

FNET Workstream 1, DRAFT Mitigation Guidance**Contents**

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1. Introduction

What is mitigation?¹ This document uses a working definition of mitigation as the action of reducing the severity or seriousness of a potential human rights issue.

Why does mitigation matter? Mitigation is one step in an organisation’s due diligence approach to managing human rights, where due diligence is defined as the “action taken by a company to both identify and act upon actual and potential risks for workers in its operations, supply chains and the services it uses².”

How does mitigation differ from remediation? The OECD Guidelines clarify that potential human rights impacts “are to be addressed through prevention or mitigation, while actual impacts are to be addressed through remediation³”.

¹ NB: No specific definitions are given of mitigation by the UN Guiding Principles on Business and Human Rights (UNGPs)¹, the Ethical Trading Initiative’s Human Rights Due Diligence Framework¹, the OECD Guidelines for Multinational Enterprises¹ or the SHIFT RAFI Framework.

² <https://www.ethicaltrade.org/resources/human-rights-due-diligence-framework>

³ <http://www.oecd.org/daf/inv/mne/48004323.pdf>

Who can mitigate negative human rights and ethical trade impacts? Potential ethical trade impacts can be reduced in severity by the following stakeholders:

- Companies
- Workers
- Suppliers
- Customers
- Trade unions
- Civil society
- Government.

Ethical trade impacts can be reduced individually or collectively by a collaboration of one or more of the above stakeholders.

How does mitigation happen? The document below outlines steps which companies can take to mitigate ethical trade risks. It is a working document and therefore the guidance is not exhaustive. Mitigation is an ongoing process and FNET intends to review and develop this guidance based on the successes and challenges that FNET members have in mitigating ethical trade risks.

What other guidance is available on mitigation? At present, customers' main mitigation guidance to suppliers is the requirement for ethical audits, collaboration with industry initiatives and involvement in specific projects and programmes. In some cases, audit requirements are based on risk assessments determined by country and industry risks. In other cases, audit requirements are based on previous audit performance. A number of retailers are also looking at suppliers' proactivity in tackling ethical issues and the collaborations they are part of as indications of an effective mitigation approach.

In September 2018, the International Finance Corporation, in partnership with the Ethical Trading Initiative and Ergon, released a guidance document for the private sector entitled [Managing Risks Associated with Modern Slavery A Good Practice Note for the Private Sector](#) which includes a section on mitigating the risks of modern slavery. FNET have aligned the following guidance with this document.

2. [Mitigation Guidance](#)

2.1. [Mitigation as Part of Suppliers' Ethical Trade Strategy](#)

At what stage in a company's ethical trade strategy should mitigation take place? The [Ethical Trading Initiative's Human Rights Due Diligence Framework](#) (see Figure 1 below) recommends that mitigation takes place after a company has undertaken a risk assessment and identified their ethical trade or human rights priorities by determining where they have leverage and are able to take substantive actions.

Figure 1: [Ethical Trading Initiative’s Human Rights Due Diligence Framework](#)

What steps are required before companies can mitigate risks? The assumption in this guidance is that companies have undertaken a risk assessment which has identified a “reasonable” number of priorities, where reasonable is defined as priorities that companies can manage with their internal resources and/or through partnerships with local organisations.

For most companies this will be in the range of 5-10 priorities which may be defined by product, country, ethical trade issue or a combination of both and will take into account companies’ leverage and ability to effect change. Companies’ risk assessments and priorities should be reviewed on at least an annual basis taking into account changes to external risks and to internal purchasing practices. Factors such as a change in political regime or moving of sourcing country might require re-prioritisation.

Figure 1: Examples of companies’ ethical trade priorities

Example 1: [Marks and Spencer’s identified ethical trade priorities and mitigating steps:](#)

1. **Taking the lead on modern slavery** – participation in multiple collaborations including Stronger Together, and the Issara Institute financial support to the UK Modern Slavery helpline, staff training, UK and international conferences covering forced labour, increased supply chain transparency
2. **Tackling in-work poverty** - wage increases in M&S’ own business, increased wages and job security in Cambodian supply chain, Emerging Leaders training to cover financial literacy and money management, Traidcraft green beans purchasing practices research
3. **Fostering an inclusive society** – employment of people with disabilities in M&S’ own business, project work to promote gender equality in Indian clothing supply chains, tackling the gender pay gap in M&S’ own business.

