

**Initial Assessment by the UK National Contact Point for the OECD
Guidelines for Multinational Enterprises**

**Complaint from an international trade union against a UK registered
multinational operating in Bangladesh**

SUMMARY OF THE UK NCP DECISION

- **The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided to reject the complaint on the grounds that the allegations made in the complaint have not been supported by sufficient supporting evidence and therefore have not been substantiated.**
- **As the complaint has been rejected, the UK NCP will terminate the review of the decision to suspend the complaint process on the grounds of ongoing legal proceedings in Bangladesh.**
- **This Initial Assessment concludes the complaint process under the Guidelines.**

BACKGROUND

1. On 6 December 2005, an international trade union (A) wrote on behalf of a local union in Bangladesh to the UK NCP raising a number of concerns which it considered constitute a Specific Instance under the Guidelines in respect of the operations of a UK registered multinational (B) operating in Bangladesh.

THE COMPLAINT AND RESPONSE

2. The concerns raised by A relate to B's operations in Bangladesh and were specifically related by A to Chapters IV(1)(a) and IV(8) of the Guidelines which state that:

“IV. Employment and Industrial Relations

Enterprises should, within the framework of applicable law, regulations and prevailing labour relations and employment practices:

1.a) Respect the right of their employees to be represented by trade unions and other bona fide representatives of employees, and engage in constructive negotiations, either individually or through employers' associations, with such representatives with a view to reaching agreements on employment conditions.

[...]

8. Enable authorised representatives of their employees to negotiate on collective bargaining or labour-management relations issues and allow the parties to consult on matters of mutual concern with

representatives of management who are authorised to take decisions on these matters”.

3. A makes the following allegations in respect of B:
 - a) That B victimised and unfairly dismissed three union’s leaders from its factory in Bangladesh after they repeatedly asked management for copies of financial statements on the company’s profits to which the union allegedly has a legal right to access.
 - b) That B locked out the factory’s workers and called in police support in response to a peaceful strike on 5-8 March 2005 organised by the union in support of the three dismissed members.
 - c) That B refused to negotiate in good faith with the union by making unfounded allegations as to the legitimacy of the union’s executive committee and subsequently dismissing five union members.

4. B disputes these allegations and submits:
 - a) That B has never been known to take any anti-union stance and that B’s decision to dismiss the three union leaders was not an act of victimisation. B also states that there is no evidence to support the allegation that it dismissed the three union leaders because of their request to access the company’s financial statements. The company disputes that the union has a legal right to access the company’s financial statements.
 - b) That the strike of 5-8 March 2005 was declared illegal by local authorities and that there is no evidence to support the allegations that B used the police in order to break the strike.
 - c) That B must ensure that those with whom it is negotiating are duly authorised representatives of the employees. For this reason, B filed a writ petition before the Supreme Court of Bangladesh on 26 October 2005 as a result of which the Court issued a “status quo” order halting negotiations with the union until completion of an investigation on the formation of the union’s executive committee. B also explains that all disciplinary actions taken against workers since the “status quo” order are not related to their union membership.

THE UK NCP PROCESS SO FAR

5. The UK NCP received A’s complaint against B on 6 December 2005. The complaint was sent by e-mail and stated that it was to be followed by three supporting documents to be sent by fax. The UK NCP has no record of this fax having been received and has subsequently asked A to provide copies of these documents. A has not provided the UK NCP with copies of these documents and has not made any reference to the documents in exchanges of correspondence with the UK NCP.

On 13 December 2005, the complaint was forwarded to the company. On 3 February 2006, B sent its preliminary response on the allegations made in the complaint. Shortly afterwards, and before issuing an Initial Assessment, the UK NCP suspended the complaint process taking into

account that the three dismissed union leaders had started legal proceedings in Bangladesh against their dismissal (since then, one union leader has withdrawn his claim). These proceedings have not yet concluded.

