

Equality and Human Rights Commission

Business and human rights:

Getting the right
process and remedy
in place for workers'
complaints



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What is the aim of this publication?

This publication is for operational managers in medium to large companies operating in England, Scotland and Wales. It aims to help companies establish an effective process for handling human rights complaints from workers across their business and supply chain. It is part of the Equality and Human Rights Commission guidance on handling and resolving human rights complaints¹ about your business, which also covers complaints from customers and communities about human rights issues.

We are grateful to everyone who contributed their expertise to the development of this guide, including Ergon Associates who facilitated its development.

Introduction

A company can have a harmful effect on the human rights of workers, including those who are not employees.

For example, a company might:

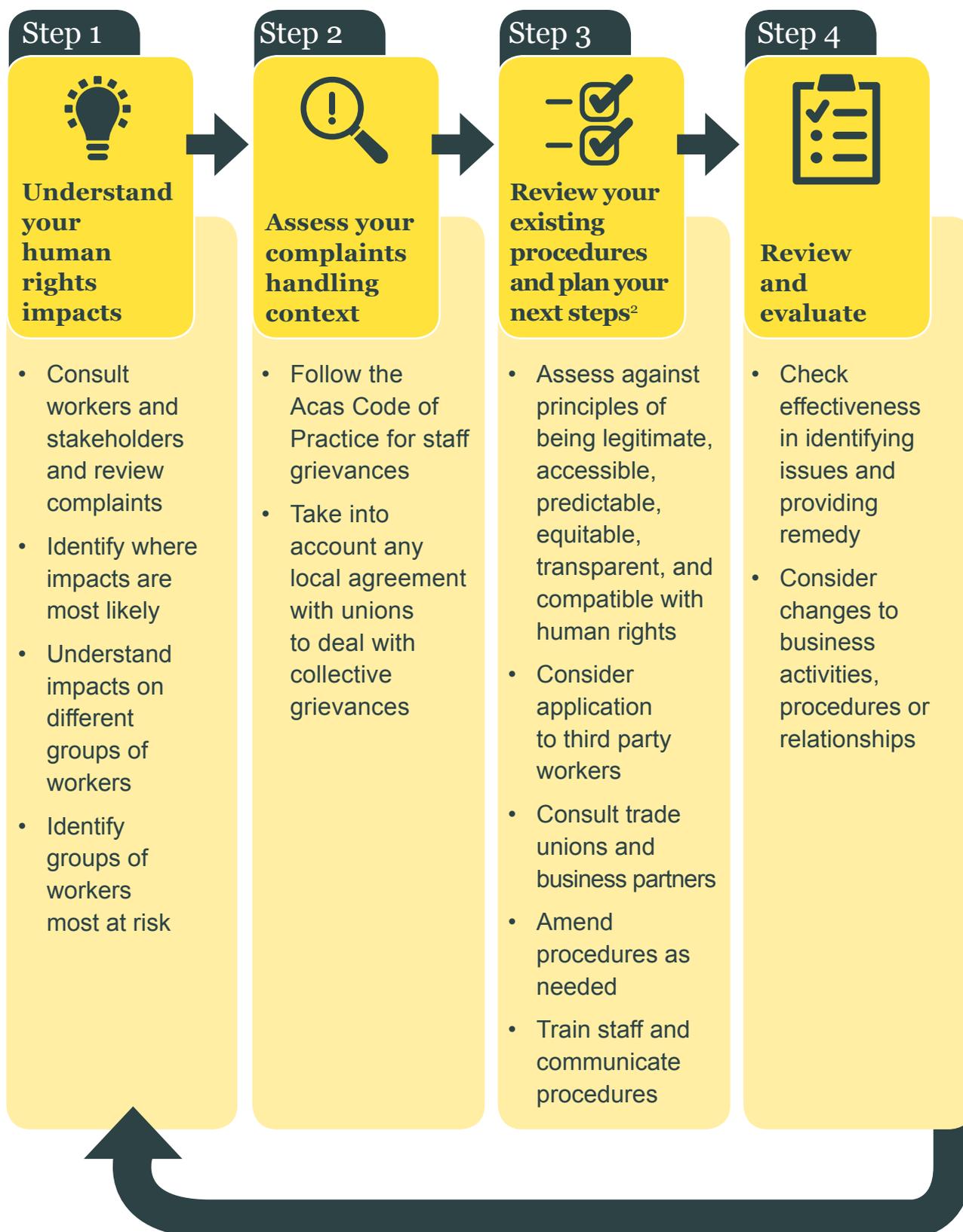
- Ignore dangerous or risky working conditions
- Penalise employees for being members of a trade union
- Discriminate against its workers, for example, because of their race, age or because they are pregnant
- Fail to prevent the exploitation of third party or contractor workers who are subject to excessive working hours, paid below the legal minimum wage or have been trafficked.

