

Making a difference Modern slavery in a safety context

Sean Elson
Partner

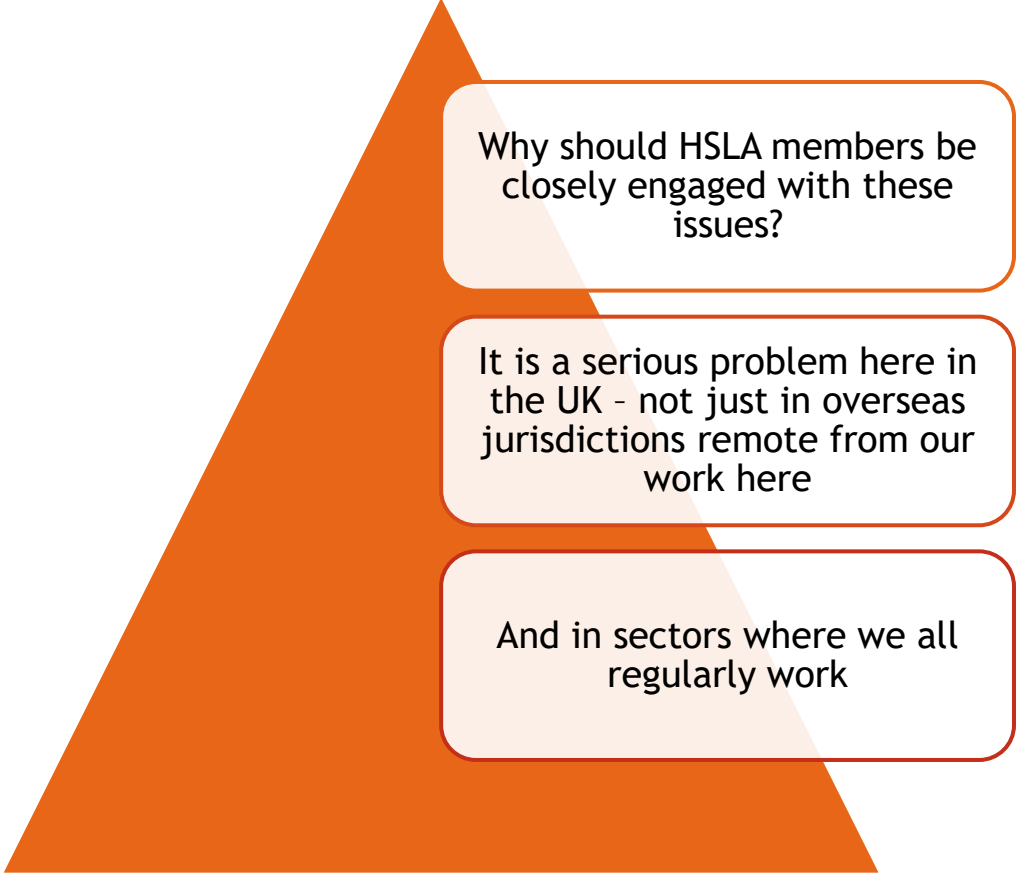
Pinsent Masons LLP

A purpose-led professional services
business with law at the core

For today



Relevance?

