Assessing the impact of modern slavery guidance for procurement in UK construction

2021

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About this report

This report is authored by **Dr Akilah Jardine**, Rights Lab Research Fellow in Antislavery Business and Communities, **Dr Alexander Trautrims**, Rights Lab Associate Director, and **Helen Carter**, lead consultant at the Supply Chain Sustainability School (SCSS). The Rights Lab is a university "Beacon of Excellence" and home to the world's largest and leading group of modern slavery researchers. Launched in 2012, SCSS is a free learning environment, upskilling those working within, or aspiring to work within, the built environment sector. SCSS services the markets of construction, infrastructure, homes and facilities management across England, Scotland and Wales. SCSS covers a wealth of topics such as fairness, inclusion and respect (FIR) and modern slavery. To respond to the growing need for modern slavery guidance from the industry, SCSS established the Special Interest Group on Modern Slavery in 2015 which brought together a consortium of stakeholders across the industry. The Special Interest Group aimed to produce guidelines and best practices for businesses and suppliers on tackling modern slavery. Dr Trautrims was an active member amongst construction industry practitioners in the Special Interest Group that produced the UK's first guidelines for businesses to address modern slavery in their procurement processes.

Executive summary

Since the introduction of the Modern Slavery Act in 2015, the Supply Chain Sustainability School (SCSS) has worked extensively to support and guide businesses within the construction sector to not only comply with legislation, but to move beyond compliance into best practice. It has partnered closely with the University of Nottingham which has been instrumental in keeping information practical but also challenging for SCSS members.

The SCSS Procurement Guidance has been well-received and remains a popular resource within the School. This report aimed to validate the usefulness of the resource and to enable SCSS to determine how it can be further enhanced to remain relevant and useful for the construction industry. The key findings in this report are:

1. Fifty-nine (59) percent of respondents are SMEs.

2. Twenty-eight (28) percent of organisations heard about the Procurement Guidance via SCSS website search, followed by an email from the School (25%).

3. Ninety-four (94) percent of organisations that downloaded the Guidance read it. [1]

4. Ninety-seven (97) percent of organisations that read the Guidance found it useful.

5. Fifty (50) percent found all of the Guidance useful, followed by 30% who found the overview of the Modern Slavery Act the most useful.

6. Sixteen (16) percent have observed changes in the construction industry that may have arisen as a result of the Procurement Guidance.

7. Sixty-three (63) percent of organisations have established, changed or amended practices or policies as a result of the Procurement Guidance.

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[1] Only two organisations who downloaded the document did not read it.

Introduction

There are an estimated 40.3 million people worldwide in conditions described as modern slavery (ILO, 2017). The term "modern slavery" has been used to describe a wide range of exploitative practices including human trafficking, debt bondage, and forced labour. Forced labour is defined by the International Labour Organization (ILO) as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (ILO Forced Labour Convention, 1930 No. 29). Forced labour is therefore distinct from other poor and unlawful labour and employment practices as individuals are subjected to forms of control which prevent them from leaving or escaping exploitative conditions.

In the UK, the National Crime Agency estimates that there are between 10,000 and 13,000 people enslaved (HM Government, 2019). However, as modern slavery is a "hidden" crime, the figures are likely to exceed this. The government have identified 17 types of modern slavery offences in the UK, characterised into four broad groups: labour exploitation, domestic servitude, sexual exploitation and criminal exploitation (Home Office, 2017). In 2019, the National Referral Mechanism (NRM) – the UK's system for identifying and supporting victims – recorded 10,629 potential victims of modern slavery, a 52% increase from the previous year (Home Office, 2020). Labour exploitation was identified as the most common form of exploitation for adults recorded. According to the UK government, there are three ways in which victims are exploited: victims may be exploited for multiple purposes in isolated environments; victims may be forced to work directly for offenders in businesses or sites that are owned or controlled by the offenders; and victims may be employed in legitimate jobs but their wages may be controlled by their offender (Home Office, 2017). In all cases, individuals may be subject to a host of exploitative practices such as non-payment of wages, isolation, restriction of movement, retention of identity and personal documents, and abusive living and working conditions (ILO, 2012).

