

**IN THE MATTER OF THE FINDINGS OF  
A REVIEW INTO THE BOOHOO GROUP PLC'S LEICESTER SUPPLY CHAIN  
&  
LIABILITY UNDER A MANDATORY HUMAN RIGHTS DUE DILIGENCE / 'FAILURE  
TO PREVENT' LAW**

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**LEGAL OPINION**

**TIMOTHY OTTY QC**

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**Blackstone Chambers**

*Commissioned by Business and Human Rights Resource Centre & Corporate Justice  
Coalition*

IN THE MATTER OF THE FINDINGS OF A REVIEW INTO  
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OPINION

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A. EXECUTIVE SUMMARY

1. On 5 July 2020, the Sunday Times newspaper published an article in which it alleged unacceptable working conditions and exploitative and illegal rates of pay as low as £3.50 an hour in Leicester-based factories making clothes for boohoo Group PLC ("**Boohoo**"). The article noted that at the relevant time, the minimum wage in Britain for those aged 25 and over was £8.72. As a consequence of the allegations, on 8 July 2020, Alison Levitt QC was commissioned by Boohoo to conduct an independent review into whether the allegations were well-founded, the extent to which Boohoo had knowledge of them, Boohoo's compliance with the relevant law and to make recommendations for the future. On 24 September 2020, an open version of Ms Levitt's *Independent Review into the boohoo Group PLC's Leicester supply chain* ("**the Review**"), was published by Boohoo, minus its Appendices.<sup>1</sup>
  
2. The key findings reached by Ms Levitt QC in the Review were that:<sup>2</sup>
  - (1) She was satisfied that the allegations about poor working conditions and low rates of pay in many Leicester factories were not merely well-founded but substantially true.
  
  - (2) Boohoo's monitoring of its Leicester supply chain was inadequate and this was attributable to weak corporate governance.
  
  - (3) From (at the very latest) December 2019, senior Boohoo Directors knew for a fact that there were very serious issues about the treatment of factory workers

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<sup>1</sup> Review available here: <https://www.boohooplc.com/sites/boohoo-corp/files/final-report-open-version-24.9.2020.pdf> (last accessed 22.07.21).

<sup>2</sup> Review, pp.6-7.

in Leicester and whilst Boohoo put into place a programme intended to remedy this, it did not move quickly enough.

(4) Boohoo ought to have appreciated the serious risks created by 'lockdown' in relation to potential exploitation of the workforce of the Leicester factories. It capitalised on the commercial opportunities offered by lockdown and believed that it was supporting Leicester factories by not cancelling orders, but took no responsibility for the consequences for those who made the clothes they sold.

(5) There was no evidence that the company itself or its officers had committed any criminal offences.

3. Under the heading "*Boohoo's liability in criminal law for the actions of its suppliers and sub-contractors*",<sup>3</sup> the Review stated that:

*"There may be evidence of breaches of the United Nations Guiding Principles on Business and Human Rights. In criminal law, a company is generally not liable for the acts of its sub-contractors. However, there may be some statutes which impose liability in particular circumstances. Many of the audits of companies in Boohoo's supply chain have applied the UNGPBH, which is an instrument consisting of 31 principles implementing the "Protect, Respect and Remedy framework on the issue of human rights and transnational corporations and other business enterprises. It has no force of law in the UK and thus a breach could not by and of itself amount to the commission of a criminal offence."*<sup>4</sup>

4. We have been asked by the Corporate Justice Coalition ("**CJC**") and the Business and Human Rights Resource Centre ("**BHRRC**") to provide an opinion addressing the following question:

*"Could Boohoo PLC have been found liable for breaches of the UN Guiding Principles of Business and Human Rights ("**the Guiding Principles**") under mandatory human rights due diligence/UK 'failure to prevent' legislation that instrumentalises the Guiding Principles?"*

5. Our opinion adopts the following structure:

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<sup>3</sup> Review, p.197.

<sup>4</sup> Review, pp.197-198.

- (1) First, we consider the evidence analysed by the Review in relation to allegations of poor working conditions and low rates of pay, Boohoo's business practices, weak corporate governance and inadequate monitoring of the supply chain and Boohoo's state of knowledge in 2019, and we set out the conclusions reached in the review in relation to each of these matters (section B).
  - (2) Secondly, we set out the background to and relevant content from the Guiding Principles, including the relevant human rights to which they relate (section C).
  - (3) Thirdly, we explain some of the history to the lobby for a mandatory human rights due diligence/'failure to prevent' law in the UK, including CJC's proposals in that regard and a model legal provision ("**the Model Legal Provision**") developed by the British Institute of International and Comparative law ("**BIICL**") (section D).
  - (4) Fourthly, we consider the question of whether Boohoo could have been found liable for breaches of the Guiding Principles under a mandatory human rights due diligence/'failure to prevent' law in the UK that broadly takes the form of the BIICL Model Legal Provision (section E). In doing so, we consider some of the recommendations of the Review and steps taken to implement those recommendations, and their implications for this question.
6. We conclude that based on the evidence considered and conclusions reached in the Review, Boohoo could have been found liable for breaches of the Guiding Principles under mandatory human rights due diligence/UK 'failure to prevent' legislation in the form of the BIICL Model Legal Provision, had such legislation been in place during the relevant period of time (section F). Of course, it is difficult to speculate as to whether Boohoo might have behaved differently had such legislation been in place, but such incentivisation of better practice simply underscores the value of such legislation.

## **B. THE EVIDENCE IN THE REVIEW**

7. The bulk of the Review (some 146 of 234 pages) is devoted to a summary of the evidence it considered. This evidence was gathered from a range of sources, including Boohoo itself, responses submitted through a questionnaire on the Review website as

part of its public call for evidence, responses from stakeholders consulted by the Review team, consultees and campaign groups, a forensic accountancy firm engaged to assist with the Review and the Review team's own visit to Leicester.

### **Allegations of Poor Working Conditions and Minimum Wage Underpayment**

8. The Review considered a range of evidence in relation to the allegations of poor working conditions and pay. This included a document review in relation to a sample of 62 of Boohoo's direct suppliers (described as 'Tier 1') and those to whom its suppliers' sub-contracted (described as 'Tier 2'). This sample drew on a sample audit conducted by an ethical audit company engaged in late 2019 and spot checks conducted by the same company in July and August 2020, responses to the website questionnaire, stakeholders' responses and the Review team's visit to Leicester.
  