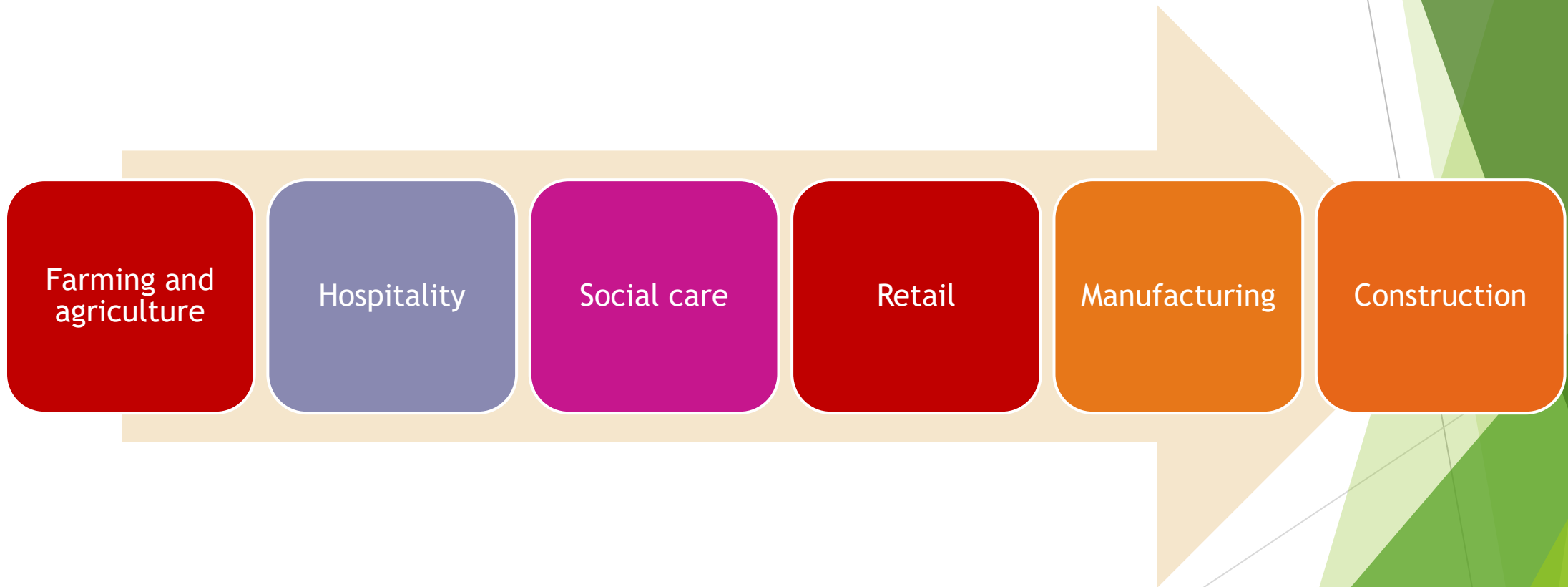


Why should HSLA members be closely engaged with these issues?

It is a serious problem here in the UK - not just in overseas jurisdictions remote from our work here

And in sectors where we all regularly work

Pervasive across the sectors where we are all working



Safety and Forced Labour - Linked issues

ESG has become a catch all for ethical business conduct

It's OK to be sceptical about whether this is the latest fad

“ESG”

Problem is it often becomes a conversation about environmental concerns and carbon

We should be part of the conversation as others are clear that H&S and labour issues are important elements

An example - the OECD

- ▶ The OECD has issued relevant guidance
- ▶ Guidelines for Multi-National Enterprises (MNE) for Responsible Business Conduct:
<https://doi.org/10.1787/81f92357-en>
- ▶ Due Diligence Guidance for Responsible Business Conduct
- ▶ With further sector specific guidance in areas such as mineral supply chain and garment and footwear
- ▶ OECD explicitly places “labour rights” in there alongside environment, tax, bribery and corruption etc.



International Labour Organisation (the ILO)

The ILO Forced Labour Convention 1930 (No.29) is one of the bedrocks of defining forced labour

ILO Forced Labour Indicators will be deployed in trying to establish the position of alleged victims

It also engages with the issue of occupational safety and health and in drawing a direct link has stated:

“

“Migrant workers (especially in disadvantageous work situations) are believed to often avoid reporting occupational accidents and diseases or seeking medical care for fear (of being dismissed, of high costs they cannot afford, of intervention by the authorities etc.)”.

Touch Points (not synergies)





Real world application

We deal with fatigue in a safety context

Working very excessive hours or not taking holidays is a red flag for forced labour

Organisations must manage groups of workers where English is not their first language

Groups of workers being organised by a single individual is another red flag

Organisations are increasingly focussed on worker wellbeing

Exploited individuals face enormous welfare issues such as mental health and poverty

Unkempt appearance are another red flag

So safety reps/supervisors/package managers and similar are at the front line

No organisation has a modern slavery/forced labour team!

Where is the law?