> **"** In 2019, the National Referral Mechanism – the UK's system for identifying and supporting victims – recorded 10,629 potential victims of modern slavery, a 52% increase from the previous year (Home Office, 2020)"

As the NRM system aggregates all labour exploitation into one category, rather than breaking it down by sector, there is a lack of information on the type of sectors people are exploited in. However, high-risk areas for labour exploitation are said to include sectors such as agriculture, manufacturing, warehouse and distribution, and construction (GLAA, 2018).

The construction sector has been characterised as a high-risk area for labour exploitation and modern slavery due to pressure to reduce costs, the use of subcontractors and recruitment agents, and its reliance on migrant labour which is considered the "lifeblood" of the sector (Crates, 2016). Therefore, exploitative labour can be present in the sector's product supply chains in materials used on construction sites and in its labour supply chains, particularly where labour is outsourced or recruited through agents. Similar to other sectors, unethical recruitment agencies can exploit workers in a number of ways: by forcing them to pay unlawful recruitment fees; having workers sign a contract they do not understand or agree

to misleading working terms and conditions they would not have otherwise agreed to if they were aware of the true nature of the work; withhold a worker's wages; retain their passports and identity documents to restrict their movement; and compel them to work and/or impose a debt on workers for loans with increasing interest rates.

In 2015, the UK government introduced the Modern Slavery Act to strengthen its efforts in combatting modern slavery. Section 54 of the Act requires commercial organisations with an annual turnover of £36 million or more to report on the steps they are taking to ensure that their supply chains and operations are not tainted with slave labour. In response to the Act, the SCSS developed the Procurement Guidance in 2015 (SCSS, 2015) to help organisations identify their risks, embed the modern slavery requirements within the prequalification and contracting process and support the auditing and supply chain management processes. The Guidance was written for procurement professionals, sustainability advisors and individuals who make procurement decisions as well as those who support them. It provides guidance on how to address the issues relating to modern slavery through everyday procurement activities and has been specifically written for sectors covered by the SCSS (Construction, Facilities Management, Infrastructure, Homes and Off Site). As of December 2019, the Guidance has been downloaded over 250 times.

The aim of this report is to outline the impact of the Procurement Guidance on the policies and practices of a selection of UK businesses and identify knowledge gaps that practitioners wish to have filled around how to make their businesses resilient against modern slavery.

> " Section 54 of the Act requires commercial organisations with an annual turnover of £36 million or more to report on the steps they are taking to ensure that their supply chains and operations are not tainted with slave labour.

Methodology and profile of respondents

A semi-structured online survey was disseminated to members of SCSS who downloaded the Procurement Guidance. Thirty-two organisations completed the survey, four of whom took part in a follow up interview with SCSS and the Rights Lab. The survey and interviews took place between April and July 2020. Of the organisations that responded, 59% were SMEs. Thirty-five (35) percent of respondents operated in the construction sector, 28% in infrastructure, 9% in facilities management and 6% in homes and residential. The remaining 22% represented organisations working in self-ascribed areas such as training, plant hire, raw material supply, lone worker safety, elevators, escalators and related services, security provision, and energy and sustainability. By registering with SCSS, members and partners are able to freely access a wealth of resources and training opportunities such as e-learning modules, toolbox talks, webinars, presentations and documents.
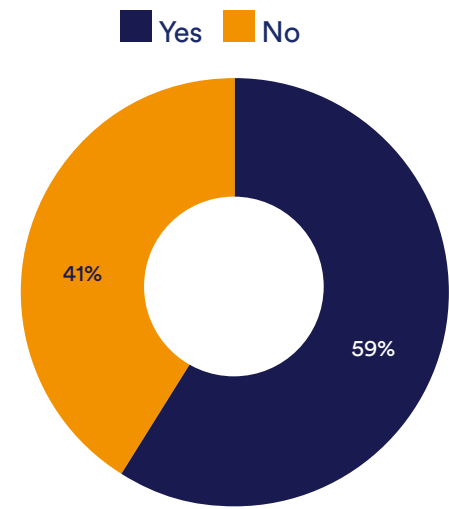
Figure 1 : Organisations categorises as an SME

