



# Small Sample Analysis of Modern Slavery Statements in Cocoa and Garment Sectors

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## Context

Modern Slavery (MS) is presented in policy and legislation as an extensive challenge to society. Varying interpretations of the legal definition of MS, which encompasses offences of 'Slavery, Servitude and Forced or Compulsory Labour and Human Trafficking'<sup>1</sup>. This means that different types of statistics are in existence to indicate its possible extent and are often contested. However, the official figure of suspected victims of MS in 2017, is stated by the UK Government to be 5145.<sup>2</sup>

The Modern Slavery Act (MSA) was enacted in the UK in March 2015. Section 54 (9) of the Act, the Transparency in Supply Chains (TISC) Reporting clause, requires companies with an annual turnover of over £36 million operating in the UK to publish a Slavery and Human Trafficking Statement each year. It is this part of the legislation which is the focus of this analysis.

## Methodology

In advance of fieldwork to examine what impact, if any, this relatively new requirement is having on working conditions in garment and cocoa sectors supply chains, where there are known issues around exploitation and child labour, a small sample analysis of 40 MSA statements produced in the UK garment and cocoa sectors was undertaken by the University of Liverpool Clothes, Chocolate and Children Project.<sup>3</sup>

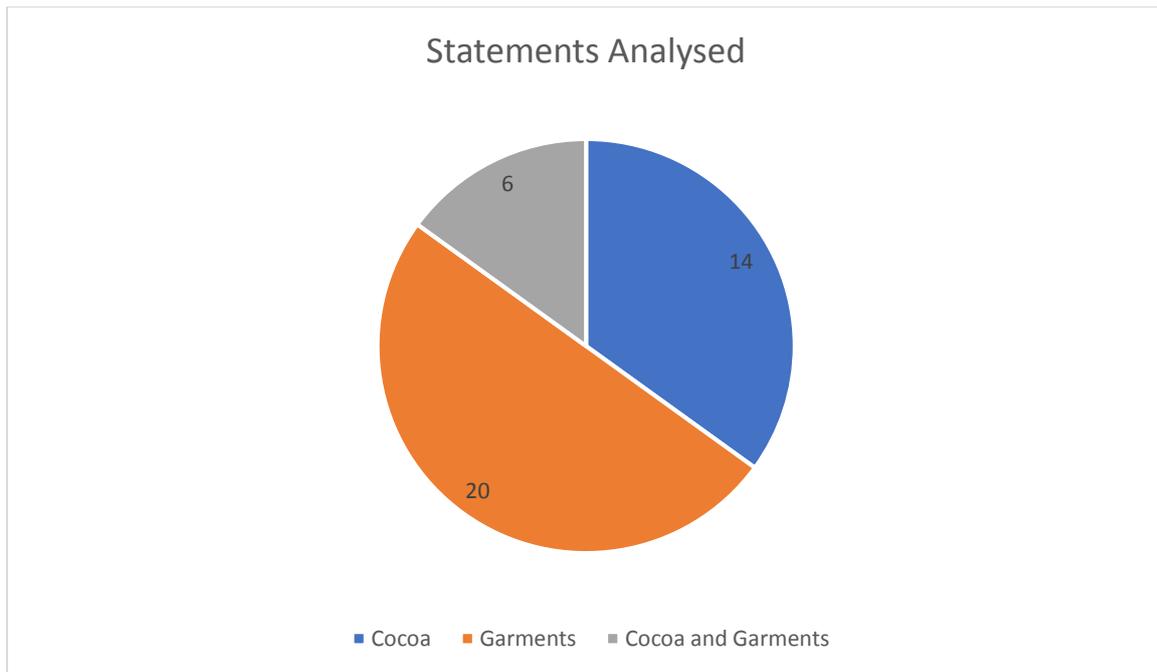
There is currently no official central registry of MSA statements and thus statistics provided by third parties cannot be fully relied upon. However, in the absence of an official repository, the statements analysed here had to be primarily randomly gathered through searching the online database '[Modern Slavery Registry](#)' for companies who produce or sell garments and cocoa (chocolate) products. To then address the fact that companies are not legally required to deposit statements in this, or any other registry, additional desk-based research was essential to identify the most up-to-date statements. This was especially needed to locate the statements of known cocoa companies which could not be easily found. The breakdown of statements are as follows:

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<sup>1</sup> Part 1 of the Modern Slavery Act (2015): <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

<sup>2</sup> Source: Modern Slavery and Human Trafficking: National Referral Mechanisms Annual Report for 2017 (2018) by the National Crime Agency.

