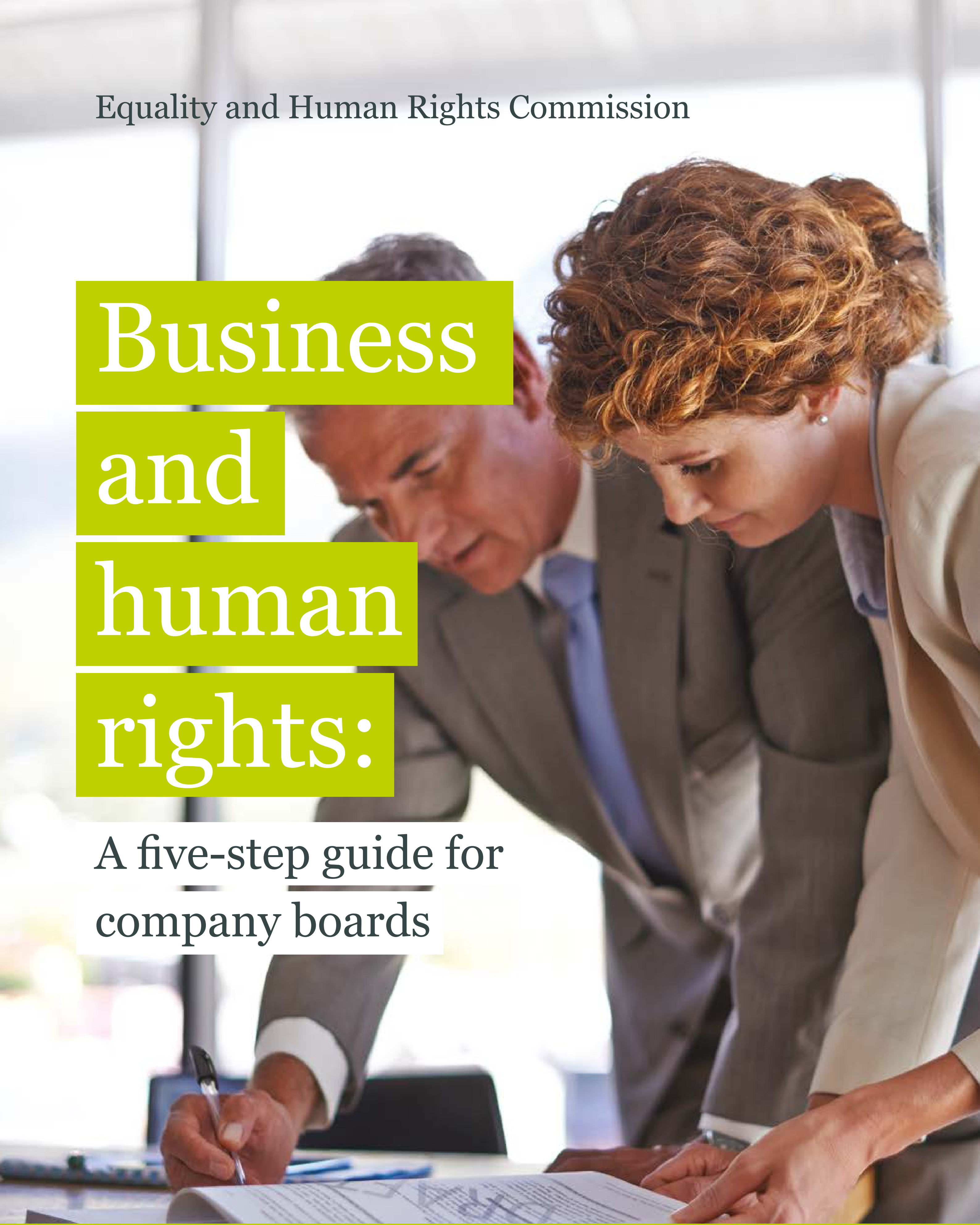
Equality and Human Rights Commission



Business and human rights:

A five-step guide for company boards

Equality and Human Rights Commission

About this publication

What is the aim of this publication?

This guide is for boards of UK companies. It sets out five steps boards should follow to satisfy themselves that their companies identify, mitigate and report on the human rights impacts of their activities. These steps will also help boards to reflect their leadership and fiduciary duties.