■ Yes ■ No

Figure 2: Sectors in which organisations operated

■ Construction
■ Facilities management
■ Homes and residential
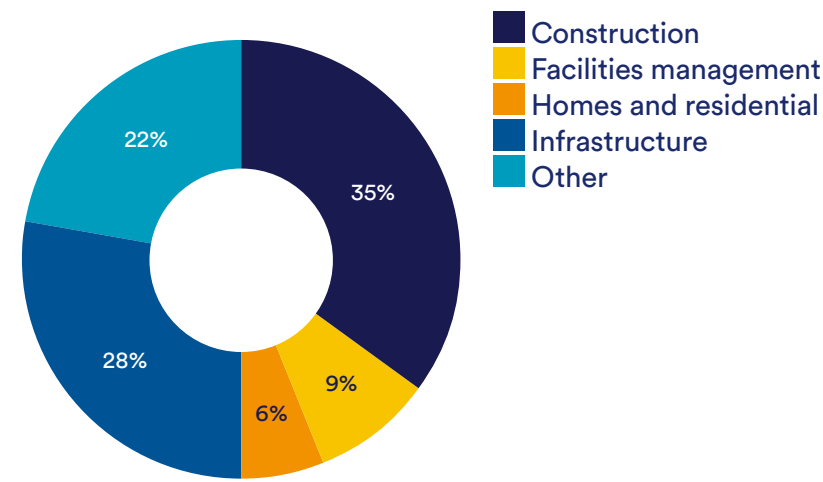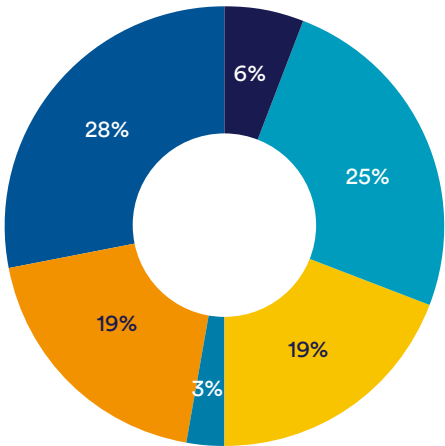■ Infrastructure
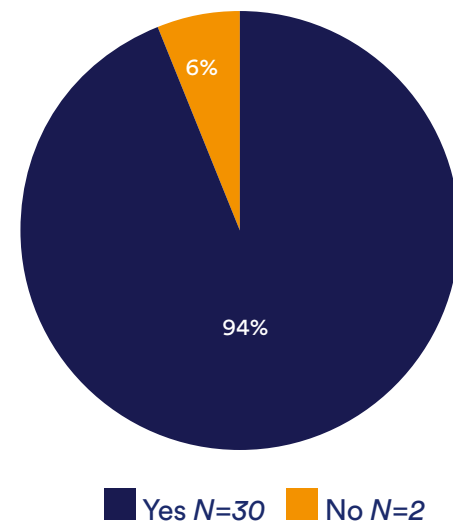■ Other

Figure 3: Knowledge of Procurement Guidance

■ Action plan recommended resource
■ An email from the School
■ At a School workshop or supplier day
■ Other
■ Recommendation from a peer or client
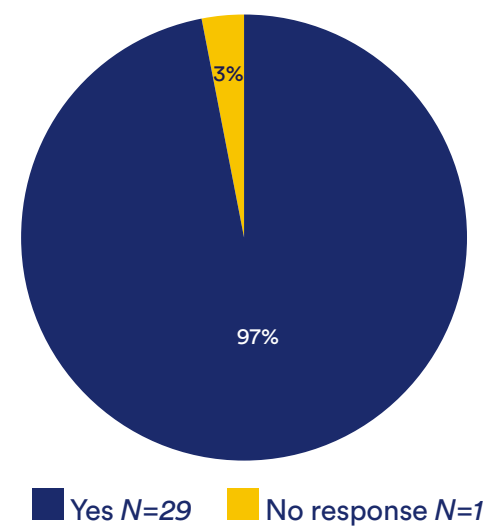■ School website search