You can develop and implement an effective complaints and grievance process for employees and your wider workforce that includes human rights issues by following the four steps outlined in this guide. In addition, the Acas Code of Practice on disciplinary and grievance procedures sets out the basic principles of fairness to follow when an employee wishes to raise a grievance about an issue at work.

Effective complaints and grievance procedures will help you to demonstrate that your company respects the human rights of all the workers you rely on as well as meeting your legal responsibilities towards them. In the UK, businesses have obligations to protect workers that are set out in law, for example, the Employment Rights Act 1996, the Equality Act 2010, the Trade Union and Labour Relations (Consolidation) Act 1992 and the Health and Safety at Work etc. Act 1974. An effective complaints procedure can also help you avoid lengthy and potentially costly disputes.

You can find out more about what companies have done in the case studies at the end of this guide.

Four step guide to getting the right process and remedy in place for workers' complaints



2. Principles referenced in Step 3 are from The UN Guiding Principles on Business and Human Rights. Principle 31. See OHCHR. 2011. Guiding Principles on Business and Human Rights. Page 34. www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Step 1

Understand your human rights impacts



Your first step is to understand how your business potentially affects the human rights of your workforce. You can gather information by:

- Reviewing information about human rights issues in your sector or industry
- Analysing records of past complaints and grievances
- Talking to your human resources team, workers and trade unions about the risks and how effectively the company deals with complaints
- Identifying whether some workers are more likely to be at risk of negative human rights impacts, and
- Talking to contractors' workers or workers hired through third parties, such as agencies.

Whistleblowers and other third parties

Most complaints and grievance procedures provide remedy for the individuals directly affected by the issue. Third parties who may not be directly affected by an issue can also alert you to human right risks you may not have identified yourself.

For example:

- Whistleblowers either in the company or outside may identify human rights risks in your company's operations or business relationships
- Trade unions may identify human rights risks and problems in the workplace.

You should take these complaints seriously and investigate them.

Step 2

Assess your complaints handling context



You must ensure that your company complies with the UK legal framework and any industry standards for dealing with concerns, problems or complaints from employees. The Acas Code provides practical guidance to employers, employees and their representatives on what the law requires. Employment tribunals can increase awards if an employer unreasonably fails to comply with the Acas Code of Practice on grievance and disciplinary procedures,³ and the Public Interest Disclosure Act 1998 introduced protection for employees who raise concerns about certain kinds of wrongdoing.

Your company should also follow any collective dispute resolution procedures that deal with grievances affecting several employees.

3. Acas. 2015. Code of Practice on disciplinary and grievance procedures: www.acas.org.uk/index.aspx?articleid=2174

Step 3

Review your existing procedures and plan your next steps



Using the information you gathered in Steps 1 and 2, review how well your existing procedures identify and handle human rights-related complaints, including formal staff grievances.

Consider if you need to make improvements to your complaints and grievance procedure(s) to improve transparency, legitimacy, predictability and to increase staff trust in the overall process. For example:

- Does your procedure give an indicative timeframe for each stage of handling a complaint?
- Is your procedure handled by staff with the appropriate seniority, knowledge of human rights and of the procedure?
- Is your procedure applied consistently across your business?
- Are the likely outcomes of your procedure made clear?
- Are staff involved in the procedure kept informed of progress?

When reviewing whether your existing complaints and grievance procedures are accessible and fair, you should assess whether they:

- Are known and available to all your workers
- Allow a work colleague or a trade union representative to accompany workers to meetings to discuss a complaint
- Allow a worker to avoid facing a manager who is alleged to have harassed them
- Make reasonable adjustments for disabled workers
- Use collective dispute resolution procedures agreed with trade unions to deal with grievances affecting several employees
- Assure workers they will not be bullied or victimised for raising complaints.

Agency and contract workers and workers in the supply chain

To support agency or contractor workers, you might consider specifying as a condition of contract that the agency or contractor:

- Has an appropriate grievance procedure for their workers and complies with it, and work with them to improve it if necessary
- Reports regularly on grievances where human rights issues are raised
- Has a sub-contracting policy (where appropriate) and that you reserve the right to periodically monitor its effectiveness. Your agency or contractor should ensure that the sub-contractor complies with employment and equality laws, and abides by any collective agreements.

