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Decision

# **Initial assessment by the UK National Contact Point for the OECD Guidelines for Multinational Enterprises: complaint from UKLFI against PwC.**

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## Summary of the UK NCP decision

- The UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) has decided that the issues raised in the complaint from UK Lawyers for Israel merit further examination.
- This initial assessment decision is made on the basis of the initial information offered by the parties. The decision to examine further the claim is not a finding against PwC.
- The UK NCP will now offer the parties mediation. If the parties do not want to mediate or cannot reach agreement, the UK NCP will examine further the claim about whether PwC's actions met the OECD Guidelines' obligations.

## Substance of the complaint

1. The complaint has been brought by UK Lawyers for Israel (UKLFI). UKLFI is a Non-Governmental Organisation (NGO) based in the United Kingdom. The purpose of the organisation is to 'provide, assist in providing, procure or promote the provision of legal support including advocacy, research, advice and campaigning in combating attempts to undermine, attack and/or delegitimise Israel, Israeli organisations, Israelis and/or supporters of Israel'.<sup>1</sup>

2. The respondent is the PricewaterhouseCoopers Global Network and its associated entities, (hereafter referred to collectively as PwC). PwC is a multinational professional services firm with its headquarters in the United Kingdom. UKLFI allege that in the course of PwC's work for the Palestinian Authorities (PA), it breached certain articles under the General Policies, Disclosure and Human Rights sections of the OECD Guidelines for Multinational Enterprises (the Guidelines).

3. PwC accepted an invitation from the NCP to respond to the complaint. It does not accept the allegation as set out by UKLFI.

## Guidelines provisions cited

4. UKLFI have cited a number of general issues in their complaint. However, they specifically refer to the following articles of the guidelines:

### Chapter II – General Policies

Enterprises should take fully into account established policies in the countries in which they operate, and consider the views of other stakeholders. In this regard:

#### A. Enterprises should:

1, Contribute to economic, environmental and social progress with a view to achieving sustainable development.

7, Develop and apply effective self-regulatory practices and management systems that foster a relationship of confidence and mutual trust between enterprises and the societies in which they operate.

10, Carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts as described in paragraphs 11 and 12, and account for how these impacts are addressed. The nature and extent of due diligence depend on the circumstances of a particular situation.

11, Avoid causing or contributing to adverse impacts on matters covered by the guidelines, through their own activities, and address such impacts when they occur.

12, Seek to prevent or mitigate an adverse impact where they have not contributed to that impact, when the impact is nevertheless directly linked to their operations, products or services by a business relationship. This is not intended to shift responsibility from the entity causing an adverse impact to the enterprise with which it has a business relationship.

13, In addition to addressing adverse impacts in relation to matters covered by the guidelines, encourage, where practicable, business partners, including suppliers and sub-contractors, to apply principles of responsible business conduct compatible with the guidelines.

### **Chapter III – Disclosure**

1, Enterprises should ensure that timely and accurate information is disclosed on all material matters regarding their activities, structure, financial situation, performance, ownership and governance. This information should be disclosed for the enterprise as a whole, and, where appropriate, along business lines or geographic areas. Disclosure policies of enterprises should be tailored to the nature, size and location of the enterprise, with due regard taken of costs, business confidentiality and other competitive concerns.

3, Enterprises are encouraged to communicate additional information that could include:

c) its performance in relation to these statements and codes

d) information on internal audit, risk management and legal compliance systems

e) information on relationships with workers and other stakeholders

### **Chapter IV – Human Rights**

States have the duty to protect human rights. Enterprises should, within the framework of internationally recognised human rights, the international human rights obligations of the countries in which they operate as well as relevant domestic laws and regulations:

1, Respect human rights, which means they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.

2, Within the context of their own activities, avoid causing or contributing to adverse human rights impacts and address such impacts when they occur.

3, Seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products or services by a business relationship, even if they do not contribute to those impacts.

4, Have a policy commitment to respect human rights.

5, Carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks of adverse human rights impacts.

6, Provide for or co-operate through legitimate processes in the remediation of adverse human rights impacts where they identify that they have caused or contributed to these impacts.

## **The initial assessment process**

5. The initial assessment process is to determine whether the issues raised merit further examination. It does not determine whether the company has acted inconsistently with the guidelines.

## Handling process

6.

21 December 2016	<u>UKLFI</u> submit their initial complaint along with supporting documents.
21 December 2016	The <u>UK NCP</u> acknowledges receipt of the complaint by return of email to <u>UKLFI</u> .
12 January 2017	The <u>UK NCP</u> meets with representatives of <u>UKLFI</u> to explain the complaint process and discuss their application.
16 January 2017	<u>UKLFI</u> re-submit their complaint.
20 January 2017	<u>UKLFI</u> confirm that they are content for their complaint to be shared with the other party.
27 January 2017	The <u>UK NCP</u> receives additional material from <u>UKLFI</u> in support of their complaint. This takes the form of 3 appendices which complement the main document of the complaint.
27 January 2017	The <u>UK NCP</u> contacts PwC to inform them of the complaint.
27 January 2017	The <u>UK NCP</u> also contacts <u>UKLFI</u> to let them know that the complaint has been passed to the respondent.
30 January 2017	The <u>UK NCP</u> is contacted by PwC, acknowledging receipt of the complaint.
9 February 2017	The <u>UK NCP</u> meets with a representative of PwC to explain the complaint process. At the same meeting PwC ask for an extension of the normal window of response in order to undertake its own internal fact-finding process.
21 March 2017	The <u>UK NCP</u> receives a letter from PwC in response to the complaint.
26 May	The <u>UK NCP</u> contacts both parties with an update on the likely timetable for the release of

