



The Law Society

Business and Human Rights Advisory Group Recommendations

March 2014



Contents

Foreward	5
The UN Guiding Principles on Business and Human Rights	7
The business and human rights advisory group (BHRAG)	8
Law Society internal working group.....	10
Issues and recommendations	10
Establishing the business case.....	10
Conduct and regulation	12
Guidance, education and training	13
Summary of recommendations.....	16
Annex A BHRAG Terms of Reference	18

Foreward

The Law Society believes very strongly that the promotion of business and respect for human rights are mutually reinforcing. As the representative body for the solicitors' profession in England and Wales we take seriously the role we can play raising awareness of the United Nations Guiding Principles on Business and Human Rights (UNGPs), and how they can and should be applied to solicitors.

In addition to providing guidance on the State duty to protect and on improving access to remedy, the UNGPs provide guidance on implementing the responsibility of business enterprises to respect human rights. The UNGPs are relevant to the legal profession both as advisers to business and to firms as business enterprises.

Utilising the UNGPs, which reflect existing norms, will ensure our profession retains a competitive advantage in what is an increasingly globalised marketplace. More importantly, promoting business respect for human rights is the right thing to do. Particularly so for a profession like ours, which has a deep and abiding commitment to human rights, equality before the law and justice.

I would like to thank members of our Business and Human Rights Advisory Group, who have contributed their time and considerable expertise to help the Law Society consider how it should take forward work in this new and rapidly evolving area, and to everybody else who has contributed to this relevant and timely report.

Nick Fluck

President of the Law Society of England and Wales

The UN Guiding Principles on Business and Human Rights

1. In response to the growing concern over corporate responsibility and accountability for the violation of human rights, in 2005 the UN appointed Professor John Ruggie as the Secretary General's Special Representative on business and human rights.
2. On 18 June 2008, the UN Human Rights Council unanimously welcomed the framework proposed by John Ruggie. This policy framework comprises three core pillars:

Pillar 1 - the State duty to **protect** against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication;

Pillar 2 - the corporate responsibility to **respect** human rights, which means to avoid infringing on the human rights of others and addressing adverse human rights impacts with which they are involved; and

Pillar 3 - the need for greater access by victims to effective **remedy**, judicial and non-judicial.

3. On 16 June 2011, the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights.¹ The UNGPs seek to provide concrete and practical guidance for implementation of the "Protect, Respect and Remedy" framework.
4. The UNGPs are not legally binding but there has been support for their implementation across governments and the private sector.
5. Under the European Commission's strategy on corporate social responsibility all member states are invited to submit an implementation plan for the UNGPs. In 2013, the UK Government became the first to issue a national implementation plan. The plan, "Good Business: Implementing the UN Guiding Principles on Business and Human Rights"² sets out the UK Government's expectation of business and is intended to support UK companies to meet their responsibility to respect human rights. It marks the start of the UK Government's work on integrating the UNGPs within the legal, regulatory and policy framework in the UK and will be updated in 2015. It explicitly mentions the need for "trade associations/sector groups of companies to develop guidance relevant to their members' sector of activity on developing human rights policies and processes, including due diligence".³
6. In other sectors, industry bodies are supporting their members to promote the corporate responsibility to respect human rights. This is in part being achieved by developing guidance on the implementation of the UNGPs within those sectors. The information and technology, oil and gas and employment and recruitment industries are examples of

¹ United Nations Guiding Principles on Business and Human Rights (UNGPs)
www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf

² Good Business: Implementing the UN Guiding Principles on Business and Human Rights
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf

³ *ibid* pg.15

sectors where recent guidance has been produced.⁴ Guidance has also been produced for small and medium sized enterprises,⁵ demonstrating that these issues cut across all types of business regardless of size or sector.

