

**COMPLAINT FROM AN INDIVIDUAL
IN CAMEROON AGAINST A UK
COMPANY**

Initial Assessment By The UK
National Contact Point For The
OECD Guidelines For
Multinational Enterprises

JUNE 2016

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Summary of the complaint and the UK NCP decision

1. This complaint to the UK National Contact Point for the OECD Guidelines for Multinational Enterprises is made by an individual in Cameroon about his treatment by his employer, an energy company in Cameroon, between 2002 and 2014. The complainant says that his employer made unjustified and arbitrary changes to his position and salary in 2002, and has subsequently falsified or withheld his employment records, including a final record given to him on his retirement in May 2014, to conceal this abuse and avoid paying benefits and compensation due to him.
2. The complainant refers to a UK investment company that in 2014 acquired a majority shareholding in his employer. He says that the UK company failed to change the poor governance practices of his employer. He asks the UK NCP to help him obtain full and correct documents relating to his employment and payment of the full settlement due to him, and/or to help him obtain justice in the UK courts.
3. The UK investment company named in the complaint accepted the UK NCP's invitation to respond. The company says that it does not have any role in day to day management of the complainant's employer, but notes that on acquiring its shareholding, it made some changes to personnel and policies of this company to strengthen its corporate governance. The UK company notes that most events referred to in the complaint pre-date its shareholding. It understands that the complainant's employment dispute was addressed through the proper processes, and the compensation legally due to him has been paid. The UK company rejects the allegation that it fails to meet its obligations under the OECD Guidelines.
4. The UK NCP has decided to reject further examination of the complaint. The information provided shows that the complainant may have a genuine employment grievance, but the UK NCP does not consider that the information substantiates an issue about OECD Guidelines obligations of the UK company named.
5. The UK NCP notes that this complainant has now had complaints on these issues considered by three NCPs in relation to three different companies. None of the NCPs has felt able to proceed.

Guidelines provisions cited

The complainant refers to the following provisions of the Guidelines:

Chapter II General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard Enterprises should:

6. Support and uphold good corporate governance principles and develop and apply good corporate governance practices, including throughout enterprise groups.
7. Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.
10. Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in Paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.
11. Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts where they occur.
12. Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

Chapter 3 Disclosure

1. Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.
2. Disclosure policies of enterprises should include, but not be limited to, material information on:
 - d) remuneration policy for members of the board and key executives, and information about board members, including qualifications, the selection process, other enterprise directorships and whether each board member is regarded as independent by the board.
6. The complainant also refers to Chapter I of the Guidelines: this chapter sets out concepts and principles rather than containing specific recommendations.

The Initial Assessment process

7. The Initial Assessment process is to determine whether the issues raised merit further examination. It does not determine whether the company has acted consistently with the Guidelines.
8. The complainant has made previous complaints referring to the same actions of his employer. The company named in this complaint is not the subject of any of the earlier complaints, and nothing in the UK NCP's decision in this complaint affects decisions in the earlier complaints. Paragraph 35 below discusses the handling of the earlier complaints.

Handling process

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| 9. | 14, 21, 28, 31.07.2015, and 4.08. 2015 | UK NCP receives complaint and supporting information |
| | 28.08.2015 | UK NCP receives translations of key documents |
| | 03.11.2015 | UK NCP shares complaint with company and invites response |
| | 30.11.2015 | UK NCP receives company response and shared with complainant |
| | 07, 08, 09, 15, 17.12.2015 | Further material sent by complainant |
| | 31.12.2015 | UK NCP issues draft Initial Assessment |
| | 11.01.2016 | UK NCP receives comments from complainant |
| | 25.01.2016 | UK NCP issues final Initial Assessment |

10. Three factors delayed the Initial Assessment process:
 - Presentation of the complaint was piecemeal: the complainant sent additional submissions and supporting documents after submitting the original complaint papers. Some documents were sent at a late stage in the process, and the UK NCP comments on the handling of these late submissions at Paragraphs 30-32 below.
 - The complaint and much of the supporting material were in French and the complainant said he could not provide translations. The UK NCP delayed handling to obtain translations of the complaint and documents it identified as key supporting documents.
 - The issues had been raised previously. Paragraph 3.1.5 of UK NCP procedures permits the UK NCP to make a draft Initial Assessment without seeking a response from the company named *"in exceptional circumstances (for example where it appears to the NCP that a complaint has been considered previously, does not relate to the named company's responsibilities under the OECD Guidelines or is for another NCP to consider)."* The UK NCP delayed handling to consider whether it could assess the complaint without inviting a company response, but ultimately decided to invite a response.

UK NCP decision

11. The UK NCP has decided to reject the complaint. The UK NCP took the following points into account when considering whether the complaint merited further consideration:

Identity of the complainant and his interest in the matter

12. The complainant is an individual acting on his own behalf. He clearly demonstrates an interest in the issues he raises about his employment grievance. He is able to provide information about this grievance. In providing information about actions of the UK company, he appears to rely on general information publicly available.

