

Ms Lola Fadina
Chair of UK NCP Steering Board
Department of International Trade
3 Whitehall Pl.
SW1A

cc: UK NCP Steering Board members
Allen Anie

Amsterdam, 1 February 2018

Restoring civil society confidence in the UK National Contact Point (NCP) for the OECD Guidelines

Dear Ms Fadina,

We are writing to you as Chair of the UK NCP Steering Board because of our interest in the performance of National Contact Points under the OECD Guidelines for Multinational Enterprises (the Guidelines). OECD Watch is an international network of civil society organisations working on corporate accountability issues, with a particular focus on the Guidelines. Our network consists of over 100 members in 55 countries, including UK NGOs such as Amnesty International UK, Christian Aid, CORE, Global Witness, Rights and Accountability in Development, The Corner House and Traidcraft Exchange.

We are concerned that the lack of complaints submitted to the UK NCP over the last two years is indicative of a loss of confidence amongst civil society organisations in the ability of the NCP to handle complaints fairly in keeping with the procedural requirements of the Guidelines, and we wish to see this confidence restored. All governments that adhere to the Guidelines have made a binding commitment to establish an effective NCP that has the confidence of its stakeholders, including civil society. We are asking the UK NCP and the UK government to honour its commitment in this regard.

Following the successful structural and procedural reforms introduced in 2008, the UK NCP garnered a reputation as one of the best performing NCPs worldwide. Unlike many other NCPs, the UK NCP has had its own Steering Board, a functioning staff team, and a willingness to examine cases and make determinations of compliance with the Guidelines.

However, since 2011, the UK NCP has steadily lost the confidence of UK civil society, according to the evidence available to us, including Amnesty International's 2016 report¹ and the outcome of a multi-stakeholder workshop held in March 2016 to discuss the report's

¹ Amnesty International UK, "Obstacle Course", 2016, available at https://www.amnesty.org.uk/files/uk_ncp_complaints_handling_full_report_lores_0.pdf

findings and recommendations.² Of the 25 complaints alleging breaches of human rights principles filed between 2011 and 2016, only one was fully accepted for examination and concluded, and only six were partially accepted. The loss of confidence in the UK NCP has been noted by the UK NCP Steering Board.³

In order to restore the confidence of civil society and ensure that the UK honours its commitments under the Guidelines to have an NCP that meets the core criteria of visibility, accessibility, transparency and accountability and the criteria for handling cases of predictability, equitability and impartiality, OECD Watch recommends the following steps be taken by the UK government and the UK NCP Steering Board, as appropriate:

With regard to the *modus operandi* of the UK NCP:

- Improve the NCP's transparency by publishing its annual reports to the OECD and providing information on its website regarding the past and future promotional work it is carrying out.
- Review key aspects of the NCP's complaints handling to ensure that i) the NCP's follow-up to a Final Statement is conducted in a timely manner; and ii) complainants who agree to mediation are able to seek a subsequent determination of their case, without prejudice, in the event of the mediation failing.
- Provide the UK NCP with an adequate, dedicated budget to ensure that all of its functions are adequately covered through staffing and financial resources necessary to handle all of the NCP's responsibilities and are not subject to availability of funds on an *ad hoc* basis.
- Consider reconstituting the NCP to incorporate an independent Panel of Experts who have the expertise necessary to understand complex issues in the field of business and human rights, allowing the appointment of this Panel to be overseen by the Steering Board. The NCP's Terms of Reference should then be revised to detail when and how the Panel of Experts will be used when handling specific instances.

With regard to the UK NCP's initial assessment of cases:

- Ensure that the UK NCP does not impose an unreasonably high burden of proof during the initial assessment stage. In this regard, the NCP should follow the Procedural Guidance, which states that the evidential standard for accepting a complaint is to 'determine whether the issue is bona fide and relevant to the implementation of the Guidelines'. In order for the NCP to meet the core criteria of accessibility, the threshold for accepting complaints should be plausibility, and only those cases that are clearly frivolous should be rejected.

With regard to the structure and functioning of the UK NCP's Steering Board:

- Publish in full the findings and recommendations of the review of the NCP and Steering Board undertaken by the Department of International Trade in 2017 (as stated in the Review's Terms of Reference).

² British Institute of International and Comparative Law, 2016, available at https://www.biiicl.org/documents/1012_roundtable_discussion_on_the_uk_national_contact_point_-_event_report.pdf?showdocument=1

³ Minutes of the 22 February 2017 Steering Board meeting (removed from NCP website).

- Reassert the independence of the NCP as stated in the Government's response to the 2017 report of the Joint Parliamentary Committee on Human Rights (JCHR)⁴, and ensuring that its oversight and review functions enable it to hold the NCP accountable for operating within the OECD's Procedural Guidance.
- Appoint members of the Steering Board from outside government departments and expand the board to eight external members to improve its capacity to review cases.⁵
- Maximize the Steering Board's transparency and accountability by publishing meeting minutes on a timely basis and retaining minutes of previous meetings.
- Reform the review procedure so that requests for review are handled directly by the Steering Board without NCP influence, and allowing grounds for review to include both substantive and procedural errors in the application and interpretation of the Guidelines.

We draw your attention to a key purpose of the NCP – reiterated on many occasions by governments and inter-governmental bodies – which is to provide a grievance mechanism to enable access to remedy for victims of business related human rights abuses. If the UK NCP doesn't handle complaints in keeping with the Guidelines, and refrains from citing companies that are in breach, it cannot serve this purpose.

We believe that these recommendations, if implemented, would improve the functioning of the UK NCP in a way that would enable it to operate more effectively and in line with the core criteria laid out in the OECD Guidelines. This would restore the confidence of civil society in its ability to execute its task of furthering the effectiveness of the OECD Guidelines.

We would welcome your response to these recommendations and are at your disposal to further discuss them. We are sending a copy of this letter to the Steering Board and to the head of the UK NCP team.

Yours Sincerely,



Dr. Joseph Wilde-Ramsing, Ph.D.

OECD Watch Coordinator

OECD Watch ○ Sarphatistraat 30 ○ 1018 GL ○ Amsterdam ○ The Netherlands
+31 (0)20 639 12 91 ○ www.oecdwatch.org ○ info@oecdwatch.org

⁴ See p.17 on non-judicial access to justice: <https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/686/686.pdf>

⁵ Recommendation from UK NCP Steering Board's minutes of 12 July 2017 (6.2) that appointments to the new Steering Board need to take into account the human rights dimension of complaints:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/673623/UK_NCP_Steering_Board_Minutes_12_July_2017.pdf