<sup>3</sup> This analysis supplements a literature review of research findings, both academic and by non-governmental organisations (NGOs), which have examined the quality of MSA statements since their first publication in 2016.



Statements were analysed against the expectations within the legislation and guidance for TISC reporting. The MSA only requires businesses to write and publish an annual statement, which can even state that no steps have been undertaken, but must meet three basic legal requirements:

- Be approved by the board of directors or equivalent management body
- Be signed by a director (or equivalent)
- Be published on the company’s website with a link to the statement provided in a prominent place on that website’s homepage. If the organisation does not have a website, it must provide a copy of the statement to anyone who makes a written request for one within 30 days.

The Government practical guidance for developing MSA statements, issued when the legislation was enacted and updated in October 2017<sup>4</sup>, goes further by stating that:

“The slavery and human trafficking statement **must set out what steps they have taken** during the financial year to ensure that modern slavery is not taking place in their organisation or in their supply chains. Organisations will report in different ways depending on the size, type and activities of the business. Government guidance recommends reporting on six areas of activity:

1. Organisational structure and supply chains,
2. Organisational policies
3. Assessing and managing risk

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<sup>4</sup> It is acknowledged that most of the Statements considered in this study were published before the updated guidance was issued, and at the time of publication that updated guidance is imminent.

4. Due Diligence

5. Performance Indicators

6. Training

Organisations are encouraged to paint as detailed a picture as possible of the steps they have taken to address and remedy modern slavery, and the effectiveness of such steps. If an organisation has taken no such steps, they must still publish a statement stating this to be the case. “

(Transparency in Supply Chains etc. A practical guide: Home Office, 2017)

## Findings

### Overall Relevance to CCC Project

#### **Chocolate**

The statements reviewed from chocolate-producing companies gave limited information about the cocoa procurement processes, including the locations or ownership of the cocoa farms procured from. Known risks related to cocoa farming such as the use of seasonal casual labour and legal child labour did not feature to a significant extent in any of the analysed statements. These statements gave some examples about local partnerships for e.g. sustainability or environmentally aware farming, but little on partnerships to address MS issues locally and support MSA compliance through e.g. local work with NGOs or Labour Unions.

The reviewed statements by companies who sell but do not strictly produce cocoa products (e.g. supermarkets, coffee shops, biscuit confectioners), did not address any MS issues relating to cocoa. Where companies are known to use cocoa in the production of their own-branded products e.g. Easter eggs, cakes, biscuits, their supply chain descriptions still excluded cocoa.

#### **Clothes**

Statements varied in the level of transparency regarding the factories used in garment production. Some published names and addresses, others published regions where they were located. Few companies state that they used UK garment factories, and for those who state they used factories overseas, they rarely explicitly differentiated between those company-owned and those independently owned and contracted.

Many statements did not address MS risks in the lower tier of the garment production process e.g. detailing, embroidery, dyeing, washing, labelling.

No statement included checking on the use of seasonal casual labour in factories for e.g. Christmas goods, nor the use of subcontractors or outsourcing e.g. home-working.

Some statements outlined the local partnerships developed to address the MS issues that were already known about e.g. Project Issara working on forced labour in Thailand, but few described partnerships to assist in monitoring for MS through proactive work with e.g. local NGOs or Labour Unions.