Results

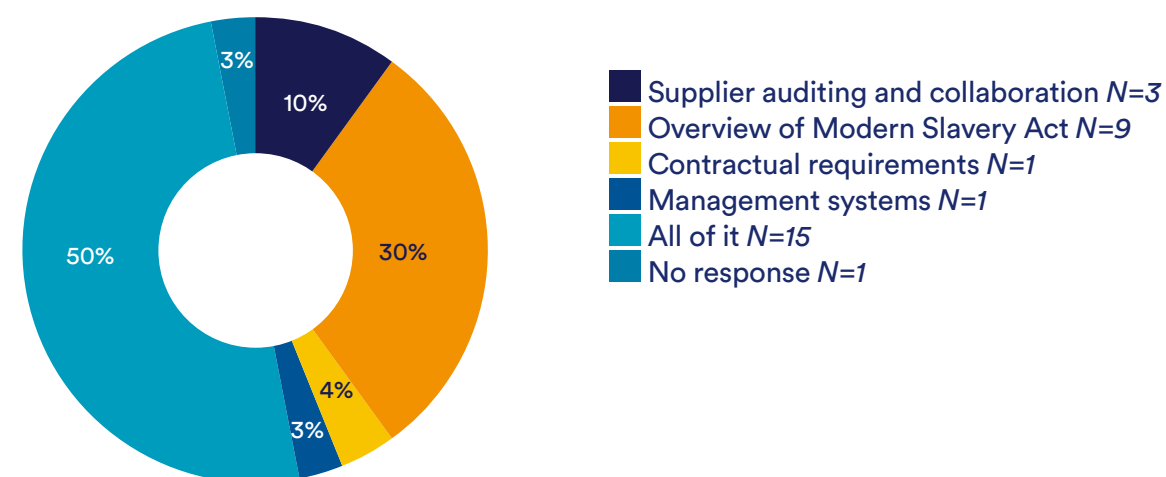**1. When you downloaded the Guidance, did you read it?**

94%

6%

■ Yes *N=30* ■ No *N=2*

2. If you read the Guidance, have you found it useful?

97%

3%

■ Yes *N=29* ■ No response *N=1*

3. Which elements were most useful?

3%

10%

50%

30%

4%

3%

■ Supplier auditing and collaboration *N=3*
■ Overview of Modern Slavery Act *N=9*
■ Contractual requirements *N=1*
■ Management systems *N=1*
■ All of it *N=15*
■ No response *N=1*

4. Have there been any changes you have observed in the construction industry, in part of in full, that may have arisen as a result of the Procurement Guidance?

16%

19%

6%

59%

■ Yes *N=5*
■ No *N=6*
■ No answer *N=2*
■ Not sure *N=19*
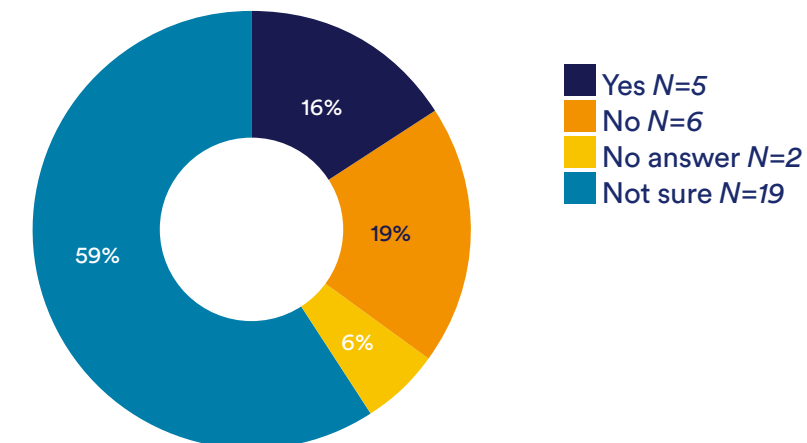
66 Greater emphasis on compliance within public sector and public funded projects."

— **Construction company**

66 More collaboration, greater awareness of the issue, more transparency, better understand[ing] of materiality and risk assessment."

