



Department for  
International Trade

# **UK National Contact Point Procedures for Dealing with Complaints Brought Under the OECD Guidelines for Multinational Enterprises**

September 2019

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## 1. Introduction

### 1.1. What is this note about?

1.1.1. This note is issued in consultation with the Steering Board that oversees the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines).

1.1.2. The UK NCP is based in the Department for International Trade (DIT). DIT Ministers play no part in the NCP's decisions on complaints, and have delegated general oversight of the NCP to its Steering Board which includes external members as well as representatives of Government departments.

1.1.3. The purpose of the note is to explain the process for the NCP to consider complaints brought under the Guidelines. As the Guidelines make clear, the first objective of the complaint process is to find a solution through conciliation or mediation. The NCP only undertakes a full examination of the complaint if mediation fails to find a resolution. This note explains what the NCP will do to decide whether to accept a case; how the mediation process works; the examination process - should this prove necessary; and publication of the NCP's decision.

1.1.4. Anyone considering making a complaint under the Guidelines should read this note together with form URN11/650 "Bringing a Complaint under the OECD Guidelines for Multinational Enterprises" which sets out the information the NCP will usually need to consider a complaint and can be found at: <https://www.gov.uk/government/publications/complaint-form-for-national-contact-points-ncp-initial-assessment>

### 1.2. Useful jargon

Throughout this note "NCP" refers to the UK National Contact Point for the OECD Guidelines for Multinational Enterprises. Contact details for the NCP can be found on:

<https://www.gov.uk/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-oecd-guidelines-for-multinational-enterprises>

References to the NCP Published Procedure refer to the procedures set out in this document.

"Company" refers to the multinational enterprise against which the complaint is made.

"Guidelines" refers to the OECD Guidelines for Multinational Enterprises.

"Parties" refers to the complainant or complainants and the enterprise being complained against.

"Specific Instance" means a complaint that is submitted to the NCP concerning a company's alleged breaches of the Guidelines. The terms "specific instance" and "complaint" are synonymous.

"Steering Board" means the Steering Board established to oversee the operation of the NCP and its implementation of the Guidelines.

## **2. Stages in the NCP Process for Considering Specific Instances**

### **2.1. The stages involved in handling complaints**

There are three key stages to the NCP's process for handling Specific Instances:

Stage 1 – from receipt of complaint to Initial Assessment

Stage 2 – from acceptance of a case to conclusion of mediation or, if mediation is refused or fails, fact finding

Stage 3 – drafting and publication of Final Statement.

There may be a fourth stage - to report on follow up action – in cases where a mediated agreement provides for this, or where a Final Statement has recommended follow up action.

### **2.2. Timetable**

2.2.1. The NCP has committed to complete each Specific Instance within a year of receiving the complaint. It will aim to complete Stage 1 within 3 months of a complaint, Stage 2 within a further 6 months and Stage 3 within a further 3 months.

2.2.2. Some degree of flexibility may be needed to the timetable; for example, because of circumstances outside the NCP's control. In these circumstances the NCP will notify the parties, explain the reason and set out a revised timetable.

2.2.3. As set out above, the NCP is committed to the prompt resolution of each Specific Instance. Parties are urged to provide information promptly in order to adhere to the timetable. Failure to do so could result in the NCP making its decision in the absence of that information.

### **2.3. Who can make a complaint?**

2.3.1. According to the Guidelines, any "interested party" can file a complaint. The complainant may be, for example, a community affected by a company's activities, employees or their trades union, or an NGO. A complainant may act on behalf of identified other parties.

2.3.2. The NCP will consider all complaints it receives. However, the NCP will need to receive detailed information from the complainant in order to deal with the complaint. Therefore, complainants should have a close interest in the case and be in a position to supply information about it. They should also, in accordance with the principles of the Guidelines, have a clear view of the outcome they wish to achieve. Sources of either additional information or organisations that may assist in filing a complaint are given at the end of this note.