The business and human rights advisory group (BHRAG)

7. Bar associations globally have begun to recognise the relevance of the UNGPs for their members. In 2012, the American Bar Association endorsed the UNGPs.⁶ The Council of Bars and Law Societies has issued a report on Corporate Responsibility and the Role of the Legal Profession, which outlines the relevance of the UNGPs for the legal profession.⁷
8. In 2013, the Law Society set up the BHRAG to evaluate how the Law Society can best assist the profession to consider the implications of the UNGPs, including in regard to practical guidance for its members.
9. During the mandate of the BHRAG, the Law Society has played a key role in supporting the establishment of an IBA working group on business and human rights. This recognises both the increasingly global nature of legal practice and the fact that it is imperative that bar associations globally share experiences and best practices in this rapidly evolving area.
10. The UNGPs are relevant to the legal profession in respect of each of the three interconnected “pillars” of protect, respect and remedy. While some discussion was engaged in by the BHRAG regarding the responsibility of lawyers in the context of access to remedy (particularly in litigation), in light of the complexity of the issues, limited time frame and composition of the BHRAG,⁸ the BHRAG focused largely on the second pillar, the **corporate responsibility to respect**.
11. The agreed terms of reference for the BHRAG are attached in Annex A of this report. The BHRAG met six times and focused on the following areas:
 - Establishing the business case – testing the belief that the UNGPs are relevant and important for the legal profession

⁴ European Commission Human Rights guides <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/>

⁵ European Commission Human Rights guides <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/> & Equality and Human Rights Commission http://www.equality.humanrights.com/upload_files/sme_hr.pdf

⁶ American Bar Association Resolution www.americanbar.org/content/dam/aba/administrative/human_rights/hod_midyear_109.authcheckdam.pdf

⁷ Corporate Responsibility and the Role of the Legal Profession www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_07022013_CSR_and_1_1361955115.pdf

⁸ The Law Society sought broad participation in the advisory group with the aim of reflecting a cross-section of membership (“Business and Human Rights- Law Society to consult leading lawyers” www.lawsociety.org.uk/news/press-releases/business-and-human-rights-law-society-to-consult-leading-lawyers/). Ultimately however, the group is predominantly composed of representatives from large city firms and large multinational companies.

- Regulation – considering the balance between the regulatory ethical framework for solicitors and the UNGPs
- Guidance, education and training – considering what practical guidance could and should be provided by the Law Society for its members.

12. The BHRAG comprised of:

- Robert Heslett, Chair of the BHRAG, Law Society International Issues Committee and Council member and Law Society IBA Council member
- Juliya Arbisman, Law Society Human Rights Committee member
- Nicole Bigby, Partner, Director of Risk, Berwin Leighton Paisner
- Daniel Cooke, Counsel, Global Projects BP plc, Law Society International Issues Committee member
- Andrew Denny, Partner, Allen & Overy LLP
- Marjon Esfandiary, Law Society Human Rights Committee member
- Jonathan Exten Wright, Partner, DLA Piper UK LLP
- Rae Lindsay, Partner, Clifford Chance LLP
- Shanta Martin, Solicitor, Leigh Day and Law Society Human Rights Committee member
- Ruby Sandhu, Business and Human Rights Consultant, Amsterdam & Partners LLP
- Johanna Hull, Business & Human Rights Associate, Herbert Smith Freehills

13. Experts were invited to the meetings to assist in discussions in particular areas and thanks go to the following for their participation:

- Francis Neate – former President of the IBA
- Mauricio Lazala and Elodie Aba – The Business and Human Rights Resource Centre
- Sarah de Gay and Carolyn Giles – Slaughter and May
- Jonathan Kembery – Freshfields Bruckhaus Deringer
- Andrew Hopper QC – Regulatory lawyer and QC

Law Society internal working group

14. In addition to the BHRAG, the Law Society set up an internal working group to look at what steps the Law Society, as an organisation, needs to take to develop a meaningful policy on human rights in relation to its own activities.
15. As a business organisation itself, the Law Society should reflect on its own alignment with the UNGPs with respect to its employment activities, own suppliers/contractors and activities related to the members it represents.
16. This internal working group will have a permanent mandate thus ensuring that the Law Society's internal dialogue on business and human rights continues to evolve.
17. The internal group comprises representatives of the legal team, international department, legal policy department, HR, procurement, equality and diversity and CSR. The group is in the process of conducting an audit of policies/processes across the business that will need reviewing in relation to the UNGPs. It is also producing a framework draft human rights policy for the Law Society which it hopes to agree in early 2014.

