

SPECIFIC INSTANCE COMPLAINT: MR & MRS Y/MNE X FINAL STATEMENT BY THE NCP

Summary of the Outcome of the Specific Instance

This Final Statement concludes consideration by the New Zealand National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) of a Specific Instance submitted by Mr and Mrs Y in regard to alleged conduct towards them by MNE X through its subsidiary company Z in managing an insurance claim made by them.

After reviewing the Specific Instance application and consulting the parties, the NCP offered its good offices to facilitate discussion between them. However, although agreement was initially reached on a resolution of the complaint, this was later withdrawn by the applicants on the basis of their later consideration of additional information received at the conclusion of the facilitated good offices meeting. Following a lengthy period of consideration of this material, including seeking legal advice, the applicants decided to discontinue their complaint under the Specific Instance Process.

In accordance with the Guidelines, this Final Statement briefly describes the issues raised, the procedures the NCP initiated in assisting the parties, and the outcome.

Substance of the Specific Instance/Guidelines Provisions Cited

In November 2013 an application by Mr and Mrs Y was submitted to the New Zealand National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises (the Guidelines). The application cited Part IV (2) of the Guidelines relating to human rights, that *Enterprises should... Avoid causing or contributing to adverse impacts on matters covered by the Guidelines, through their own activities, and address such impacts when they occur.*

Mr and Mrs Y alleged that their treatment by MNE X (via its subsidiary Z), in the management of insurance claims arising from the 2010/11 Canterbury earthquake had breached their human rights in terms of the Guidelines. The application alleged that long delays, disputes over assessments, unnecessarily complications and issues of conduct by MNE X's representatives in the settlement of their claim caused them stress and discomfort and adversely affected their mental and physical wellbeing, thus breaching their right to the highest attainable standard of health set out in article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Initial Assessment/Good offices

As a part of its function, the NCP receives concerns raised, in the form of Specific Instances, about the business conduct of MNEs operating in or from New Zealand. In such circumstances, the NCP's main function is to assist the parties, when appropriate, in their efforts to reach a mutually acceptable resolution to matters raised under the Guidelines. This may also involve making recommendations as to how the MNE might make its business practices more consistent with the Guidelines. Given the voluntary nature of the Guidelines, the NCP does not determine whether a "violation" of the Guidelines has occurred, nor does the NCP adjudicate disputes.

After a thorough review of the information initially provided, and then in response to further inquiries, the NCP decided that the issues raised by Mr and Mrs Y were bona fide, merited further consideration, and were relevant to the implementation of the Guidelines. It accepted the Specific Instance in July 2014, subsequently met with both parties and offered its good offices to assist them

to undertake a dialogue to seek a mutually agreed upon resolution of the issues between them. Both parties were amenable to this and engaged positively in the process.

A facilitated mediation meeting was held between the parties in late June 2015. Following an exchange of information and perspectives and subsequent discussion, both parties agreed at the meeting that the issues had been resolved to their mutual satisfaction. It was agreed that MNE X would send Mr and Mrs Y a formal letter of apology relating to certain aspects of the way in which their insurance claim had been managed and that the NCP would be informed when this had been done. At the conclusion of meeting, MNE X gave Mr and Mrs Y a compact disc with a complete record of all telephone calls made between them and the MNE's representative who had overseen their claim, to confirm its view that that the conduct of the representative had at all times been acceptable.

Subsequent to being informed by the MNE in early August that the letter of apology had been sent, the NCP contacted the applicants to inquire as to progress. In late August the NCP was informed that, although Mr and Mrs Y had agreed that their issues had been resolved at the meeting, having subsequently listened to the CD they now considered that the MNE representative concerned had been behaving unreasonably toward them. Therefore they did not consider the issues to be resolved, intended to seek legal advice over whether a further claim might be made, and asked that their Specific Instance remain 'open' in the meantime.

The NCP inquired over the rest of 2015 and into 2016 as to progress and whether Mr and Mrs Y intended to seek any further involvement by the NCP. In July 2016, Mr Y informed the NCP that they had concluded that they would be unlikely to succeed in any further claim, so requested that the Specific Instance be closed. Following further consultation with the parties over this final statement it is now issued.

Conclusion

This Specific Instance is concluded as, although the employment of good offices produced an initial agreement to settle the issues between the parties, this was ultimately not able to be sustained. In the view of the NCP, both parties engaged in the Guidelines process in good faith despite this outcome. In the circumstances, no purpose would be served by identifying the parties concerned, so their identities have been anonymised.