### **2.4. What are the grounds for making a complaint?**

Complainants need to decide which chapters or paragraphs in the Guidelines they consider are being breached by the company sufficient to base a complaint to the NCP and specify these in making their complaint. The NCP's determination of a complaint will be evidence based.

### **2.5. What happens to information provided during the course of an examination?**

2.5.1. One of the objectives of the NCP is to ensure that its process is transparent. The NCP shares information provided to it about a complaint with all parties in the complaint, unless a good case is made to the NCP that specific information should not be shared (for example because of legal restrictions or considerations of personal safety). This applies to information provided by the parties or any other person or organisation, and applies whether information is provided in writing or in the course of a meeting with the NCP. Where information is sensitive, the preferred course is to agree appropriate conditions of confidentiality.

2.5.2. Information is shared with parties in this way on the understanding that it is not to be more widely shared or made public. Information on the confidentiality that applies at each stage of the complaints process is in the relevant sections below.

## **2.6. Legislation applying to information submitted in a complaint**

### **Data Protection Act 2018**

#### **The Data Protection Principles and Fair Processing Notice**

2.6.1. The Data Protection Act 2018 (“the Act”) regulates the handling of the personal data of individuals. The UK NCP is part of the DIT. The Fair Processing Notice on how we collect and process personal data is provided in separate Guidance on the NCP’s website.

### **Freedom of Information Act and Environmental Information Regulations**

2.6.2. The UK NCP, as part of the DIT, is subject to the Freedom of Information Act (FOI) and the Environmental Information Regulations (EIR) as part of the DIT. Information held by the UK NCP will be considered for release in response to FOI and EIR requests

2.6.3. The NCP will inform parties in complaints currently under consideration if any information they have provided is being considered for release in response to an FOI or EIR request

2.6.4. Further information on information access rights under the Data Protection Act and the Freedom of Information Act can be found at <https://ico.org.uk/for-organisations/guide-to-freedom-of-information> . Further information on information access rights under the Environmental Information Regulations can be found at: <https://ico.org.uk/for-organisations/guide-to-the-environmental-information-regulations>

## **3. Stage 1: from receipt of complaint to Initial Assessment**

### **3.1. What are the key steps the NCP takes when it receives a complaint?**

3.1.1. The usual process will be for the NCP to write to the complainant within 10 days of receiving the complaint to confirm how the complaint will be handled. At the same time, the NCP will write to the company named in the complaint to share the information received about the complaint and invite the company to make a response. The NCP will give the company 20 working days to provide any response.

3.1.2. The NCP may ask the complainant for further information or clarification it considers is necessary to take the complaint forward, and in this case may extend its deadline for the company's response.

3.1.3. The NCP will offer separate meetings to the complainant and the company to explain the NCP process and answer any questions. An agenda will be agreed prior to any meeting, and a minute produced after the meeting. As part of the NCP's commitment to transparency (see 2.5), minutes will be shared with both parties.

3.1.4. The NCP will then make a draft Initial Assessment based on the information received in the complaint and any response, and will issue this to the parties for comment before finalising it for publication.

3.1.5. In exceptional circumstances, the NCP may make a draft Initial Assessment without inviting a response from the company (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).

### **3.2. What additional steps may the NCP take before making an Initial Assessment?**

3.2.1. The NCP may ask either party for further information at any point.

3.2.2. The NCP may seek informed opinion from members of its Steering Board or other known persons or organisations to clarify factual or background information referred to in the complaint (but not to give a view on the merits of the complaint).

### **3.3. Can parties make additional representations before the NCP makes its Initial Assessment?**

3.3.1. The NCP cannot accept additional representations on issues not included in the complaint and response. Complainants should set out in the complaint all the issues they want the NCP to consider. The NCP may, at its discretion, allow complainants to make limited representations with regard to any counter-allegations made in the company's response, and may allow the company to reply if these further representations refer to new supporting evidence.

3.3.2. Parties also have an opportunity to comment on the draft Initial Assessment before it is finalised for publication.