Issues and recommendations

Establishing the business case

18. The UNGPs are relevant to the legal profession both as advisers and from the perspective of law firms as business enterprises. As with all other business enterprises, law firms have a responsibility to respect human rights.

Recommendation 1 – The Law Society should take the position that its law firm members have a responsibility to respect human rights and in accordance with the UNGPs, and that this should be reflected in firms' business operations, and as appropriate in advice that they provide to clients. This would include putting in place a human rights policy in line with the UNGPs.

19. A business case for the legal profession to follow the UNGPs can be made for the following reasons:
 - While the UNGPs themselves do not impose legal obligations on companies, their principles are increasingly being reflected and referred to in law, regulation, contracts, and dispute resolution processes.
 - The UNGPs are also reflected explicitly in government policy, including the UK's national action plan.⁹ Increasingly, companies are being subjected to greater transparency requirements with respect to their human rights impacts, as evidenced by the new disclosure requirements under the UK Companies Act 2006.¹⁰

⁹ Good Business: Implementing the UN Guiding Principles on Business and Human Rights www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf

¹⁰ The Companies Act 2006 (Strategic Report and Directors' Report) Regulations, 2013 www.legislation.gov.uk/ukdsi/2013/9780111540169/contents

- The contours of legal liability in relation to human rights violations are crystallising with new cases being brought every day.
 - Advising clients on business and human rights is a growing area of work for some firms.
 - Reputation – the current public and political mood in relation to business and their interactions with society has shifted and scrutiny of business behaviour, including by law firms and lawyers, is likely to continue and intensify. Respect for human rights can help protect and enhance law firms’ and solicitors’ reputation.
 - Attracting and retaining staff – potential employees are increasingly seeking out employers with high ethical standards. Acknowledging their responsibility to respect human rights can help law firms attract and retain the best talent, contributing to lower rates of staff turnover and increased employee motivation.
 - Increasing client base - there is increasing evidence that clients are ahead of their professional advisers in this area. For some firms issues around business and human rights are already present in panel reviews. Law firms cannot afford to be following their clients, particularly in an increasingly competitive and globalised legal business market.
20. The UNGPs apply to all aspects of business operations. In the case of law firms, the UNGPs would apply to firms as employers, consumers of goods and services and as providers of professional legal services to clients. The BHRAG recognised that different challenges in applying the UNGPs may be faced by firms, depending on the size of the firm and the nature of its practice.
21. In-house lawyers, including those in government, will face different challenges particularly in view of their status as employees of their clients which should be considered in greater detail in the Law Society’s next stage of consultation in this area. The application of the UNGPs to these groups must be considered in much more detail.

Recommendation 2 – The Law Society should develop advice, guidance and training that addresses those issues relating to law firms arising from their business operations¹¹ which are common to many businesses but that also addresses specific issues relating to law firms as providers of professional legal services.

Recommendation 3 – The Law Society should undertake further consultation to better understand the particular issues concerning in-house lawyers and small and medium size firms that arise with respect to implementation of the UNGPs prior to issuing any specific guidance regarding such lawyers. The Law Society must consult further to ensure that guidance can be tailored to meet the needs of different groups.

¹¹ Such as employment and supply chain issues.

Conduct and regulation

22. Solicitors and law firms have specific responsibilities, by virtue of their role as regulated professionals and trusted advisors. The BHRAG discussed the following:

Due diligence – Many firms will be experienced in conducting due diligence. However, human rights due diligence is a new area and raises issues of which firms might have limited experience. This has implications in terms of training, resources and what best practice looks like. BHRAG agreed that firms should adopt appropriate human rights policies and due diligence procedures in accordance with the UNGPs to identify, prevent and mitigate human rights risks associated with their activities and should also commit to monitoring and evaluating implementation.

Access to legal advice – The right to have access to legal advice and the right of solicitors to decline to act (for non-discriminatory reasons). Implementing the UNGPs in an appropriate way should not unreasonably inhibit the ability of parties to obtain representation.