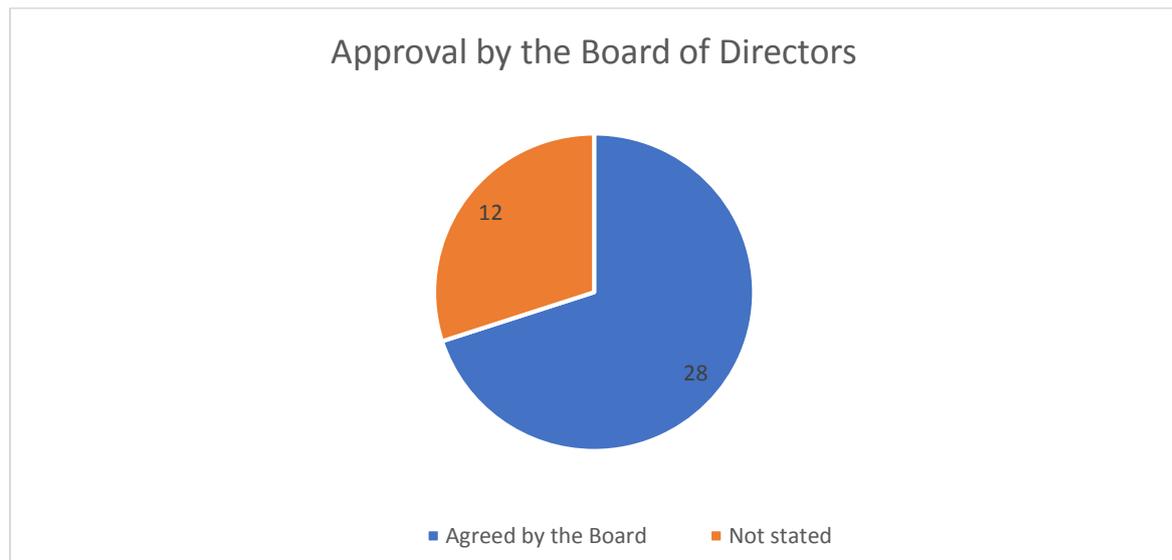
## Children

Statements often made generic declarations that farmers or factories using child labour would not be contracted within the supply chain. However, they did not describe any proactive methods for checking on the potential exploitation of child labour, especially for children legally allowed to work in the local context.

No partnerships with NGO's working specifically on children's rights to support monitoring MSA compliance were described by any company statement.

## Meeting the basic legal requirements

### Approval by the Board of Directors



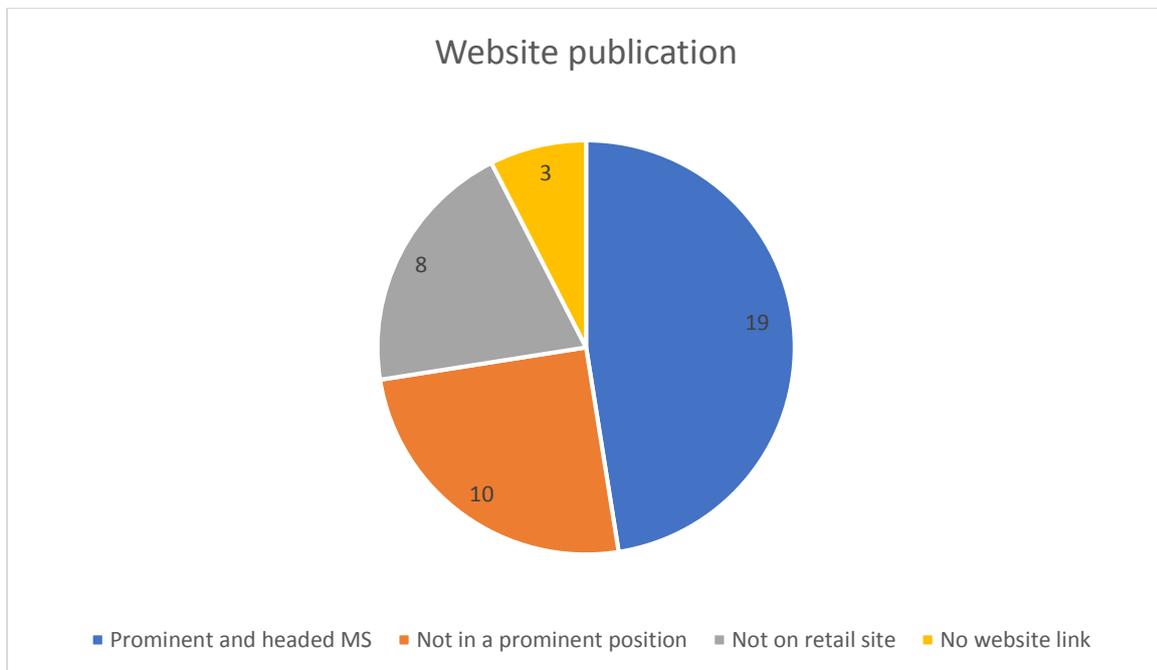
In the 40 statements analysed, 12 (30%) did not explicitly state that the Statement had been agreed by the Board. These 12 statements were equally split across cocoa-related and garment sectors.