Whether the issue is material and substantiated and whether there seems to be a link to the enterprise's activities

13. The UK NCP considered information submitted by the complainant between 14th July and 4th August 2015, and information submitted by the company on 30th November 2015.
14. Most of the supporting information offered by the complainant relates to his dispute with his employer. It includes documents relating to his employment history, details of email exchanges with the employer, and published judgments of the Cameroon Labour Inspectorate and courts about the employment dispute.
15. Documents show that the employment dispute began in 2002, when the complainant challenged changes to his posting. From 2005 onwards, he challenged the accuracy of his employment records and in 2008, he took the dispute to the Cameroon courts. In 2012, the Cameroon Supreme Court ordered the complainant's employer to pay him certain benefits, and the employer eventually did so in 2013. The complainant remained in his employment throughout these events. He then retired at the end of May 2014.
16. The UK company named in the complaint began its acquisition of the complainant's employer in 2013 and completed it in May 2014. The complainant says that the UK company was in a position to appoint senior staff to his employer from January 2014.
17. On the basis of the information provided by the complainant, it appears to the UK NCP that the following events took place from 2014 onwards:
- a) On 31st May 2014, the complainant retired from his employment.
 - b) In August 2014, he wrote to his former employer to complain that he had not yet received the final employment record that should have been provided on retirement. The employer then sent the record to him, but he found it to be inaccurate, and found an associated reduction in his final financial settlement on retirement.
 - c) In March 2015, the complainant raised a complaint about his final settlement with the Cameroon Labour Inspector.

- d) In June 2015, the complainant sent emails to his employer's human resources director and corporate governance or audit director to complain about the problems with his final record and final settlement.
 - e) In June 2015, the complainant's trades union also wrote to the corporate governance or audit director, and referred to the complainant's case as one of several cases in which changes had been made to retiring employees' benefits in a manner that was not transparent.
 - f) The complainant then submitted the complaint to the UK NCP. As at 4th August 2015, he advised the UK NCP that neither he nor the trades union had received any substantive replies to their enquiries.
18. In its response to the complaint, the UK company offers details of changes it made to the management and governance of the complainant's employer, and copies of a new ethical code published by the employer.
 19. In regard to the complainant's individual circumstances, the UK company says that it is not involved in individual employee disputes. It relies on details it has received from the complainant's employer: these are that the complainant was paid in 2013 all the amounts found to be due to him by the courts, that his final employment record was delivered to him by hand shortly after his retirement at the end of May 2014, that there is no reason to believe it is incorrect, and that his complaints are part of an ongoing pursuit of additional compensation.
 20. Based on the information offered, the UK NCP considers that the complainant may have a genuine employment grievance. The information does not establish, however, that the grievance relates to employment obligations under the OECD Guidelines (trades union and collective bargaining rights, child labour and forced labour, discrimination, employing and training local workers, and consultation with a company's workforce and its representatives)¹.
 21. The complainant's claim is that the alleged failure to resolve his employment grievance arises from, and is also evidence of, poor corporate governance. He says that the UK company has failed to address this poor governance, and so has failed to meet its corporate governance and disclosure obligations under the OECD Guidelines.
 22. The UK NCP does not consider, however, that the information provided supports this allegation. The UK company says that it did identify corporate governance concerns in its due diligence preceding its acquisition, and has provided information about changes it has made to strengthen governance. These changes include appointing new Directors and creating Board sub-committees dealing with Audit and Environmental and Social Governance.
 23. The company refers to the improvements as work still in progress. The NCP notes that the information provided suggests that some further work may be required to ensure that changes made are fully effective (for example, adding the hotline number for

¹ In an earlier complaint, the complainant said that the grievance was linked to racial discrimination; however, this allegation was not considered to be substantiated by the NCP that considered the complaint. No new information on this aspect is provided in this complaint.

reporting grievances and improving access to ESG documents on the company's website).

24. The company's information does refute the complainant's claim that it has not acted, however. The complainant's claim appears to rely simply on the fact that his employer's response to his individual situation has not changed.
25. The complainant has not brought his individual situation to the attention of the UK company directly. His claim therefore appears to rely on showing either that the UK company is directly involved in his employer's day to day decision making, or that there is other information to suggest poor governance that should be known to the UK company.
26. In regard to the former, the UK company says that it is not involved in individual employee disputes, and the complainant has not offered information to support his claim that it is.
27. In regard to the latter, only one piece of information offered relates to outstanding concerns beyond the complainant's individual case: the letter written to the employer by the trades union in June 2015. This letter refers to an issue affecting final benefits of other retiring employees. It refers to²: *"a situation of non-transparency which is causing harm to employees and creating employment disputes....We have been able to establish upon examining the files shown to us by departing employees that the amounts of sums paid by way of final benefits upon taking retirement are very often assessed downwards for certain employees and upwards for certain others."*
28. The union letter does suggest a wider issue, but there is no indication that it touches on employment obligations under the OECD Guidelines. Nor does it suggest that current corporate governance arrangements may be inadequate: it is addressed to the current audit director of the employer company and suggests that he conducts an internal investigation as the appropriate first response.
29. Based on the information offered, the UK NCP concludes that the complaint does not substantiate an issue relating to the Guidelines obligations of the company named.