2017	the initial assessment.
31 May 2017	The <u>UK NCP</u> shares the PwC response with <u>UKLFI</u> .
6 June 2017	The <u>UK NCP</u> receives a response from <u>UKLFI</u> to PwC's letter.
13 June 2017	The <u>UK NCP</u> shares with PwC the limited response it received from <u>UKLFI</u> on 6 June 2017.
29 June 2017	The <u>UK NCP</u> receives a limited response from PwC in relation to the shared submission of 13 June 2017.
3 July 2017	The <u>UK NCP</u> shares with <u>UKLFI</u> PwC's limited response.
15 June 2018	The <u>UK NCP</u> publishes its findings.

## The UK NCP decision

7. The UK NCP has decided to allow the complaint. The UK NCP took the following points into consideration when it examined the claim:

### Identity of the complainants and their interest in the matter

8. The UK NCP accepts that UKLFI has an interest in bringing this complaint in its capacity as an NGO. Although it is not acting directly on behalf of a specific client, it has named 3 parties which can potentially be affected by the allegations. These are the victims of acts of terror, Palestinian citizens, and contributors to the international aid donations intended for the PA.

9. In their response to the UK NCP, PwC states that the structure of its international operations preclude it from being subject to any complaint from UKLFI as it does not consider itself to be a multinational enterprise. The wording of the OECD Guidelines under Part 1, Section 1, Article 4 indicates that this is not the case.

### Whether the issue is material and substantiated and there seems to be a link to the enterprises' activities

10. In the complaint submitted to the UK NCP, UKLFI refer to foreign donor payments which were made to the PA in a period leading up to August 2014. During this time PwC handled the auditing of these payments and their subsequent allocation (the engagement).

11. UKLFI put forward the argument that PwC had a duty to ensure these foreign donor payments to the PA were correctly accounted for, kept apart from other funds intended for different designated purposes and where relevant, draw notice to the fact that allocated funds had potentially been used incorrectly. UKLFI assert that in not doing so, PwC's actions did not meet the standards set out under the Guidelines.

12. UKLFI's complaint includes a letter of confirmation from a donor client that PwC had a role in managing and auditing PA's accounts. In addition to this, UKLFI also obtained evidence from several sources in the public domain which established PwC's historical work with the PA over the period in question. UKLFI

subsequently approached PwC for access to files related to the engagement. PwC declined to provide this, citing concerns over issues of client confidentiality.

13. The UK NCP accepts that in relying upon these sources, there is a distinct lack of exact detail in UKLFI's account of how PwC executed its obligations under the engagement. However, the initial assessment process is to determine whether the issues raised merit further examination. It is not an assessment of the likely outcome of any further examination. It is on this basis that the UK NCP has considered the complaint.

14. The Guidelines state that in the course of their business, multinational enterprises should have a duty to be aware of, and consider, situations where matters of general policy, disclosure and human rights have potentially been breached.

15. The UK NCP concludes that the issues UKLFI raise in their complaint are material.

### **Relevance of applicable law and procedures, including court rulings**

16. The complaint includes references to the standards of international law found within the International Bill of Human Rights, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and, the International Labour Organisation Declaration on Fundamental Principles and Rights at Work.

### **How similar issues have been, or are being, treated in other domestic or international proceedings**

17. The complaint includes reference to a legal case which was heard in the US courts in 2015, Sokolow v Palestine Liberation Organization and Palestinian Authority.

### **Whether the consideration of the specific issue would contribute to the purpose and effectiveness of the guidelines**

18. In their written responses to the UK NCP, PwC emphasise their engagement with the PA concluded in 2015, and that there is no evidence to support the allegation it participated in the distribution of funds to individuals implicated as terrorists, knowingly or otherwise. Additionally, PwC also stated that the narrow scope of its work did not require it to consider this issue, with the implication being that PwC should not be held accountable to a standard that it was not aware of. However, the Guidelines exist to promote an overall standard of good practice.

19. The conclusions reached by the UK NCP in this initial assessment are based on the information it has been passed by both parties. They relate to whether the issues raised are material to the Guidelines and if they can be substantiated. It is not an assessment of the likely outcome of further examination.

### **Next steps**

20. The UK NCP will formally ask both parties whether they are willing to engage in a mediation/conciliation process, with the aim of agreeing how the issues identified can be successfully addressed. Subject to their response, the UK NCP will liaise with the parties to arrange mediation/conciliation meetings. If these meetings lead to a resolution, the UK NCP will reflect this in a Final Statement without making a determination on whether PwC acted inconsistently with the Guidelines.

21. If a mediated solution is not possible, the UK NCP will conduct a separate examination into the issues. The findings will be presented in a Final Statement.

**June 2018**

### **UK National Contact Point for the OECD Guidelines for Multinational Enterprises**

1. The wording is taken from UKLFI's website and can be found at <http://www.uklfi.com/about-uk-lawyers-for-israel/> (<http://www.uklfi.com/about-uk-lawyers-for-israel/>) as of January 2018. ↩