

**EXPORT GUARANTEES ADVISORY COUNCIL
MINUTES OF MEETING HELD ON 22 SEPTEMBER 2014**

Present: Mr Andrew Wiseman (Chair)
Ms Gillian Arthur
Mr Alastair Clark
Ms Alexandra Elson
Mr Chris Fitzpatrick
Mr John Newgas
Ms Anna Soulsby

Apologies: Mr Neil Holt

In attendance: Mr David Godfrey (Items 8-12)
Mr Pat Cauthery
Mr Steve Dodgson
Mr Max Griffin
Ms Lucy Wylde
Ms Rebecca Schade (Items 6-7)

Secretary: Mr Laurence Lily

1 APOLOGIES FOR ABSENCE

1.1 Apologies were received from Mr Holt.

2 MINUTES OF 17 FEBRUARY 2014 MEETING AND MATTERS ARISING

2.1 The draft minutes were approved with minor amendments and would be published on the UKEF website.

3 UK NATIONAL CONTACT POINT FOR THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

3.1 The Council requested a briefing on the OECD Guidelines for Multinational Enterprises (the Guidelines) and the operation of the UK National Contact Point (NCP) in addressing complaints made under them. The Council

welcomed Mr Danish Chopra of the Department for Business, Innovation and Skills who provided a presentation on the work of the NCP.

- 3.2 Mr Chopra summarised the background to, and scope of, the Guidelines. He explained their purpose of establishing voluntary principles and standards for responsible business conduct. He said that the Guidelines broadly flowed from other corporate social responsibility instruments, such as those established by the United Nations. He explained that all OECD-member governments and twelve non-member countries had promulgated the Guidelines and established mechanisms to address complaints.
- 3.3 Mr Chopra said that the current operations of the UK NCP had been informed by a public consultation carried out in 2008, which had changed the way it operated. This had led to the introduction of a steering committee consisting of officials from government departments, including from UK Export Finance, and appointees from business, NGOs and Trade Unions. He explained that professional mediators, paid for by the government, were now employed in order to help address complaints between parties. He provided the Council with a breakdown of the outcomes of complaints handled by the UK NCP since 2008.
- 3.4 Mr Chopra commented that it was now common for the UK NCP to receive complaints with support of NGOs or Trade Unions. He said the length of time taken to handle some complaints had led the OECD to introduce indicative timescales for responses to be made. The Council recalled that the BTC oil pipeline project, which had been supported by UKEF, was the subject of a complaint to the UK NCP but had taken many years to adjudicate. Mr Chopra agreed that the case took a long time and considerable resources to reach an outcome, partly due to the way it was handled, but it had involved a highly controversial project.
- 3.5 Mr Chopra highlighted the growing focus on human rights since the Guidelines were last revised in 2011. The Council asked about the type of human rights complaints heard by the UK NCP. Mr Chopra told the Council

that these varied widely, with human rights impacts often being informed by the nature of the business activity from which the complaint arose, for example, relating to environmental damage caused by extractive industries.

- 3.6 Mr Chopra shared lessons learned from past cases which had led to improvements in the processes followed and brought greater clarity on what could and could not be achieved, taking into account that the Guidelines were voluntary in nature. The Council asked about the criteria that is applied in forming a view as to whether an enterprise had acted within the Guidelines. Mr Chopra said it depended on the individual case and the issues raised by the complaint. He emphasised that the process of adjudicating complaints relied upon transparency and positive engagement by the parties. Mr Chopra told the Council that the process worked most successfully when both the business and NGO concerned had an interest in resolving the complaint, as mediation would be more likely to achieve resolution.
- 3.7 Mr Chopra summarised some of the challenges faced by the UK NCP, including a high number of complaints as compared to other NCPs and the need to manage the expectations of complainants. He said the UK NCP was involved with peer reviews to compare practices with other NCPs; working with non-OECD countries to promote the guidelines along with UK businesses based abroad; holding training events/seminars, developing manuals and a database to help build a knowledge base for the work of NCPs to help achieve consistency in the implementation of the Guidelines and, thereby, raise standards of business behaviour. The Council asked whether the OECD conducted any benchmarking across NCPs. Mr Chopra said that a Peer review mechanism of the OECD for NCPs was in place.
- 3.8 The Council asked whether complainants could choose which NCP to approach if the enterprise involved operated out of a number of countries. Mr Chopra said it was possible such a choice could arise but thought that the UK NCP was often the first choice as it was perceived to apply the process conscientiously. Which NCP ultimately handled the complaint was based on mutual agreement.