### **3.4. On what grounds does the NCP decide whether or not to accept a complaint?**

3.4.1. The Initial Assessment decides whether issues raised in the complaint merit further examination. It does not include any decision on whether the company breached the Guidelines. As set out in the “Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises”, in making its Initial Assessment of a Specific Instance the NCP will consider the stated grounds of the complaint and the information it has received about the complaint, taking into account:

- the identity of the party (complainant) concerned and its interest in the matter
- whether the issue(s) is(are) material and substantiated;
- whether there seems to be a link between the enterprise’s activities and the issue raised;
- the relevance of applicable law and procedures, including court rulings;
- how similar issues have been, or are being, treated in other domestic or international proceedings, and
- whether consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines.

### **3.5. What does acceptance of a complaint at Initial Assessment mean?**

If the NCP decides to accept the complaint, this means that it considers that there is enough information to warrant further examination of the issues raised with regard to the company’s responsibilities under the Guidelines. It does not mean that the NCP has concluded that the Guidelines have been breached.

### **3.6. What does rejection of a complaint at Initial Assessment mean?**

3.6.1. If the NCP does not accept the complaint it means that it considers there is not enough information to warrant further examination of the issues raised with regard to the company’s responsibilities under the Guidelines,

3.6.2. Rejection of a complaint at Initial Assessment concludes the NCP process. At the conclusion of the NCP process, parties have a right to request a review of the process. A review is conducted by the NCP Steering Board. It cannot overturn the NCP decision, but is intended to identify procedural errors in the NCP decision-making process, and ensure they are corrected where possible.

3.6.3. Information about the review process is at:

<https://www.gov.uk/government/publications/complaints-brought-under-the-oecd-guidelines-for-multinational-enterprises-to-the-uk-national-contact-point-review-procedure>

3.6.4. A complainant may submit a new complaint in respect of issues rejected by the NCP if new information means the reasons for rejection no longer apply.

### **3.7. What if the parties reach a settlement before the NCP issues an Initial Assessment?**

If the parties reach a settlement and the complaint is withdrawn before the NCP has issued an Initial Assessment, the NCP will close its file, and the identities of the parties will not be disclosed

by the NCP except as agreed by the parties, or in accordance with legal requirements or obligations under the Ministerial Code (for example parliamentary questions).

### **3.8. What form does an Initial Assessment take?**

3.8.1. The Initial Assessment, when issued, will include:

- the names of the parties if the complaint is accepted (if it is rejected, the assessment will not name parties without their agreement);
- the substance of the complaint – including reference to those Guidelines alleged to have been breached;
- a statement of the precise nature of the complaint;
- a summary of the process the NCP has followed to date;
- the reasons for accepting or rejecting issues for further examination;
- a statement that acceptance of issues for further consideration does not mean that the NCP has determined at this stage that the Guidelines have been breached; and
- an outline of the next stages in the NCP's determination.

3.8.2. Before issuing the Initial Assessment, the NCP will send a draft of the assessment to the parties, inviting their written comments within not more than 10 working days. When issuing the Initial Assessment, it will be for the NCP's discretion whether to take account of any comments so received.

3.8.3. When issued, the Initial Assessment will be sent to the parties and published on the NCP website: <https://www.gov.uk/government/groups/uk-national-contact-point-for-the-organisation-for-economic-co-operation-and-development-guidelines> . Where the Initial Assessment rejects the complaint, publication will not occur until 10 working days after the parties have been notified, to allow a review request to be made. If a review is requested, the Initial Assessment will not be published until the review procedure is completed.

### **3.9. Confidentiality in the Initial Assessment Stage**

3.9.1. The NCP does not name parties in a complaint unless and until it has accepted issues at Initial Assessment, or unless parties agree to be named. This means that, unless there is a legal or Parliamentary requirement to do so, the NCP will not usually confirm or deny publicly that a complaint has been received until the Initial Assessment is published.

