**OECD Complaints Procedure**

The Guidelines are recommendations addressed by governments to multinational enterprises operating **in** or **from** adhering countries. They establish standards for responsible business conduct. Adhering governments are committed to encouraging enterprises operating in their territory to observe a set of widely recognised principles and standards for responsible business conduct wherever they operate. There are two particularly relevant chapters, one concerning human rights and one on employment and industrial relations. Other obligations cover tax, transparency, bribery, the environment, and due diligence.

Although trade unionists tend to look to the employment and industrial relations chapters regard should also be had to the human rights chapters. The standards set by the main international human rights instruments can be very helpful in terms of promoting trade union and employment rights. Sufficiently interested persons, or their representatives (such as unions) can submit complaints (which are called ‘Specific Instances’ in OECD jargon).

**How to complain**

The alleged failure to respect the principles set out in the Guidelines by a multinational company are grounds for a complaint to be raised with the appropriate channels. The instrument’s implementation mechanisms established National Contact Points (NCP) in all adherent States. The NCPs are government offices charged with promoting the Guidelines and handling enquiries in the national context.  Any “interested party” can file a complaint, and trade unions are recognised as appropriate organisations to use these processes. The NCP will consider all complaints it receives.

Generally, issues are dealt with by the NCP in the ‘host State’ (in whose country the issue has arisen, harm has occurred, etc). But often multinationals operate subsidiary operations in non-OECD States, where no NCP exists. In such cases complaints should normally be addressed to the ‘home State’ NCP, in the country in which the multinational’s top-tier entity is registered. But the Guidelines also envisage a framework of coordination across more than one country and a framework of international cooperation occasionally applies, with one, two, or more NCPs being involved in dialogue on cases. This said, some NCPS have a ‘good’ track record for taking up and helping to resolve cases (the UK’s record is better than most), while others (notoriously the US NCP) appear to be very ineffective.

To raise a complaint with the UK NCP, you should contact the innovation and SKils (BIS). BIS Ministers play no part in the NCP’s decisions on complaints, and have delegated general oversight of the NCP to its Steering Board, on which a trade union representative sits, Lord Bill Jordan, former President of the AEU, and then General Secretary of the ICFTU (ITUC’s cold war era predecessor). Human rights lawyer Daniel Leader, from Leigh, Day and Co, also sits on the Board, as does an NGO representative from the International Rescue Committee.

The UK NCP has committed to complete each Specific Instance within a year of receiving the complaint.

**Complaint contents:**

Any complaint should clearly set out the following information:

Who are the Parties? - how many members, is the union recognised, etc

The facts - what has happened? Include evidence.

The relevance of the Guidelines - which specific sections have been breached?

What outcome is required – a statement, or would opening dialogue be sufficient?

**Confidentiality in the Initial Assessment Stage**

The NCP does not name parties in a complaint unless and until it has accepted issues at Initial Assessment, or unless parties agree to be named. The NCP will not usually confirm or deny publicly that a complaint has been received until the Initial Assessment is published.

**The Mediation Process**

The preferred outcome of any complaint is an agreement between the parties. When the NCP accepts a complaint, it will discuss with the parties involved and offer its “good offices” with the objective of bringing both parties together to discuss the issues and come to mutually agreed resolution without undue delay.

For unions, mediation can be a strategy to open dialogue with an employer that otherwise refuses to speak with them. It can be the door to begin recognition discussions or to create a new union-employer forum, or even to discuss terms of a potential collective agreement. Mediation is voluntary.

Mediation will be conducted by a professional mediator contracted by the NCP. The NCP will prepare terms of reference to be agreed by both parties and the mediator. The mediator will be agreed by the NCP and both the parties and an additional mediator may be appointed if parties and the NCP agree on this. The mediator will be responsible for agreeing with the parties the methods and processes for mediation. The NCP mediator will be neutral.

**Final Statement**

If mediation is refused or fails to achieve agreement, the complaint will return to the NCP for examination. It may seek advice from other relevant government departments, UK diplomatic missions or overseas DFID offices, business associations, NGOs or other agencies. If appropriate it will seek informed independent opinion. The examination may also involve further meetings between the NCP and the parties.

The NCP’s Final Statement will include the following:

* details of the allegations and those chapters/paragraphs of the Guidelines that it is alleged have been breached;
* details of the parties involved i.e. complainant and the company;
* a summary of the process the NCP has followed;
* the outcomes of any mediation,
* the results of examination (if any),
* a clear statement as to whether the company breached the Guidelines;
* where appropriate, specific recommendations to the company so that its conduct may be brought into line with the Guidelines;

**Outcomes**

The remedies and outcomes that should be expected from an OECD Guidelines complaint are not equivalent to those available under national legal frameworks. An NCP cannot award compensation, nor can it order reinstatement of dismissed workers. It has no juridical powers of compulsion. The process seems to work most effectively as a vehicle for bringing parties into dialogue and mediation processes.