

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

**COMPLAINT FROM AN INDIVIDUAL  
IN INDIA AGAINST A UK COMPANY  
IN RESPECT OF EMPLOYMENT IN  
THE UNITED ARAB EMIRATES**

**MAY 2013**

# Contents

<b>Contents .....</b>	<b>2</b>
Summary of the UK NCP decision .....	3
The complaint and response .....	3
The complaint.....	3
Guidelines provisions cited .....	4
The company's response .....	5
The UK NCP process so far .....	6
UK NCP decision .....	6
Next steps .....	10

## Summary of the UK NCP decision

- **The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises has decided to reject the complaint on the grounds that the issues are not substantiated in respect of the company's responsibilities under the Guidelines.**

## The complaint and response

### The complaint

1. On 1<sup>st</sup> February 2013, an individual wrote to the UK National Contact Point (NCP) raising concerns under the Guidelines relating to his employment in the United Arab Emirates' (UAE) office of an insurance company headquartered in the UK. The NCP understands that this office was in the Dubai Media and Technology Free Zone.
2. The complainant was employed from May 2006 until September 2010, when he was made redundant. He alleges that from the start of his employment, the company sought to change some of his agreed terms and conditions of employment, changed or did not honour other agreed terms and conditions, and did not offer him benefits offered to other employees (including more junior staff). He claims that he was discouraged from raising grievances about this treatment.
3. The complainant also alleges that he was not fairly considered for appointment (on promotion) to a new senior role in his work area in 2009, and that the company intended, by creating this role, to make his own role redundant.
4. The complainant also alleges that the redundancy terms offered to him by the company did not include some benefits due to him, including compensation that was due under UAE law and was offered to members of staff made redundant a few months' earlier.
5. When the complainant asked for these benefits to be included in the offer, he alleges that a representative of the company threatened him with police action, and that these threats were subsequently repeated. He claims the threats caused severe mental distress to him and his family, and his subsequent acceptance of a compromise offer, still falling short of what he believed was due to him, was made under the duress of this extreme fear and distress. His fears also prevented him from pursuing complaints about his treatment until he left the UAE two years later.

6. The complainant considers that the company treated him in this way because he was Asian rather than European and that his treatment was therefore discriminatory. He also considers that his treatment breached his human rights and, in particular, that the threats made to him were a serious abuse of human rights.
7. The complainant seeks mediation with the company in order to secure the benefits he considers were due to him, together with payments of interest for the delay in providing these and compensation for discrimination and abuse of his human rights.

### **Guidelines provisions cited**

8. The complainant refers to the following provisions of the Guidelines:

#### Chapter IV: Human Rights

Paragraph 1. *[Enterprises should...] 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.*

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

Paragraph 3. *[Enterprises should...] 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*

Paragraph 6. *[Enterprises should...] 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.*

#### Chapter V: Employment and Industrial Relations

Paragraph 1.e. *[Enterprises should...] Be guided throughout their operations by the principle of equality of opportunity and treatment in employment and not discriminate against their workers with respect to employment or occupation on such grounds as race, colour, sex, religion, political opinion, national extraction or social origin, or other status, unless selectivity concerning worker characteristics furthers established governmental policies which specifically promote greater equality of employment opportunity or relates to the inherent requirements of a job.*

9. The Chapter IV provisions cited were added to the Guidelines in 2011 and are applied by the UK NCP to the actions of enterprises from 1<sup>st</sup> September 2011 and to cases where ongoing human rights impacts are known to an enterprise at 1<sup>st</sup> September 2011. In considering actions of enterprises before September 2011, the UK NCP instead

applies the general provision in Chapter II of the pre-2011 Guidelines I that enterprises should “*Respect the human rights of those affected by their activities consistent with the host government’s international obligations and commitments.*” (This provision is retained in the 2011 Guidelines in a shorter form: enterprises should “*Respect the internationally recognised human rights of those affected by their activities*”).

