

**APPROACH OF THE UK NCP TO  
SPECIFIC INSTANCES IN WHICH  
THERE ARE PARALLEL  
PROCEEDINGS**

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### **Issue**

1. The purpose of this paper is to provide guidance to complainants and companies on how the UK NCP intends to handle the issue of parallel legal proceedings within the OECD Guidelines complaints process.
2. The UK NCP considers parallel proceedings to be court proceedings in progress at the same time as a Specific Instance, which address the same or closely related allegations. Such proceedings can be either criminal or civil in nature and can take place under the jurisdiction of the host country, another country or an international court or tribunal.

### **NCP Approach**

3. The UK NCP adopts the following principles in respect of the impact of parallel proceedings:
  - 3.1 The fact that parallel proceedings exist will not of itself cause a suspension of its investigation and/or its determination of any dispute;
  - 3.2 The UK NCP will suspend a complaint only where it is satisfied that it is necessary in order to avoid serious prejudice to a party to parallel proceedings and appropriate in all the circumstances;
4. The UK NCP will only consider suspension of a complaint upon an application by a party to the complaint.
5. Before suspending a complaint, the UK NCP will expect the parties to give serious consideration to the benefits of conciliation/mediation which can lead to a quicker and more cost effective solution to the issues raised.
6. The NCP will progress any aspects of a complaint that it concludes are not necessary to suspend. This means an element of the complaint may be suspended while the remainder is taken forward under the published UK NCP procedure.

### **What this means to the published complaints procedure**

7. The UK NCP will accept a complaint under its published procedures when appropriate even if it has notice that parallel legal proceedings are underway. The initial assessment will include reference to any parallel proceedings of which the UK NCP is aware.
8. A party to a complaint can request a suspension at any stage of the complaints process on the grounds that continuation of the process may cause serious prejudice to a party to parallel proceedings. The UK NCP will only consider a request once a complaint has been accepted for consideration and has become a Specific Instance.
9. Before considering a request the UK NCP will ask the party making the request to provide evidence of the parallel proceedings. This should include court documentation wherever possible. The party requesting the suspension will also

need to show that continuation of the NCP process will seriously prejudice one of the parties to the parallel proceedings. The information provided will be copied to the other party save in exceptional circumstances and upon a request by the applicant that the information should not be shared.

10. On receipt of the evidence, the UK NCP will take a view on the following:

- Would continuation of the complaints process be likely to cause serious prejudice to one of the parties to the parallel proceedings?
- If so, is it appropriate in all the circumstances that the process be suspended in part or in its entirety?

11. The NCP will consider whether there is a likelihood of serious prejudice on a case-by-case basis. The following are examples of situations in which serious prejudice could arise:

- A finding by the NCP on a specific instance will be accepted by a foreign court as a deciding factor in an important issue before it.
- A company director is subject to criminal legal proceedings in a country, the judicial system of which includes a right to silence. The same company is also the subject of a complaint to the UK NCP covering closely related issues. The company is asked by the UK NCP to provide information which is material to the complaint under the Guidelines but which could result in prejudice against the individual in the court case if made public, for example in the Final Statement.

12. If the UK NCP assesses that serious prejudice may occur by continuing with the Specific Instance process it will, if it considers it appropriate, suspend the relevant aspects of the UK NCP action and inform the parties of this decision. It will continue handling any remaining aspects of the complaint it considers to be important to which the risk of serious prejudice does not apply.

13. Before any aspects of a Specific Instance are suspended the UK NCP will still offer conciliation or mediation to the parties on the grounds that this may provide a more expedient and cost effective resolution to the problem. The suspension will take effect if mediation is declined or is unsuccessful.

14. Once the parallel proceedings have concluded, the UK NCP will decide whether there is any merit in continuing with an examination of the suspended aspects of the complaint, By way of example, there may be merit in doing so in circumstances where the Guidelines set a higher standard than the laws applied by the court or tribunal.

15. Where all or part of a complaint has been suspended, the UK NCP will ask both parties to a complaint to provide an update on the status of the parallel proceedings at least every 6 months.

16. The UK NCP will apply this guidance to all current Specific Instances being handled by the UK NCP, including those currently suspended, and to all future complaints which it receives.