This guide also provides advice on how boards can meet the UN Guiding Principles on Business and Human Rights, the global standard, which outline the role of business and governments in respecting human rights. The Guiding Principles do not create any new international legal obligations on companies, but they can help boards to operate with respect for human rights and meet their legal responsibilities set out in domestic laws. They are also supported by the UK Government.

Why has the Equality and Human Rights Commission produced it?

The Equality and Human Rights Commission is a statutory body established under the Equality Act 2006 to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote human rights. We are also a UN-accredited ‘A status’ National Human Rights Institution.

Acknowledgements

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Introduction

Human rights are basic rights and freedoms for everyone based on dignity, fairness, equality and respect.

A company may affect people's human rights through its own activities or through its business relationships. Examples include child labour or forced labour within the supply chain; breaches of individuals' privacy or restrictions on free speech; poor safety or security practices; and environmental pollution causing harm to people's health. These impacts on human rights can arise in business operations abroad or in the UK and can result in local or global operational, financial, legal or reputational risks, such as complaints, litigation, or operational delays that drive up costs and harm the company brand.

When companies operate with a culture of respect for human rights they become brands, partners, investments and employers of choice. This guide sets out the five steps boards should take to satisfy themselves that their companies understand the potential human rights impacts of their activities, take effective steps to mitigate or remedy them, and report on how they do this.

This guide also provides advice on how boards can meet the UN Guiding Principles on Business and Human Rights, the global standard, which outline the role of business and governments in respecting human rights. The Guiding Principles do not create any new international legal obligations on companies, but they can help boards to operate with respect for human rights and meet their legal responsibilities set out in domestic laws. They are also supported by the UK Government.

The UN Guiding Principles are based on a 'Protect, Respect and Remedy' framework which says that:

- states have a duty to protect against human rights abuses by third parties, such as business, through their policies, regulation and adjudication
- companies have a responsibility to respect human rights, that is, to avoid infringing on the rights of others and to address any infringements with which they are involved, and
- states and companies must take steps to ensure that there are effective judicial and non-judicial remedies available to people whose human rights are abused.

The Five Steps

We recommend that boards should follow five steps to ensure that their company is fulfilling its responsibility to respect human rights in a robust and coherent manner that meets the expectations of the UN Guiding Principles and UK statutory reporting obligations. Boards should be aware of the company's salient, or most severe, human rights risks, and ensure the company:

1. embeds the responsibility to respect human rights into its culture, knowledge and practices
2. identifies and understands its salient, or most severe, risks to human rights
3. systematically addresses its salient, or most severe, risks to human rights and provides for remedy when needed
4. engages with stakeholders to inform its approach to addressing human rights risks, and
5. reports on its salient, or most severe, human rights risks and meets regulatory reporting requirements

There are questions to guide board members' discussions with senior management on p.17.

Step One: Ensure the company embeds the responsibility to respect human rights into its culture, knowledge and practices

Ensuring the company has a public commitment to respect human rights is the foundation for a culture that makes human rights a consistent part of how it does business, works with partners, manages risks and reports on activities.

The board and senior management should provide a consistent narrative and messages about the significance of respect for human rights to the success of the company.

As part of the board's overall responsibility for determining the nature and extent of the company's principal risks, the board should satisfy itself that it understands likely human rights risks in its sector, the company's most salient human rights risks, and how it manages or mitigates them.

The board should ensure that at least one of its members has business and human rights expertise and/or appoint a human rights champion. The board should be aware of the range of human rights contained in the Universal Declaration of Human Rights and the International Labour Organization's core conventions, as well as the standard of conduct for business set out in the UN Guiding Principles.

The executive team should confirm to the board that it has expertise on human rights, distinct from other aspects of sustainability.

To understand how the company has embedded human rights across all business practices, the board should ask for information and evidence on how it has:

- allocated lead responsibility for human rights at operational and senior management levels, and equipped staff for those roles
- ensured shared responsibility across different company functions whose actions and decisions may pose risks to human rights
- implemented governance procedures to make sure the most severe and systemic human rights issues are escalated to the board
- encouraged staff to talk openly about human rights issues, including tensions between human rights and commercial priorities
- provided performance incentives that motivate staff to manage human rights risks
- learned from its experience in identifying and mitigating human rights risks to support continuous improvement, and
- identified indicators to assess the effectiveness of its human rights risk management processes.