6. On 28 July 2009, the UK NCP received a request from A to progress the complaint under the Guidelines while legal proceedings continued to take place in Bangladesh. On 14 August 2009, the UK NCP responded to A asking for further information in relation to the issues raised in the complaint, and specifically for a copy of the Bangladesh's Labour Court ruling and for a copy of the Bangladesh's Labour Appellate Tribunal's subsequent ruling. The UK NCP did not receive a response from A.
7. On 16 September 2009, the Steering Board of the UK NCP endorsed a new parallel proceeding guidance¹ which sets out how the UK NCP intends to approach current and future complaints in which there are parallel proceedings. On 6 November 2009, the UK NCP wrote to both parties offering them the opportunity to comment on the application of the guidance to this complaint and/or request that the complaint remain suspended. On 18 December 2009, B requested that the complaint remain suspended in order to avoid causing serious prejudice to the parties involved in the ongoing legal proceedings in Bangladesh and especially to the company.
8. On 16 March 2010, the UK NCP informed both parties of its decision to finalise the Initial Assessment on the complaint before considering B's request any further. In the same letter, the UK NCP asked both parties to send by 16 April 2010 any further comments or information that they considered relevant to the allegations contained in the complaint.
9. The UK NCP received B's response on 21 April 2010. In its response, B submitted that the complaint should be rejected because: the allegations do not fall within the Guidelines; the issues raised are not material and substantiated; and progressing the complaint does not contribute to the purposes and effectiveness of the Guidelines.
10. The UK NCP did not receive a response from A and on 20 April 2010 sent an initial reminder to A. On 27 May 2010, A e-mailed the UK NCP stating that it considered the complaint to fall within the Guidelines and that the issues were material and substantiated because the Bangladesh's Labour Court had already ruled in favour of the two dismissed employees. On 16 June 2010, the UK NCP asked A for: a copy of the supporting documentation that A appears to have sent to the UK NCP by fax when it submitted the complaint on 6 December 2005; confirmation that on 9 September 2009, A and B signed an agreement relating to labour issues at B's factory in Bangladesh;

¹ <http://www.bis.gov.uk/files/file53069.pdf>

11. On 30 June 2010 the UK NCP sent A a reminder to respond to the request for further information and a final reminder on 19 July 2010. On 23 and 28 July 2010, A e-mailed the UK NCP stating: that it could not confirm whether an agreement had been signed with B on 9 September 2009; that it could confirm that the court proceedings in Bangladesh are about two of the original three dismissed union's leaders; that further to recent changes in B's management, the situation at B's Bangladesh's factory is improving; and that it would provide more details shortly. A could not find the supporting documents that were referred to in the original complaint. On 20 September, the UK NCP sent A a reminder to provide an update on the status of the appeal to the High Court Division of the Supreme Court of Bangladesh. On 24 September 2010, the UK NCP again asked A for an update on the status of the appeal to the High Court Division of the Supreme Court, and for a copy of the judgment of the Bangladesh's Labour Court in favour of the dismissed employees. A was unable to provide this information.
12. On 5 October 2010, the UK NCP also asked the British High Commission in Dhaka to seek more information on the status of the appeal to the High Court Division of the Supreme Court, but, at 8 November 2010, no further information was available.

UK NCP DECISION

13. The UK NCP has decided to reject the complaint from A on the grounds that the allegations made in the complaint have not been supported by sufficient evidence and therefore have not been substantiated. The reasons for this decision are explained below at paragraph 14(b).
14. As stipulated in paragraph 14 of the Commentary on the Guidelines on "Implementation in Specific Instances", the UK NCP took the following points into account when considering whether A's concerns merited further consideration:

- a) Identity of A and its interest in the matter:

The UK NCP is satisfied that A is a legitimate and credible body to make this complaint. A is a recognised international union and has brought the complaint on behalf of a local union in Bangladesh. The UK NCP considers that both A and the local union are directly interested in the issues raised in the complaint and are in a position to supply information about it.

- b) Whether the issue is material and substantiated:

The UK NCP does not consider that the issues raised in the complaint have been substantiated. This is because the allegations have not been supported by sufficient supporting evidence.

As explained in more detail in the above section titled “The UK NCP process so far”, the UK NCP has offered the complainant the opportunity to submit further evidence on several occasions in 2009 and 2010. However, the UK NCP has not received any supporting evidence from A.

(i) Alleged victimisation and unfair dismissal of union leaders.

A stated that the mere fact that court proceedings are ongoing in Bangladesh proves by itself that the allegation is material and substantiated. However, the UK NCP considers that the existence of relevant ongoing court proceedings does not necessarily mean that the complaint submitted under the Guidelines is material and substantiated. The UK NCP considers that it is necessary to review all of the relevant information and ascertain what the court proceedings reveal in respect of the merits of the complaint submitted under the Guidelines before reaching a conclusion as to whether the complaint submitted under the Guidelines is material and substantiated.