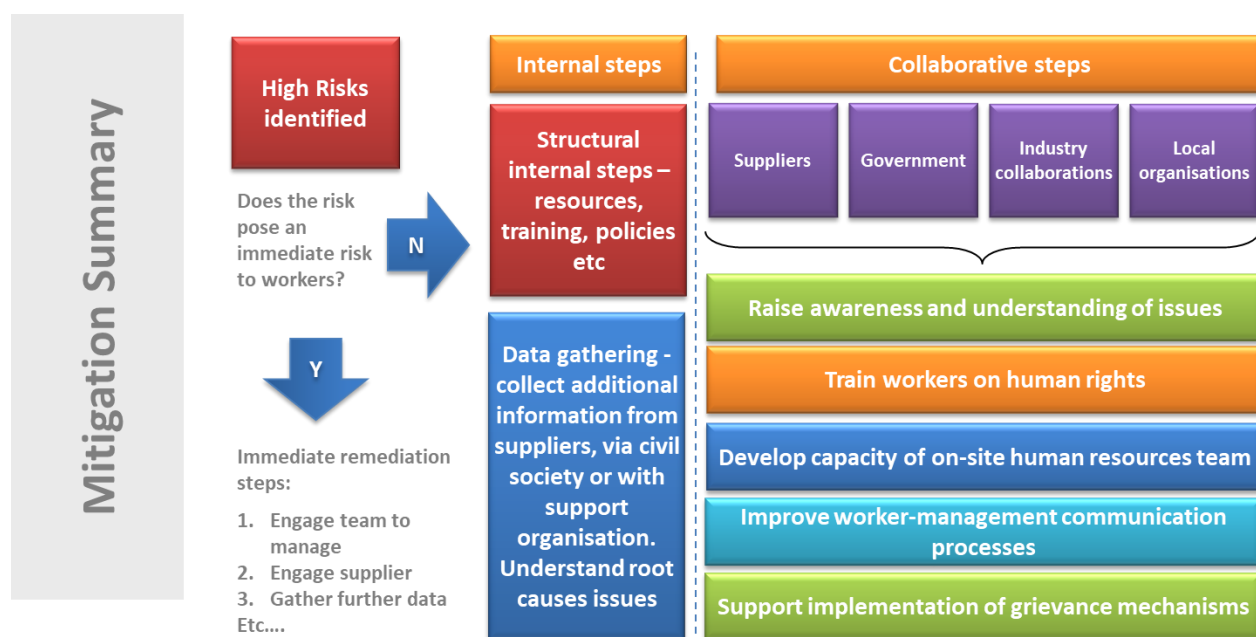
Example 2: Princes ethical trade priorities

1. Brazil
2. Indonesia
3. Italy
4. Spain
5. Thailand
6. The United Kingdom

Example 3: Nestle priority categories

1. Cocoa
2. Coffee
3. Dairy
4. Palm oil
5. Pulp and paper
6. Soya
7. Sugar
8. Cereals and grains
9. Hazelnuts
10. Vanilla
11. Meat, poultry and eggs
12. Fish and seafood

What mitigation steps can companies take: The steps that companies can take to reduce the severity of ethical trade impacts can include the steps summarised below. *In all cases, companies should consider the root causes of the issues they are trying to mitigate and the unintended consequences of any actions that they take.*



2.2. Detailed Proposed Mitigation Process

The **internal steps** listed below relate to things companies can do within their organisation to start to address ethical trade risks, irrespective of what those risks are. The **collaborative steps** which follow (working with suppliers, government, industry, local organisations and workers) are those they can take once they’ve identified their priorities and worked out which external group/s they need to work with to mitigate those risks. Irrespective of which external group/s they choose to work with we have recommended focusing on five areas of work:

1. Raising awareness and understanding of ethical trade issues and risks and how they can be mitigated

2. Training workers to understand their human rights – a critical first step which is often missed
3. Developing the capacity of on-site human resources (HR) teams or managers of an HR team doesn't exist – this step is critical in the long-term to reducing ethical trade risks
4. Improving worker-management communication processes – whether through simple communication processes or advanced technology, this step is crucial to reduce risks in the long-term
5. Support the implementation of grievance mechanisms – ensuring workers know how they can raise issues in the workplace and with relevant third parties, including government.

