

REPORT TO BUSINESS SERVICES COMMITTEE – 15 SEPTEMBER 2022

ABERDEENSHIRE COUNCIL RESPONSE TO THE CONSULTATION ON INCLUSION OF SCOTTISH PUBLIC BODIES IN TRANSPARENCY IN SUPPLY CHAINS REPORTING

1 Executive Summary/Recommendations

The Committee is recommended to note the corporate response to the consultation which is seeking views on the proposed UK Modern Slavery Bill announced 10 May 2022. The consultation allows the Scottish Government to provide targeted questions to public sector bodies ahead of further policy development. The response was submitted by the Head of Customer & Digital Services under delegation following consultation with the Chair, Vice Chair and Opposition Spokesperson.

1.2 The Committee is recommended to:

1.2.1 Note the corporate response to the Scottish Government consultation at Appendix 1 on proposals to extend the reporting requirements to Scottish public bodies for the publication of modern slavery statements as part of work to improve Transparency in Supply Chains; and

1.2.2 Note that the response was submitted under delegation by the Head of Customer & Digital Services.

2 Decision Making Route

2.1 Alongside commercial organisations, the public sector has a crucial role to play in addressing the risks of modern slavery in its supply chains, with £13.3bn of procurement spend annually across the Scottish public sector alone. Many public sector organisations have already started to identify and address the modern slavery risks within their supply chains and beyond.

2.2 The UK Government propose that public sector bodies be included in the formal requirement to publish a modern slavery statement. As per the requirements for commercial organisations, this would extend to public sector organisations with an annual budget – as opposed to turnover – of £36 million or more, unless they are already captured by the existing legislation.

2.3 This would include, for example, Central Government Departments, including the Scottish Government and devolved public bodies, local government bodies - including Local Authorities, NHS bodies and non-market and market public bodies (such as public corporations) - which meet the budget threshold.

2.4 The [consultation](#) sought views on the proposed UK Modern Slavery Bill announced on 10 May 2022 and allowed the Scottish Government to provide targeted questions to public sector bodies ahead of further policy development. Proposals include:

- inclusion of public bodies in the reporting requirement for a modern slavery statement
- introduction of a single reporting deadline by which all organisations must publish their statement each year
- mandating that the reporting of specific topics within the statement be compulsory to facilitate transparency

2.5 The corporate response is attached as **Appendix 1** to this Report.

2.6 In accordance with the Scheme of Governance Part 2A A.22 the response to the consultation was submitted by the Head of Customer & Digital Services under delegation following consultation with the Chair, Vice Chair and Opposition Spokesperson in order to meet the deadline of 22 August 2022.

3 Discussion

3.1 The purpose of the proposals is to extend the reporting requirements for the publication of modern slavery statements and to consider the mechanisms by which to achieve this and associated enforcement regimes.

3.2 The response on behalf of Aberdeenshire Council recognises that at a political, ethical and moral level, public bodies support measures designed to identify, prevent and eradicate modern slavery in supply chains. Further, public bodies are committed to increased transparency and “open government.” Any initiatives that strengthen this position and demonstrate public scrutiny and challenge are to be welcomed.

3.3 However, the council has concerns about the burden of additional reporting and the need to ensure that it is kept proportionate.

3.4 There are also concerns about the ability of local authorities to be able to fully undertake the necessary due diligence required, and obtain up-to-date, reliable, objective information on whether suppliers have been convicted of offences, particularly on contracts with global operations.

4 Council Priorities, Implications and Risk

4.1 This report helps deliver all six of the council’s Strategic Priorities

Pillar	Priority
Our People	Education Health & Wellbeing
Our Environment	Infrastructure Resilient Communities
Our Economy	Economy & Enterprise Estate Modernisation

4.2 A detailed integrated impact assessment is not required because this is a response to a consultation and does not have a differential impact on any of the protected characteristics or on those facing socio-economic disadvantage.