Retainers – Firms should consider how to address human rights issues as part of retainers. BHRAG considered that retainers could be used as mechanisms to both communicate a firm's commitment to human rights, and to outline how the firm deals with human rights issues where relevant. The nature and scope of a client's instructions and the retainer, will be crucial in determining how firms should deal with clients if human rights issues arise that engage the firm's responsibilities under the UNGPs.

Client relationships – The BHRAG considered the action a firm might take to manage its relationships with clients or potential clients, from initial human rights due diligence, agreement to act, and managing ongoing relations with clients. One of the more difficult areas identified was if a firm became aware of an adverse human rights impact, or risk of such an impact, that engaged the firm's responsibilities under the UNGPs either because the firm might cause or contribute to an adverse human rights impact, or because there was a direct link between the firm's products or services and an adverse human rights impact, based on the firm's relationship with a client. How such issues should be addressed with clients will depend on the particular circumstances, but could well involve a firm: (a) drawing the issue to the client's attention, (b) consistent with the UNGPs, using its "leverage" to advise its client on the human rights risk, and how to address or mitigate impacts that have occurred, and (c) terminating a client relationship in certain circumstances.

Leverage – BHRAG considered the issue of leverage as defined in the UNGPs and how it might apply to legal professionals,¹² and agreed that this was an area for further consideration.

Acting in the client's best interests – Firms should consider the impact that the provision and content of legal services may have on human rights. In providing advice, solicitors have a duty to act in the client's best interests. Acting in the client's

¹² Guiding Principles on Business and Human Rights Implementing the UN 'Protect, Respect and Remedy' Framework, UNHR Office of the High Commissioner 2011 Principle 19 and commentary: "Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability to effect change in the wrongful practices of an entity that causes a harm."

best interests and advising on the prevention and mitigation of adverse human rights impacts should go hand in hand. Providing information and advice on human rights risks does not require the lawyer or client to agree on what is ethically right or wrong but provides important context and improves legal advice.

Confidentiality – Applies to lawful dealings between a solicitor and client (including potential clients). Although there is nothing to prevent a firm disclosing its own policies and commitments to the UNGPs, care would be needed to ensure no breach of client confidentiality would occur if reporting examples of how those policies have been applied.

23. The BHRAG did not have sufficient time to consider practical guidance on all of the above issues, however, it did conclude that the current regulatory regime for the solicitors' profession does not conflict with the principles set out in the UNGPs.

Recommendation 4 – The regulatory regime for solicitors does not present barriers to implementation of the UNGPs. The Law Society should encourage members to adopt appropriate human rights policies and due diligence procedures. The Law Society should undertake further work on areas such as: confidentiality, retainers, due diligence and what leverage means in the context of legal services provision, in order to be able to provide practical guidance to its members.

Recommendation 5 – It is recommended that the Law Society considers further; with appropriate input from relevant stakeholders, what issues arise for lawyers in relation to pillar 3 (access to remedy) and the Law Society's role in providing appropriate guidance on these.

Guidance, education and training

24. The BHRAG recognised that knowledge of the UNGPs is currently not widespread within the profession. For those familiar with the UNGPs additional challenges include:
- a. An imperfect understanding of what the UNGPs mean for the legal profession overall, and in relation to specific practice areas (for example, different transactional contexts, litigation etc).
 - b. Concerns about additional compliance burdens, similar to when the anti-money laundering requirements were introduced. Additional resources are likely to be needed to conduct human rights due diligence appropriately and apply the results of such due diligence, but the UNGPs encourage a risk-based approach that suggests a focus on those clients and practices that are most likely to give rise to serious human rights risks.
 - c. There are also concerns surrounding the resources needed to ensure that lawyers are equipped with the skills and training to spot human rights risks during client representations, and where appropriate integrate these into advice. Resources may also be needed to fully integrate new policies across a firm and in some instances drive cultural change
 - d. The nature of the UNGPs is that they are intentionally not prescriptive, which means that there is uncertainty around their implementation and what they mean in day-to-

day practice. In this area the legal profession is no different to other sectors. There is a desire for consistency and clarity.