3.9.2. The NCP cannot advise parties about public statements relating to information they provide. Information provided by another party or by the NCP during the Initial Assessment stage should not be shared with third parties or made public, however, as this is likely to affect the purpose and effectiveness of the NCP process.

## **4. Stage 2: from acceptance of a case by the NCP to conclusion of mediation or examination**

### **4.1. The Mediation Process: the role of mediation in resolving Specific Instances**

4.1.1. The preferred outcome of any complaint is an agreement between the parties. When the NCP accepts a Specific Instance, it will discuss with the parties involved and offer its “good offices” with the objective of bringing both parties together to discuss the issues and come to mutually agreed resolution without undue delay. Mediation can be viewed as an ‘assisted negotiation’ between the parties with the aim of reaching a settlement agreeable to both; the NCP will facilitate discussions and may make suggestions. The NCP will not pressurise the parties into mediation or any particular outcome.

4.1.2. Mediation is voluntary. The published Final Statement will note where the parties refused to undertake mediation and will provide a summary of the reasons why mediation was not undertaken.

4.1.3. If the parties are unable to agree on mediation or mediation fails, then the NCP will conduct an examination of the case as set out in paragraph 4.5 below. Whilst mediation is continuing the complaint will not simultaneously be subject to examination.

4.1.4. All parties to an NCP mediation need to be clear of what the mediation will entail, what the desired outcomes are, and what the expectations on them are. The parties involved in mediation should be genuinely committed to mediation and should not see the mediation process as a means of gathering further information or as an opportunity to avoid addressing issues and accounting for conduct.

4.1.5. The NCP and the parties will agree the most suitable approach to mediation:

- (i) a mediation within the NCP process, or
- (ii) mediation by a third party agreed by the parties in the complaint.

4.1.6. For each complaint only one of the mediation courses will be chosen.

### **4.2. Mediation within the NCP process**

4.2.1. If mediation is undertaken within the NCP process the mediation will be conducted by a professional mediator contracted by the NCP. The NCP will prepare terms of reference to be agreed by both parties and the mediator. The mediator will be agreed by the NCP and both the parties and an additional mediator may be appointed if parties and the NCP agree on this. The mediator will be responsible for agreeing with the parties the methods and processes for mediation. The NCP will request an update of progress from the mediator every 2 months.

4.2.2. In mediation conducted within the NCP process, the NCP mediator will at all times be neutral. The role of the mediator contracted by the NCP is to provide a platform and opportunity for each party to discuss the issues raised by the complaint. The mediation is confidential. The Mediation Agreement will be the only record of what happened during the mediation. This will be written and agreed by both parties. This Agreement, or a summary statement also agreed by both parties, will be published as part of the final assessment that the NCP publishes. The NCP

encourages parties to include in published details any follow-up arrangements they have agreed (See Section 5. and 6. for more information on Final Statements and follow-up arrangements)

4.2.3. The NCP contracted mediator will:

- Agree the agenda with both parties before commencing the joint mediation session(s).
- Chair and facilitate meetings with the parties either separately or together, and encourage both parties to exchange information, build up trust and confidence, and ultimately find a process to resolve the issues.

4.2.4. There are three main stages to the mediation process:

- The NCP contracted mediator will meet both parties separately to prepare for the mediation. These meetings will explore the issues, explain the mediation process, and answer questions on the how the process will work. These meetings will have an agenda and be minuted.
- The NCP contracted mediator will bring both parties together in a meeting or meetings which will always commence with providing each party with a period of time to explain their views and will provide ample opportunity to clarify outstanding issues. The initial meeting may result in a settlement or will end by mapping out a process of on-going dialogue.
- At the end of a successful mediation process the parties, with the assistance of the NCP contracted mediator if they wish, will draft a Mediation Agreement and, if the full agreement is not to be published, a summary for publication.