4.3 The table below shows whether risks and implications apply if the recommendations are agreed.

Subject	Yes	No	N/A
Financial			X
Staffing			X
Equalities and Fairer Duty Scotland			X
Children and Young People's Rights and Wellbeing			X
Climate Change and Sustainability			X
Health and Wellbeing			X
Town Centre First			X

4.4 The following Risks have been identified as relevant to this matter on a Corporate Level:

The following Risks have been identified as relevant to this matter on a Corporate Level - [Corporate Risk Register](#):

- ACORP002 – Changes in government policy, legislation, and regulation.
- ACORP005 – working with other organisations (eg supply chains, outsourcing and partnership working)
- ACORP007 – social risk (e.g. population changes, demographic changes, crime, anti-social behaviour)

4.5 The following Risks have been identified as relevant to this matter on a Strategic Level - [Directorate Risks](#):

- BSSR003 - Statutory responsibility for the proper administration of the Council's funds. Supporting an environment of advice and guidance to enable the proper use of public funds by Services.

5 Scheme of Governance

5.1 The Head of Finance and Monitoring Officer within Business Services have been consulted in the preparation of this report and their comments are incorporated within the report and are satisfied that the report complies with the Scheme of Governance and relevant legislation.

5.2 The Committee is able to consider on this item under Section C.1.1b of the List of Committee Powers in Part 2A of the Scheme of Governance as it relates to a matter falling within the remit of Customer Communications and Improvement.

Ritchie Johnson
Director of Business Services

Report prepared by Kate Bond, Head of Customer & Digital Services.
Date: 17 August 2022

List of Appendices:

Appendix 1 - Aberdeenshire Council response to the consultation on Inclusion of Scottish Public Bodies in Transparency in Supply Chains Reporting.

Appendix 1 - Aberdeenshire Council Response to the Scottish Government Consultation on Equality Evidence Strategy 2023-2025

Question 1:

Are you an organisation which currently voluntarily publishes a modern slavery statement?

Yes

No

Don't know

Question 2a:

Do you support the proposal for public bodies in Scotland with a budget of £36m or more to be included in the statutory reporting requirement for a modern slavery statement?

Yes

No

Question 2b:

If you have answered no to 2a, please provide further information.

Question 3a:

There is a proposal to introduce a single reporting deadline. Do you think this would be beneficial or detrimental?

Beneficial

Detrimental

Question 3b:

Please provide further information regarding your answer at 3a.

Public bodies have significant reporting requirements so it is important that reporting is proportionate in order to encourage compliance and ease the burden of statutory reporting on public bodies.

Question 4:

Please tell us what challenges you feel public sector organisations could face in producing a modern slavery statement?

At a political, ethical and moral level, public bodies support measures designed to identify, prevent and eradicate modern slavery in supply chains. Further, public bodies are committed to increased transparency and "open government." Any

initiatives that strengthen this position and demonstrate public scrutiny and challenge are to be welcomed.

However, an alternative approach could be to introduce statutory guidance to support Modern Slavery (within Fair Work) – where suppliers are encouraged to make full, timeous and progressive modern slavery statements and demonstrate their purported compliance. This could be a less resource intensive and more effective means of addressing the issue.

Within existing resources, it can be challenging for Contracting Authorities to obtain up to date, reliable objective information on whether suppliers have been convicted of offences aside from more involved due diligence and investigations (potentially at a global level).

A private company may have the opportunity to carry out site visits and audits overseas where a public body would not generally have the time, resources or authority to carry this out or assess when it might be proportionate and relevant to do so.

As the legislation stands, a company can be compliant by declaring they have done nothing and intend to do nothing in relation to modern slavery. A council/public body could not comfortably and in good conscience take this approach. A public body would have an express or implied duty to carry out due diligence and challenge less progressive or more guarded suppliers (and their wider supply chain/operations).