25. When considering implementation of the responsibility to respect human rights, law firms will need to review their business practices and governance, including in relation to their employees, supply chains and clients.
26. The BHRAG agreed a useful first step would be for the Law Society to produce a template of a human rights policy commitment; with guidance on developing and embedding that commitment.

Recommendation 6 – The Law Society should encourage firms to develop policies and procedures to implement firms’ responsibility to respect human rights, which will be an evolving process. Law Society guidance needs to be practical, user friendly, and develop over time reflecting best practice. Initial guidance from the Law Society should include a template human rights policy commitment.

27. Law firms in England and Wales are extremely diverse and range from large multinational firms to small/medium sized firms to sole practitioners, and cover a wide variety of practice areas. A risk-based approach would require those firms most likely to be engaged in matters involving potential risks to the human rights of others to have the highest level of focus on these issues. Likewise, in terms of in-house, solicitors are employed by businesses, government and other enterprises and the size of in-house teams varies widely, from hundreds to a single individual. (See Recommendation 3).
28. In order to alleviate some of the concerns that there will be an additional compliance burden for law firms, the Law Society should ensure that any guidance it provides is incorporated into, and aligns, with other Law Society policies and guidance.

Recommendation 7 – Human rights guidance should be incorporated into or aligned with relevant existing Law Society guidance and policies to minimise additional compliance requirements and ensure consistency.

29. The BHRAG noted that the Law Society has begun to play a key role in leading discussions among fellow bar associations globally. In doing so, the Law Society has been able to promote awareness of these issues and highlight the contribution of UK legal service providers in this area.

Recommendation 8 – The Law Society should continue to actively engage in developing and sharing best practice both domestically and internationally for the legal profession.

30. Given that education and training will be a key means by which firms and solicitors develop an understanding of, and ability to implement, the UNGPs, the BHRAG considered to what extent law students and solicitors should be trained in this area.
31. The BHRAG identified guidance, education and training as crucial in terms of awareness raising and helping to ensure that the current legal training regime retains a global competitive advantage.

Recommendation 9 – The Law Society should recommend that the SRA incorporate business and human rights as an integral part of legal training requirements and CPD.

32. Given current awareness levels, promoting understanding and awareness is a priority and presents both challenges and opportunities for the legal profession and Law Society.
33. The UK Government's National Action Plan 2013¹³ calls on trade associations to develop guidance on human rights and policies and this emphasises the urgency of action in this area. The BHRAG agrees that there is an urgency for the Law Society to act on the recommendations from this report to ensure that the legal sector does not fall behind other business sectors and retains its competitive advantage.

Recommendation 10 – The Law Society should develop a programme of awareness raising activities on the UNGPs and the guidance they provide for implementing the responsibility of business to respect human rights.

Recommendation 11 – The Law Society should implement all recommendations included in this report by the end of 2014; and allocate sufficient resources in order to do so. Progress towards meeting this target should be reviewed on a bi-annual basis. Further consultations with a wider net of stakeholders should be included within this timetable.

¹³ Good Business: Implementing the UN Guiding Principles on Business and Human Rights
www.gov.uk/government/uploads/system/uploads/attachment_data/file/236901/BHR_Action_Plan_-_final_online_version_1_.pdf

Summary of recommendations

Recommendation 1 – The Law Society should take the position that its law firm members have a responsibility to respect human rights and in accordance with the UNGPs, and that this should be reflected in firms' business operations, and as appropriate in advice that they provide to clients. This would include putting in place a human rights policy in line with the UNGPs.

Recommendation 2 – The Law Society should develop advice, guidance and training that address those issues relating to law firms arising from their business operations¹⁴ which are common to many businesses but that also addresses specific issues relating to law firms as providers of professional legal services.

Recommendation 3 – The Law Society should undertake further consultation to better understand the particular issues concerning in-house lawyers and small and medium size firms that arise with respect to implementation of the UNGPs prior to issuing any specific guidance regarding such lawyers. The Law Society must consult further to ensure that guidance can be tailored to meet the needs of different groups.