2.2.1. INTERNAL STEPS

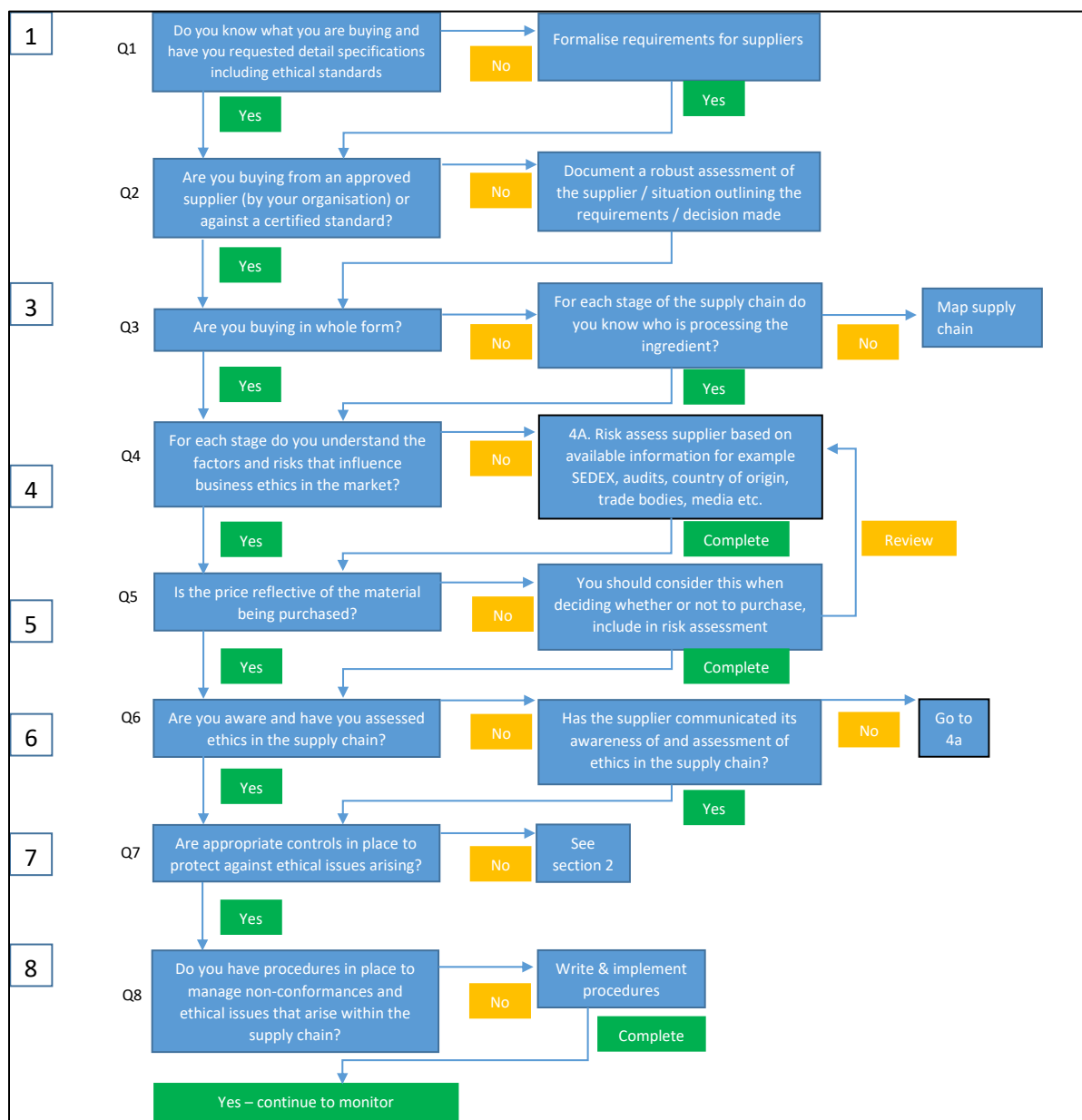
2.2.1.1. Structural, internal steps

The following internal steps can be used to reduce risks irrespective of whether a company has identified their highest priorities:

