Marks and Spencer, Next, H&M, Debenhams and Primark, which have published an MSS, have been found to have slavery in their supply chains. In the meantime there has not been a single prosecution for failing to meet the terms of the Act. There are now growing demands for the legislation to be toughened and for government to take action against failing companies.

What Else? What Next?

These four issues have been prominent amongst critiques of the Act but they have not been the whole story by any means. Other issues remaining to be addressed include the position of domestic workers, still often trapped in slavery by the terms of their visas, inconsistencies between the legislation in England and Wales, Scotland and Northern Ireland, the poor systems for collecting and analysing data, a lack of effective protection for children and appropriate long-term support for victims after passage through the NRM. This comprehensive critique has not stopped the government from continuing to describe the Act as 'world-leading', especially after the government of Australia announced its intention to introduce similar (but not identical) legislation. The committee hearing evidence in Australia was at least able to take account of submissions criticising key aspects of the UK legislation in shaping its own; for example, it is proposing to include public companies in its equivalent to Clause 54.

Despite the continuous and substantial volume of critique from NGOs, and academics (which were generating an increased volume of research on this policy area), perhaps the most significant criticism came from official inspectorates and others close to the Parliamentary process. A substantial broadside was fired by Her Majesty's Inspectorate of Police and Fire and Rescue Services which, in a detailed review of police activity late in 2017, was highly critical of the response of police forces, many of which had poor systems in place for recording and responding to cases of modern slavery and in some instances had no recorded cases of prosecutions or even of recorded cases of slavery at all over recent months. The Commons Select Committee on Work and Pensions strongly challenged the current arrangements for victim support, adding their weight to demands for an extended period of support beyond the modest 45-day period currently on offer, shown to be completely inadequate. [3] The Independent Anti-Slavery Commissioner in his 2017 Annual Report, not only described the NRM for suspected victims of trafficking as 'not fit for purpose' but was highly critical of other aspects of the systematic response to modern slavery; and the National Audit Office, the official auditor for government policy, also scathingly described the government's modern slavery strategy as 'inadequate', weak, poorly-informed and 'inconsistent'.

Whilst the Modern Slavery Act remains today more or less in the form it was in when enacted, the legislative, policy and practice context in which it is being implemented is steadily changing. The NRM is undergoing its – to date –

third review, the legislative framework for dealing with labour exploitation has been altered substantially (as may shortly also be the case for victim support), new structures and processes are being introduced to improve the capacity and skills of police forces, and it may be that the role of the Anti-Slavery Commissioner could become truly independent of government. There remain several further key issues to be addressed: these include the continuing hostile government stance towards domestic workers who are abused, inconsistencies between the three legislative frameworks operating within the UK, and the demonstrable weakness of the provisions of Clause 54. Whether these changes require legislation or not (and some will) is beside the point. The Act itself has been shown to be deficient in many important regards and continuing to claim it as 'world-leading' is now a more hollow claim than ever before. Ironically, if the pressure from NGOs, academics, parliamentarians and others fails to shift the government on such key issues, countries which have developed legislation or are in the process of doing so, as in France, New Zealand, Canada, and Australia, having learnt from the mistakes of the UK legislation, may offer, by a sort of reverse policy transfer process, models for eventual improvement of the UK's legislation.

Notes

[1] The 200 years refers to the time taken between Wilberforce's 1807 Act abolishing the Transatlantic Slave Trade and the 2015 Modern Slavery act.

[2] There has been a wide-ranging debate about this term given that there is no overarching, internationally-accepted definition of the term. It has now come to be understood as shorthand for a range of practices involving coercion, exploitation and a lack of human rights. The Home Office in a recent review has identified 17 types of modern slavery offence. See C. Cooper *et al,* (2017) *A Typology of Modern Slavery Offences in the UK,* (2017) London: Home Office.

[3] Work and Pensions Committee, 12th report , 2016-2017, *Victims of Modern Slavery*, HC803, London: The Stationery Office.

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