

## **SPECIFIC INSTANCE CASE: MR and MRS T V MNE F**

### **FINAL STATEMENT BY THE NEW ZEALAND NATIONAL CONTACT POINT**

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#### **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 on Responsible Business Conduct (the Guidelines) of a Specific Instance filed by an NGO on behalf of Mr and Mrs T concerning alleged conduct towards them by a Multinational Enterprise (MNE) in relation to their contracted project management role over repairs to Mr and Ms T's property following the events of the Canterbury earthquakes in 2010 and 2011.

After reviewing the Specific Instance application and consulting the parties, the NCP offered its good offices to facilitate discussion between them on one element of the application. The claim that MNE F had no policy commitment to respect human rights was substantiated. The NCP was willing to engage further with MNE F on this point to encourage development of such policies and procedures.

The NCP concluded the specific instance was closed as the parties had been unresponsive for some time following the offer of its good offices.

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 August 2015, the New Zealand NCP received an application from the NGO on behalf of Mr and Mrs T, alleging that MNE F had breached the human rights provisions of the Guidelines in relation to their contracted project management role over repairs to Mr and Mrs T's property following the events of the Canterbury earthquakes in 2010 and 2011.

The application referred to Chapter 2 (A.11) and Chapter 4 (S.2) of the Guidelines and stated that the MNE's actions in relation to their contracted project management role over repairs to Mr and Mrs T's property had caused or contributed to adverse human rights impacts and had failed to address these once brought to its attention.

Over the course of 2015 to 2017, the NCP considered information provided by Mr and Mrs T and MNE F about the allegations of breaches of the Guidelines. Both Mr and Mrs T and MNE F provided comment on the NCP's initial assessment. While both responses provided some further information, they essentially amplified points made in the earlier material supplied, so did not materially change the basis for the initial assessment's original conclusion.

#### **Initial assessment/good offices**

The NCP concluded that good offices should be offered with respect to one element of the specific instance, and that the MNE F should be engaged with over its development of a human rights policy. The remaining elements of the specific instances had not been substantiated and did not merit further action under the Guidelines. In particular:

- The NCP considered the claim that MNE F's failure to obtain asbestos checks on Mr and Mrs T's property arbitrarily deprived them of their right to property under article 17 of the Universal Declaration of Human Rights (UDHR) and right to health resulting from the financial

stress under article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) merited further examination. Good offices were offered in respect to this claim.

- The NCP considered that Mr and Mrs T substantiated the claim that MNE F did not appear to have a specific human rights policy. However, the MNE F informed the NCP that it was in the process of developing a human rights policy. The NCP was willing to engage further with MNE F on this point and encouraged development of such policies and procedures.
- The NCP considered that Mr and Mrs T had not substantiated the claim that their dwelling was left in an uninhabitable state as factors external to MNE F contributed to delays to emergency work. MNE F offered temporary accommodation, permanent alternative accommodation, and a security patrol for Mr and Mrs T's house. Mr and Mrs T turned down the MNE F's offer of accommodation.
- The NCP considered that Mr and Mrs T were unable to specify in what way the alleged failure by MNE F to undertake a valid repair strategy breached the Guidelines or what were the adverse human rights impacts on Mr and Mrs T for this alleged failure.
- The NCP considered that the obligation to mitigate human rights impacts linked to the MNE's operations and business relationships and to carry out due diligence activities to that end must be seen in the context of the particular situation and the nature of the business relationships that apply and what can reasonably be expected of a party concerned. The NCP considered that there was insufficient information to establish that MNE I was in a 'business relationship' with the Crown entity involved and, even if it was, that it would have had sufficient leverage to effect a change in practice.

## **Conclusion**

The assessment process is to determine whether the issues raised merit further consideration and involvement, not to determine whether an MNE has "breached" the Guidelines. In 2017, the NCP offered its good offices to facilitate discussion between them on one element of the application. The NCP did not receive communications from either party involved in the specific instance for some time following the offer of good offices and concluded this Specific Instance due to the parties being unresponsive.

**New Zealand National Contact Point for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct**

**July 2024**