Recommendation 4 – The regulatory regime for solicitors does not present barriers to implementation of the UNGPs. The Law Society should encourage members to adopt appropriate human rights policies and due diligence procedures. The Law Society should undertake further work on areas such as: confidentiality, retainers, due diligence and what leverage means in the context of legal services provision, in order to be able to provide practical guidance to its members.

Recommendation 5 – It is recommended that the Law Society considers further; with appropriate input from relevant stakeholders, what issues arise for lawyers in relation to pillar 3 (access to remedy) and the Law Society's role in providing appropriate guidance on these.

Recommendation 6 – The Law Society should encourage firms to develop policies and procedures to implement firms' responsibility to respect human rights, which will be an evolving process. Law Society guidance needs to be practical, user friendly, and develop over time reflecting best practice. Initial guidance from the Law Society should include a template human rights policy commitment.

Recommendation 7 – Human rights guidance should be incorporated into or aligned with relevant existing Law Society guidance and policies to minimise additional compliance requirements and ensure consistency.

Recommendation 8 – The Law Society should continue to actively engage in developing and sharing best practice both domestically and internationally for the legal profession.

Recommendation 9 – The Law Society should recommend that the SRA incorporate business and human rights as an integral part of legal training requirements, and CPD.

Recommendation 10 – The Law Society should develop a programme of awareness raising activities on the UNGPs and the guidance they provide for implementing the responsibility of business to respect human rights..

Recommendation 11 – The Law Society should implement all recommendations included in this report by the end of 2014; and allocate sufficient resources in order to do so. Progress towards meeting this target should be reviewed on a bi-annual basis. Further consultations with a wider net of stakeholders should be included within this timetable.

¹⁴ Such as employment and supply chain issues.

Annex A

Business and Human Rights Advisory Group (BHRAG)

Terms of Reference

BHRAG has been set up to look at the issue of Business and Human Rights and the role that The Law Society of England and Wales (TLS) as a bar association should play in terms of providing advice and guidance to its members in this area.

For the purposes of focusing discussions of this group and achieving practical outcomes it is proposed that BHRAG will focus its work around the *Guiding Principles on Business and Human Rights for Implementing the United Nations “Protect, Respect and Remedy” Framework* (UNGPs); which provides recommendations on how businesses and States can put into practice the UN framework of Protect, Respect and Remedy, which has been widely supported by governments, civil society and the private sector.

Background

In response to the growing concern over corporate responsibility and accountability for the violation of human rights, the UN appointed Harvard professor, John Ruggie, as the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.

On 18 June 2008, the United Nations Human Rights Council unanimously “welcomed” the “Protect, Respect and Remedy” Framework proposed by the Special Representative. This policy framework comprises three core principles: the State duty to protect against human rights abuses by third parties, including business, through appropriate policies, regulation, and adjudication; the corporate responsibility to respect human rights, which means to act with due diligence to avoid infringing on the rights of others; and the need for greater access by victims to effective remedies, judicial and non-judicial.

On 16 June 2011, the Human Rights Council endorsed the UNGPs. The UNGPs seek to provide concrete and practical recommendations for implementation of the Protect, Respect and Remedy Framework.

Despite the fact that the UNGPs are not legally binding, there has been tremendous support for their implementation across government and the private sector. The European Union requires all member States to submit an implementation plan for the UNGPs. The UK Government is fully supportive and has commenced work on ensuring governmental elements are aligned with the UNGPs and is working to encourage the business community to implement the principles, as appropriate, in their sectors.

The relevance to lawyers, the legal profession and the Law Society

There are several compelling reasons why the legal profession should be taking a leading role in this area:

- the UNGPs apply to law firms as business organisations;

- lawyers' special role in upholding the rule of law, which is critical to the ability of companies to respect human rights;
- members' encouragement for TLS involvement;
- some lawyers are already and will continue to advise clients on how they can best implement the UNGPs;
- while the UNGPs themselves do not impose legal obligations on companies, their principles are increasingly being reflected and referred to in law, regulation, bilateral contracts, loan covenants and litigation and the legal liability for businesses in relation to human rights are crystallizing with new cases being brought every day. Advising clients on human rights is a growing area of lawyers' business;
- significant inroads are being made in other industry sectors to implementing the UNGPs and major companies are increasingly expecting their entire supply chain, including professional service providers such as law firms, to know and show that they are respecting human rights; and
- the current public and political mood in relation to business and their interactions with society has shifted and scrutiny of business behaviour, including by law firms and lawyers, is likely to continue and intensify.
- this is not an area where the profession should lag behind.

