

**Initial Assessment By The UK
National Contact Point For
The OECD Guidelines For
Multinational Enterprises**

**COMPLAINT FROM REPRIEVE
AGAINST BT –
CO-OPERATION WITH
INTELLIGENCE AGENCIES**

JANUARY 2015

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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.**

Substance of the complaint

1. The complaint is made by Reprieve: a UK based NGO that works to promote the rule of law around the world.
2. Reprieve allege that British Telecommunications plc (BT) is linked to human rights impacts of US military operations in Yemen because it permits UK and US intelligence agencies to intercept its customers' communications, from which these agencies derive intelligence that informs these military operations.
3. BT accepted an invitation from the UK NCP to respond. It does not accept the allegations, and notes that it would in any case be precluded by UK law from disclosing any details relating to an interception request.

Additional allegation and separate assessment

4. Reprieve also allege that BT is linked to the same impacts by providing a communications cable between United States military facilities in the UK and Djibouti. Reprieve has raised these allegations previously with the UK NCP, and, because of this, they have been separately assessed by the UK NCP (see linked assessment). Where a complaint is rejected, the Initial Assessment does not usually name parties, but in the earlier complaint both parties agreed to be named (and so they are also named in this assessment).
5. Because the two sets of allegations relate to the same company and the same impacts, the UK NCP has also considered whether information submitted in support of one set of allegations would materially change the initial assessment findings in regard to the other set of allegations. That is, if all the information supporting both sets of allegations is taken together, would the NCP's finding be different in regard to either set of allegations. The UK NCP does not consider that its findings would be different.

Guidelines provisions cited

6. The complainants refer to the following provisions of the Guidelines:

Chapter II General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard: Enterprises should...

2. Respect the internationally recognised human rights of those affected by their activities.

Chapter IV Human Rights

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1 Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

2 Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

3 Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

5 Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

6 Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

7. Provisions in Chapter IV were added when the Guidelines were updated in 2011. They are applied by the UK NCP to actions of enterprises from 1st September 2011 and to unresolved risks or impacts known to the enterprise at 1st September 2011.

The Initial Assessment process

8. The Initial Assessment process is to determine whether the issues raised merit further examination. It does not determine whether the company has acted consistently with the Guidelines.

Handling process

9.

19.08.2014	UK NCP receives complaint including new allegations alongside allegations previously considered.
02.09.2014	UK NCP shares complaint with company and gives handling advice to complainant.
12 to 29.09.2014	Further exchanges with parties about treatment of new allegations. UK NCP updates handling advice
08.10.2014	UK NCP receives company response to all allegations
10.10.2014	UK NCP receives clarification of context for new allegations
10.11.2014	UK NCP updates handling advice.
19.11.2014	UK NCP receives further company response to new allegations
18.12.2014	UK NCP issues draft Initial Assessment to parties
14.01.2015	UK NCP issues finalised Assessment to parties

10. All documents provided in the complaint and response were shared with both parties.
11. The NCP offered each party a meeting to explain the process. Neither party took up the offer.

UK NCP decision

12. The UK NCP has decided to reject the complaint. The UK NCP took the following points into account when considering whether the complainants' concerns merited further consideration:

Identity of the complainants and their interest in the matter

13. The UK NCP accepts that Reprieve has an interest in the impacts of the military operations referred to, and represents identified individuals in Yemen who have been affected by these operations. Reprieve has noted that it is likely its clients would be able to participate remotely in any UK based mediation.
14. The OECD Guidelines process also relies on complainants being able to provide information about a company's involvement in the issue raised, in order to show how a company's Guidelines obligations are engaged. The UK NCP understands that the complaint relies on publicly available information to support the allegations considered here: Reprieve does not have any other knowledge of the actions of BT or the actions of the state agencies it refers to.

Whether the issue is material and substantiated and whether there seems to be a link to the company's activities.

15. In support of its claims, Reprieve offers a variety of press reports relating to operations of UK and US intelligence services, and to US military operations. Some of the information was available in July 2013 when Reprieve made its earlier allegations against BT.
16. Reprieve's identification of BT with these new allegations relies on three press articles. Two of these articles (one of which appears to rely on the other in identifying the company) were published in August 2013. The UK NCP has previously considered these two reports in assessing a complaint made in November 2013 on a related issue (see Paragraph 23 below).
17. The third press article was published in June 2014. It appears to the UK NCP to be similar to the August 2013 articles. As with these articles, it is based on unauthorised disclosures by a former employee of US intelligence services of internal documents of US and UK intelligence agencies. As with the August 2013 articles, there is no suggestion that the writer can make available the source documents he refers to. It is also unclear, in the case of this third article, whether the documents were disclosed to the writer directly or whether he relies on another source.
18. The UK NCP's view about the information in the 3 articles is the same view it reached in the November 2013 complaint (see Paragraph 23 below). The UK NCP accepts that the source was considered genuine by the writers of the articles and provided other information generally acknowledged to be genuine. Because the source documents are not available to any party in the complaint, however, and because, as described, they are not documents to which the company identified was a party, the NCP does not consider the articles substantiate the company's link to the complaint.
19. Other information provided by Reprieve does not refer to the activities of BT, and so cannot substantiate an issue relating to BT's Guidelines obligations.
20. The UK NCP concludes that the complainants have not substantiated an issue with regard to BT's obligations under the Guidelines.

Relevance of applicable law and procedures, including court rulings

21. The complaint refers to international law on human rights under the International Covenant on Civil and Political Rights (right to life, right to a fair trial) and international conventions on torture and war. The UK NCP notes that Reprieve sought a Judicial Review in 2012 in connection with UK intelligence agencies' provision of information for similar US military operations. The request for review and a subsequent appeal were rejected by the UK courts.

22. The company refers to UK legal restrictions on disclosure of any details relating to an interception request: the UK understands the relevant laws to be Section 19 of the Regulation of Investigatory Powers Act 2000 (RIPA) and Section 5 of the Official Secrets Act.

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

23. As indicated at Paragraph 16 above, some supporting information in this complaint was previously considered by the UK NCP. The UK NCP refers to Paragraphs 44-45 of its Initial Assessment published on 27th October 2014 rejecting a complaint from a UK NGO against six telecommunications companies.
24. The UK NCP notes, however, that the issue raised in the earlier complaint was that the access provided to the security services was itself a breach of the human right to privacy of any person whose communications were accessed. The current complaint makes a separate claim of a breach of other human rights of specific individuals and communities, by alleging that access to communications supported military operations in Yemen.
25. The UK NCP notes the 5 December ruling of the Investigatory Powers Tribunal (IPT) (following a complaint brought by a number of NGOs) that interception activities referred to in the complaint were lawful. The UK NCP notes that the IPT's decision was made on assumed facts.

Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the Guidelines

26. The UK NCP's decision is based on its finding that the information provided does not establish that the Guidelines obligations of the company identified are relevant to the issue raised.
27. The UK NCP notes that its procedures allow new a complaint to be made on issues previously rejected if new information means that the reasons for rejection no longer apply.

Next steps

28. As the complaint has been rejected, this Initial Assessment concludes the complaint process under the Guidelines.

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UK National Contact Point for the OECD Guidelines for Multinational Enterprises

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