Where workers are at risk of exploitation and coercion by their agency you may want to open your complaint and whistleblowing procedures to workers and third parties in the supply chain such as witnesses and workers' families. This will help ensure that you identify risks of modern slavery.

For supply chains in the UK, victims and witnesses can report concerns to the Modern Slavery Helpline. For those working in the UK fresh produce sector, including agriculture, horticulture and associated processing and packaging, UK workers and witnesses can report concerns of exploitation to the Gangmasters Licensing Authority (GLA).

If your supply chain is overseas, you may want to open your complaint procedures to a third party such as a local NGO or trade union as well as workers and witnesses to help ensure that you identify human rights issues including modern slavery. For more information, please see Home Office guidance.⁴

If you are required to report on steps taken to tackle modern slavery under the Modern Slavery Act 2015, extending your complaints mechanism to your wider workforce, supply chain and third parties is a measure you could mention.

Use your analysis and stakeholder engagement to make any improvements to your complaints or grievance procedure. Discuss the procedure with staff, their representatives, and your suppliers and contractors to ensure that it is fit for purpose and so that everyone understands and trusts it. Ensure that your staff have the knowledge and skills to identify human rights issues when someone raises a complaint and they are confident in understanding how to deal with it and know when to escalate an issue to senior managers and the Board.

4. For more information, please see: Home Office. 2015. *Slavery and human trafficking in supply chains: guidance for businesses* www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide;

Step 4

Review and evaluate your changes



Once you have made changes to the way you handle worker complaints, you should review your procedure regularly to check it serves the needs of your business and your workforce, identifies human rights issues and provides suitable remedy. Remedies can range from an apology and action to stop the problem happening again, to financial compensation, or internal penalties. Consider what those affected might regard as an effective remedy as well as what you think is appropriate, and ask them if possible. If there are any changes to your business activities, procedures or relationships, you should consider whether this affects your complaints or grievance procedure and whether you need to make any changes.

Good practice

Providing access to grievance procedures for contracted workers in the supply chain

In 2014, the Equality and Human Rights Commission reported that outsourcing and contracting practices can have a direct impact on the employment and working conditions of workers in the cleaning sector. It worked with the cleaning industry to improve this and in 2015 published responsible procurement principles. These include encouraging companies that buy-in cleaning services to:

- ensure suppliers have appropriate grievance procedures, and
- provide a channel to enable their suppliers' workers to raise concerns about the workplace and their staff through the company's own grievance procedures.

Encouraging confidential arrangements for reporting workers' concerns

In 2008, the Equality and Human Rights Commission reported on poor working conditions and breaches of law and licencing standards in the meat and poultry processing sector.

The Commission convened an industry-led taskforce and leading British supermarkets and industry bodies adopted a set of management standards to make improvements. The standards said that all meat and poultry processing companies should:

- provide confidential communications channels (such as helplines and whistleblower channels) accessible to all workers (including direct employed and agency workers, and non-English speaking workers) to allow them to obtain advice and report concerns
- provide processes to ensure that agency workers' concerns were fed back to the management of their place of work
- track and monitor grievances and complaints at each site.

Suppliers are also encouraged to display contact details for the GLA to help workers who may experience exploitation and abuse.

Providing an accessible complaints procedure

All M&S employees are covered by M&S's own internal grievance channels and all of their suppliers are covered by their Global Sourcing Principles (GSP) which require that they have their own grievance procedures. To support their suppliers to create more effective grievance procedures they are rolling out their workplace communications toolkits. M&S uses independent ethical auditors to assess many of their suppliers. These auditors leave worker and union representatives with cards with confidential phone numbers they can call if they wish to raise issues confidentially.

Taking action against bullying and victimisation

M&S has policies to prevent retaliation (bullying or victimisation) against an individual or organisation that raises a grievance. M&S will investigate an allegation, and if there is clear evidence of bullying or victimisation, the company will take action to remedy the situation. For example, M&S might issue a warning letter to a business partner, or request the intervention of government, when a legal or administrative remedy is required.

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 19:00 (Monday to Friday)**

10:00 to 14:00 (Saturday)

Post **FREEPOST Equality Advisory Support Service FPN4431**

Questions and comments regarding this publication may be addressed to: **correspondence@equalityhumanrights.com**.

The Commission welcomes your feedback.

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