### Signed by the Director (or equivalent)



4 out of the 40 statements (10%) did not explicitly state or show sign off by the Director; 3 in the garment sector and 1 in cocoa.

### Published on the company's website with a link to the statement provided in a prominent place on that website's homepage



19 out of 40 companies had a link to the MS statement explicitly and prominently under the heading 'Modern Slavery' on the homepage of their company's retail website or, for companies who did not retail products directly, on their company website.

10 of the remaining 21 linked the MSA statement to their homepage via other headings such as 'ethics', 'about us' or 'corporate responsibility' – sometimes up to 4 clicks away from the homepage.

8 companies who retailed cocoa and garment products did not have a link at all to their MS statement on their retail site but did have it on their company site.

3 companies, all cocoa-related, did not have links to their statements on their website/s at all.

## TISC Guidance

The TISC reporting responsibility came into effect in April 2016. Therefore, most companies at the time of this study (March/April 2018) were issuing or had issued their second MS Statement, supported by Government guidance published in 2015 and 2017. The following issues were observed in the analysed statements against the headings provided in the guidance:

**Organisations are encouraged to paint as detailed a picture as possible of the steps they have taken to address and remedy modern slavery, and the effectiveness of such steps.**

Statements varied widely in terms of detail - from one paragraph on a website to a 23-page PDF document. The longest document however was not always the most informative on what steps companies had undertaken in the last year to address MS; the detail was sometimes lost in larger narratives about ethics, human rights, sustainability, environmental issues.

20 statements (50%) described the 'steps taken' in the previous year and the steps intended for the coming year, indicating a shift towards an annual assessment of MS performance and planning for future action.

6 of these statements outlined only a commitment to address MS, and 14 described intentions for the coming year.

### **Organisational structure and supply chains**

There was no uniform approach to describing the organisational structure of a company, and only a few described the governance arrangements within their structure for assessing organisational performance on MS.

The language used to describe the supply chain varied across the statements e.g. 'T1, T2, T3', 'primary', 'secondary', 'farm-level'. It also varied in describing the areas of the business the supply chains apply to e.g. 'goods not for resale', 'products', 'logistics'.

21 companies stated that their MS statements applied to primary and secondary tiers in the supply chain, and sometimes beyond, but the actions evidenced were limited to primary suppliers (T1).

13 statements out of the 40 explicitly restricted themselves to application to, and actions about, T1 in the supply chain.

Of the 40 statements, only 6 gave full transparency to their T1 suppliers by publishing their names and addresses. All of these were in the garment sector.

A small number of statements refer to undertaking 'traceability work' i.e. companies getting to understand the nature and extent of complex supply chains, down to the level of subcontractor and even homeworking, in order to identify the potential for MS in the future.

### **Organisational policies**

Policies were web-linked in 19 of the 40 statements, mainly in the garment sector, but the level of detail given for what policies existed and to whom they apply is inconsistent across both sectors.

