



chapter 3.8

Remediation and grievance mechanisms

‘Early warning, effective solutions’

When something has gone wrong and people are negatively affected as a result of the company’s actions, things need to be put right. Grievance mechanisms,⁸² and other processes to provide remedy in such situations, are not new to companies. However, the systems that exist are typically for people inside the company, primarily employees, while the responsibility to respect human rights applies

to all stakeholders that are negatively affected by a company’s activities or business relationships. Grievance mechanisms can help provide remedy where a company has caused or contributed to a negative impact; they can also be important early warning systems for companies and can provide critical information for broader human rights due diligence processes.

SUMMARY OF GUIDANCE POINTS

- Guidance point** ① Understanding remediation
- Guidance point** ② Taking full advantage of grievance mechanisms
- Guidance point** ③ Mapping existing grievance mechanisms
- Guidance point** ④ Using the effectiveness criteria
- Guidance point** ⑤ Considering how to extend or create mechanisms for external stakeholders
- Guidance point** ⑥ Improving performance of grievance mechanisms

MAIN COMPANY FUNCTIONS LIKELY TO BE INVOLVED IN THE PROCESS

- **Human resources:** May sometimes act as an intermediary between management and workers, including in grievances and disputes
- **Trade union or works council:** Can function as trusted channel to receive and handle complaints; may support company in improving performance
- **Community relations:** May serve as intermediary between the company and different external stakeholders affected by the company, or their legitimate representatives
- **Business operations:** May interact with local communities and, therefore, are needed to resolve many complaints; can also be a source of complaints
- **Legal and compliance:** Often runs existing whistle-blower procedures; understands legal considerations related to the handling of grievances
- **Senior management:** May receive some complaints directly; role in instilling accountability throughout the organisation

Guidance point ① Understanding remediation⁸³

In the Guiding Principles, the term ‘remediation’ is used to refer to the process or act of providing remedy. At its core, the concept of remedy aims to restore individuals or groups that have been harmed by a business’s activities to the situation they would have been in had the impact not occurred. Where this is not possible, it can involve compensation or other forms of remedy that try to make amends for the harm caused. This should not be confused with ‘remediation’ in the context of social audits, where the concept includes – and

82. In this chapter, ‘grievance’, ‘complaints’ and ‘dispute’ are used interchangeably.

83. This section is drawn from Shift, ‘Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights’, 2014. Available at www.goo.gl/PWTP6c.

typically focuses on – forward-looking actions to prevent a non-compliance from recurring.

As the Guiding Principles set out, judicial remedy includes: “apologies, restitution, rehabilitation, financial or non-financial compensation, and punitive sanctions (whether criminal or administrative, such as fines), as well the prevention of harm through, for example, injunctions or guarantees of non-repetition”. These forms of remedy are relevant – or have equivalents in the case of punitive actions – also in the context of non-judicial mechanisms, with the exception of criminal sanctions.

Guidance point 

Taking full advantage of grievance mechanisms

Grievance mechanisms can play a critical role in meeting the responsibility to respect in two ways:

1. They can support the provision of remedy where a company causes or contributes to negative impacts;
2. They can enable problems to be addressed early before they escalate as well as helping to identify patterns over time, thus feeding directly into broader human rights due diligence.

Companies, and their stakeholders, often focus on the first role without due consideration of the second. This risks missing the useful function that grievance mechanisms can play, even where the company itself is not responsible for providing remedy. For example, they can alert companies to the need to apply pressure on a supplier to ensure that the supplier provides the appropriate remedy for harm it has caused. Of course, suppliers have their own responsibility to respect human rights and should have their own grievance mechanisms in place.

The following table provides some examples of typical grievance mechanisms that may have a role to play in addressing business-related human rights harms.