## **The company’s response**

10. The company responded on 25<sup>th</sup> March 2013 denying the allegations. The company notes that in principle it supports the access to remedy the NCP process offers, but says that it does not consider the NCP process is appropriate in this case where a former employee is seeking additional compensation arising from the termination of his employment.
11. The company says that the complainant’s terms and conditions were consistent with those of other employees of his grade and experience. Changes made to them were for policy reasons – they were explained to the complainant and he had an opportunity to raise grievances about them during his employment.
12. In respect of the 2009 appointment to a senior role, the company says that the complainant was considered and interviewed for the post, and had the opportunity to seek feedback on the reasons he was not ultimately selected.
13. In respect of his redundancy, the company says that the redundancy package was negotiated over the course of a number of meetings with the complainant and changes were made to accommodate requests he made. The company does not accept that any threats were made to the complainant: it considers that his belief that a threat was made arose from a misunderstanding and that this was subsequently fully explained to him.
14. The company notes that the complainant had a number of opportunities to raise grievances through the company’s own processes, and through the UAE courts. The company co-operated with a mediation service offered by the Labour Dispute Department of the Government owned regulator of the Free Zone, with which the complainant raised his grievances. The complainant also raised the issues raised in the complaint with the company in a letter of August 2012 and the company made an internal investigation and replied to the complainant in September 2012.

## The UK NCP process so far

15. The UK NCP received the complaint and some supporting evidence on 1<sup>st</sup> February. On 12<sup>th</sup> February, the NCP asked for some further information and the complainant provided additional information on 15<sup>th</sup> February, and again on 25<sup>th</sup> February when he confirmed that the NCP now had all the information he wished it to consider.
16. The NCP forwarded the complaint to the company on 15<sup>th</sup> February and subsequently (on 18<sup>th</sup> and 25<sup>th</sup> February) forwarded the further details provided the complainant.
17. The NCP received the company's response on 25<sup>th</sup> March and forwarded it to the complainant on 28<sup>th</sup> March. On 1<sup>st</sup> April, the complainant made a further submission in reaction to the company's response, including documents relating to his contact with the company in August/September 2012 and other documents which he asked the NCP to consider.
18. The NCP offered an initial meeting to each party to explain the process. The complainant did not take up the offer. At the company's request, the NCP telephoned a company representative on 6 March and explained the complaints process.
19. Both parties were also given an opportunity to comment on a draft of this Initial Assessment and the NCP has made some minor changes in response to comments from the complainant.

## UK NCP decision

20. The UK NCP has decided to reject the complaint. The UK NCP took the following points into account when considering whether the issues merited further examination:

### **Identity of the complainant and his interest in the matter:**

21. The NCP is satisfied that the complainant has a close interest in the issues he raises and is able to provide information about them.

### **Whether the issues are material and substantiated:**

22. The NCP finds that the issues are not substantiated in respect of the company's responsibilities under the Guidelines. The evidence submitted establishes that the complainant had grievances about his treatment during his employment and on his redundancy (and, in the NCP's opinion, establishes that there may be some justification for these grievances). But the evidence does not establish that the grievances are relevant to the company's responsibilities under the

Guidelines provisions on discrimination and human rights. The NCP considered that:

#### Chapter V, Paragraph 1.e. on discrimination

23. The Guidelines provision refers to a range of grounds on which discrimination may occur, including *race, colour, sex, religion, political opinion, national extraction or social origin, or other status*. The complainant alleges that discrimination in this case was based on his race, but the NCP does not consider that the evidence offered substantiates this. Evidence contrasting the complainant's treatment with that of other workers does not refer to the race or national extraction of these workers, or to the treatment of other workers of the same race as the complainant. Evidence relating to grievances raised by the complainant during and after his employment does not include any specific allegations of racial discrimination (in some cases general references are made to discrimination but no grounds are stated).
24. Other evidence submitted by the complainant shows that he received favourable performance reports and commendations, and that, whilst he was not offered the new senior post created in 2009, when he expressed an interest in the post, he was considered and interviewed.

#### Chapter II, Paragraph 2 on human rights

25. The complainant alleges abuse of rights including rights to fair pay, discrimination, health and safety in employment, and security of person. The allegation in respect of fair pay appears to refer to the allegation of discrimination, and the NCP's consideration of the discrimination allegations is set out in Paragraphs 22-23 above.
26. In respect of the rights to health and safety and security of person, the complainant makes some references to fears early in his employment about raising grievances about his treatment (in one case, he reports being told that he would lose his job if he raised a grievance). Evidence indicates that he did subsequently raise grievances and issues without any apparent difficulties, however.
27. The allegations in respect of health and safety and security of person relate principally to meetings about his redundancy, however. The complainant alleges that in an initial meeting about his redundancy on 20<sup>th</sup> June 2010, the Human Resources manager he met physically prevented the complainant from leaving the room, and threatened that if he did not agree the redundancy terms offered, the police would be called and told that he was "absconding". The NCP understands that employers in the Free Zone are required to report employees who abscond (i.e. do not attend their work) and that the UAE authorities may deport and permanently exclude from re-entry employees reported as absconding.