— **Infrastructure company**

66 Greater detailed audits from clients to identify anomalies."

— **Infrastructure company**

5. Have you established, changed, or amended any practices or policies, however large or small, that would be attributed in part or in full, to the Procurement Guidance?

6%

31%

63%

■ Yes *N=20*
■ No *N=10*
■ No answer *N=2*
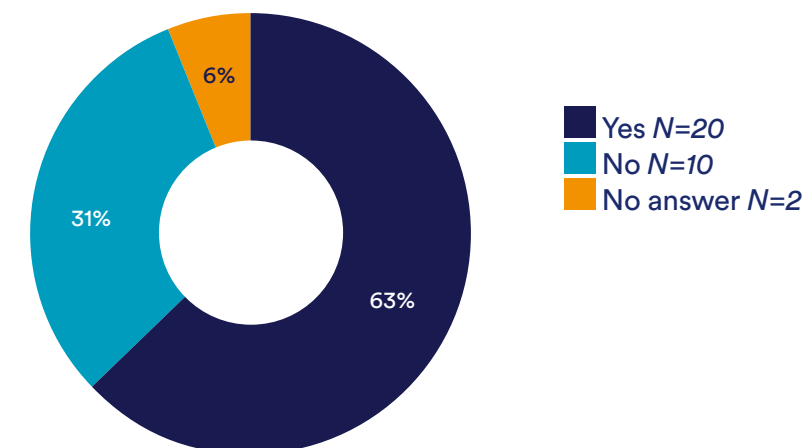
Many businesses implemented the Procurement Guidance in their organisations in a number of ways. This included using the Guidance to introduce, update and/or review their policies to strengthen their procurement processes, engage with suppliers and integrating the Guidance into their supplier assessment and inform their modern slavery and human trafficking statement:

> **Update of modern slavery policy and requirements within our procurement and supply chain charter documents."**
>
> – Construction

> **We have reviewed our whole process."**
>
> – Infrastructure

> **Strengthened our detailed registration process increasing the thorough investigation into the validity of registration documents."**
>
> – Infrastructure

> **We introduced a slavery policy which we didn't have previously."**
>
> – Construction

> **The Guidance has helped form the foundation of our training modules and transparency statement."**
>
> – Infrastructure

> **Changes to our supply chain approval process."**
>
> – Security provision

> **Revised and updated policies and procedures along with additional training for our people."**
>
> – Construction

> **Implemented a formal policy of supplier assessment."**
>
> – Construction

> **Discuss risk assessment and procurement standards for our suppliers."**
>
> – Elevators, escalators and related services

> **It has helped us to review our policies and the policies of others that we do business with."**
>
> – Lone Worker Safety/ Monitoring Solutions

> **Integrated into PQQ questions and supplier assessment."**
>
> – Infrastructure

> **Pre and post contracting assessment of risk and performance."**
>
> – Infrastructure

Case study 1: **Facilities management**

A facilitates management organisation responsible for providing labour reported that the Guidance was a useful tool for "opening the conversation" around modern slavery risks with procurement personnel and educating their own business development team on what good looks like: "I've been very vocal about the way the procurement department really don't consider a lot of the workers in the way that they purchase. So we found it particularly useful in helping the sales team and those frontline business development workers open the conversation with procurement personnel about justifying their charge rates… having these guidance notes and having dialogue coming from cross-party and cross-sector is what really helps get people thinking." Since adopting the Guidance, they have ran several awareness raising campaigns which resulted in 53% of their service contracts committing to paying workers the real living wage. The organisation reported: "as long as you're having that conversation, you're then starting to humanize the service, as so often human capital is borne as a commodity, so being able to humanise the whole service is the most important factor that anyone of us in the industry should be able to do."

The organisation noted that a key limitation of the Guidance is the lack of enforcement which makes it difficult to cascade responsibility: "The biggest thing is really, there's got to be teeth to it…cause so many times when we say to our [service contractors], well look you see the information, you read the guidance…if they're not living up to that, that's their problem, not ours. That's the service company problem, not my tier one contractor's problem…"

Case study 2: **Infrastructure**

An infrastructure organisation felt that "Being part of SCSS has had a great impact, because you learn more and then reading about it, having the guidelines. [Being] a managing director of a company – you have to make sure your processes and procedures are in place to meet the demand." However, the organisation voiced that while the Guidance provided useful information, "it takes long to digest" particularly for smaller organisations. They suggested that the Guidance is written more towards clients in tier 1 and tier 2 and should be simplified for smaller businesses as they may not go through a procurement process that robustly. Therefore the Guidance needs to meet the needs of organisations further down the supply chain.