UK Modern Slavery Act 2015 was seen as leading the way on this issue

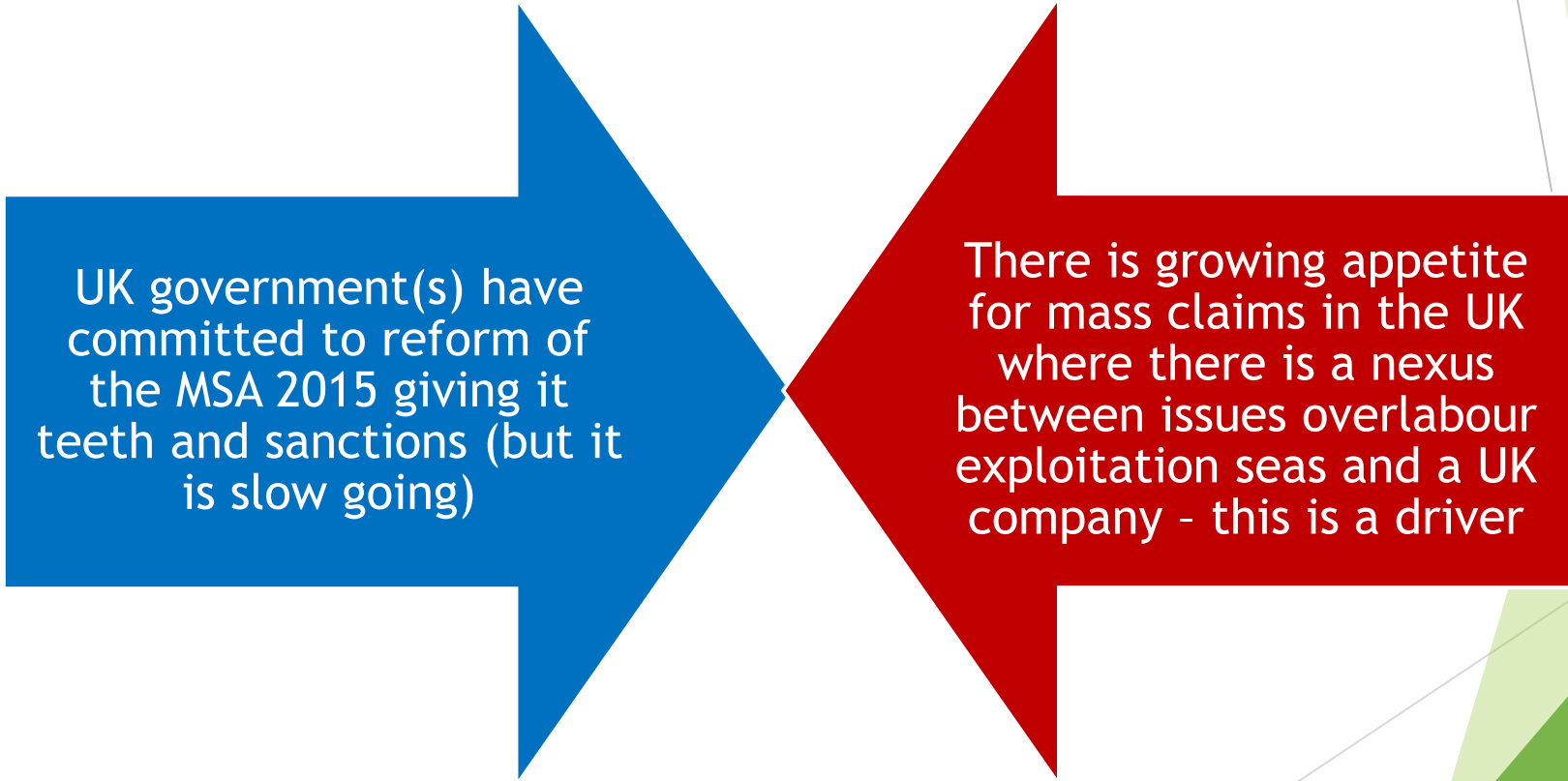
Defined in statute a number of offences relating to human trafficking and forced labour

The UK has been left behind with developments in Europe

German Supply Chain Act and at an EU level the Corporate Sustainability Due Diligence Directive (CSDDD or CS3D)

The legislative position is important but it's not everything

Where might we be needed?



UK government(s) have committed to reform of the MSA 2015 giving it teeth and sanctions (but it is slow going)

There is growing appetite for mass claims in the UK where there is a nexus between issues overlabour exploitation seas and a UK company - this is a driver

And more of the same

Lots of commentary around shareholder/investor/funder claims around environmental compliance/false prospectus/reporting


Why are such claims based around ethical labour issues going to be any different

Especially in an environment where organisations have been “finding their way” concerning the content of the UK obligation on annual transparency statements

Claimant firms are working closely with NGO's and global activists in identify affected persons resulting in letters of claim and proceedings being issued

Public bodies are susceptible to public law judicial review (Pinsent Masons has been involved in one) as well as procurement challenges

Final word on the legals



Many of us will have collaborated with colleagues dealing with contractual claims where “health and safety failings” are being used to either justify or support a contract claim or termination

In view of the increased use of contract terms/warranties around ESG generally and forced labour specifically this must be an area where a similar approach may arise

Conclusion - safety practitioners as trusted advisors

Working with colleagues on suitable wording for corporate warranties/contract terms etc./or bringing or defending civil claims alleging labour abuses

Upskilling or leading debate with safety leads, General Counsel, Boards - bring to their mind the inextricable link between workplace safety and potential for exploitation

Embed this issue and make it pervasive within our corporate and board training

We support client H&S investigations - as regulatory lawyers with a feel of what is right in terms of labour conditions - we can be a first point of contact to do the same if whistleblowing or concerns are raised in this context

When the time comes and inevitably there are consequences for non-compliance including civil sanctions and fines let's ensure that the regulatory expertise here within the HSLA is there to help and support organisations