Step Two: Ensure the company identifies and understands its salient, or most severe, risks to human rights

Human rights due diligence focuses on risks to people, not risks to the business.

It is an ongoing process through which a company understands when, where and how it could impact on human rights, prioritises these risks for action, takes steps to address them, tracks the effectiveness of its efforts, and communicates with internal and external stakeholders.

The UN Guiding Principles make clear that companies should prioritise human rights risks based on their severity, that is, how grave, widespread and hard to remedy they are. These are the company's salient human rights issues.

The process of identifying the salient human rights issues not only helps a company understand where the greatest risks to people lie across its business, it also helps a company uncover where rights-related risks to the business are likely to be found.

Certain risks to human rights can be integral to what a company does, where it works, how it is structured and the way it makes decisions. The board should periodically review these high-level risks. Examples include:

- **Business model risks:** for example, companies that rely on bringing cheap products to market with narrow profit margins for suppliers, on being fastest to market, or on highly seasonal production, may incentivise suppliers to pay their workers below the living wage, require excessive overtime, and cut corners on safety.
- **Business relationship risks:** for example, a company in a joint venture with a government that has a poor human rights record may find that its licence to land or mineral rights is awarded without due process and consultations with local communities, or that police or military suppress community opposition.

- **Operating context risks:** for example, a company working in regions with high levels of conflict, corruption or weak rule of law is likely to face increased risk of involvement with human rights abuses, which arise more easily and are less likely to be remedied in these contexts.
- **Workforce risks:** for example, a company with a significant proportion of low-skilled migrant labour in its workforce or supply chain, or which encourages the use of workers on contract from a third-party employer, may find that these workers lack full legal protection, freedom of association rights and access to remedy, and also face exploitative working conditions.
- **Public policy risks:** for example, a company that lobbies against laws and regulations that protect human rights may undermine a state's duty to do so, making it more difficult for companies in general to operate in that country with respect for human rights.

For further information about these risks and examples of mitigating measures, see **www.equalityhumanrights.com/businesshumanrights.**

Step Three: Ensure the company systematically addresses its salient, or most severe, risks to human rights and provides for remedy when needed

When a company has identified its salient human rights risks as part of its due diligence, it should then consider how it can prevent or reduce them.

It should also provide for remedy if it causes or contributes to any harm to people's human rights.

Companies can use their influence to reduce risks to human rights occurring through their value chains and other business relationships. Boards should review how their companies mitigate these risks using different types of influence. Examples include:

- **Commercial influence:** companies may: use terms of tenders, contracts or joint venture agreements to set human rights standards, and audit their supply chains to ensure they are implemented; and promise better prices or future business to partners that meet human rights standards. When severe impacts persist despite efforts to mitigate them, companies should consider ending business relationships.
- **Business influence:** companies can improve the standards and business practices of their suppliers through training, integrating international or industry standards into negotiations, and delivering a consistent message to partners about their approach to human rights across all levels and parts of the company.
- **Influence through action with business peers:** companies can work with their peers to develop joint solutions to shared human rights challenges, for example, they can agree standard requirements for suppliers or a joint public stance on human rights standards in discussion with a government.

- **Influence through action via local and international organisations:** to reduce human rights risks companies may help build the human rights knowledge and skills of local industry associations, encourage better enforcement practices by local governments, and work with governments and international agencies to encourage law and practices that protect human rights.
- **Influence through multi-stakeholder initiatives:** companies can collaborate with business, governments, international and civil society organisations to develop, implement and monitor industry standards, or establish joint strategies for tackling systemic challenges.

Where a company identifies that it has caused or contributed to a negative impact on human rights, it has a responsibility to provide timely and effective remedy to the people who are affected. Boards should ensure that the company has fair and transparent processes in place to receive and address complaints that are accessible to those whose human rights may be affected by the company's activities.