Case study 3: **Infrastructure**

An infrastructure organisation highlighted that there were elements of the Guidance they were already working on, however, they used the Guidance to review their own processes. For instance, they used some of the pre-qualification questions provided by the Guidance and embedded them within their own assessment tool: "We created a supplier engagement toolkit and incorporated quite a lot of the approach and some of the question sets into our toolkit from the guide. The whole model around risk assessment and embedding into the procurement process, we sort of sense checked against that. So that was really useful from that perspective…We cut and paste some of the questions in the document into our pre-qual and into the tenders that we were having."

The organisation also used the Guidance to help shape their procurement process: "What we have done, is embedded things more fully into the procurement process…so we looked at the whole of our supply chain, did a risk assessment, identified where the potential issues could be in terms of…the sectors that we're working…identified about 40 suppliers…[and] had face-to-face discussions." Further, they stated "[We] embedded questions around modern slavery and human rights into our procurement process so rather than doing an ad hoc risk assessment every year…we've got some quite specific questions embedded in there and we'll have action plans as part of the contracts so it's an ongoing rather than one off exercise."

While the organisation found the Guidance useful, one of the challenges they experienced was the lack of evidence and information on specific risks in their supply chains: "The things we were trying to get a bit more granularity on was around the sectors, so how we identify the risks in particular areas… it was quite top level in terms of construction…[however] where we were trying to identify what would be the real hotspot in our categorisation – so would it be concrete, or steel? So that specificity at category level which would be really useful…so we had to do it at a more generic level than we probably wanted to." Additionally, they also found it challenging using the Guidance to map their supply chains and engaging with suppliers: "We're still stuck on that in terms of getting into the depth beyond tier 1. It's starting to come on the radar particularly because of the current situation [Covid-19], not necessarily because of the human rights agenda but because of the continuity of the supply aspect and knowing where things come from…We can provide data for tier one but not for data down the tiers. And I'm challenging back on that a little bit because I don't want to go out to my suppliers and asking them information…and then somebody else might ask for the same data again."

Case study 4: Infrastructure

An infrastructure company "credited the school with the identification of modern slavery as a massive risk to our business." The organisation used the Guidance to help inform their process, in particular their category management process which screened suppliers and assessed their level of risk. This included conducting a risk assessment at a subject matter or category strategy stage followed by an assessment of suppliers to see what processes they have in place and working with them to improve their own practices: "We've made small but quite significant changes…[We] have more of a holistic process that identifies from a category management perspective what risks have we got and that same heat map (in post contract) comes into effect but is done on an individual supplier basis and it has specific actions at the end." This approach has been applied to over 40 of their suppliers which equate to over 60% of the organisation's spend.

A key challenge for the organisation in adopting the Guidance is being able to identify what good practice looks like and communicating their expectations to suppliers: "The biggest challenge for me…I don't think it's something the school can solve…is what does good look like…nobody at the moment knows what good looks like…the [Modern Slavery] Act isn't strong enough, no consistency – we're asking suppliers for one thing, somebody else is asking them for another thing…and what we're doing is building in time, costs, and duplication…I understand that's not something the school can solve because it's a much bigger issue but it's that for me, being able to say this is what my expectations looks like across the piece, this is standardization, this is what good looks like." The organisation voiced the difficultly in engaging suppliers who find it challenging to respond to their expectations: "People understand the issue but how do we put that into practice? How do we make it transparent and easy to be able to make suppliers respond? I don't believe suppliers want to be difficult, they just don't understand what it is that we're asking them to do. And that's why these resources through the school are so important to use because they're the tools that we would use – so we can't say at the moment to suppliers this is what minimum standard is but we can say here are the free tools and resources, go and upskill yourselves – use that and come back to us." Relatedly, the organisation suggested that revised versions of the Guidance include dialogue from a variety of angles, in particular, the suppliers' perspective: "Unless you live and breathe it from a procurement perspective, you don't know what they mean. So, for people who are brand new to this, some of our suppliers…what do we actually mean? What do we actually want you to say? If I was coming at it as a supplier thinking 'I have no idea what this is, what is it you're looking for from me?'