4.2.5 Should the mediation process fail, then the NCP will start to examine the complaint (see 4.5 below). If mediation was successful on some aspects of a complaint, the Mediation Agreement or summary will be annexed to the Final Statement and the NCP will only examine those aspects where mediation failed. In any case where the majority of key concerns of the complaint were mediated and where the parties are content for the NCP not to investigate the remaining issues, this will be written into the Mediation Agreement.

### **4.3. Responsibilities of both parties in the NCP mediation process**

4.3.1. Both parties enter into the mediation in the spirit of seeking to reach a resolution on the issues at hand. Parties are expected to adhere to the agenda and not raise new issues not known to the NCP, the NCP contracted mediator, or the other party beforehand.

4.3.2. It must be clear that the persons taking part in mediation have the authority to implement a proposed agreement. If the persons taking part are subject to higher authority within that party, this must be made clear from the outset.

### **4.4. Confidentiality in the mediation stage**

4.4.1. Mediation procedures need to be informal and confidential, in order to encourage open discussion. Mediation sessions will not therefore be minuted by the NCP contracted mediator, but a summary of the final conclusions from a meeting may be provided by the mediator merely to note progress made and solely for the purpose of informing the following meeting. Parties will agree to observe confidentiality except to the extent that it is necessary to seek professional advice or guidance from within their organisation. In these circumstances those consulted will be expected to observe confidentiality.

4.4.2. The NCP appointed mediator will provide the NCP with updates on the mediation process. These updates will be prepared taking into account the confidentiality applying to the mediation discussions, and will be held in the NCP's records.

## **4.5. Mediation outside the NCP process**

The filing of a complaint with the NCP sometimes results in the parties asking to resolve any complaint amongst themselves. At any stage, the parties may realise that they may be able to settle their differences without further intervention by the NCP. They are free to seek mediation outside the NCP process. If the NCP receives written notification from both parties that they wish to mediate outside the NCP process, the NCP will suspend the case. The NCP will request an update of progress every 2 months to determine whether the Specific Instance procedure needs to be reopened. If mediation outside the system is successful, the NCP will close the case. If this is achieved before the Initial Assessment is completed, a note closing the complaint without identifying the parties will be published. If this is achieved after the Initial Assessment stage, a reduced Final Statement will be published explaining that the parties have achieved a mediated settlement outside the NCP process.

## **4.6. The Examination Process**

4.6.1. If mediation is refused or fails to achieve agreement, the complaint will return to the NCP for examination. The NCP may also decide that mediation cannot continue under the NCP process, and in this case will offer the parties the option of continuing outside the process. Where mediation is taking place outside the NCP process, the NCP will usually expect to receive a notification of failure to reach agreement from the parties (or from one party with the knowledge of the other party).

4.6.2. The objective of the examination is for the NCP to investigate the complaint in order to assess whether the complaint is justified.

4.6.3. At the outset of the investigation the NCP will identify the steps it intends to take in order to proceed with the investigation and will notify both parties in writing. The NCP will inform both parties in writing of any amendments it considers necessary to these steps. If, as a result of the investigation, the NCP decides that additional steps are required in order to complete the investigation, it will notify both parties of the additional steps it intends to take.

4.6.4. The examination is likely to involve the NCP collecting further information or statements from the complainant or the company. It may also seek advice from other relevant government departments, UK diplomatic missions or overseas DFID offices, business associations, NGOs or other agencies. If appropriate it will seek informed independent opinion.

4.6.5. The examination may also involve further meetings between the NCP and the parties. In each case the meeting will have an agenda and be minuted.

4.6.6. In exceptional cases the NCP may consider it necessary to undertake a field visit. The NCP will seek to agree terms of reference for the field visit with both parties in advance of the visit. The NCP will share a report of the visit with both parties for their comment.

4.6.7. Unless a good case is made for information to be withheld, information and evidence received by the NCP will be shared with the parties. Where information is sensitive, the preferred course is to agree appropriate conditions of confidentiality.

4.6.8. The NCP will then review all the information it has gathered and make a decision as to whether the Guidelines have been breached.