If a supplier has not broken the law and there is no evidence to point conclusively to compliance or non-compliance, what further steps is a public body expected to take/at what level/within what budget and for how long? If a serious allegation is made, a responsible public body would report the breach to the appropriate authorities and allow investigations to take place. All prior due diligence, statements and reporting on statements seems to lead up to this same endpoint (the making of an allegation to the appropriate authorities). It is unclear what is expected in terms of suppliers (compliantly) stating they do nothing and intend to do nothing about modern slavery (a valid and legally compliant response). This puts a great deal of responsibility on public sector buyers, potentially involving supplier operations they have no visibility over and no contractual leverage bearing in mind self-cleansing can apply and any decision to terminate could be challengeable with legal and financial consequences.

Through Fair Work, Contracting Authorities have some visibility over individuals working on particular UK contracts and the connected supply chain but not the wider, global supply chain within potentially complex group structures. Site visits/audits are not a viable option for public bodies as they could be (in selective cases) in the private sector. Public bodies would presumably be expected to extend a duty of care over a supplier's entire global operations and not only supply chain elements connected to the Council's overarching business needs and individual contracts being performed.

Question 5a:

Current guidance suggests that statements cover the following 6 areas. Which of these do you think should become mandatory?

1. The organisation's structure, its business and its supply chains; **YES** / NO
2. Its policies in relation to slavery and human trafficking; **YES** / NO
3. Its due diligence processes in relation to slavery and human trafficking in its business and supply chains; **YES** / NO
4. The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk; **YES** / NO
5. Its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; **YES** / NO
6. The training and capacity building about slavery and human trafficking available to its staff; **YES** / NO

Question 5b:

Please provide further information regarding your answers at 5a.

1. The organisation's structure, its business and its supply chains;

This is already publicly available, transparent, well-established and underpinned by legislation. A Council has a general and very wide-ranging purpose underpinned by legislation.

2. Its policies in relation to slavery and human trafficking;

It is a given that public bodies support measures designed to identify, prevent and eradicate modern slavery in supply chains at a political, ethical and moral level. Public bodies/local authorities should be held to a minimum standard and expected to demonstrate overall compliance and progressive good practice.

3. Its due diligence processes in relation to slavery and human trafficking in its business and supply chains;

Proportionate steps should be taken as a need/risk arises on a contract by contract basis.

4. The parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;

The Council performs a vast range of statutory and regulatory functions at a strategic and operational level to meet the known and anticipated future needs of

communities. There are issues with visibility in global complex supply chains within complex group structures. The duty extends far beyond workers/contractors/subcontractors working on or connected to the public body's own contract(s). Risk sectors can be identified (centrally) and (with statutory guidance) steps can be taken to mitigate perceived risks in particular commodity areas.

5. Its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;

Need to consider how effectiveness is established? What are the critical success factors?

6. The training and capacity building about slavery and human trafficking available to its staff;

Training should be developed and delivered centrally and cascaded to all procurement staff rather than the responsibility of individual public bodies.

Question 6a:

Do you think public sector organisations should be able to publish a group statement and respond collectively?

YES / NO

If the duties are extended to public bodies, bodies such as Police Scotland and NHS should be able to respond collectively. Similarly, shared services and public bodies recognised to be working in a collaborative alliance in terms of purchasing should have this flexibility.

Question 6b:

Who do you think would be responsible for signing off a group statement?
Chief Executive

Please explain your answer.

Decisions of this nature are normally political and would follow internal governance e.g. Chief Executives or a committee structure. All relevant policies/procedures/governance etc governing internal, "in-house" operations transparently available and subject to FOI. Key risk areas should be on a programme of internal/external audit.

Question 7:

Current guidance requires public sector modern slavery statements to be signed off by the accounting officer, chief executive or equivalent role, and approved by the senior management body. What level of sign-off or clearance do you feel is appropriate for a modern slavery statement? Please explain your answer.

See answer to 6b

Question 8a:

Do you think that Scottish public sector organisations would face any challenges when publishing their modern slavery statement on the UK Government registry?

No

Question 8b:

If you have answered yes, please explain your answer.

As public bodies are subject to Freedom of Information and this information would not be considered commercially sensitive, it does not seem to be material where information is published if the proposals are adopted.

Question 9:

What assistance do you feel would be appropriate to support public sector organisations in fulfilling the requirements of the modern slavery statement?

