

Export Guarantees Advisory Council Annual Report



The Export Guarantees Advisory Council is a non-departmental public body (NDPB) established under the Export and Investment Guarantees Act 1991. Its role is to advise the Secretary of State for Business, Innovation and Skills on the policies that UKEF applies when doing business, particularly those related to:

- environmental, social and human rights
- anti-bribery and corruption
- sustainable lending
- disclosure, in line with information legislation

The council's advice is provided in the context of the government's export strategy and the role UKEF plays to support exports while applying ethical policies established by international agreements that relate to export credit agencies.

The council does not have executive powers and therefore is not involved in decision-making relating to UKEF support for particular export transactions. It does, however, carry out retrospective reviews of export transactions UKEF has supported to understand how ethical policies are applied in practice to give assurance and, where appropriate, advise on how these might be further developed.

Members of the council are appointed by Ministers. Members of the council are not remunerated but provide their services on a voluntary basis. The current members are:

Chair

Andrew Wiseman (partner, Harrison Grant Solicitors)

Members

Gillian Arthur (head of philanthropy services, Sanne Group)

Alistair Clark (corporate director, environment and sustainability department, European Bank for Reconstruction and Development)

Alexandra Elson (policy manager, Royal Dutch Shell Plc)

Chris Fitzpatrick (director, Elements of Sherwood Ltd)

Neil Holt (retired, previously director, ethics and business conduct, CH2M HILL Group, trustee, Transparency International)

John Newgas (consultant, Sagwen Computer Consultancy)

Anna Soulsby (associate professor of organisation behaviour, Nottingham University Business School)

During 2014–15, the council met on four occasions. Separately, it met with the Minister of State for Trade and Investment.

Senior officials from UKEF including its chief executive attended the council's meetings. They briefed the council on current issues and developments and export transactions supported. It is the practice of the council to also meet outside parties to discuss issues of interest to help inform the council's agenda. During the year it met with Jubilee Debt Campaign and the British Bankers Association. The council also met with Professor John Ruggie, who led the development of the UN Guiding Principles on Business and Human Rights, and also an official from BIS with responsibility for handling complaints made to the National Contact Point under the OECD Guidelines for Multinational Enterprises.

At the beginning of the year, the council was consulted on the formulation of UKEF's new three-year business plan which was published in June 2014. The plan sets out a number of objectives that UKEF will seek to achieve so it has the capability and capacity to carry out its role throughout the economic cycle by responding to movements in market conditions as these affect the willingness of commercial providers (normally banks and insurers) to assume financial risks in support of exports. The plan commits UKEF to provide a quality of service and range of products which are comparable with other leading export credit agencies to help ensure exporters can compete on an international level playing field. In this regard, the plan envisaged changes being made to UKEF's statutory powers to enable it to offer a wider range of products.

The government subsequently introduced in Parliament the Small Business, Enterprise and Employment Bill to enact, among other things, amendments to the Export and Insurance Guarantees Act 1991 (EIGA) that would give it wider powers to support exports, including potential exporters. The council was consulted on the proposed changes which also included a provision to remove the statutory duty for the Secretary of State to seek the council's advice on the provision of reinsurance to the private market. This particular duty was a legacy arising from the privatisation of UKEF's Short-Term trade credit insurance operations in 1991 but no reinsurance has been provided to the private sector for over fifteen years and its utility had become redundant, against a background where the council could no longer retain a member with the requisite knowledge and experience of reinsurance. During the pre-legislative public consultation on the proposed changes to UKEF's powers and also the passage of the Bill through Parliament, concerns were raised about UKEF's ethical policies and practices in support of exports. In this regard, the government rejected proposed amendments to the Bill but committed UKEF to continue to abide by international agreements that require it to address ethical issues when it provides support for exports, as appropriate to each of its products. The Bill received Royal Assent in March and the new law has broadened UKEF's powers to support exports which will help

facilitate the introduction of new products. The council will be consulted about the introduction of new products, and the application of ethical standards in relation to them, during 2015–16.