9. In relation to poor working conditions, the Review considered:
  - (1) A number of examples from the document review which related to non-compliant health and safety standards (including locked fire doors, buildings in a general state of disrepair and no "*wholesome drinking water*")<sup>5</sup> and COVID-19 controls (including the absence of any risk assessment).<sup>6</sup> Examples included:
    - (a) A visit during the sample audit conducted by the ethical audit company engaged in late 2019 which led its Managing Director to say that the relevant factory "*has the worst conditions that I have seen in the UK and is not safe for workers*".<sup>7</sup>
    - (b) Spot checks by the same ethical audit company in July/August 2020 which found a company with "*too many health and safety issues to report*"<sup>8</sup> amongst other issues.<sup>9</sup>

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<sup>5</sup> Review, pp.65-66.

<sup>6</sup> Review, pp.66.

<sup>7</sup> Review, pp.85.

<sup>8</sup> Review, pp.66.

<sup>9</sup> Review, p.79.

- (2) Numerous responses submitted through the website which alleged working conditions which were at best unclean and at worst “*appalling*”, other responses which alleged unsafe working conditions (including locked fire exits and covered smoke alarms)<sup>10</sup> and a large number which described inadequate or non-existent COVID-19 measures.<sup>11</sup>
  - (3) The health and safety hazards and locked fire doors the team saw for itself when it visited Leicester.<sup>12</sup>
10. The Review concluded that “*a significant number of the factories in our sample had unacceptably poor working conditions, which included serious health and safety violations. There is a significant risk of a disaster in the future. I have particular concerns about fire; I have concluded that were a fire to break out in some of the buildings in Leicester it is likely that there would be loss of life*”.<sup>13</sup>
11. In relation to low rates of pay, the Review considered:
- (1) A number of examples from the document review which related to non-compliant working hours records,<sup>14</sup> payment practices<sup>15</sup> and minimum wage payment.<sup>16</sup> Examples included:
    - (a) Visits during the sample audit conducted by the ethical audit company engaged in late 2019 which identified falsified wage records, no signed contracts of employment and workers who had not been paid for seven weeks.<sup>17</sup>
    - (b) Spot checks by the same company in July/ August 2020 which found non-compliant working hours records (described as “*clearly falsified*”),<sup>18</sup>

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<sup>10</sup> Review, p.124.

<sup>11</sup> Review, p.125.

<sup>12</sup> Review, p.184.

<sup>13</sup> Review, p.219.

<sup>14</sup> Review, pp.62-63.

<sup>15</sup> Review, p.63.

<sup>16</sup> Review, pp.64-65.

<sup>17</sup> Review, p.85.

<sup>18</sup> Review, p.63; p.79.

payment practices<sup>19</sup> and minimum wage payment (including workers claiming they earned £3 per hour).<sup>20</sup>

- (2) The majority of responses submitted through the website which alleged failures to pay the minimum wage (one witness suggesting pay could be as low as £2.50 per hour) and other responses alleging other infractions relating to wages such as long hours, no pay, no holiday pay, no paid breaks and no pension contributions<sup>21</sup> and concealment.<sup>22</sup>
  - (3) A large number of stakeholder responses which said that failure to pay the minimum wage was endemic.<sup>23</sup>
12. The Review concluded that *“a significant number of the suppliers and sub-contractors within the sample...considered were paying their employees less than the national minimum or living wage”* and that this was *“an historic problem”*.<sup>24</sup> The drivers for this were considered to be *“an unhealthy combination of lack of scrutiny, commercial pressures and historical assumptions that state benefits can be used to subsidise low wages”*.<sup>25</sup>
13. In relation to other employment-related allegations, the Review considered a number of examples from the document review where there was non-compliant documentation, including right to work documentation.<sup>26</sup> The Review concluded that *“employees’ rights are ignored and/or neglected on a wide scale. Many employees do not have proper contracts and are not entitled to paid holidays or sick-pay. Working hours are frequently excessive and inadequately remunerated”*.<sup>27</sup> The Review also considered the absence of any responses from any garment workers who said they were a member of a trade union against the backdrop of expressions of interest by some.<sup>28</sup>

### **Allegations Relating to Retailer Business Practices**

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<sup>19</sup> Review, p.63; p.79.

<sup>20</sup> Review, pp.64-65; p.79; p.157.

<sup>21</sup> Review, pp.116-118.

<sup>22</sup> Review, pp.122-123.

<sup>23</sup> Review, p.132.

<sup>24</sup> Review, p.219.

<sup>25</sup> Review, p.219.

<sup>26</sup> Review, pp.61-62; pp.75-76; pp.78-79.

<sup>27</sup> Review, p.219.

<sup>28</sup> Review, p.130.

14. The Review considered evidence from a significant number of Boohoo Board members and senior staff, most of whom appeared to acknowledge that *“its systems and processes were in need of attention and improvement”* but that they were *“concerned as to how this could be achieved without sacrificing its core characteristics of speed and agility”*.<sup>29</sup>
15. The Review considered evidence as to whether Boohoo’s prices were too low and the impact of those prices on conditions in its supply chain,<sup>30</sup> including the culture of driving a hard bargain,<sup>31</sup> buyers’ lack of understanding of garment cost and how to adapt a design to meet a price point<sup>32</sup> and Boohoo’s bargaining power with Leicester suppliers.<sup>33</sup> The ex-Chairman of Boohoo told the Review:

*“I could quite see how some buyers might feel that in order to appear very good in his (Mahmud, the CEO’s] eyes, they would have to almost screw these people to the floor as it were.”*<sup>34</sup>

16. The Review also considered evidence relating to Boohoo’s test-and repeat model and its impact on order sizes and timeframes<sup>35</sup> and therefore the use of sub-contracting by its suppliers.<sup>36</sup> The General Counsel of Boohoo referred to a supplier:

*“... operating a really lovely factory and doing work for [competitor] brands and then we’re getting kicked out to wherever for production of our garments.”*<sup>37</sup>

When she asked why Boohoo products were not being made in the model factory, the Review records her answering that *“it was something to do with cost and size of the order”*. Boohoo’s CEO, Mahmud Kamani acknowledged that the use of sub-contractors *“speeds things up... When buying so many new lines, it is hard to do everything with the manufacturer”*.<sup>38</sup>

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<sup>29</sup> Review, p.95.

<sup>30</sup> Review, pp.97; 128.