Additional note on late submissions

30. At the request of the UK NCP, the complainant confirmed on 4th August 2015 that he had submitted all the papers he considered relevant for the UK NCP to assess his complaint. As noted above, however, he then made additional submissions at a late stage in the process: submitting more than 20 additional documents between 7th and 17th December. Because of the confirmation given by the complainant in August, the UK NCP was not obliged to consider the late submissions in reaching its Initial Assessment decision.
31. The UK NCP nevertheless made a brief review of the late submissions, to establish whether they included any significant new documents not available to the complainant in August. All the documents appeared to have been available to the complainant in

² The original letter is in French: the UK NCP quotes from a translated version.

August. As far as the UK NCP could determine³, none of the documents was a communication of the UK company referring to the complainant or to a specific governance issue.

32. The UK NCP has not shared the late submissions with the UK company before reaching its Initial Assessment decision.

Relevance of applicable law and procedures, including court rulings

33. The complainant notes that in regard to his final settlement, he lodged a new complaint with the Cameroon employment regulator in March 2015, and has been given leave to bring a new court case.
34. In addition to his other requests for remedy, the complainant asks the UK NCP to assist him in exercising his rights in matters subject to the UK courts. This is not part of the UK NCP's remit. The OECD Guidelines process is a voluntary process and the UK NCP has no role in the UK legal system (other than to inform the appropriate authorities if an offence under UK law is believed to have been committed).

How similar issues have been, or are being, treated in other domestic or international proceedings

35. As noted above, the issues have been considered previously:
- a) The same complainant made a similar complaint to the UK NCP in 2011 about a former UK owner of his employer. That UK owner was a subsidiary of a US multinational and so the UK NCP transferred the complaint to the US⁴. The US NCP published an Initial Assessment rejecting the complaint in September 2012. The complainant then made further submissions to the UK NCP, but the UK NCP advised him that these submissions did not constitute a new complaint. The UK NCP's Steering Board rejected a subsequent request from the complainant for a procedural review.
 - b) The complainant also made a similar complaint to the French NCP in September 2014 about the French Development Agency Group, which invested in his employer in 2006. The French NCP published an Initial Assessment in March 2015: it did not consider it useful to offer its good offices and closed the case⁵, but it noted that a UK investment fund was now a majority shareholder in the complainant's employer, and encouraged the French Development Agency to consider, with the UK fund and other partners, a social and governance

³ The UK NCP did not obtain translations of the late submissions.

⁴ The transfer of the 2011 complaint is publicly recorded in the Initial Assessment decision of the US NCP and was agreed by the complainant at the time it was proposed. There was no published decision by the UK NCP as its procedures do not require an Initial Assessment decision in the case of an agreed transfer. The US NCP rejected the complaint as the allegations were not sufficiently substantiated.

⁵ The French NCP's reasons for closing the case were that (i) the dispute between the complainant and his employer was not linked to the OECD Guidelines, but to local labour regulations, (ii) the governance allegations were not sufficiently substantiated and (iii) the French Development Agency has appropriate due diligence as recommended by the Guidelines.)

assessment of the employer based on the OECD standard for responsible business conduct.

36. The UK NCP understands that the complainant also raised a complaint with the Compliance Advisor Ombudsman (CAO) of the International Finance Corporation (IFC) in July 2015, but does not have details of this complaint.

Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the Guidelines

37. The UK NCP notes that matters referred to in the complaint have been raised with the Cameroon Labour Inspector and the Cameroon courts. The UK NCP considers that the complainant has access to remedy for what may well be a genuine employment grievance via this route, and that it may be a more appropriate route for the individual financial remedy he is seeking.
38. The UK NCP does not consider that it serves the purpose and effectiveness of the Guidelines to pursue the complaint further. For clarity, the UK NCP adds that it considers that impacts beyond the circumstances of this individual complainant would need to be demonstrated for a complaint on these issues to be substantiated. The UK NCP notes that this individual complainant has now had complaints considered by three NCPs, none of which has felt able to proceed.
39. The UK NCP notes that in relation to matters covered by the Guidelines, the UK company named in this complaint does have ongoing due diligence obligations in regard to its shareholding. These will include monitoring the corporate governance “work in progress”.
40. As presented in this complaint, the issue raised by the complainant’s trades union in June 2015 does not appear relevant to matters covered by the OECD Guidelines. The UK NCP suggests that the UK company may, however, wish to assure itself that no associated concerns arise relating to Guidelines matters.

Next steps

41. As the complaint has been rejected, this Initial Assessment concludes the complaint process under the Guidelines.

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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