



**UK NATIONAL CONTACT POINT  
PROCEDURES FOR DEALING WITH  
COMPLAINTS BROUGHT UNDER  
THE OECD GUIDELINES FOR  
MULTINATIONAL ENTERPRISES**

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# 1. Introduction

## 1.1 What is this note about?

- 1.1.1 This note is issued in consultation with the Steering Board that oversees the UK National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines).
- 1.1.2 The purpose of the note is to explain the process for the NCP to consider complaints brought under the Guidelines. As the Guidelines make clear, the first objective of the Specific Instance process is to find a solution through conciliation or mediation. The NCP only undertakes a full examination of the complaint if mediation fails to find a resolution. This note explains what the NCP will do to decide whether to accept a case; how the mediation process works; the examination process - should this prove necessary; and publication of the NCP's decision.

## 1.2 Useful jargon

Throughout this note “NCP” refers to the UK National Contact Point for the OECD Guidelines for Multinational Enterprises. Contact details for the NCP can be found on: <http://www.bis.gov.uk/nationalcontactpoint>

References to the NCP Published Procedure refer to the procedures set out in this document.

“Company” refers to the multinational enterprise against which the complaint is made.

“Guidelines” refers to the OECD Guidelines for Multinational Enterprises.

“Parties” refers to the complainant or complainants and the enterprise being complained against.

“Specific Instance” means a complaint that is submitted to the NCP concerning a company's alleged breaches of the Guidelines. The terms “specific instance” and “complaint” are synonymous.

“Steering Board” means the Steering Board established to oversee the operation of the NCP and its implementation of the Guidelines.

## **2. Stages in the NCP Process for Considering Specific Instances**

### **2.1 The stages involved in handling complaints**

There are three key stages to the NCP's process for handling Specific Instances:

Stage 1 – from receipt of complaint to Initial Assessment

Stage 2 – from acceptance of a case to conclusion of mediation or examination

Stage 3 – drafting and publication of Final Statement.

### **2.2 Timetable**

- 2.2.1 The NCP has committed to complete each Specific Instance within a year of receiving the complaint. It will aim to complete Stage 1 within 3 months of a complaint, Stage 2 within a further 6 months and Stage 3 within a further 3 months.
- 2.2.2 Some degree of flexibility may be needed to the timetable; for example, because of circumstances outside the NCP's control. In these circumstances the NCP will notify the parties, explain the reason and set out a revised timetable.
- 2.2.3 As set out above, the NCP is committed to the prompt resolution of each Specific Instance. Parties are urged to provide information promptly in order to adhere to the timetable. Failure to do so could result in the NCP making its decision in the absence of that information.

### **2.3 Who can make a complaint?**

- 2.3.1 According to the Guidelines, any "interested party" can file a complaint. The complainant may be, for example, a community affected by a company's activities, employees or their trades union, or an NGO. A complainant may act on behalf of identified other parties.
- 2.3.2 The NCP will consider all complaints it receives. However, the NCP will need to receive detailed information from the complainant in order to deal with the complaint. Therefore, complainants should have a close interest in the case and be in a position to supply information about it. They should also, in accordance with the principles of the Guidelines, have a clear view of the outcome they wish to achieve. Sources of either additional information or organisations that may assist in filing a complaint are given at the end of this note.

### **2.4 What are the grounds for making a complaint?**

Complainants need to decide which chapters or paragraphs in the Guidelines they consider are being breached by the company sufficient to base a complaint to the NCP and specify these in making their complaint. The NCP's determination of a complaint will

be evidence based. Complaints falling outside the Guidelines will not be considered - nor will ineligible, frivolous or vexatious complaints.

## **2.5 What happens to information provided during the course of an examination?**

One of the objectives of the NCP is to ensure that its process is transparent. Unless a good case is made to the NCP for information to be withheld from a party, all the information received by the NCP from the parties or any other person or organisation (whether during the course of a meeting or in writing) will be copied to all parties. The preferred course is to agree, where appropriate, conditions of confidentiality attaching to sensitive information.