<sup>31</sup> Review, pp.97-99; 129.

<sup>32</sup> Review, pp.100-101; 128-129.

<sup>33</sup> Review, pp.98.

<sup>34</sup> Review, p.100.

<sup>35</sup> Review, pp.99; 103-104; 129.

<sup>36</sup> Review, p.107.

<sup>37</sup> Review, p.87.

<sup>38</sup> Review, p.107.



17. The Review did not accept that Boohoo's business model was founded on exploiting workers in Leicester. However, the Review made a number of findings about the way in which Boohoo's buyers approach the issue of placing orders with suppliers, including too much emphasis on autonomy, insufficient knowledge about garment technology and how designs can be altered to reduce cost prices and no incentives to ensure that the price is not so low that it cannot be achieved in an ethical way. The Review also concluded that *"it is axiomatic that the greater the number of sub-contractors involved, the higher the profit element and the lower amount available for workers' wages"*;<sup>39</sup> further:

*"There has been historic acquiescence in the use of sub-contractors. Indeed it could be said that there was a degree of tacit reliance upon them in the sense that it allowed suppliers to handle volumes of orders which were placed in a way which did not pay real attention to levels of capacity. This was coupled with a serious failure to appreciate the level of risk attached to the use of sub-contractors. Unauthorised sub-contracting has been endemic for many years but Boohoo has failed to get a grip on it, partly because it failed to appreciate the extent to which it was exposed to it."*<sup>40</sup>

### **Weak Corporate Governance and Inadequate Monitoring of Supply Chain**

18. The Review considered evidence suggesting that the issue of unauthorised subcontracting by a supplier was discussed by Boohoo at least as early as August 2016<sup>41</sup> and that allegations about poor working conditions and low rates of pay were made about the same supplier directly to Boohoo at least as early as August 2017 and then again in October 2017.<sup>42</sup> Notwithstanding the investigation which revealed issues, these were not escalated to Boohoo's Audit Committee or Board. Moreover, Boohoo continued to work with the supplier, including in circumstances where spot checks in August 2020 indicated that issues remained.<sup>43</sup>
19. The Review also considered evidence indicating that in April 2017, PWC had produced a *Supplier Ethical Governance Risk Assessment* for Boohoo which recommended a new approval process for new suppliers, their completion of a pre-audit factory checklist declaring their capacity, greater visibility of subcontracting, regular auditing and audit

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<sup>39</sup> Review, p.211.

<sup>40</sup> Review, p.222.

<sup>41</sup> Review, p.68.

<sup>42</sup> Review, pp.73-74.

<sup>43</sup> Review, pp.73-76.

recording together with result implementation and the overall systematisation of Boohoo's supplier index.<sup>44</sup> The Review concluded that *"it appears that the majority of PWC's recommendations were never implemented"*.<sup>45</sup>

20. In addition, the Review considered evidence that in January 2018, a Supply Chain Discussion Paper by Boohoo's Head of Internal Audit recommended investment in a specialist audit action management tool given the volume of suppliers.<sup>46</sup> The Review also considered evidence that in September 2019, the same Head of Internal Audit produced an Internal Audit Report which showed that the majority of suppliers manufacturing in Leicester (and Manchester) had out of date audit reports and those which were available had been conducted on a pre-arranged date.<sup>47</sup> A new team structure for compliance was proposed with a review of the approach to supply chain governance, including the introduction of a supply chain governance tool alongside regular updates to the Board.<sup>48</sup> An ethical audit company was then engaged which conducted some sample audit work in Leicester in late 2019.<sup>49</sup> In February 2020, an agreement was entered into with the same company for a year-long Supplier Audit Management Programme but its start was delayed due to COVID-19.
21. The Review has explained that those at Boohoo have said variously *"Looking back, audit compliance was not fit for purpose"*;<sup>50</sup> *"we didn't have full transparency of the UK supply chain"*;<sup>51</sup> *"there was an understanding that we needed to go from the back of a fag packet, box-ticking, to semi-professional overnight"*;<sup>52</sup> and *"I felt there wasn't really a sponsor on the Board for [work around the supply chain]"*.<sup>53</sup> The Managing Director of the ethical audit company summarised the situation to the Review as follows:<sup>54</sup>

- (1) Boohoo did not understand the size of its supply chain in Leicester;

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<sup>44</sup> Review, pp.80-81.

<sup>45</sup> Review, p.81.

<sup>46</sup> Review, p.81.

<sup>47</sup> Review, pp.82-83.

<sup>48</sup> Review, pp.83.

<sup>49</sup> Review, p.85.

<sup>50</sup> Review, p.84; p.214.

<sup>51</sup> Review, p.84.

<sup>52</sup> Review, p.109.

<sup>53</sup> Review, p.174.

<sup>54</sup> Review, p.90.

- (2) The in-house compliance team was of insufficient size to manage several hundred suppliers and sub-contractors;
- (3) The in-house compliance team did not have the appropriate skill levels; and
- (4) The majority of factories in Leicester would not understand basic legal requirements.

22. The Review concluded that there was no complete and reliable list of Tier 1 suppliers, no list of Tier 2 sub-contractors of any kind<sup>55</sup> and that no RAG-rated risk register had ever been provided.<sup>56</sup> The Review also concluded that Boohoo's monitoring of its supply chain had been inadequate for many years as:

- (1) Insufficient financial resource had been allocated to supply chain compliance;
- (2) There was no robust or consistent method of onboarding new suppliers;
- (3) There was no methodology for maintaining and updating supplier information such as the day-to-day capacity to fulfil orders;
- (4) There was an overreliance on audit as the sole method of managing supply chain compliance, infrequent performance of in-house audits and no robust method of ensuring third party audits were in date;
- (5) There was no system of sanctions for non-compliance that was widely known about and could be enforced;
- (6) There was no coherent record-keeping system for compliance activities; and
- (7) There was no robust method of ongoing monitoring.<sup>57</sup>

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<sup>55</sup> Review, p.108.

<sup>56</sup> Review, p.177.

<sup>57</sup> Review, pp.220-221.