- a. Identify individuals with accountability and responsibility for addressing ethical trade issues
- b. Allocate resources to the management of ethical trade issues
- c. Set up regular cross-category meetings with high-level visibility of ethical trade issues
- d. Review and revise policies and procedures to ensure country, sector and issue-specific salient risks are addressed
- e. Increase the ethical trade awareness of staff involved in selecting and managing suppliers
- f. Conduct training to increase staff engagement in labour rights and understanding of the key areas of risk that have been identified – the FNET Supplier Engagement [presentation](#) and [animation](#) can help you to do this
- g. Review and revise purchasing practices to:
 - i. Build ethical criteria into the tendering and contract setting processes for example requiring potential suppliers to provide information on their labour practices and ethical trade capacity/ capability and outlining ethical trade requirements in suppliers' contracts
 - ii. Ensure that new and existing suppliers are assessed consistently against ethical as well as commercial criteria and;
 - iii. Ensure any changes in operations do not have major effects on workers
 - iv. For more information, have a look at the [ETI's Guide to Buying Responsibly](#)
- h. Ensure best practice in companies' own operations, for example:
 - i. Do workers in their operations know their rights and can they exercise them?
 - ii. Do companies have grievance mechanisms in place which all their workers are aware of?
 - iii. How do companies manage the ethical trade risks of service providers and/ or third-party labour providers to their business?
- i. Review company's own approach to managing their supply chain using the FNET ethical decision tree – see Figure 2 below
- j. Discuss approach with customers and gain their feedback based on managing risks in their own operations and supply chains.

FNET members have developed the following ethical decision tree as an example for Spices to indicate the internal process which can be followed once an ethical trade priority has been identified:

Figure 2: FNET Spices Working Group ethical decision tree



2.2.1.2. Data gathering

The following internal steps can be used to mitigate risks with high risk or high priority suppliers and supply chains in conjunction with point 3):

- a. Gather information from suppliers on key areas of ethical trade risks including the presence of accommodation, types of labour, labour provision and agencies, existence of modern

- slavery statement. This could be through [SEDEX](#) or, if not members of Sedex, an ethical trade questionnaire – several are available online including one via [Stronger Together](#)
- b. Conduct an information trawl to understand the context of the risk, what it is and where it is. Include internally available information such as Sedex SAQs, SMETA audits, on site audits, site visits and interviews and reports via the internet e.g. NGO or campaigning organisation reports
 - c. Understand the purchasing context:
 - i. How much leverage do you have with the high priority suppliers?
 - ii. What ethical trade capacity and engagement do suppliers currently have? See [FNET Supplier Engagement Questionnaire](#)
 - iii. Is purchasing from a high-risk supplier essential?
 - k. Gather data on who the key players or stakeholders are that are likely to have influence in a supply chain e.g. industry bodies or associations, large brands etc
 - l. Gather data on the legal background of each country e.g. the ability to form a trade union and working hours regulations. Potential sources of data for this information are:
 - i. International Labour Organisation –[NORMLEX](#) for data on national labour and social security laws and [ILO stat](#) for details on actual working practices in different countries
 - ii. [Wage Indicator.org](#) for information on wages by country
 - d. Enlist support of NGOs/ organisations with expertise in labour practices and worker rights to understand specific risks further – some links below for potential information on local organisations which may be able to help:
 - iii. The Local Resources Network - <http://localresourcesnetwork.net/>
 - iv. The Modern Slavery map - <http://modernslaverymap.org/>
 - v. Global Modern Slavery Directory - <http://www.globalmodernslavery.org/>
 - e. Where limited information is available about a supplier or supply chain, commission in depth investigations of specific suppliers using an existing ethical trade advisory firm/ audit firm. Suggestions include: [Impactt](#), [Ergon](#), [Verite](#)

2.2.2. [COLLABORATIVE STEPS](#)

The **collaborative steps** which follow are those companies can take once they've identified their priorities and worked out which external group/s they need to work with to mitigate those risks. Irrespective of which external group/s they choose to work with we have recommended focusing on five areas of work: raising awareness, training workers, developing human resource capacity, improving worker-management communication and supporting the implementation of grievance mechanisms.

2.2.2.1. [Engage suppliers](#)

The following steps can be used to mitigate the risks of high risk or high priority suppliers and supply chains where a company is able to affect change individually. It is important to start with an understanding of how much suppliers understand and are engaged in ethical trade and to recognise that changes in suppliers' performance will happen at different speeds, or may not happen at all:

- a. Assess supplier human resource and supply chain ethical expertise using the FNET [Supplier Engagement questionnaire](#)
- b. Sit down with suppliers where possible to explain how their risk has been assessed and understand their viewpoint and steps they have already taken to manage these risks. Include