The Law Society

In other sectors, industry bodies are playing a key role in supporting their members to promote the corporate responsibility to respect human rights and the legal profession is no different. Industries are increasingly looking at developing specific guidance on what the UNGPs mean for their sector. The information and technology, oil and gas, and employment industries are examples of sectors that have produced recent guidance in relation to the UNGPs .

Guidance has been produced by the European Commission for small and medium sized enterprises, demonstrating that these issues cut across all types of business regardless of size or sector. It will be particularly important for the profession, through its representative body, to publically define the relationship between the special role of legal advisor and business and human rights responsibilities, to shape and guide future commentary in this area.

To date TLS's role has been limited to awareness raising activities around the UNGPs While the American Bar Association has publicly endorsed the UNGPs, it is unlikely to go any further at present and any guidance it does issue is limited by its voluntary and purely representational role. While we understand many bars are looking at this issue, few are yet to take any more concrete action and we believe that there is a real opportunity for TLS and our members to be leaders in this area.

Risks and challenges

Key risks and challenges for this work are likely to include:

- overcoming perceptions that the UNGPs apply only to large multinationals
- meeting expectations of business and human rights advocates
- ensuring a critical mass of top firms remain engaged and supportive of the policy project and outcomes
- reaching consensus on the appropriate approach to balancing the duty to the client and the UNGPs

- producing guidance which is comprehensive, relevant and useful to nearly all membership sectors (i.e. large and small firms, in house), and
- ensuring members implement resultant guidance—costs and effort associated with implementation may be a deterrent.

In order to take forward this work TLS has established two groups:

An **internal** working group will be looking at what steps TLS as an organisation needs to take to develop a meaningful policy on human rights and its own responsibility to respect human rights, through the implementation of the UNGPs. This working group will be a permanent group thus ensuring that TLS's internal dialogue on business and human rights continues to evolve and develop.

An **external** advisory group, to determine how TLS can best assist the profession to implement their business and human rights responsibilities. Given time constraints of members and the need to come up with tangible outcomes it is proposed that this group meet over a period of 6 months.

BHRAG composition

Participation in the advisory group has been advertised to the profession and its composition is designed to reflect a cross-section of membership, representing the different sub-sectors of membership, including in-house, city, SMEs. It also includes members of TLS's International Issues and Human Rights Committees. BHRAG representation also aims to capture relevant roles in the legal profession such as managing partners, risk and compliance, CSR and human rights.

BHRAG will agree expert witnesses to be invited to each meeting to provide evidence on particular areas.

BHRAG objectives

The objective of BHRAG will be to evaluate where TLS can best assist the profession to consider the implications of the UNGPs. Discussions will focus on the following areas:

1. Establishing the business case – testing the case that the UNGPs are relevant and important for the legal profession
2. Regulation – considering the balance between the regulatory ethical framework for solicitors and the UNGPs, legal privilege and confidentiality issues, including how the unique role of lawyers interrelates with the UNGPs
3. Education and training – from legal training through to Continued Professional Development (CPD)
4. Guidance – what practical guidance, if any, could TLS provide for its members on the UNGPs

Outputs

The output of BHRAG will be a series of practical recommendations and actions for TLS in each of the four areas. These recommendations will be put together in a final report, and presented at an event to publicise the work of BHRAG.

Translating these recommendations into practical policy or action will be taken forward by a TLS project group as Stage 2 of this work. The project group's role will be to develop the deliverables from the outcomes of Stage 1 (for example writing and publishing TLS guidance for members) within a set timescale. BHRAG will be asked to play an advisory role during this process to review any outcomes.