23. The Review concluded that the failures it identified *“did not arise from the intentional exploitation of Leicester factory workers. Rather they were caused by weak corporate governance”*.<sup>58</sup>

### **State of Knowledge in December 2019**

24. The Review found that *“much of the time, Boohoo simply has no idea where its clothes are being made and thus no chance of monitoring the conditions of the workers who make them”*.<sup>59</sup> It also found that *“there were a series of warnings and red flags, both from inside and outside the company, which Boohoo ignored. By the time they began to take notice, it was too late”*.<sup>60</sup>

25. Specifically, the Review concluded that:

- (1) *“Boohoo has known since at least 2017 that allegations were being made about companies in its Leicester supply chain”*;
- (2) *“from at the latest March 2019, Boohoo realised that there were problems with the Leicester supply chain and that action needed to be taken”*;
- (3) *“by December 2019 at the latest, the Boohoo Board...knew for a fact that there were some serious examples of unacceptable working conditions and poor treatment of workers (including illegally low pay) in the Leicester supply chain” and that “it was more likely than not that they realised by the end of 2019 that the problems were likely to be widespread if not endemic”*;
- (4) *“Boohoo took steps to examine and remedy the position but that there was insufficient sense of urgency, particularly from December 2019 onwards. The problems revealed in December 2019 should have resulted in an immediate programme of spot-checks of the kind that they later implemented in July and August 2020”*; and
- (5) *“it is more likely than not that the failure to move at pace from March 2019 was due to a failure of governance, in particular, that commercial issues such as growth and profit*

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<sup>58</sup> Review, p.215; see also p.221.

<sup>59</sup> Review, p.210.

<sup>60</sup> Review, p.215.

*were still considered to be a higher priority than supply chain supervision and scrutiny”.*<sup>61</sup>

26. Although not considered in detail in the Review, in February 2019, the Environmental Audit Committee (“EAC”) published its report on *Fixing Fashion: clothing consumption and sustainability*.<sup>62</sup> This drew on evidence which the Committee had considered, having heard evidence on a range of matters in 2018, including evidence of “*a dress on Boohoo that retailed at full price for £5*”,<sup>63</sup> “concerns about working conditions and illegally low pay in the garment manufacturing hub of Leicester”<sup>64</sup> and a link between the two:

*“We heard that the buying practices of some online fashion retailers may be putting UK clothing manufacturers in the position where they can only afford to pay garment workers illegally low wages...:*

*Boohoo holds weekly meetings at its Manchester head office where suppliers bring samples to the product rooms in a single room with 10 to 12 large tables. ‘It’s like a cattle market,’ says one person from a supplier who did not want to be named. ‘Say I’m the buyer, and [you’ve] just given me the price of this [dress] for £5. I will literally hold it up to the next table and say, ‘How much for that?’ and he’ll tell you £4. It’s ruthless.’*<sup>65</sup>

27. The EAC Report records that Boohoo denied that its buying practices and discount prices were to blame for illegally low wages in Leicester garment factories: “*It says its £5 dresses are merely a ‘marketing tool to attract customers to visit our website and these loss leading garments make up only 80 out of over 6,700 dress styles on the Boohoo website’.*”<sup>66</sup> Boohoo was pressed on why it would not sign up to the Ethical Trading Initiative (“ETI”) and had not recognised trade unions; its evidence that it was using all of the same standards as the ETI was contested by the ETI and its evidence that there did not appear to be demand for the workers in its Burnley warehouse to require a union was contradicted by the union of Shop, Distributive and Allied Workers.<sup>67</sup>
28. The Review found that although “*treating a £5 dress as a standalone piece of evidence that Boohoo must be underpaying its suppliers is plainly oversimplistic*”,<sup>68</sup> the “*the suggestion that*

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<sup>61</sup> Review, pp.222-223.

<sup>62</sup> EAC Report available here: [Fixing fashion: clothing consumption and sustainability - Report Summary - Environmental Audit Committee \(parliament.uk\)](#) (last accessed 22.7.21).

<sup>63</sup> EAC Report, p.6.

<sup>64</sup> EAC Report, p.15.

<sup>65</sup> EAC Report, p.17.

<sup>66</sup> EAC Report, p.17.

<sup>67</sup> EAC Report, p.19.

<sup>68</sup> Review, p.96.

*Boohoo seeks to drive a 'hard bargain' was not something that those in senior positions at the company in principle had any difficulty with*"<sup>69</sup> and *"there seemed to be little or no recognition at Board level of the danger that Boohoo's predominant place in the Leicester clothing industry meant that this may not be a free negotiation"*.<sup>70</sup> The Review concluded that Boohoo had acknowledged internally in September 2019 that the information given to the EAC in relation to supplier audit status was not accurate and agreed with that assessment.<sup>71</sup> This would suggest that at the very least, Boohoo were on notice not only as to possible issues in their supply chain but the potential link between these issues and their purchasing practices.

### C. THE GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

29. The Guiding Principles implement the UN 'Protect, Respect and Remedy' Framework which was developed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.<sup>72</sup> They were endorsed by the Human Rights Council in UN Resolution 17/4 of 16 June 2011. The Guiding Principles are stated to apply to *"all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure"*.<sup>73</sup> They are also stated not to be read as *"creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights"*.<sup>74</sup>
30. Section II of the Guiding Principles articulates 'the Corporate Responsibility to Protect Human Rights' through both 'Foundational Principles' and 'Operational Principles' (Principles 11-21 ("**P11-23**")). The key principles of relevance to the allegations of poor working conditions and low rates of pay in many Leicester factories which were found by the Review to be not only well-founded but substantially true are set out below.

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<sup>69</sup> Review, p.98.

<sup>70</sup> Review, p.98.

<sup>71</sup> Review, p.83.

<sup>72</sup> Guiding Principles available here:

[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf) (last accessed 22.07.21).

<sup>73</sup> Guiding Principles, p.1.

<sup>74</sup> Guiding Principles, p.1.

**P11: Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address the adverse human rights impacts with which they are involved.**

**P12: The responsibility of business enterprises to respect human rights refers to internationally recognised human rights - understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work.**

31. The commentary on P12 clarifies that the International Bill of Human Rights consists of the Universal Declaration of Human Rights and the main instruments through which it has been codified: the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Bill recognises a wide range of human rights, including:

(1) The right for those who work to just and favourable remuneration (UDHR, Art. 23(2); ICESR, Art. 7(a));

(2) The right to just and favourable conditions of work (UDHR, Art. 23(1); ICESR, Art. 7(b));

(3) The right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay (UDHR, Art. 24; ICESR, Art 7(d)); and

(4) The right to form and join trade unions (UDHR, Art. 23(4); ICESR, Art. 8).