Impact of Covid-19 on the construction industry

Given the outbreak of the novel Coronavirus that was declared a pandemic by the World Health Organization in March 2020, the interviews briefly explored the impact of Covid-19 on the construction sector. Covid-19 has had an unprecedented and profound impact on the construction industry in the UK. The government lockdown measures have required people to work remotely from home. However, while some workers in the sector have been able to do so temporarily, others have been either furloughed, continue to work on site, or have lost their jobs. Further, with social distancing measures introduced to ensure health and safety, businesses have had to ensure that their workplaces are adapted to minimise the risk of workers catching and transmitting the virus. While there remains a lack of evidence on the short- and long-term impact of Covid-19 on the industry, extant studies have suggested that organisations have faced issues such as cash flows, delayed contracts and shortage of materials (Stride, Suresh and Renukappa 2020). Relatedly, it has been suggested that Covid-19 has resulted in productivity losses amounting to 35% on construction sites in the UK (CIOB, 2020).

While there is also a lack of evidence on the impact of Covid-19 on workers at risk of modern slavery, the pandemic is likely to pose additional risks by exacerbating the vulnerabilities of individuals, increasing their susceptibility to exploitive practices during and post-Covid-19.

A common concern was the increase of labour to the market, though it is expected that there will be a lack of employment opportunities. The organisations reported that while there may be an uptake in construction productivity post-lockdown, businesses are working to reduce costs by either employing cheaper labour or reducing their infrastructure costs. One organisation reported: "[If] we get this massive uptake in construction productivity, you're going to get back to those 2009/2010 levels where people are buying workers at 0.5% margins to run it so it's going to get really tight. Any third-party costing measures are where they're going to first push back down, so the labour market is going to suffer and again a lot of these businesses are now. People are going to be moving out of offices…a lot of clients are [saying] we don't need so many floors in this building, so we do still need to keep the cleaner, but we only need them 2 hours a day not 6 hours a day. So, they'll be a lot of people taking pay cuts and there is going to be a lot of desperation at the bottom of the market – there are going to be hard times at the low end. Without some kind of regulatory guidance, then I think that exploitation is naturally going to climb." Another voiced a similar concern: "What I'm seeing…is that pressure on resources, everyone coming back at the same time. Where is that labour coming from? Is that going to put a squeeze on things over a very short period of time? I'm going back to suggest that we do a bit of a case study to make sure we do things right. I know we chose some new suppliers and had to get things in a very short time and I think for us its making sure we try and embed the things that we have put in place from 12-18 months ago…did we actually stick to the rigour around that? One of the things we're demanding more… is that when things fall short, [we] go back and re-communicate some of those messages and making people more aware of those potential greater risks on that leg period of coming back and people trying to accelerate things. I'm hearing some things around tendering…everyone's trying to squeeze things really quickly to get things up and running again and are you making sure you don't make shortcuts in that process?"

Additional support organisations would like in combating exploitation in their supply chains

- Stronger action by Government and law enforcement

- Further tailored support for specific areas of construction (for example, facilities management and infrastructure)

- Tailored guidance for smaller organisations

- Additional opportunities to collaborate with SCSS

- Additional evidence and case studies to demonstrate best practice and influence behavioural change

- National and/or international standards to ensure that the playing field is levelled to a consistently high standard

- A practical tool to help with the risk mapping exercise. In particular, a tool that includes, for example, high-risk countries and industries which calculates risk exposure and provides additional support on what data should be collected or tracked

- Further guidance to encourage senior leaders to ensure that their policies are translated into action

- Ongoing reporting and updates on the work that organisations are carrying out to mitigate the risk of slavery in their operations

- More joined-up approaches to minimise the burden of suppliers answering questionnaires from each customer

- Regular communication of responsibilities

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