### **Assessing and managing risk**

Some companies expressed 'risk assessments' as the tool for assessing the risk of MS in their business operations (e.g. recruitment agency use) in preparation for actions to address the MSA legislation. SEDEX Members Ethical Trade Audit (SMETA) was the main tool cited for this, but there were examples of other tools being used in addition to SMETA or in place of it e.g. SEGURA, Eco Vadis, social audits or social assessments.

Some statements used methodologies to identify and address areas of the supply chain deemed to present the highest risk (e.g. 'root cause analysis'), but of the 40 statements considered only 6 companies (15%) published their risk assessment in full, and only one of these was in the cocoa sector.

Undertaking a SMETA was in some cases identified as a contractual requirement for overseas suppliers of products to the company.

### **Due Diligence**

There was an emerging practice of referring to due diligence, and using due diligence risk frameworks in statements, but this was not always detailed in terms of the procedures followed.

Some statements talked about how the MSA was built into the 'code of practice' suppliers were expected to adhere to as part of the contracting process.

Details of how companies supported the detection of potential indicators of MS in the supply chain and what they would do with suppliers and workers if found, also known as detection and remediation procedures, were not completely given in the statements considered.

19 out of 40 refer to mediation actions or processes, 11 of these were in the garment sector.

3 statements reported the figures for how many cases of potential or actual MS had been discovered in the previous year, including a nil report. One outlined the steps that were taken as a result.

Some innovation was observed in statements such as the employment of people who had escaped MS; the evaluation of MS training by academic and NGO partners; expert stakeholder meetings to identify key risk areas of business for MS and independently-staffed whistle blowing MS helplines for staff, suppliers and workers. Nonetheless, the majority of the statements considered did not contain such meaningful actions that went beyond legal compliance.

### **Performance Indicators**

There was some evidence of the emerging use of MS Key Performance Indicators (KPI) organisationally, for individual staff and for suppliers. 9 statements denote existing or planned KPI development.

Only 3 companies, all in the garment sector, published the previous year's statements or referred to progress on the previous year's intentions in their current statement.

### **Training**

5 statements did not describe any actions on training for MS or MSA compliance.

In the remainder, training was alluded to in a variety of ways – e-learning, conferences or face to face training. Some companies differentiated the types of training e.g. learning about the MSA to ensure compliance in supplier relationships, training on the company MS policy, training on 'awareness toolkits' to spot MS in the workplace, product specific MS training. At times it was described as integrated into other training such as ethical procurement or human rights. Training was outlined as devised and delivered in different ways; internally by company staff or externally by specialist organisations e.g. the Ethical Trading Initiative, Fast Forward, Stronger Together.

Training was not always described as mandatory but was often stated as restricted to or expected of certain key staff roles e.g. procurement or sourcing, or in the case of training suppliers, as a condition of a supplier relationship.

10 statements describe only training employees and not suppliers.

In the 25 statements that stated they trained suppliers, it was mostly offered in the format of supplier conferences.

## Conclusion

This small study shows that the 40 Modern Slavery statements we analysed from the garment and cocoa sectors vary greatly both in terms of structure and in relation to the quality of information. The first academic report to analyse MS statements<sup>5</sup> (Stevenson and Cole, 2018) found that they were very diverse in style and content, likely because of vague guidelines for what the statements should contain. These findings seem substantiated here. The statements considered in this study did not use consistent language or follow a uniform structure, and on a practical level are not always easy to find.

The findings point to three areas of concern, firstly how businesses understand MS as a risk in their operations; secondly how businesses interpret 'steps to address and remedy' MS and, lastly; the issue of legal compliance.

The research by Stevenson and Cole argues that 'firms refer to future plans or achievements that related to other social or even environmental issues like reducing their water use, possibly as a distraction tactic' instead of concentrating on detecting and remediating MS in supply chains (2018: 94). The references to the wider issues of ethics, human rights, sustainability, environmental issues, in place of directly addressing MS within statements was equally observed in the findings of this study. It may be a conscious tactic of distraction but there are alternative explanations that can be inferred. Some companies made an explicit statement that they view MS as part of a wider human rights agenda. It also may be symptomatic of a lack of understanding of what MS actually is and how it may affect or manifest in supply chains.