32. The commentary on P12 further refers to the principles concerning fundamental rights in the eight ILO core conventions as set out in the Declaration on Fundamental Principles and Rights at Work. The Declaration recognises four fundamental principles and rights at work, including the right to freedom of association and the effective recognition of the right to collective bargaining.

**P13: The responsibility to protect human rights requires that business enterprises:**

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.

33. The commentary on P13 makes clear that:

*“For the purposes of these Guiding Principles a business enterprise’s “activities” are understood to include both actions and omissions; and its “business relationships” are understood to include relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.”*

**P15: In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:**

- (a) A policy commitment to meet their responsibility to respect human rights;
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights; and
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.

34. As the commentary to P15 sets out, P16-24 elaborate further on these policies and processes and their expected content. P16 addresses statements of policy. P17-P21 relate to human rights due diligence and the need for businesses to identify, prevent, mitigate and account for how they address their adverse human rights impacts – specifically actual or potential impacts with which they may be involved either through their own activities or as a result of their business relationships – including by integrating the findings from their impact assessments across relevant internal functions and processes, taking appropriate action and tracking the effectiveness of their response. P22 addresses provision for remediation, either directly or indirectly. Finally, P23-24 give guidance on issues of context, including that businesses should *“treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate”*.



**P26: States must take appropriate steps to ensure, the effectiveness of judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy”.**

35. The commentary to P26 recognises that *“legal barriers that can prevent legitimate cases involving business-related human rights abuse from being addressed can arise where, for example: the way in which legal responsibility is attributed amongst members of a corporate group under domestic criminal and civil laws facilitates the avoidance of appropriate accountability”* (p.29).

#### **D. A MANDATORY HUMAN RIGHTS DUE DILIGENCE/FAILURE TO PREVENT LAW**

36. As Ms Levitt explains in her Review, the Guiding Principles have *“no force of law in the UK and thus a breach could not by and of itself amount to the commission of a criminal offence”*.<sup>75</sup> However, putting the Guiding Principles on a legislative footing has been recommended by various organisations and institutions over the last few years.

#### **The JCHR Report**

37. In 2017, the Joint Committee on Human Rights published its report *Human Rights and Business 2017: Promoting responsibility and ensuring accountability (“the JCHR Report”)*<sup>76</sup> in which it considered the progress made by the UK Government in implementing the Guiding Principles.<sup>77</sup> One of the Committee’s recommendations was:

*“We recommend that the Government should bring forward legislation to impose a duty on all companies to prevent human rights abuses, as well as an offence of failure to prevent human rights abuses for all companies, including parent companies, along the lines of the relevant provisions of the Bribery Act 2010. This would require all companies to put in place effective human rights due diligence processes (as recommended by the UN Guiding Principles), both for their subsidiaries and across*

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<sup>75</sup> Review, p.198. We note, however, that the Supreme Court has now held that commitment to principles of this kind can be relevant to the establishment of a duty of care for the purposes of civil liability: see eg. *Okpabi v Royal Dutch Shell* [2021] 1 WLR 1294 at §29, §47, §§143-145 affirming *Lungowe v Vedanta Resources* [2020] AC 1045.

<sup>76</sup> Available here: <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf> (last accessed 22.07.21).

<sup>77</sup> JCHR Report, §1.

*their whole supply chain. The legislation should enable remedies against the parent company and other companies when abuses do occur, so civil remedies (as well as criminal remedies) must be provided. It should include a defence for companies where they had conducted effective human rights due diligence, and the burden of proof should fall on companies to demonstrate that this has been done.”<sup>78</sup>*

38. The context for this recommendation was one where, although it did not focus on any particular sector, the Committee received a large amount of evidence on human rights abuses in the garment and textiles industry.<sup>79</sup> Furthermore, following several media reports and the publication of research findings by the University of Leicester on serious labour rights abuses in the East Midlands garment industry, the Committee conducted a visit to Leicester.<sup>80</sup> During the visit, the Committee heard “*compelling evidence...that labour rights abuses are endemic in the Leicester garment industry*”,<sup>81</sup> with the most common forms of abuse including “*payment of wages below the minimum wage, lack of employment contracts and significant disregard of health and safety regulations*”.<sup>82</sup> The Committee also considered the difficulties of holding UK companies legally accountable for the actions of their suppliers in a UK court<sup>83</sup> as well as comparative business and human rights legislation in Europe, including the French Corporate Duty of Vigilance Law introduced in 2017 and considered further below.<sup>84</sup>

### **The BIICL Report**

39. The recommendation in the JCHR Report was the subject of further consideration in a 2020 report by the British Institute of International and Comparative Law on *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms (“the BIICL Report”)*.<sup>85</sup> The BIICL Report considered the legal feasibility of introducing a ‘failure to prevent’ mechanism in legislation modelled in section 7 of the Bribery Act 2020, recommending that any such legislative provision should:

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<sup>78</sup> JCHR Report, §193.

<sup>79</sup> JCHR Report, §24.

<sup>80</sup> JCHR Report, §36.

<sup>81</sup> JCHR Report, §38.

<sup>82</sup> JCHR Report, §39.

<sup>83</sup> JCHR Report, §180.

<sup>84</sup> JCHR Report, p.59.

<sup>85</sup> Available here: [https://www.biicl.org/documents/84\\_failure\\_to\\_prevent\\_final\\_10\\_feb.pdf](https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf) (last accessed 22.07.21).

- (1) Apply to companies of all sizes, including SMEs, carrying on business in the UK;
- (2) Apply to “human rights” defined to apply to all internationally recognised human rights to be defined in a Schedule to the Act;
- (3) Establish a duty to prevent human rights harms in its own activities and those of its business relationships;
- (4) Extend to harms which take place in the entire value chain of a company, regardless of the jurisdiction of the harm;
- (5) Be subject to a statutory defence of having had in place “procedures reasonable in all the circumstances” or having undertaken “reasonable” human rights due diligence, to prevent human rights harms; and
- (6) Establish a right to civil action by those affected for compensation for damages suffered as a result of a failure to prevent human rights harms, with potential provision for preventative and injunction orders as well as state-based oversight mechanisms.<sup>86</sup>

The BIICL Model Legal Provision seeks to reflect these features, is annexed to the BIICL Report and is summarised in the Annex to this Opinion. The BIICL Report states that the focus on civil liability “should not be construed as excluding the option of an additional provision for criminal liability”.<sup>87</sup>

### **The French Duty of Vigilance Law**

40. The BIICL Report also considered legislative provision and proposals in relation to mandatory human rights due diligence regulation across Europe, referring to the French Duty of Vigilance Law introduced in 2017 alongside various commitments and proposals in Finland, Germany, Norway and Switzerland.<sup>88</sup> The French Law is the

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<sup>86</sup> BIICL Report, pp.5-6.