For further information about risks and examples of mitigating measures, see **www.equalityhumanrights.com/businesshumanrights.**

Step Four: Ensure the company engages with stakeholders to inform its approach to addressing human rights risks

As part of its human rights due diligence, the company should talk to a wide range of stakeholders to help it to:

- accurately identify human rights risks and impacts, and take effective action to address them
- understand how stakeholders perceive the actions the company takes to manage and mitigate risks and track their effectiveness, and
- integrate these insights into company decision making and practices.

Different types of stakeholders offer different perceptions of company activities and impacts. They include:

- people directly affected by a company's activities, such as staff, workers in the supply chain and their union representatives, local communities and their leaders
- experts who understand the perspectives and concerns of local groups, such as local non-governmental organisations and researchers, and
- experts who understand human rights issues in a particular industry or in high-risk geographical regions, such as national and international non-governmental organisations and trade unions, and socially responsible investors, lawyers and consultants.

The board should ensure that the company's engagement strategy:

- encourages openness to engaging with all stakeholder groups, including critics
- creates channels for communication with groups that lack influence but may be more vulnerable to impacts
- builds constructive relationships for dialogue rather than engaging only when it serves the company
- is delivered by staff with the right skills to communicate effectively
- supports the integration of stakeholder feedback into company decision making, and
- involves stakeholders affected by human rights risks in the design and promotion of the company's arrangements for dealing with complaints and grievances.

Step Five:
Ensure the company reports on its salient, or most severe, human rights risks and meets regulatory reporting requirements

The UN Guiding Principles make clear that companies should report on how they address severe human rights risks, that is, their salient human rights issues. The Guiding Principles enable companies to publicly explain how they meet their commitment to respect human rights to a wide range of stakeholders in a coherent narrative.

Reporting enables:

- the company to publicly explain how it meets its commitment to respect human rights to a wide range of stakeholders in a coherent narrative
- the company to comply with regulatory reporting requirements and to demonstrate that it is taking reasonable steps to address human rights risks
- stakeholders to evaluate how well the company understands and manages human rights risks and demonstrates that its policy commitment is reflected in practice, and
- investors, business partners and employees to identify the company as an investment/partner/employer of choice.

A company can choose to report on its salient human rights issues in its annual report, sustainability report or in a stand-alone document. Whatever form the reporting takes, it should be easy for stakeholders to find on the company website and written in a manner that is accessible to all readers.

To meet the UN Guiding Principles, the company's human rights reporting should:

- focus on its salient human rights issues and explain why and how it has determined this focus
- show how its commitment to human rights has been practically implemented across its business practices
- discuss how the company is tackling particular human rights challenges and provide clear and relevant examples demonstrating how its actions are influencing human rights outcomes, and
- include performance indicators or other metrics that offer evidence of progress over time.

The UN Guiding Principles Reporting Framework offers a good starting point for how companies should report and manage their salient human rights issues. A summary of UK statutory reporting requirements can be found on the next page.

Reporting requirements in the UK

The **UN Guiding Principles on Business and Human Rights** set the expectation that companies should identify and address human rights risks, and track and communicate how effectively they do so. This global standard is reflected in various areas of UK Government policy and law. The UK Government's 2013 National Action Plan on business and human rights states that companies should respect human rights wherever they operate. Recent amendments to EU and domestic law now place duties on companies related to disclosure about how they manage their human rights impacts.

The **Companies Act 2006** requires that UK listed companies include non-financial information in a strategic report to 'the extent necessary for an understanding of the development, performance or position of [the company's] business'.[1] The Act will be revised in 2016 to incorporate provisions of the EU Non-Financial Reporting Directive of 2014.

The **EU Non-Financial Reporting Directive 2014** applies to large public interest companies (including listed companies, banks and insurance companies) with over 500 employees. It requires the disclosure of information relating to human rights (among other issues) 'to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity'.[2] Such disclosure should include the company's policy and its outcomes, due diligence processes, principal risks, and (where relevant and proportionate) its business relationships, products or services that are likely to cause adverse impacts, along with information about how those risks are managed.

