

Review Decision: Complaint from an individual in Cameroon against a UK company

Background

1. On 4 February 2016, an Application was made by an individual for review of the UK National Contact Point's Initial Assessment dated December 2015, entitled 'Complaint from an Individual In Cameroon Against a UK Company'. Further "observations" were sent by the Applicant on 12 March 2016.
2. After an internal assessment by the NCP, on 1 April 2016, the Steering Board were notified and invited to declare their availability to participate in a review. A Review Committee was established, comprising Jeremy Carver and Daniel Leader, two External members of the Steering Board, and Andrew Blacksell, the Steering Board member from UK Export Finance. The UK NCP submitted its written comments on the Application for review together with the case papers; and a further note was received from the Applicant with his observations on the NCP's comments.
3. The Review Committee has duly considered the material provided, including the Initial Assessment, and, pursuant to paragraph 6.1 of the Review Procedure, has considered the Application for review. Following a conference between members of the Committee, the Review Committee has unanimously decided to refuse the application for review of the Initial Assessment.

The Application

4. The Applicant, an individual from Cameroon, filed a complaint with the UK National Contact Point at various dates between 14 July 2015 and 4 August 2015 with regard to his alleged ill-treatment as an employee of an energy company domiciled in Cameroon between 2002 and 2014.
5. The Applicant alleged that his employer had made arbitrary alterations to his employment position and salary in 2002, and has subsequently falsified or withheld his employment records, including a final record provided to him upon

his retirement in May 2014. It is alleged that this was done in order to conceal his ill-treatment and to avoid paying benefits and compensation due to him.

6. The Applicant took legal action in Cameroon and in 2012 the Cameroon Supreme Court ordered the complainant's employer to pay him certain benefits. The Applicant remained in employment throughout these events and retired at the end of May 2014.
7. The Respondent UK investment company began its acquisition of the Applicant's employer in 2013 which was completed in May 2014. A further dispute arose between the Applicant and his employer after his retirement in May 2014. The dispute related to his final employment record and financial settlement upon retirement. The Applicant alleges, in essence, that the UK company failed to change poor governance practices of its subsidiary company.
8. The UK company responded to the allegations on 30 November 2014 and averred that it had no involvement in the day to day management of the complainant's employer but accepts that it did make some changes to the personnel and policies of the said company. It submits that the events which are the subject of the complaint pre-date its shareholding and that the issues in question were addressed by the Cameroonian courts.
9. In its Initial Assessment, dated December 2015, the NCP rejected further examination of the complaint on the grounds that "*the NCP does not consider that the information substantiates an issue about OECD Guidelines obligations of the UK company named.*"
10. The application for review of the initial assessment dated 4th February 2016 raises the following grounds for review:
 - i. The UK NCP failed to follow proper procedure by varying its standard initial assessment procedure, which led to an unreasonable delay in making the Initial Assessment.

ii. The UK failed to treat the Applicant with appropriate fairness. The Applicant suggests that the NCP's handling of his case indicates lack of neutrality and unequal treatment.

Role of the Review Committee

11. Pursuant to section 3.3 the NCP Review Procedure for Dealing with Complaints to the UK NCP, the review procedure is intended to identify procedural errors in the NCP's decision-making, and to ensure that, if identified, they are corrected to the extent possible. In the published Guidance, the powers of the Review Committee are limited to the identification and correction of procedural errors. The Review Committee does not have the power to examine or rule upon the substance of the NCP's decision unless the substantive decision has been affected by a procedural error.
12. The Panel considered both grounds of Review.

Ground 1: Delay

13. The chronology of the complaint handling process is set out at paragraph 9 of the Initial Assessment. The initial batch of documents relating to the complaint was not filed until 4 August 2015. Translations from the original French were obtained by the NCP and not received until 28 August 2015. A decision was made to seek a response from the UK company on 3 November 2015. A response was received on 30 November 2015 and the Initial Assessment was then issued on 31 December 2015.
14. The NCP procedures for dealing with complaints state that the NCP should acknowledge receipt of the complaint within 10 days and at the same time write to the company named in the complaint and invite the company to respond within 20 working days. In exceptional circumstances, pursuant to section 3.1.5 of the Procedure, the company may make an Initial Assessment without inviting a response from the company. The Procedure states that the Initial Assessment process is expected to be completed within approximately a 3 month time frame.

15. The NCP notes that there was an initial delay in the assessment of the claim because the documents had to be translated from French. It is acknowledged by the NCP that it did not decide to contact the company in question until one month after the complaint had been received and translated because it was in two minds as to whether the initial assessment could have been made without reference to the company at all. It eventually decided to do so. The NCP is criticised for the delay; but the decision to notify the company was to 'be fair to' the Applicant, because it had the option under the Procedures to reject the Complaint immediately in circumstances where its substance had been addressed in an earlier the Complaint. Any delay beyond the stated period of 10 days in deciding whether or not to contact the company is regrettable. However, the Initial Assessment was completed approximately 3 months after the translations had been received and the delay in contacting the company had no impact on the substantive decision which was ultimately reached. In the view of the Review Committee, the NCP would have been entitled to rely upon the exceptional circumstances set out in the Procedure and dispense with requesting a response from the Company in question. In any event, the Review Committee finds that there was no overall delay in the completion of the Initial Assessment and consequently there was no material breach in the procedure adopted by the NCP in this case. This ground of review is, therefore, rejected.

Ground 2: Allegations of Bias and Unfair Treatment

16. The complainant's allegations of bias and unfair treatment appear to be brought on the sole basis that the Applicant strongly disagrees with the NCP's substantive assessment of his case. The Applicant has wholly failed to substantiate these serious allegations which are entirely without merit and which are plainly vexatious. The Review Committee has no hesitation in rejecting this ground of review.

Recommendation

17. The Review Committee recommends that the Steering Board should refuse the Application of the Initial Assessment and should communicate the reasons for doing so as set out above.

25th May 2016

Daniel Leader

Jeremy Carver

Andrew Blacksell

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