The council examined how UKEF applies the *OECD Principles and Guidelines to Promote Sustainable Lending Practices and the Provision of Official Credits to Low Income Countries* (OECD Lending Principles), an international agreement which places boundaries around the provision of export credit loans to poorer countries that are already heavily indebted in order to avoid building-up new debt burdens. The OECD Lending Principles are aligned with the efforts being made by the World Bank and International Monetary Fund to achieve the Millennium Development Goals but without creating future debt problems. The council particularly examined the support provided by UKEF for the construction of hospitals across Ghana by NMS Ltd to see how the OECD Lending Principles were applied in practice. UKEF does not have delegated authority to support exports to countries which fall within the scope of the OECD Lending Principles without the approval of HM Treasury and consulting with the Department for International Development. The council was satisfied that due process had been followed including the involvement of the Crown Agents to provide value for money assurance to the government of Ghana. The hospitals will deliver significant improvements to the delivery of local healthcare services to communities across Ghana and the first of seven is expected to be opened in the coming months.

The council met the Jubilee Debt Campaign an organisation which, amongst other things, is particularly concerned about countries where loans supported by UKEF, in respect of historic export contracts, have been rescheduled because of the inability to meet repayments. Jubilee Debt has called for the export contracts and associated loans to be audited and cancelled where the debts may be regarded as being unjust. The government considers the export contracts were entered into in good faith in line with prevailing export controls and has declined to carry out an audit but continues to implement debt forgiveness under its Heavily Indebted Poor Countries initiative where eligible countries have negotiated multilateral debt arrangements through the Paris Club of Official Creditors and made progress to implement IMF and World Bank backed economic programmes. Over the past few years UKEF has made substantial information publicly available about outstanding sovereign debts owed under rescheduling agreements. The OECD Lending Principles create a framework for UKEF and other export credit agencies to provide export credit loans for poorer countries that help protect them against assuming unsustainable debt burdens in the future.

The council routinely reviews the application of UKEF's anti-bribery and corruption policies in compliance with its obligations under the *OECD Recommendation on Bribery and Officially Supported Export Credits* (OECD Bribery Recommendation). An annual report of experience in applying the OECD Bribery Recommendation produced by UKEF was reviewed by the council which has since been published on its website. The council noted that more companies are operating anti-bribery and corruption policies; UKEF can play a role in the government's efforts to deter bribery by referring companies that do not operate anti-bribery policies to sources of guidance on how to

establish them. The council also reviewed the latest OECD Survey on the implementation of the OECD bribery recommendation by member export credit agencies. While the survey revealed instances where some export credit agencies were not yet operating procedures to the highest level, generally, all the export credit agencies operate policies and practices to deter bribery and the processes and procedures employed by UKEF are in line with the requirements of the OECD Bribery Recommendation. UKEF informed the council of new software it has acquired which enables it to access more comprehensive information on-line, to assist due diligence in regards to bribery and corruption as well as anti-money laundering, terrorist financing, and other financial crime.

The council's advice was sought in relation to an initiative being considered by UKEF to simplify the anti-bribery and corruption declarations and undertakings made by applicants for its support under its credit insurance product, the Exporter Insurance Policy, and related provisions in the policy document itself. The context is a programme of work being undertaken by UKEF to update and modernise its product documents. The purpose of simplifying the bribery provisions is to make them more easily understood through the use of plainer English and the removal of duplication and unnecessary language. The council supported the proposed changes but advised UKEF to consider undertaking a public consultation. UKEF has since published a consultation document and the expectation is that the government will make a decision on the proposals and publish a response taking account of representations made by interested parties and after consulting the council.

The council also examined the application by UKEF of the *OECD Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence* (OECD Common Approaches). In particular, it reviewed support provided for a project classified 'Category A', i.e. having potentially high environmental, social and human rights (ESHR) impacts as defined by the OECD Common Approaches, involving the expansion of a large oil refinery in India by Reliance Industries. The project was underwritten on a corporate risk basis and was the first that UKEF had supported in India for many years at a time when the government has sought to improve export trade there. The council reviewed the process by which the project had been screened, classified and assessed by UKEF's Environmental Advisory Unit (EAU) in line with the requirement for it to align with international standards. The council noted that other export credit agencies had also supported the project although ESHR due diligence had not been shared between them and UKEF undertook a number of site visits to supplement the environmental documentation produced by the project sponsor. The council also received a briefing on the first of UKEF's post-issue monitoring visits to the project site in Jamnagar and also noted that so far no other export credit agencies had carried out monitoring on-site during its construction phase. The council also examined UKEF's approach to a project involving the construction of bridges across Sri Lanka that had been classified as 'Category B'. Because the location of all the bridges was not known at the time the support was provided, UKEF put in place a mechanism to conduct ESHR due diligence following the identification of locations to be satisfied that construction at each site

would align with international standards. The EAU shared with the council the outcome of a post-issue monitoring visit to some of the bridge sites which showed the project was proceeding satisfactorily.