<sup>87</sup> BIICL Report, p.39.

<sup>88</sup> BIICL Report, pp.8-9.

only legislative example in force to date which imposes a general mandatory due diligence requirement for human rights impacts.<sup>89</sup> There have since been developments in other countries, including the recent adoption of an Act on Corporate Duty Diligence in Supply Chains in Germany and a Transparency Act in Norway, but neither of these are yet in force.<sup>90</sup> Also of significance is the adoption by the European Parliament of a resolution for a legislative proposal on mandatory supply chain due diligence in March 2021, and the European Commission's proposal for a directive on Sustainable Corporate Governance

41. The French Duty of Vigilance Law imposes a duty on companies that employ at least 5,000 employees within the company and its direct and indirect subsidiaries with a head office on French territory or 10,000 employees in its services and in its direct and indirect subsidiaries on French territory or abroad to establish and implement an effective vigilance plan (Art. 1). The plan is to include reasonable vigilance measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks resulting directly or indirectly from the operations of the company and of the companies it controls, as well as from the operations of subcontractors or suppliers with whom it maintains an established commercial relationship, when such operations derive from this relationship. The Law stipulates who is to be involved in drafting the plan and the measures it must include. Where a company does not meet its obligations within a specified time period, a person with legitimate interest can apply to court to urge the company to comply, under financial compulsion if appropriate; the company will also be liable and obligated to compensate for any harm that the due diligence would have permitted it to avoid (Art. 2).
42. As the BIICL Report points out, the French Duty of Vigilance Law applies to a subset of the larger companies caught by the Guiding Principles, while proposals in Switzerland and Germany at the time were limited to companies operating in high-risk sectors;<sup>91</sup> however, the German law since passed is not so limited and nor is the Norwegian law though both also only apply to larger companies. The French Law also

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<sup>89</sup> English translation available here: <https://www.business-humanrights.org/en/latest-news/french-duty-of-vigilance-law-english-translation/> (last accessed 22.07.21).

<sup>90</sup> See eg. the comparative table produced by the European Coalition for Corporate Justice dated 14 June 2021 and available here: [Corporate-due-diligence-laws-and-legislative-proposals-in-Europe-June-2021.pdf](https://www.ec4cj.org/wp-content/uploads/2021/06/Corporate-due-diligence-laws-and-legislative-proposals-in-Europe-June-2021.pdf) (corporatejustice.org) (last accessed 22.07.21).

<sup>91</sup> BIICL Report, p.31.

limits liability to the impacts of those actors with which a company has an established relationship, while the Swiss proposal (which failed) limited it to harms attributable to the activities of Swiss parent companies and their foreign subsidiaries<sup>92</sup> and the Norwegian law limits it to companies domiciled or delivering products or services in Norway; the German draft law, like the Guiding Principles, was not so limited and nor is the Act that has since been passed. Finally, while the French Law only provides for civil liability, this is because the criminal sanction contained within the original bill was struck out by the Constitutional Court for lack of clarity.<sup>93</sup> This reflects the importance of assessing legislative provision in relation to mandatory human rights due diligence regulation against the precise terms of the Guiding Principles for the purposes of answering a question about liability under a UK failure to prevent law which instrumentalises the Guiding Principles.

### **CJC's Proposals on a Mandatory Human Rights Due Diligence 'Failure to Prevent' Law**

43. CJC, and BHRRC as part of a coalition of UK civil society organisations who are working to strengthen corporate accountability for human rights abuses (as well as environmental damage), have considered the principal elements they would like to see included in any failure to prevent legislation. These elements are as follows:
- (1) Commercial and other organisations have a duty to prevent adverse human rights and environmental impacts of their domestic and international operations, products and services, including in their supply and value chains.
  - (2) Commercial and other organisations must develop and implement reasonable and appropriate due diligence procedures to identify, prevent and mitigate adverse human rights and environmental impacts.
  - (3) Commercial and other organisations must publish a forward-looking plan describing the procedures to be adopted in the forthcoming financial year, and an assessment of the effectiveness of actions taken in the previous financial year.

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<sup>92</sup> BIICL Report, p.43.

<sup>93</sup> BIICL Report, p.38.

- (4) Commercial and other organisations, and their senior managers shall be subject to a civil penalty if they fail to develop, implement and publish a due diligence plan, or publish a misleading or inadequate plan.
  - (5) Commercial and other organisations shall be liable for harm, loss and damage arising from their failure to prevent adverse human rights and environmental impacts of their domestic and international operations, products and services including in their supply and value chains.
  - (6) It could be a defence from liability for damage or loss, unless otherwise specified, for commercial and other organisations to prove that they acted with due care to prevent human rights and environmental impacts.
  - (7) Commercial and other organisations, and their senior managers shall be subject to a criminal penalty if they fail to prevent serious human rights or environmental impacts.
  - (8) Commercial and other organisations to be included in this legislation include all businesses, no matter their size, nature or sector, as well as public sector bodies, including those using public procurement and providing financial and other support to businesses, such as export credit agencies, development agencies and development finance institutions.
44. It should be apparent from the above that the principal elements CJC and BHRRC would like to see included in any mandatory human rights due diligence/'failure to prevent' legislation reflect a combination of the principle elements of the BIICL Model Legal Provision (duty to prevent and civil liability subject to due diligence defence: §43(1), (5) and (6) above) and the French Duty of Vigilance Law (duty diligence duty and plan requirement subject to civil penalty for failure to comply: §43(2)-(4) above) with additional provision for criminal penalty for failing to prevent serious human rights (and environmental) harms (§43(7) above).