Table: Overview of typical grievance mechanisms

	Level	Accessible to	Examples	Types of issues	Driver of installation/ adoption
INTERNAL	Company-wide	All employees; may be open to external parties	Hotline or whistleblower procedure	Typically fraud and corruption, broader ethics issues	<ul style="list-style-type: none"> ▶ Corporate governance regulations ▶ Business principles
	Country, business unit or factory	Employees	Complaints procedure or 'persons of trust' network	Related to staff interaction (for example, harassment, intimidation)	<ul style="list-style-type: none"> ▶ National legislation ▶ Common business practice
	Third party	Customers	Customer support and complaints	Complaints related to warranty or service	<ul style="list-style-type: none"> ▶ National legislation ▶ Customer loyalty
		Neighbours	Phone number or neighbourhood council	Pollution, noise, smell	<ul style="list-style-type: none"> ▶ Good relations/'social licence to operate'
		Local community	Operational-level grievance mechanism, community liaison officers	Impact on livelihoods, pollution, distribution of benefits	<ul style="list-style-type: none"> ▶ Early dispute resolution ▶ Investor pressure ▶ Financing requirement
EXTERNAL	Industry or initiative mechanism	Varies, but typically includes member company's own workers, workers in the supply chain	Fair Labor Association's third-party complaints procedure	Working conditions, living wage, or any alleged breach of initiative's own standards	<ul style="list-style-type: none"> ▶ Industry/ collaborative action ▶ Level playing field
	National Contact Points under the OECD Guidelines for Multi-national Enterprises	Any individual or organisation (affected or not affected)	All adhering countries required to establish one	All issues related to the OECD guidelines (including human and labour rights, environment, anti-corruption)	<ul style="list-style-type: none"> ▶ OECD governments ▶ Trade relations ▶ Civil society
	State-based mediation and arbitration bodies	Workers	UK: Advisory, Conciliation and Arbitration Service ⁸⁴ South Africa: Commission for Conciliation, Mediation and Arbitration ⁸⁵	Usually workplace-related issues	<ul style="list-style-type: none"> ▶ Government regulation ▶ Reducing pressure on the court system
	Courts	Everyone subject to jurisdiction	Netherlands: judicial system ⁸⁶	Any issue subject to jurisdiction	<ul style="list-style-type: none"> ▶ State obligation to provide access to remedy

84. www.acas.org.uk

85. www.ccma.org.za

86. www.rechtspraak.nl/English/Judicial-system/

Guidance point

Mapping existing grievance mechanisms

Many companies already have various grievance mechanisms for people within the company, whether formal or informal. These can include trade unions, whistle-blower policies, reporting mechanisms for issues such as sexual harassment, employee conflict management programmes, health and safety incident-reporting systems, and complaints to management.

A company should map the grievance mechanisms it already has in place to determine where gaps may exist. It should consider whether all the main stakeholder groups that could potentially be impacted by the company have access to a grievance mechanism – whether organised by the state, the company, an entity in its supply or value chain or otherwise – and in particular those groups that may fall between existing mechanisms, such as contract workers on company premises who cannot access the company's mechanism but lack representation by a trade union through their direct employer. A company may not know what mechanisms its business partners or others have in place, but such a mapping can help highlight where it lacks knowledge.

Three questions for a gap analysis of grievance mechanisms

1. Do the main stakeholder groups that could be affected by the company's activities, including through its business relationships, have access to an effective grievance mechanism?
If not: Who is responsible for providing remedy? What additional channels might be needed?
 2. Do current and planned grievance mechanisms align with the effectiveness criteria for grievance mechanisms (discussed in Guidance point 4 below)?
How do you know? If not: How do they need to be improved?
 3. Do current and planned grievance mechanisms facilitate cumulative learning and improvement over time?
If not: What needs to be done in order to enable this?
-

The best place to start may be those company operations – whether particular countries, project sites or business functions – where individuals and groups run the highest risk of being subject to severe human rights impacts, while currently having the least access to effective grievance mechanisms.

Guidance point

Using the effectiveness criteria

The Guiding Principles include a set of effectiveness criteria for non-judicial grievance mechanisms that were piloted with companies as part of Ruggie's mandate. They are summarised in the figure on the next page.