The EAU provided the council with the results of an informal survey it conducted amongst export credit agencies to gauge the extent to which they conduct post-issue monitoring of projects taking account of the requirements of the OECD Common Approaches. It was apparent that UKEF undertakes a higher level of post-issue monitoring during the construction and operational phases of projects than other export credit agencies who responded.

The council received a report produced by UKEF's internal auditors, who examined the processes and procedures that UKEF should follow in order to comply with the OECD Common Approaches. This was based upon the examination of applications and transactions supported. The audit found that projects had been correctly screened, classified, reviewed and monitored in compliance with the OECD Common Approaches. The report made a number of recommendations to improve the tracking and reporting of cases.

The council reviewed the activities of the EAU which is responsible for carrying out pre and post-issue ESHR due diligence on projects that fall within the scope of the OECD Common Approaches. Overall, the breadth and depth of the work carried out by the EAU has grown, not only in relation to carrying out ESHR due diligence on new projects but also because of the increase in the number of projects that are now being monitored after support has been provided by UKEF. During the year, the EAU established a new panel of external environmental consultants, in line with public procurement rules, so it could readily access resources in situations where, for example, there are peaks in workloads or specialist advice is required. The council encouraged the EAU to consider making public information on how it carries out ESHR due diligence, for example, through publishing a case study, so there could be a wider appreciation of its role and the expertise it brings in the consideration of ESHR matters during the pre and post-issue stages of projects supported by UKEF.

The EAU represents the UK at meetings of environmental practitioners at the OECD. The practitioners advise the OECD Working Party on Export Credits on ESHR matters and make recommendations on how standards could be further developed. In particular, the OECD Working Party had mandated the practitioners to consider ways in which to report greenhouse gas emissions and address human rights issues when considering support for projects. The EAU played a leading role to help inform this work. The council's examination of projects showed that human rights, for example, worker rights and labour conditions, featured in the due diligence in a number of projects. The council met with John Ruggie, the former Special Representative to the UN Secretary-General and leading author of the UN Guidelines on Human Rights and Business, which provided an opportunity to discuss the role of export credit agencies in supporting projects and the human rights issues which arise. Given the importance

of human rights, the council will be seeking a new member in 2015–16 with a background in human rights and business to assist its work.

The council received a presentation from BIS on the OECD Guidelines for Multinational Enterprises and the operation of the UK National Contact Point (NCP). The guidelines seek to establish voluntary principles and standards for responsible business conduct. The NCP's role is to address complaints made under the guidelines. The council sought to understand how the NCP processes work in practice for the resolution of disputes. The complaints procedure relies on voluntary participation and does not provide legal redress but offers an alternative to litigation. The NCP provides a potential avenue for complaints to be heard about projects supported by UKEF and for the NCP to help address differences and mediate solutions. UKEF takes account of any negative NCP findings in respect of a party to a project which it is being asked to support in line with the OECD Common Approaches which includes a provision to this effect.

The council met the trade finance committee of the British Bankers' Association (BBA). The BBA welcomed the introduction by UKEF of new products including the new direct lending facility. It considered that these improvements had helped to make UKEF's offering comparable with other leading export credit agencies. However, the BBA commented that in its experience other export credit agencies were more assertive in pursuing national interests in the way they conducted business and that UKEF appeared to be more rigorous in the application of the OECD ethical agreements. The BBA also commented on the need for UKEF to simplify processes and procedures and improve turnaround times. UKEF informed the council of the efforts it is making to respond to the needs of exporters in this regard.

The council reviewed UKEF's handling of information requests made under the Freedom of Information Act and the Environmental Information Regulations during 2013–14. The council welcomed the improvement in the proportion of requests answered within statutory deadlines.

The costs of operating the council during 2014–15 amounted to circa £4,000 largely to reimburse the cost of travel expenses. The council's Terms of Reference, register of members' interests, minutes of its meetings and contact details can be found on the government's website – www.gov.uk/government/organisations/export-guarantees-advisory-council. For further information on the work of the council please contact the council secretary on 020 7271 8101 or email enquiries@ukef.gsi.gov.uk.

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