#### **E. LIABILITY UNDER A FAILURE TO PREVENT LAW**

45. The answer to the question we have been asked, whether Boohoo could have been found liable [for breaches of the Guiding Principles] under mandatory human rights due diligence/UK 'failure to prevent' legislation that instrumentalises the Guiding Principles clearly depends on the form and content of any such legislation. In light of CJC and BHRRC's position on the principal elements it would like to see included in any 'failure to prevent' legislation and the analysis of this as set out at §§43-44 above, we have approached this by reference to legislation that takes the form of the BIICL Model Legal Provision. This is because while including elements of the French Duty of Vigilance Law and additional provision for criminal penalty for failing to prevent serious human rights in such a Provision would be faithful to CJC and BHRRC's position, it is unlikely to have a material impact on this analysis.
46. Liability under such a Provision would require the allegations regarding poor working conditions and low rates of pay to be caught by the definition of human rights harms. It seems likely that the allegations found to be true regarding poor working conditions would engage the right to just and favourable conditions of work while the allegations regarding low pay would engage the right to just and favourable remuneration. See, for example, *General Comment No. 23 (2016)* and the recognition of the obligations upon non-state actors such as business enterprises (sections A-B and §§74-75).<sup>94</sup> Other allegations potentially engage the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay and the right to form and join trade unions/collective bargaining.
47. Liability under such a Provision would also require Boohoo to have caused or contributed to those human rights harms through its own activities or for those harms to be directly linked to its operations, products or services by its business relationships. It seems likely the harms could be said to be directly linked to its operations, products or services by its business relationships in the sense that they are found in factories to which Boohoo either contracted directly or to which Boohoo's suppliers subcontracted its orders or parts of them. It is also arguable that Boohoo could be said to have caused or contributed to those harms through its activities – defined to include both its actions and omissions – in the form of its weak corporate governance and the inadequate

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<sup>94</sup> Available here:

<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=4slQ6QSmlBEDzFEovLCuW1a0Szab0oXTdImnsjZZVQfoUYY19kME5pOqRbao%2BukB1Kzn1MMnQL24FFvtIIdk%2F%2FR%2FF0GthE%2BTiGSATb%2BUa3WMs0%2F%2BfVfQFg02%2BY%2FTVuqU> (last accessed 22.07.21).

monitoring of its supply chain at the relevant time, if not also the approach of its buyers to the placing of orders and its acquiescence in the use of sub-contracting.

48. Under such a provision, it would be a defence for Boohoo to prove that at the relevant time, it had in place procedures reasonable in all the circumstances to prevent such harms from occurring. On the assumption that the procedures Boohoo had in place historically would not have been any different had 'failure to prevent' legislation been in force, it seems strongly arguable that Boohoo did not have in place procedures which were reasonable in all the circumstances to prevent such harms from occurring. As to the policies and processes envisaged by P15 and elaborated in P16-24:

(1) At the relevant time, Boohoo had published a statement dated August 2019 pursuant to section 54 of the Modern Slavery Act 2015 ("**the Modern Slavery Statement**") which acknowledges "*its responsibility to ensure that all products are manufactured in safe and comfortable conditions and in an ethical manner*" and refers to the principles in its Code of Conduct which include that working conditions are safe and hygienic and living wages are paid.<sup>95</sup> However, it appears that the content of the statement, which refers to "*a demanding set of procedures and policies in place to which all stock suppliers must adhere*", third party and in-house audits, identifying improvements in corrective action plan report and working with suppliers to make the identified improvements, was not sufficiently reflected in Boohoo's practice. This is to some extent reflected in the current statement dated February 2021 which refers to the failings identified by the Review, the steps taken a year previously being insufficient and the intensive audit programme launched in May 2020.<sup>96</sup>

(2) Boohoo had a compliance process in place but as the Review recognises, there were a number of shortcomings in how that process had operated in practice in recent years. In particular, it is difficult to see how such a process could have confidently captured any and all adverse human rights impacts when it was not predicated on clear visibility and understanding of Boohoo's Leicester supply chain. It seems that in collating the principles which underlie its Code of

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<sup>95</sup> Available here: [Boohoo snapshot 2021-01-11\\_170205.7517440000.pdf \(business-humanrights.org\)](#) (last accessed 22.7.21).

<sup>96</sup> Available here: [modern-slavery-statement-2020.pdf \(boohooplc.com\)](#) (last accessed 22.7.21).



Conduct, Boohoo had given thought to the potential adverse human rights impacts its activities may be involved in but didn't appear to follow this up with clear policies or practices which implemented these principles. It appears that Boohoo's compliance team was under-resourced and its Board had insufficient involvement in/oversight of its work. Further, it appears that before now, Boohoo had failed to take sufficiently prompt appropriate action in relation to issues which the Review found it knew of from at least December 2019, if not earlier.

- (3) It is unclear what remediation, if any, Boohoo intends to provide for those harmed by its activities or relationships or how it will cooperate in or assist with any such remediation being sought from other actors. We note the references in the Review to the responsibilities of other actors such as the police, fire brigade, local government, MPs, the Health and Safety Executive, Her Majesty's Revenue and Customs and the Gang-Masters Licensing Authority.<sup>97</sup>

49. The recommendations made by the Review give an indication of the sorts of steps that might be said to indicate what Boohoo has since considered appropriate to resolve the issues identified, e.g.:<sup>98</sup>

- (1) Reducing its approved suppliers to reduce and ultimately eliminate sub-contracting, publishing its list of Tier 1 suppliers and Tier 2 sub-contractors, introducing a list of requirements with sanctions for non-compliance and restricting buying to suppliers on the list with sanctions for non-compliance.
- (2) Setting up a specific Supply Chain Compliance Committee to include the Director of Sustainability, Heads of compliance, buying and merchandising and the internal auditor, reporting to the Audit Committee and appearing as a standing item on every Board meeting Agenda.
- (3) Creating a robust supply chain roadmap, implementing an electronic supply chain audit programme to capture audit status and capacity, implementing a robust onboarding system for new suppliers and opening a dialogue with its

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<sup>97</sup> Review, pp.110; 132; 138-139; 184-185; 220

<sup>98</sup> Review, pp.226-234.

suppliers to ensure a regular flow of orders, encouraging them to recruit skilled workers and placing a mixed bag of orders so that the prices charged for more complicated garments can be used to cross-subsidise the cost of more basic clothes.

- (4) Training buyers in the actual cost of fabricating garments to ensure they do not drive cost prices below what is reasonable and introducing a set of KPIs which capture ethical and sustainability issues as well as growth and profit.
- (5) Ensuring a programme of unannounced spot-checks, ongoing monitoring and due diligence including the creation and maintenance of a RAG-rated register by a Risk Committee chaired by a Board Member and reporting to the Audit Committee while appearing as a standing item on every Board meeting Agenda.