It is unclear what is expected in terms of suppliers stating they do nothing and intend to do nothing about modern slavery (a valid and legally compliant response). If a supplier has not broken the law and there is no evidence to point conclusively to compliance or non-compliance, what further steps is a public body expected to take/at what level/within what budget and for how long? If a serious allegation is made, a responsible public body would report the breach to the appropriate authorities and allow investigations to take place. Guidance around this may be of assistance.

Contract Management processes can establish if the private sector supplier has reported timeously, as fully as they might and check whether the results are out of phase with peers within the industry. Arguably, this could lead to a greater public sector contribution to the issue than the mandatory regime proposed. With statutory guidance, a similar approach could be taken with Modern Slavery similar to gender pay gap reporting. This could represent a possibly more effective alternative to reporting on the public bodies own statements, documenting and carrying out and demonstrating due diligence in a global, multi-faceted context within complex group structures. Nudge theory could be employed to effectively encourage suppliers to make full, timeous and progressive modern slavery statements and demonstrate their purported compliance. This could be a less resource intensive and more effective means of addressing the issue than transposing the same private sector duties to public bodies.

An alternative approach would be to give powers, duties and responsibilities to trade or industry bodies for compliance and good practice in known risk sectors in areas routinely procured by public bodies e.g. Care Commission or various key construction trade or regulatory bodies.

Within existing resources, it can be challenging for Contracting Authorities to obtain up to date, reliable objective information on whether suppliers have been convicted of offences aside from more involved due diligence and investigations (potentially at a global level and within complex group structures). Self-cleansing can apply and there can be a considerable amount of unsubstantiated rumour before actual proof of a breach/offence. Guidance around these issues would be helpful.

Question 10a:

One specific recommendation from the review was that the UK Government should strengthen its approach to organisations failing to comply with section 54 of the Act. The UK Government has subsequently announced that while the Home Office will maintain and monitor the government-run registry of modern slavery statements and use this to identify organisations who have not met the reporting requirements, a new single enforcement body will have powers to impose financial penalties against non-compliant organisations. This would involve a gradual and incremental approach to sanctions, from initial warning letters through to civil penalties. Such enforcement measures would commence no sooner than one year after any changes to the reporting requirements. Do you think the application of civil penalties are an effective tool to increase compliance with the requirement to publish a modern slavery statement?

Yes

No

Unsure

Question 10b:

If you have answered no or unsure to 10a, what alternative mechanisms do you feel would be appropriate and effective?

Civil penalties and a definite, hard response date are potentially likely to encourage more companies to report they do nothing and intend to do nothing in relation to modern slavery. This outcome would not further the aspirations of the Act in any way. Good, progressive behaviour from private companies should be celebrated and showcased. Modern Slavery could become one of the pillars of the Scottish Business Pledge with supporting guidance and showcasing good, progressive practice. Suggest consideration given to the alternative proposal outlined in Q1 i.e. make modern slavery an offshoot/extension of Fair Work and join up the private sector obligations on mandatory gender pay gap reporting and mandatory modern slavery reporting.

Question 11:

Do you have any other comments on the proposals regarding Transparency in Supply Chains?

Public bodies are already transparent in terms of duties, obligations, Freedom of Information etc.

The global dimension and responsibility for supplier operations unrelated to the Contracting Authority's business need or individual contracts being performed makes the challenges and resource implications very significant for public bodies. Imposing what were private sector/commercial requirements on public bodies could lead to a false sense of achievement and a mistaken public perception that the issue of modern slavery is resolved or will be fully resolved by public bodies. Due to resource constraints and competing pressures, there is the potential for the issues to be tackled at a perfunctory level. The proposals will present a significant issue in terms of human and ICT resources. On the information available, it would appear that limited resources would primarily be utilised in retrospective reporting/strategy/describing due diligence per contract/commodity rather than deployed in proactive vigilance to action actual and emerging modern slavery issues in live contracts.

Question 12:

Are you content for your responses to be published?

Yes

No