The **Modern Slavery Act 2015** requires boards to approve and publish an annual slavery and human trafficking statement on their website where the business has a turnover of £36 million or more and carries out any operations in the UK. The statement may include information about:

- the organisation's structure, business and supply chains
- policies in relation to slavery and human trafficking
- due diligence processes in relation to slavery and human trafficking in its business and supply chains
- 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

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[1] The Companies Act 2006 (Strategic Report and Directors' Report) Regulations 2013. See https://frc.org.uk/FRC-Documents/Accounting-and-Reporting/BIS-letter-guidance-on-narrative-reporting.pdf

[2] Directive 2014/95/EU of the European Parliament and of the Council 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. See Article 19a.

- 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, and
- training about slavery and human trafficking available to its staff.

The Financial Reporting Council's non-mandatory Guidance on the Strategic Report states that a strategic report should contain 'material' information. It explains that 'information is material if its omission or misrepresentation could influence the economic decisions shareholders take on the basis of the annual report as whole'.[3]

The Financial Reporting Council's UK Corporate Governance Code states that the board should confirm in the annual report that it has carried out a robust assessment of the principal risks facing the company, including those that would threaten its business model, future performance, solvency or liquidity.[4]

[3] Financial Reporting Council (2014), Guidance on the Strategic Report, Section 5.1.

[4] Financial Reporting Council (2014), UK Corporate Governance Code, Section C.2.

Human rights due diligence: questions for boards to ask of their executive teams

Board members may find these questions useful to guide discussions with senior management about the company's salient human rights issues.

1. What is the company doing to make respect for human rights a part of how it does business?

- Do company functions that pose risks to human rights have sufficient resources and responsibility to manage and mitigate those risks?
- Is there a senior manager actively leading on human rights in the company?
- Are there procedures for human rights risks and impacts to be escalated to the board?
- How are staff encouraged to raise human rights risks and take steps to mitigate and manage them? How are staff rewarded for doing so?
- What indicators assess the effectiveness of human rights risk management processes?
- Does a member of the executive team have expertise on human rights? Is there a board champion for human rights?

2. How does the company know what negative impacts it may have on people's human rights?

- Does the company assess its human rights risks across its operations and supply chain, geographic locations and decision making processes?
- What has the company identified as its salient human rights issues and on what basis? Has it drawn on the experience and knowledge of a broad range of stakeholders?
- How do senior management know whether the company's policies and processes related to human rights are effective?

3. What steps is the company taking to reduce and mitigate its risks?

- How does the company use its influence to reduce risks to human rights in its supply chain and other business relationships?
- What does the company do to ensure it is not contributing to human rights impacts through its own actions and decisions?
- Does the company work with others in the industry, or with multi-stakeholder groups to address human rights risks?
- What is the company doing to provide remedy if its own actions or decisions lead to impacts on human rights?

4. How does the company engage with stakeholders to help it understand and address human rights risks?

- Does the company engage with a broad range of stakeholders across its business to inform its understanding of human rights risks and its progress in reducing these risks?
- How do people inside or outside the company raise concerns about human rights impacts, and how does the company know whether these channels work?

5. Does the company explain which human rights issues it is reporting on and why?

- Does the company provide sufficient information to explain its human rights challenges and provide examples of how its actions are improving human rights outcomes?
- Does the report include indicators or other metrics to provide evidence of progress over time?
- Do senior management have enough information to meet regulatory reporting requirements?

Further resources

More information about business and human rights is available from:

The Equality and Human Rights Commission:
www.equalityhumanrights.com/businesshumanrights

The UN Office of the High Commissioner on Human Rights:
www.ohchr.org/EN/Issues/Business/Pages/BusinessIndex.aspx

The Business and Human Rights Resource Centre portal:
http://business-humanrights.org/en/un-guiding-principles

The UN Guiding Principles Reporting Framework:
www.UNGPreporting.org

Contacts

This publication and related equality and human rights resources are available from the Commission's website: **www.equalityhumanrights.com**

For advice, information or guidance on equality, discrimination or human rights issues, please contact the Equality Advisory and Support Service, a free and independent service.

Website	**www.equalityadvisoryservice.com**
Telephone	**0808 800 0082**
Textphone	**0808 800 0084**
Hours	**09:00 to 20:00 (Monday to Friday)** **10:00 to 14:00 (Saturday)**
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Questions and comments regarding this publication may be addressed to: **correspondence@equalityhumanrights.com**. The Commission welcomes your feedback.

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