Such recommendations are a good *ex-post* indicator of the sorts of steps that might have been considered to satisfy a requirement of procedures reasonable in all the circumstances to prevent such harms from occurring.

50. Since the Review, Boohoo has launched *An Agenda for Change in UK Garment Manufacturing* to implement its recommendations, overseen by retired Court of Appeal judge Sir Brian Leveson and assisted by KPMG. Sir Brian has produced three reports dated January 2021, March 2021 and June 2021. These and statements from Boohoo reflect a number of developments, including:

- (1) A deep dive audit review of suppliers and sub-contractors leading to the removal of 64 suppliers from Boohoo's supplier list,<sup>99</sup> the publication of Boohoo's list of UK manufacturing suppliers<sup>100</sup> and a decision to prohibit suppliers from subcontracting out cut-make-and-trim work, which workers must now be engaged by suppliers on proper contracts of employment.<sup>101</sup>

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<sup>99</sup> Leveson Report (Jan 2021), §7 available here: [the-rt-hon-sir-brian-leveson-jan-2021.pdf](#) ([boohooplc.com](#)) (last accessed 22.07.21).

<sup>100</sup> Leveson Report (March 2021), §4 available here: [report-to-board march-2021-combined.pdf](#) ([boohooplc.com](#)) (last accessed 22.07.21).

<sup>101</sup> Leveson Report (March 2021), §14.

- (2) The creation of a Risk Committee at Board level into which reports a new Supply Chain Compliance Committee and this topic is now a mandatory item on every Board Meeting agenda.<sup>102</sup>
- (3) The mapping of all Leicester factories onto internal systems which identify weekly production capacity, the creation of a new digital supplier hub for onboarding suppliers which integrates approval from compliance, finance and buying departments and only permits the raising of orders through a buying app<sup>103</sup> and the implementation of a labour standards improvement programme to support suppliers with training, guidance and resources to improve those standards.<sup>104</sup>
- (4) The creation of Key Performance Indicators for targets in the areas of engagement, technology, process and ongoing management and a set of Responsible Purchasing Practices for buyers supported by training and development modules to improve understanding of garment production, pricing and margins together with the impact of buying decisions and environmental, social and governance issues.<sup>105</sup>
- (5) The purchase of Boohoo's own premises that are intended to become an end-to-end garment production facility providing a benchmark for suppliers.<sup>106</sup>

While these developments are to be welcomed, they are also an indicator of what has been lacking to date and therefore some of the content of the concept of procedures reasonable in all the circumstances to prevent such harms from occurring.

## **G. CONCLUSION**

51. For the reasons set out above, we conclude that based on the evidence considered and conclusions reached in the Review, Boohoo could have been found liable for breaches

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<sup>102</sup> Boohoo Statement (25 September 2020) available here: [Publication of and response to Independent Review \(boohooplc.com\)](#) (last accessed 22.07.21).

<sup>103</sup> Leveson Report (March 2021), §§52-54.

<sup>104</sup> Leveson Report (June 2021), §27 available here: [sir-brian-leveson-report-to-board-2021-6-15.pdf \(boohooplc.com\)](#) (last accessed 22.07.21).

<sup>105</sup> Leveson Report (June 2021), §§40-43.

<sup>106</sup> Leveson Report (March 2021), §60.

of the Guiding Principles under mandatory human rights due diligence/UK 'failure to prevent' legislation in the form of the BIICL Model Legal Provision, had such legislation been in place during the relevant period of time. As the Review concluded :

*"Legislation is not merely a system for regulating society but also the mechanism by which society's values and priorities are communicated. If the law is not enforced, this sends a clear message that the violations are not important and the people affected do not matter."*<sup>107</sup>

Of course, it is difficult to speculate as to whether Boohoo might have behaved differently had such legislation been in place. However, Boohoo's story is a compelling example of a situation in which such legislation might have made a difference, either by encouraging appropriate action to be taken earlier or by providing a means of redress for those affected by the allegations found to be substantially true.

**TIMOTHY OTTY QC**

**NAINA PATEL**

**Blackstone Chambers**

**[22 July 2021]**

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<sup>107</sup> Review, p.220.

## ANNEX: BIICL MODEL LEGAL PROVISION

### Section X: Failure of commercial organisations to prevent human rights harms

- (1) A relevant commercial organisation (“C”) is liable for damages under this section if C fails to prevent human rights harms:
  - (a) Which it causes or contributes to through its own activities, or
  - (b) Which are directly linked to its operations, products or services by its business relationships, even if it has not contributed to those harms.
- (2) But it is a defence for C to prove that C had in place procedures reasonable in all the circumstances to prevent such harms from occurring.
- (3) For the purposes of this section, human rights harms are defined as set out in [Schedule A].
- (4) See section [Y] on a duty of the Secretary of State to publish guidance.
- (5) In this section –
  - “partnership” means –
    - (a) a partnership within the Partnership Act 1890, or
    - (b) a limited partnership registered under the Limited Partnerships Act 1907,

or a firm or entity of a similar character formed under the law of a country or territory outside the United Kingdom,

“relevant commercial organisation” means –

- (a) a body which is incorporated under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere),
- (b) any other body corporate (wherever incorporated) which carries on a business, or a part of a business, in any part of the United Kingdom,
- (c) a partnership which is formed under the law of any part of the United Kingdom and which carries on a business (whether there or elsewhere), or
- (d) any other partnership (wherever formed) which carries on a business or part of a business, in any part of the United Kingdom.

and, for the purposes of this section, a trade or profession is a business.

“foreign subsidiary” means –

- (a) a commercial enterprise which is not incorporated in the UK, and
- (b) which does not carry on a business or part of a business in the UK, but
- (c) is wholly or partially owned by a relevant commercial enterprise as defined above (the “UK parent company”).

### Section Y: Guidance about commercial organisations preventing human rights harms

- (1) The Secretary of State must publish guidance about procedures that relevant commercial organisations can put in place to prevent human rights harms in their own activities or those

*of their business relationships as mentioned in section [number of possible mechanism above (1)].*

- (2) *The Secretary of State may, from time to time, publish revisions to guidance under this section or revised guidance.*
- (3) *The Secretary of State must consult the Scottish Ministers [and the Department of Justice in Northern Ireland' before publishing anything under this section.*
- (4) *Publication under this section is to be in such manner as the Secretary of State considers appropriate.*
- (5) *Expressions used in this section have the same meaning as in section X].*