- 3.9 The Council asked whether any other NCP operated independently of government. Mr Chopra said that the Norwegian NCP was operated by officials and funded by government but reported to an independent board.
- 3.10 The Council asked whether organisations seeking an ombudsman-type arrangement to examine complaints about the impacts of overseas projects that UKEF supported might view the UK NCP as an alternative mechanism. Mr Chopra said this would likely depend on perceptions of the independence of the UK NCP which was funded, and operated, by government officials. He noted that it could be difficult for the UK NCP to process cases where much of the detail was deemed to be commercially confidential.
- 3.11 The Council noted the complaint process lacked the power to enforce recommendations or impose sanctions, and did not have the weight of law behind it given the voluntary nature of the Guidelines, nor was there an appeals process. Mr Chopra commented that a steering board review was limited to examining procedures followed by officials; it and did not involve itself in dealing with particular complaints, for example, by seeking new evidence or conducting further inquiries.
- 3.12 The Council thanked Mr Chopra for his briefing. The Council agreed to consider further the role the UK NCP in the context of complaints about projects supported by UKEF.

4 MEETING WITH JUBILEE DEBT CAMPAIGN

- 4.1 The Council discussed the meeting it held with the Jubilee Debt Campaign (JDC) in May. The Council commented that JDC had presented a summary of the range of views about UKEF in line with those of the Clean-Up British Exports (CUBE) coalition of NGOs.
- 4.2 The Council had invited JDC to submit evidence about the application of ESHR or debt sustainability standards by other OECD ECAs so that a

comparison could be made to UKEF. The Secretary said that no information had been received.

- 4.3 The Council noted that JDC had not particularly lobbied in respect of its principal interest on sovereign debt, although the Council recognised that UKEF had put into the public domain a significant amount of information related to past sovereign debts and continued to respond to FOI requests and PQs. Mr Dodgson noted that JDC's stance was that the sovereign debts owed to UKEF should be independently audited and, where appropriate, be cancelled, for example, military debts. However, Ministers had not been persuaded to carry out an audit or forgive debt beyond that which HMG had committed to do under the Heavily Indebted Poor Country (HIPC) initiative. Mr Dodgson reminded the Council that HM Treasury was responsible for UK debt policy and was the UK's representative at the Paris Club of Official Creditors.
- 4.4 The Council noted JDC had made Freedom of Information requests to obtain information about the involvement of the Department for International Development (DfID) on projects supported by UKEF in countries which fell within the ambit of the OECD Sustainable Lending Principles. Mr Dodgson reminded the Council that UKEF had no delegated authority to support projects in Sustainable Lending countries, but had to seek authority on a case-by-case basis from HM Treasury. DfID's role was to provide advice to HM Treasury on relevant factors on each case to help inform a decision by HM Treasury and UKEF engaged with DfID to assist its deliberations.
- 4.5 The Council asked to be kept informed of any developments with regard to sovereign debts.

5 LEGISLATIVE CHANGES

- 5.1 Mr Cauthery updated the Council on proposed changes to the scope of UKEF's powers under the Export and Investment Guarantees Act 1991 being sought by the Government by way of the Small Business, Enterprise and

Employment Bill that had been introduced in Parliament. Mr Cauthery explained the proposed amendments to give UKEF more generalised powers to support businesses in the UK that are, or wish to become, involved in exporting or are part of export supply chains. Mr Cauthery explained that the amendments were contained in two clauses within the Bill which consisted of over 150 clauses.