- company's buyers, procurement and/or other commercial-focussed colleagues in the conversation to increase buy in and encourage alignment between purchasing practices and ethical requirements
- c. Discuss at the outset the business rationale for suppliers' sourcing and purchasing practices and the processes suppliers follow to find new suppliers
 - d. Work with suppliers who have undertaken ethical audits to support them to close their non-conformances and understand the root causes of the issues
 - e. Support suppliers with training and capacity building where required – see the FNET Supplier Engagement [presentation](#) and [animation](#)
 - f. Encourage suppliers to develop their own human resource capability -a good starting point for this would be to talk to your own HR team to get their help. Companies could also talk to customers about any good organisations or individuals they are linked to that do this work. Potential links here – [Alliance HR](#) and [HRAngill](#)
 - g. Encourage suppliers to develop and promote channels for listening to and engaging workers including formal grievance mechanisms – some good basic guidance is available here from [ACAS](#)
 - h. Encourage suppliers to provide stable employment for workers
 - i. Encourage suppliers to formalise relationships with labour providers
 - j. Encourage suppliers to regulate the use of sub-contracting
 - k. Support the development of mature industrial relations
 - l. Support suppliers to join existing ethical trade collaborations (see criteria below)
 - m. Support suppliers to work with government to tackle labour rights issues
 - n. Assess the progress made by suppliers on a regular basis and recognise that decisions may need to be made not to source from a supplier if they are unwilling to make improvements to working practices in their operations or supply chains.

2.2.2.2. [Collaborate with your industry](#)

The following steps can be used to mitigate the risks of high risk or high priority suppliers and supply chains where a company **is not able to affect change individually**:

- a. Identify existing ethical trade collaborations in areas of high risk – these can be identified via customers, other industry colleagues or via the internet
- b. Determine whether or not to join collaborations – do they have:
 - i. Solid goals and objectives that mirror yours
 - ii. Secure funding
 - iii. Strong on the ground capability
 - iv. Engagement with local workers and communities
 - v. A solid governance model?
- c. Shadow a meeting of the collaborative initiative – do their goals fit? Is their approach effective?
- d. Review available data (e.g. impact assessments or newsletters) to determine effectiveness of collaboration
- e. Speak to existing members to gather their views
- f. Determine if resources are available to take an active part in the initiative
- g. Establish whether it is the company and/ or its suppliers who should join the initiative

- h. Determine whether or not to join the initiative
- i. NB: If no collaborative initiative exists, consider setting one up via an existing industry body or with other companies. If other industry partners are willing to cooperate, follow the steps listed in point 3. Engage suppliers above together.

2.2.2.3. Work with government

The following steps can be used to mitigate risks with high risk or high priority suppliers and supply chains where government engagement is key:

- a. Use the British Embassy in the particular country of origin to establish who in local government has influence
- b. Set up a meeting with relevant ministry/ department e.g. labour ministry – work with others to secure a meeting if leverage is an issue
- c. Develop a proposal with suppliers to work on labour rights and use the meeting to identify government’s willingness and capacity to engage on issues of labour rights by supporting the programme
- d. Identify during the meeting who the key influencers are in government for changes to law/ additional allocation of resources to labour inspectorates (for example)

2.2.2.4. Partner with local organisations

The following steps can be used to mitigate risks with high risk or high priority suppliers and supply chains where specialist expertise is required and companies are not able to tackle issues on their own or in collaboration with their industry e.g. on issues of child labour:

- a. Identify local civil society organisations who could provide support. Consult customers for potential organisations or look at public sources such as the [Local Resources Network](#), [Modern Slavery Map](#) or [Global Modern Slavery](#) directory
- b. Contact local civil society organisations to arrange meeting
- c. Request information from local civil society organisation (e.g. governing documents, financial reports, impact reports) to determine if they have:
 - vi. Solid goals and objectives that mirror yours
 - vii. Strong leadership
 - viii. Secure funding (including reserves)
 - ix. Strong on the ground capability
 - x. Engagement with local workers and communities
 - xi. A solid governance model?
- d. Meet with the local organisation to determine the above and, if deciding to proceed, scope a potential project
- e. Pilot programme with one or more suppliers
- f. Monitor and evaluate progress
- g. Determine ongoing engagement with local organisation

2.2.2.5. Work with your workers

The following steps can be used to engage workers and reduce risks wherever in a company’s organisation or supply chain those workers are. FNET notes that engaging workers in company’s supply chains can be

challenging with limited resource but encourages companies reading this guidance to, at a minimum, understand from their suppliers what channels they have for consulting with workers:

- a. Establish systems for regular consultation and cooperation between employers and workers in the company's own operations. Encourage suppliers to do the same
- b. Formally recognise and work with the company's suppliers to ensure workers' rights to establish and join organisations of their own choosing without previous authorisation
- c. Establish systems to provide regular information to workers and their representatives to support meaningful negotiations on employment conditions and enable them to obtain a true and fair view of the enterprise performance in your own operations. Encourage suppliers to do the same
- d. Establish one or more grievance mechanisms in the company's own operations. Encourage suppliers to do the same.