## 5. Stage 3: drafting and publication of the Final Statement

5.1. The NCP's Final Statement will include the following:

- details of the allegations and those chapters/paragraphs of the Guidelines that it is alleged have been breached;
- details of the parties involved i.e. complainant and the company;
- a summary of the process the NCP has followed;
- the outcomes of any mediation, or a summary, in a statement agreed between the parties and including any follow up arrangements agreed by parties;
- the results of examination (if any), which will include an argued rationale behind each conclusion including a clear statement as to whether or not the company is in breach of the Guidelines;
- where appropriate, the NCP will make specific recommendations to the company so that its conduct may be brought into line with the Guidelines;
- a date by which both parties will be asked to submit to the NCP an update on measurable progress towards meeting the recommendations (if any); and
- where the NCP has found examples of good company practice consistent with the Guidelines this information will also be included.

5.2. Once the NCP has drafted its Final Statement it will be sent to the parties for factual checking, with a deadline of 10 working days for comments. The NCP will, at its discretion, then incorporate any necessary factual changes before sending the finalised statement to the parties, together with information of how they can seek a review if they consider that the process set out in this note has not been properly followed. The Review Procedure is explained in separate guidance available on the NCP website: <https://www.gov.uk/government/publications/complaints-brought-under-the-oecd-guidelines-for-multinational-enterprises-to-the-uk-national-contact-point-review-procedure> .

5.3. Any request for review will have to be made within 10 working days of the date the Final Statement is sent to the parties. At the end of this period, if no review has been requested, the statement will be published on the NCP website.

5.4. The NCP will inform the DIT Minister with responsibility for the OECD Guidelines once the Final Statement is ready to be published, who will arrange for copies of the Final Statement to be lodged with House of Commons and House of Lords libraries alongside publication, and will inform the Chairman of the DIT Select Committee that this has been done.

### Confidentiality in the Final Statement stage

5.5. Once the NCP has issued its Final Statement, parties can communicate publicly about the complaint. Information and views provided during the proceedings by another party involved remains confidential unless that party consents to its release, however.

## **6. Follow up to Final Statements**

6.1. Where the Final Statement includes recommendations to the company, it will also specify a date by which both parties are asked to provide the NCP with a substantiated update on the company's progress towards implementing these recommendations. The NCP will then prepare a Follow Up Statement reflecting the parties' response and, where appropriate, the NCP's conclusions thereon. The NCP will send a draft of the Follow Up Statement to parties and invite any factual comments within 10 working days. The NCP will, in its discretion, then incorporate any necessary factual changes before sending the finalised Follow Up Statement to the parties and publishing the finalised Follow Up Statement on the NCP's website. The NCP will also provide a copy of the Follow Up Statement to the DIT Minister with responsibility for the OECD Guidelines.

6.2. The NCP may also make a follow-up statement in cases where an agreement between the parties provides for this and sets an agreed follow-up date.

## 7. Useful contacts

The following organisations may be a source of either additional information or assistance in making a complaint or responding to a complaint.

### OECD Guidelines for Multinational Enterprises

- Website <http://mneguidelines.oecd.org/>
- E-mail [investment@oecd.org](mailto:investment@oecd.org)

### Trades Unions (for example)

- Trades Union Congress (TUC)
- Website <https://www.tuc.org.uk/>
- Trade Union Advisory Committee to the OECD
- Website <https://www.tuac.org/en/public/index.phtml>
- E-mail [tuac@tuac.org](mailto:tuac@tuac.org)

### Business (for example)

- Confederation of British Industry (CBI)
- Website <https://www.cbi.org.uk>
- The Business and Industry Advisory Committee to the OECD
- Website <http://www.biac.org/>
- E-mail [biac@biac.org](mailto:biac@biac.org)

### The NGO Community (for example)

- OECD Watch
- Website <https://www.oecdwatch.org>
- E-mail [info@oecdwatch.org](mailto:info@oecdwatch.org)



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