The broadness of the definitions within the MSA of modern slavery as 'slavery, servitude and forced or compulsory labour' and human trafficking as 'travel with a view to V [victim] being exploited' are potentially being reinterpreted or misinterpreted by businesses, with the issue of 'exploitation' being particularly difficult to concretely define. Exploitation is rarely viewed in the context of a continuum of labour abuses. This misunderstanding is then exacerbated further by the wide interpretation of what constitutes 'the supply chain'. For example, almost all statements concentrated on the risk of MS in overseas supply chains, but few addressed the domestic (UK) context. Indicating that for many companies, this is an activity assumed not to affect UK workers or suppliers.

Child labour was also largely brushed over by statements affirming that they would not contract any supplier who uses child labour, without considering the experience of children who are legally in the workplace and their potential experience of exploitation or forced labour. This was particularly conspicuous in the statements from the cocoa sector, an area of known risk relating to the exploitation of children. The fact that most statements concentrated on the primary tier of the supply chains but did not, or could not, address lower tier activity means that the supply chain tiers most vulnerable to abuses, such as casual labour, subcontracting and homeworking, were not within their purview. This, as

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<sup>5</sup>101 statements from the apparel and textiles sector

some admitted, was because they did not understand the complexity of their supply chains at this point in time.

Collectively, these findings signal that businesses are in the midst of developing their awareness and understanding of MS, whilst simultaneously attempting to demonstrate compliance with the law.

Cole and Stevenson posit that “(C)ompanies must also examine what part they may play in encouraging modern slavery, such as by driving down supplier prices or demanding ever-quicker production. These practices play a big role in pushing suppliers to pursue cheap labour solutions and illicit subcontracting” (29<sup>th</sup> May 2018). However, no statement analysed in this study reflected on these political and economic issues and the inter-relationship between profit-making and exploitation. Statements struggled to outline the steps businesses had taken and planned to address or remedy MS. 6 statements cited an intention to address or remedy MS but did not detail any steps taken or planned; fully allowable within the TISC guidance. This is not to say that legally requiring businesses to address the content and quality of statements would have an impact. A significant number of these statements were shown not to comply with even the simplest legal requirements.

For example, in relation to publishing the MS statement on the website of a company, this obligation has been widely interpreted or in 3 cases, ignored. It is unclear if the company, in circumstances where they sell products directly to the public, has a specific responsibility to have a link on the homepage of their retail website and if that link must be entitled ‘Modern Slavery Statement’. In a quarter of cases, the statements were arguably ‘buried’ under several headings. Combined with the omission of a legal requirement to deposit statements in a central repository, this limits the ease with which statements can be found and companies held accountable. Thus, the expectation for NGOs and individuals to monitor the compliance of companies with the MSA is rendered largely unrealistic. The lack of clarity in the legal requirements and the lack of government enforcement action on non-compliance appear to be significant issues, and whilst the definition of publication on the website may be contested, it remains that without ambiguity 19 statements out of the 40 did not meet the basic legal requirements for MS statements. This finding is corroborated by other recent research into MSA compliance (CORE, 2017; Ergon Associates, 2018; Phillips, Trautrim and Kenway, 2018; Stevenson and Cole, 2018).

It is difficult to state how much progress has been made in the quality of the statements since the legislation was introduced, as there is no central regulation or monitoring of MS statements over the time since the enactment of the MSA. However, it appears that the guidance and encouragements given by Government to businesses on developing their MS statement content, in particular the steps businesses are taking to ‘address and remedy modern slavery’ (HM Government, 2017), have not had a great impact on the quality of the statements analysed in this small study. These findings indicate that there are several concerns regarding the legally compliant and substantive nature of MS statements and therefore there are challenges in the extent to which the MSA’s TISC requirement may impact positively on the lived experiences of children and adults working within them.

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