Figure: Effectiveness criteria for non-judicial grievance mechanisms

(a) Legitimate	enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes
(b) Accessible	being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access
(c) Predictable	providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation
(d) Equitable	seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms
(e) Transparent	keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake
(f) Rights-compatible	ensuring that outcomes and remedies accord with internationally recognized human rights
(g) Dialogue and engagement	consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances

Learning from practice: Grievance mechanisms and the effectiveness criteria

- ▶ It is important to **be explicit about what issues can be reported**; this can also help avoid inadmissible complaints.
 - ▶ Low frequency in the use of a mechanism may be due to a lack of awareness and trust in the mechanism; it can be countered by better **understanding the sources of distrust and by increasing interaction with potential users of the mechanism**, possibly via a third party to maintain anonymity.
 - ▶ Confidence by users that the **reporting of issues will, in and of itself, not lead to sanctions** against the person lodging the report is important to ensure that people feel confident bringing issues to the mechanism.
 - ▶ Difficulties arising from anonymous complaints can be resolved by engaging a **trusted third party**, which ensures confidentiality but enables a channel for communication with the complainant.
 - ▶ Concerns about potential liability related to complaints can be best addressed by **responding adequately when a complaint is brought** to the attention of the company, not by ignoring it.
 - ▶ Types of grievance processes include direct negotiation, facilitation, conciliation, mediation, investigation, adjudication and arbitration. **Different types of complaints call for a different response (or mix of responses)**. For example, whereas fraud requires investigation, a complaint that involves unfair treatment may need to include additional approaches such as mediation.
 - ▶ **Mediation**, including through a third party, may be a particularly effective way of achieving the goal of early dispute resolution as it makes the process less adversarial and enables more of a focus on mutual gains.
-

Guidance point

Considering how to extend or create mechanisms for external stakeholders

Existing grievance mechanisms may be extended to external stakeholders, or new mechanisms may need to be created if the company identifies gaps in its current approach. Options include:

- **Opening up existing mechanisms to non-employees:**
While existing mechanisms may not exclude external complainants, they are usually not published as such and/or are hidden on company intranets. Some companies explicitly open up their grievance mechanisms to particular groups, such as workers of contractors. Whistle-blower hotlines are also often made available to outside parties. When a company decides to take this step, it is important that it is published among the relevant groups in their own language, and where possible through trusted channels.
- **Considering international framework agreements:**
Some companies have chosen to enter into an agreement with the relevant international trade union confederation for company-wide implementation of labour and other standards. Many of these agreements contain provisions for the joint investigation and resolution of complaints and disputes related to the agreement, and for regular dialogue.
- **Engaging in multi-stakeholder initiatives:**
Some companies participate in multi-stakeholder initiatives that have their own grievance mechanisms, although these are not always open to third parties outside the initiative. Examples include the third-party complaints mechanisms of the Fair Labor Association and the Roundtable on Sustainable Palm Oil, and the internal procedures of the Voluntary Principles on Security and Human Rights (available only to members).
- **Participating in a mechanism for a specific sector:**
Because some grievances go beyond the activities or capacity of a single company, a joint effort can be a useful addition and a helpful pooling of resources. Examples include the hotline of the International Council of Toy Industries, and the grievance mechanism set up by the electronics industry in Mexico involving a local NGO and the relevant industry body, as well as global brands sourcing from local suppliers there.
- **Creating a grievance mechanism for community complaints:**
Project funders may require a company to develop a specific grievance mechanism for a high-impact project that can have potentially significant consequences for local

communities around the project. There is growing experience from the extractive sector, in particular, about how to develop and implement such mechanisms more effectively.⁸⁷



LEARNING FROM PRACTICE

Companies often fear that when they open up their grievance procedures to non-employees, they will be flooded with complaints. In practice, such a move does not necessarily lead to a significant spike in complaints, though over time the number of complaints can be expected to rise. What matters is clear communication about the scope of the mechanism, and engagement with likely users in advance of making the mechanism available to them to try to identify possible problems with its implementation.

Guidance point

Improving performance of grievance mechanisms

There should be regular reporting on the functioning of the grievance mechanism, including up to senior management. A company can assess its mechanisms against the kind of key performance indicators (KPIs) set out in the table below.