2.3. Mitigation Case Studies

Case study 1: [Nestle](#) - mitigation of ethical trade risks in hazelnut production, Turkey – Partner with local organisations

Turkey produces around 75% of the world's hazelnuts. Nestlé purchases 60% of its hazelnuts from the eastern and western parts of the Black Sea region of Turkey either directly from farms or from a small number of suppliers who obtain hazelnuts through a chain of intermediaries

Hazelnut harvests are seasonal, requiring large groups of migrant workers and their families to move to the areas where hazelnut gardens are located for a brief harvest period

Nestle are working with the Fair Labour Association (FLA) to improve supply chain transparency and implement a monitoring and remediation system for tackling labour rights issues. They are committed to:

- Strengthening child labour monitoring and remediation
- Continuing to work with local authorities and the ILO to raise awareness through campaigns, training and an illustrated supplier code in Turkish
- Establishing a toll-free phone number for non-compliance reporting; and
- Introducing a self-assessment tool for hazelnut growers to verify their performance with respect to child labour criteria

Case study 2: [CP Foods](#) – Seafood Taskforce, Thailand – Collaborate with your industry

CP Foods are founder members of [the Seafood Taskforce](#), a multi-stakeholder collaboration founded in 2014 to drive measurable social and environmental change through greater supply chain accountability, verification and transparency in the Thai seafood industry.

The Taskforce is an industry-led membership organisation established as a non-profit organisation in the US and supported by a full-time Secretariat. It works through a number of Member Sub-Groups.

Each member commits to minimum requirements to support achieving progress against the Task Force objectives and to support the implementation of Task Force output.

Some of the achievements of the past year include:

- Implementation of a Port In Port Out mechanism with physical inspection of fishing vessels and their crews
- Working with the Thai government to improve the legislative framework
- The implementation of Vessel Monitoring Systems
- Training to assist in remote analysis of fishing vessels.

2.4. [Challenges and Support in Implementing Mitigation Strategies](#)

What challenges do suppliers face in implementing mitigation strategies?

- Getting practical guidance for themselves and their suppliers on how to resolve issues e.g. how to manage a labour provider
- Finding effective ways to engage suppliers that are bigger than you
- Managing the contradictions between the KPIs of buying and ethical trade teams
- Managing low spend, high risk suppliers
- Tackling the root causes of issues such as working hours and overtime
- Getting sufficient resource.

What has helped suppliers to implement mitigation strategies?

- Ensure a director or senior manager takes the lead on ethical and human rights
- Focus on the most vulnerable at any given moment
- Keep flagging the labour provision model wherever it is in the world
- Secure resources and gain commitment
- Work with suppliers to develop trust and build long-term relationships
- Establish strong and effective systems, tools and databases
- Get maximum visibility of issues
- Keep it simple and have several practical objectives in order to be able to show progress
- Develop own policy and strategy in order to be proactive and take the lead.

When does mitigation need to become remediation? At some point for all suppliers, a potential ethical trade risk will become an actual risk. At this point, suppliers should affect remedy for the victims of those human rights risks. The first step should always be to use judicial or non-judicial state-based remedy mechanisms. If these are absent or ineffective, suppliers should support site-based remedy mechanisms. In the absence or failure of these, suppliers should be ready to support effective remedy for victims.

How do ethical audits fit into mitigation? Ethical or social audits provide a point-in-time-assessment of working conditions on a particular site. Audits can support the reduction of potential risks by creating an actionable, verifiable plan for sites, provided that the audit and its action plan are followed up on by all interested parties.

How does this work with other tools available? This guidance is intended to work alongside tools such as the BRC & ALP's "Retailer Protocol for Handling Reported Cases of Modern Slavery in the UK Supply Chain" which is due to be released later in 2018. It complements tools such as the [WRAP Raw Material Risk Tool](#) which looks at specific mitigations by products and includes potential collaborations in those areas.

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