The UK NCP notes that, on 6 March 2007, the Labour Court in Bangladesh accepted the dismissed union leaders’ arguments and passed judgment in their favour, ordering B to reinstate them. The UK NCP requested a copy of the judgment from A but was not provided with one. The UK NCP has seen the subsequent Bangladesh Labour Appellate Tribunal’s judgment dated 11 March 2008. The UK NCP notes that the Labour Appellate Tribunal ruled that the orders of the Labour Court be set aside and the case be re-submitted to the Labour Court for the purpose of hearing the arguments of both parties. The UK NCP understands that this was on the basis that the Appellate Tribunal considered that there had been a procedural error in the handling of the case.

The UK NCP notes that the court proceedings in Bangladesh have not yet concluded and that the Labour Appellate Tribunal returned the consideration of the substantive issue to the Labour Court.

The UK NCP has also seen a copy of the two union leaders’ appeal to the High Court Division of the Supreme Court of Bangladesh against the Labour Appellate Tribunal’s ruling. The UK NCP notes that, pending its ruling on the appeal, the Supreme Court has issued an interim order staying the operation of the judgment passed by the Labour Appellate Tribunal (and has not passed any interim order directing B to reinstate the dismissed union leaders).

Therefore, apart from the complaint itself, the only supporting documents which the UK NCP has received is a copy of the judgment of the Labour Appellate Tribunal and a copy of the appeal to the High Court Division of the Supreme Court (the UK NCP has not received a copy of the judgment of the Labour Court). These documents do not set out the detail of the union leaders' case and the decision of the Labour Appellate Tribunal expressly does not address this. Also, whilst the UK NCP has taken into account that the Labour Court upheld the union leaders' case, it understands that this judgment has subsequently been set aside by the Appellate Tribunal. As a result, the UK NCP considers that, pending the outcome of the appeal to the High Court Division of the Supreme Court, the judgment of the Labour Court cannot be relied upon to find that this part of the complaint is substantiated.

In light of the above, the UK NCP considers that this part of the complaint has not been substantiated because it has not been supported by sufficient evidence.

(ii) Alleged suppression of a peaceful strike.

The UK NCP does not accept for further consideration the complaint that B allegedly used the local police force to suppress the workers' strike of 5-8 March 2005. This is because, after requests from the UK NCP, A has not submitted any evidence to the UK NCP to support this allegation.

(iii) Alleged failure to engage in constructive negotiations with the union.

The UK NCP also does not accept for further consideration the complaint that B allegedly failed to engage in constructive negotiations with the union. The UK NCP considers that there is reasonable evidence to conclude that B is engaging in constructive negotiations. Following the election on 17 November 2008 of a new executive committee of the union, the UK NCP understands that B and A have been engaging in negotiations with a view to reaching an agreement relating to labour issues at B's factory in Bangladesh. The UK NCP also understands that an agreement between B and A was signed on 9 September 2009, although A has been unable to confirm this. Furthermore, the UK NCP has enquired about the current position and A stated that, following a change of management at B, the situation in the Bangladesh factory is improving.

c) Relevance of applicable law and procedures:

According to A, B has breached aspects of Bangladesh employment law in that B allegedly unfairly dismissed three union leaders on 9 November 2004. B denies this allegation and states

that the three former employees were dismissed for non-union related reasons and through a fair process.

As the complaint has been rejected, the UK NCP will terminate the review of the decision to suspend the complaint process on the grounds of ongoing legal proceedings in Bangladesh.

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

The UK NCP understands from the parties that the alleged unfair dismissal of two of the three union leaders is currently the subject of ongoing legal proceedings in Bangladesh. The UK NCP understands that one union leader has withdrawn his complaint petition against B.

As the complaint has been rejected, the UK NCP will terminate the review of the decision to suspend the complaint process on the grounds of ongoing legal proceedings in Bangladesh.

e) Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines:

One of the stated aims of the Guidelines, specifically the role of the NCPs, is for the NCP to “offer “good offices” in an effort to contribute informally to the resolution of the issue”². To this effect, the UK NCP considers that, had there been sufficient supporting evidence to deem the allegations material and substantiated, and if the UK NCP had decided to restart the complaint process after reviewing the decision to suspend it, the UK NCP could have helped both parties in reaching a conciliated/mediated solution to the complaint.

NEXT STEPS

15. This Initial Assessment concludes the complaint process under the Guidelines.

24 November 2010

UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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² OECD Guidelines for Multinational Enterprises, *Commentary on the implementation procedures of the OECD Guidelines for Multinational Enterprises*, 2008, paragraph 16, p. 59 (available at www.oecd.org/dataoecd/17/44/1900962.pdf).