28. Evidence shows that the complainant reported this alleged threat to company managers and to the Free Zone regulator on 20<sup>th</sup> and 21<sup>st</sup> June 2010. The company's response to these reports indicates that the manager alleged to have made the threat denied that he had made any threat, and suggested that the complainant had misunderstood a reference to a need to inform the authorities about the cancellation of his visa. Neither the complainant nor the company offers any third party evidence about the 20<sup>th</sup> June meeting.
29. The complainant says these threats were repeated on subsequent occasions, but does not name any representatives of the company making the threats apart from the HR Manager, who has since left the company. The Free Zone regulator arranged a mediation meeting between the complainant and company, but the complainant did not subsequently pursue his complaint with them, or take any action under UAE law (the complainant notes that he was advised that he would need to leave the UAE before pursuing any legal action).
30. The complainant says that the threats made to him caused extreme fear and distress to him and his family, and this fear forced him to agree to redundancy terms he did not consider fair. The NCP understands that in agreeing to these terms he also agreed that they were in full and final settlement of any claim against the company.
31. Whilst accepting that the complainant was fearful, the NCP does not consider that the complaint establishes that his extreme fear and distress were justified by the circumstances. The complainant was familiar with the company's policies, and was employed in a management level position, with good performance reports. He had raised grievances previously without adverse consequences. The company does not accept that the comments made were intended as a threat, but even if they were, the complainant does not show that he had reason to believe the company generally stood behind the threat or that it could be successfully carried out.
32. The NCP notes that the complainant continued to dispute his redundancy terms (securing some concessions), and to pursue his grievances with the Dubai authorities after he claims the alleged threats were made, with no apparent adverse consequences to himself or his family. He continued to live and work in Dubai for two years following his redundancy.
33. The NCP concludes that the evidence does not substantiate the complainant's claim that the company failed to respect his human rights.

#### Chapter IV on human rights

34. The complaint also refers to the company's enhanced responsibilities under the 2011 Guidelines, to address adverse human rights impacts it



caused, contributed to or is linked to. As explained at Paragraph 9 above, the UK NCP applies these provisions to the actions of enterprises from 1<sup>st</sup> September 2011 and to ongoing impacts known to an enterprise at that date. The NCP does not consider that the complainant has demonstrated a human rights impact to which these provisions would apply.

## **Conclusion**

35. The NCP concludes that while the complainant may reasonably have grievances about his treatment, the issues are not substantiated in respect of the company's responsibilities under the Guidelines.

## **Relevance of applicable law and procedures, including court rulings**

36. As outlined above, the complainant and the company were subject to the laws of the Dubai Free Zone. The Zone's regulator advised the complainant on how to instigate proceedings under Dubai law, but he did not pursue an action.

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

37. The UK NCP's finding is based on the evidence submitted in the complaint and response and not on any precedent. However, the NCP observes that there are similarities between this complaint and the *Complaint from an Individual in India against a UK Registered Company* on which the UK NCP published an Initial Assessment in October 2012. Both are complaints from individuals seeking redress from a former employer in circumstances where their access to legal remedy is limited by an agreement made with that employer.

## **Whether the consideration of the specific issue would contribute to the purposes and effectiveness of the Guidelines:**

38. The company suggests that it is not appropriate for issues relating to individual employment disputes to be considered under the Guidelines. The UK NCP considers that if there had been evidence relevant to the company's responsibilities under the Guidelines, the NCP could have accepted the complaint for further examination. However, the UK NCP notes that any recommendation it might have made in these circumstances would be in regard to the enterprise making its future conduct more consistent with the Guidelines. The UK NCP does not make recommendations about compensation, and has no statutory powers to award compensation.

## Next steps

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

**21<sup>st</sup> May 2013**

**UK National Contact Point for the OECD Guidelines for Multinational Enterprises**

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