Examples of key performance indicators on grievance mechanisms⁸⁸

KPI	Interpretation
A significant number of complaints or grievances are brought to the mechanism in the period after its establishment.	Indicating both awareness of the mechanism's existence and confidence that it provides a credible first avenue of recourse.
A reduction, over time, in the number of grievances pursued through other non-judicial mechanisms, NGOs or the media.	Indicating both awareness of the mechanism's existence and confidence that it can provide a credible and effective first avenue of recourse.
Over time, the number of grievances of the same or similar nature decreases.	Indicating that staff are learning from past mistakes and adapting practices and/or operating procedures where appropriate.
Audits show a reduction in incidents of non-compliance with applicable standards.	Indicating that grievance processes are contributing to the identification and remediation of non-compliance incidents.
A reduction in absenteeism and staff turnover and/or an increase in productivity among suppliers'/contractors' workers.	A partial indicator of reduced worker grievances and improved worker satisfaction, most relevant in relation to supply chains and contractors.
Standard operating procedures (SOPs) have been reviewed and amended where investigations reveal significant and repeat grievances despite staff following existing SOPs.	Indicating that lessons for management systems are being learnt and integrated to reduce the likelihood of the same kind of grievances recurring.

87. See, for example, www.goo.gl/DbPw8V.

88. This builds on the Harvard Kennedy School Corporate Responsibility Initiative, 'Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and their Stakeholders', 2008, p.39, available at www.goo.gl/x1Suuf.



WRAPPING UP - COMMON PITFALLS TO AVOID

TAKING THE PERSPECTIVE OF THE COMPANY RATHER THAN THE COMPLAINANT

Company mechanisms are often designed solely from the perspective of the company and tend to focus more on stopping a violation of the business's rules rather than remedying a situation. Grievance mechanisms need to be designed with a focus on the potential users of the mechanism if they are to be truly effective – and, ideally, they should involve those users in the design phase.

IGNORING THE RELATIONSHIP WITH LEGAL REMEDIES

Operational-level grievance mechanisms are not a substitute for legal remedies; rather, they are meant to accelerate resolution of disputes and to avoid escalation by complementing legal remedies. Where judicial mechanisms are weak or corrupt, companies will need to think carefully about the implications of this for their grievance mechanism design.

GRIEVANCE MECHANISMS BASED ON ADJUDICATION

It is crucial for the effectiveness of operational-level mechanisms that they are based on dialogue and mediation, not adjudication by the company. This because of the inherent problem with a company being not only the subject of a grievance, but also the final judge of the outcome. This can undermine perceptions of the legitimacy of the process and the company's seriousness about handling stakeholder complaints.

Some suggestions for SMEs

Be open and talk to people

For smaller companies, simply talking to people who are or may be affected by your operations can be the simplest way to resolve problems. For individuals outside the company, a public email address or phone number to handle feedback and complaints can help ensure that you are creating a channel for any concerns.

Third-party service instead of own

Instead of their own hotlines, companies can use one provided by a third-party service that supports multiple companies. Clear Voice Hotline Service is one example of such a system.⁸⁹

Build on sector grievance procedures

Sector organisations often have their own grievance procedures that smaller companies can use. The Fair Wear Foundation has a complaints procedure for its members, which functions as a fall-back if they lack their own mechanisms.⁹⁰ ◀



Key sources and websites

- ACCESS Facility – grievance mechanism database
www.accessfacility.org
- Shift, ‘Remediation, Grievance Mechanisms and the Corporate Responsibility to Respect Human Rights’, 2014
www.goo.gl/HdR2eh
- Caroline Rees, ‘Piloting Principles for Effective Company–Stakeholder Grievance Mechanisms: A Report of Lessons Learned’, Harvard Kennedy School Corporate Responsibility Initiative, 2011
www.goo.gl/ATXg7k
- Caroline Rees and David Vermijs, ‘Mapping Grievance Mechanisms in the Business and Human Rights Arena’, Harvard Kennedy School Corporate Responsibility Initiative, 2008
www.goo.gl/osPjLw

89. www.clearvoicehotline.net

90. www.fairwear.org/page/verification