- 5.2 The Council asked about responses from Interested Parties. Mr Cauthery said UKEF anticipated Interested Parties would provide written evidence to Parliament, which might include proposing that the powers should include the ability to prohibit support for certain classes of export given this issue had been raised in the pre-legislative public consultation. The Council asked to be alerted to the introduction of any amendments to the Bill that could impact on the application of UKEF's ethical policies.
- 5.3 Mr Cauthery said if Parliament passed the proposal legislation UKEF would consider the introduction of new products where there was a demand for these which could assist the export effort. Mr Cauthery said the Council would be consulted on the development of any new products and the application of the OECD agreements in relation to environmental, social and human rights impacts, anti-bribery and corruption and sustainable lending that might apply to business supported under them.
- 5.4 The Council asked whether there was still demand for an expanded product range given the recovery in the financial markets and the wider economy. Mr Dodgson said that while the situation had eased there was still demand for UKEF support both under the Short-Term products and in respect of the new Direct Lending Facility where there was a strong pipeline of potential project business if exporters were successful in winning contracts. He remarked that more companies were receiving support than before. Mr Dodgson said support for export supply chains and greater flexibility in the provision of export working capital support were two areas where it was anticipated there could be product developments if the proposed legislative changes were adopted.

6 ENVIRONMENTAL AND SOCIAL PRACTITIONERS' MEETING

- 6.1 Ms Schade provided the Council with a report on the meeting of environmental and social practitioners of the OECD Working Party on Export Credits. She said the meetings provided a forum where ECAs could meet to discuss issues relating to the application of the OECD Common Approaches.
- 6.2 Ms Schade told the Council that the practitioners had considered technical questions arising from the application of the OECD Common Approaches, including approaches to monitoring projects after ECA support had been issued, animal welfare issues and clarification of terms used within the text of the OECD Common Approaches. She said the practitioners had also shared experience on Category A and B projects supported by their respective ECAs and considered a number of case studies which included UKEF's environmental, social and human rights due diligence carried out in respect of support for a bridge building programme in Sri Lanka.
- 6.3 Ms Schade reported that the practitioners had continued discussions on how human rights due diligence could be carried out with respect to smaller transactions and existing operations, and considered the potential issue of human rights project-related impacts. She explained that the practitioners had received a presentation on human rights and the ICT sector which had considered a tension between increasingly sophisticated digital surveillance technology and the need to protect human rights which were not adequately covered by international standards. The Council asked to be kept updated on developments on these two issues.
- 6.4 Ms Schade reported that the practitioners discussed developing a common methodology for estimating the greenhouse gas (GHG) emissions from projects but said there was still a need for further technical work to be undertaken. The Council commented that parallel efforts by multilateral financial institutions to harmonise greenhouse gas reporting might assist the practitioners. Ms Schade said UKEF would be attending a forthcoming meeting of financial institutions where this topic was to be discussed. The

Council noted UKEF's engagement with other government departments, principally the Department of Energy and Climate Change, on GHG reporting and policies.

7 COMPARISON OF ECA APPROACHES IN POST-ISSUE MONITORING OF PROJECTS

- 7.1 Ms Schade reported research conducted by the Environmental Advisory Unit on ECA approaches to post-issue monitoring. She reminded the Council of the requirements of the OECD Common Approaches to monitor projects, regardless of their classification, after support has been decided in relation to on-going compliance with agreed ESHR standards during the construction and operational phases. She said that for Category A projects (those judged to have potentially high ESHR impacts), ECAs were expected to routinely receive monitoring reports and to encourage sponsors to publish monitoring information relating to their management of project ESHR impacts and take appropriate action to address non-compliance. Ms Schade commented that for projects, especially Category A projects supported by multi ECAs, it was usual for an Independent Environmental Consultant (IEC) to be appointed, who had a duty of care to the ECAs to monitor on-going compliance with relevant standards.
- 7.2 The Council noted the research revealed some differences in how ECAs operated post-issue monitoring and commented that UKEF appeared to operate more formal and consistent post-issue monitoring policies and procedures. The Council observed that UKEF appeared to more routinely carry out post-issue monitoring on Category B cases than other ECAs.
- 7.3 Mr Griffin explained how post-issue monitoring worked in practice to show how UKEF responded where environmental issues had occurred through a case study involving the Yansab petrochemical project in Saudi Arabia as had been reported in UKEF's Annual Report and Accounts. The project had experienced contamination of groundwater and UKEF had worked with the IEC and the other ECA involved to ensure the problem was being

appropriately addressed. Mr Griffin said that UKEF had undertaken site visits and not solely relied upon reports by the IEC. Mr Griffin commented that it would be some time before the problem could be resolved which meant there would be on-going vigilance by the ECAs. The Council noted that UKEF was working alongside the project sponsor to be assured that all reasonable steps were being taken to address the source of the problems and minimise adverse environmental impact.

- 7.4 The Council discussed the ability of ECAs to influence the application of ESHR standards of projects, particularly when they were reaching the end of loan repayment periods, when the ability to exercise a withdrawal of support in a non-remediation situation would be reduced in its potency. It noted that such an event would probably occur only in the most extreme cases but a consequence would be that all influence by the ECA(s) would be lost. The Council recognised the importance of a collaborative approach and the need to keep on top of performance during the construction and operational phases to minimise as far as possible problems getting out of control.
- 7.5 Mr Griffin told the Council that UKEF was reviewing its approach to documenting ESHR requirements in the support provided for projects taking account of work in this area being undertaken by Equator Principles banks. The Council asked for a briefing in due course on the outcome.

8 CHIEF EXECUTIVE'S UPDATE

Government export strategy

- 8.1 Mr Godfrey told the Council that the Cabinet Secretary had recently met with Departments to discuss the government's export strategy, which included an aspiration to increase UK exports to £1 trillion by 2020. He said that insofar as UKEF's contribution was concerned he had explained plans to build awareness of its products and services, particularly among medium-sized businesses in the UK and to project sponsors overseas, and the proposals to widen UKEF's powers that would allow UKEF to increase the range of

circumstances in which it could help companies that export, or who intend to export. He told the Council that UKEF was developing a bank toolkit to increase understanding of UKEF's products among the banks' networks. He said UKEF was also responding to feedback from customers, including repeat customers, in order to streamline the application process.

Business

- 8.2 Mr Godfrey told the Council that twenty-one banks had applied to join the panel of Agent banks under UKEF's direct lending facility, which was increasing in visibility and generating a growing pipeline of potential business that might use the facility if the exporters won the business. He said that demand for other products, such as the Export Refinancing Facility and loan guarantees in support of aircraft sales was less pronounced due to rising liquidity in the banking and capital markets which had reduced demand for the need for UKEF support.
- 8.3 Mr Godfrey told the Council that EU sanctions on Russia had the potential to affect UKEF support for exports to Russia, notwithstanding the provision of official export credit support had not been banned. He said UKEF had to examine each export transaction on a case-by-case basis to ensure they could be lawfully supported in line with the sanctions.
- 8.4 The Council asked for an update on potential UKEF support for projects in India. Mr Dodgson said UKEF's support for the Jamnagar Oil Refinery project in 2013 had shown the potential for UK exporters to supply to infrastructure projects. He told the Council that the Chancellor had announced a £1 billion line of credit from UKEF to support Indian projects such as the proposed Bengaluru-Mumbai Economic Corridor and the willingness of UKEF to consider the provision of support for loans funded in rupees. He noted there remained challenges relating to the application of international ESHR standards but that India was a market where the government was seeking to improve the UK's export performance.

9 INFORMATION REQUESTS

9.1 The Council noted UKEF's recent responses to requests for information.

10 EGAC SCORECARD

10.1 The Council reviewed the advice it had provided and decisions it had taken, and noted that all actions arising from these were either complete or in hand.

11 BUSINESS SUPPORTED

11.1 The Council noted the business supported since its last meeting.

12 ANY OTHER BUSINESS

12.1 There was none.

Larry Lily

Secretary