## **2.6 Data Protection Act 1998**

### **The Data Protection Principles**

- 2.6.1 The Data Protection Act 1998 (“the Act”) regulates the handling of the personal data of individuals. It requires that those who handle personal data (referred to as “data controllers”) comply with eight rules of good information handling known as the Data Protection Principles.
- 2.6.2 A party to a complaint will be acting as a “data controller” where it submits information which contains personal data to the NCP. In that case, the party must ensure that it complies with all of the Data Protection Principles. The Information Commissioner’s Office has published guidance on complying with the Data Protection Principles which is available online ([www.ico.gov.uk](http://www.ico.gov.uk)).
- 2.6.3 If a party decides that it is necessary to obtain consent from the relevant individual(s) in order to comply with the Data Protection Principles, this consent should be obtained from the relevant individual(s) before the information which contains the personal data is submitted to the NCP. The consent should also cover the processing of the data by the Department for Business, Innovation and Skills (“BIS”) for the purposes set out at paragraph 2.6.6 below. The NCP is able to provide parties with pro forma consent forms to assist with this.
- 2.6.4 Where consent from the relevant individual(s) has not been obtained, in some cases the NCP may request that consent is obtained before proceeding further. This may be the case if, for example, it is necessary for the NCP to transfer the relevant personal data to a country or territory outside of the European Economic Area.

### **Fair Processing Notice**

- 2.6.5 The NCP is part of BIS. For the purposes of the Act, BIS is the “data controller” (as defined in section 1 of the Act). BIS must process any personal data and/or sensitive personal data which is submitted to it by the parties to a complaint in accordance with the requirements of the Act.

2.6.6 BIS will process personal data and/or sensitive personal data which is submitted to it by the parties to a complaint where that data is relevant to all or part of the complaint and is not excessive. The “processing” of this data will include:

- the recording and holding of the data by BIS for the purposes of determining whether to accept the complaint and (where appropriate) conducting conciliation/mediation or examining whether the company has acted inconsistently with the Guidelines;
- the transmission and dissemination of the data to the other party(s) to the complaint so that all parties have the opportunity to review all of the material submitted to the NCP in relation to the complaint and make representations to the NCP.

## **3. Stage 1: from receipt of complaint to Initial Assessment**

### **3.1 What will the NCP do when it receives a complaint?**

Within 10 working days of receiving a complaint, the NCP:

- will acknowledge receipt to the complainant; and
- will forward the complaint to the company named in the complaint, with an invitation to send the NCP a preliminary response within 21 working days of the notification.

### **3.2 On what grounds does the NCP decide whether or not to accept a Specific Instance?**

3.2.1 In making its Initial Assessment of a Specific Instance, the NCP will consider the stated grounds of the complaint and the information it has received about the complaint, in order to decide:

- whether it falls within one or more of the Guidelines; and
- whether the issue raised is material and substantiated.

3.2.2 As set out in the “Commentary on the Implementation Procedures of the OECD Guidelines for Multinational Enterprises” the NCP may, if there is good reason to do so, also take into account:

- the relevance of applicable law and procedures, including court rulings;
- how similar issues have been, or are being, treated in other domestic or international Specific Instances;
- whether consideration of the Specific Instance would contribute to the purposes and effectiveness of the Guidelines.

### **3.3 What happens next?**

3.3.1 The NCP will offer separate meetings to both parties. At the meetings the NCP will explain the process and answer any questions. The NCP will also use each meeting to begin its investigation of the complaint. At the meeting with the

complainant it will clarify the precise nature of the complaint. At the meeting with the company, it will ask for a response to the complaint.

3.3.2 An agenda will be sent out prior to each meeting and all meetings will be minuted.

3.3.3 The NCP may write to the parties if it needs any further information.

3.3.4 If appropriate, the NCP will seek informed independent opinion either from experts that have been recommended by members of the Steering Board or other known persons or organisations that may bring particular knowledge and experience that will facilitate consideration of the complaint.

### **3.4 What does acceptance of the Specific Instance mean?**

If the NCP decides to accept the complaint, this means that it considers that there is enough information to warrant further examination. It does not mean that it has concluded that the Guidelines have been breached.

### **3.5 What does refusal to accept a Specific Instance mean?**

If the NCP does not accept a case it means that there is insufficient evidence of any breach of the Guidelines sufficient to warrant further investigation or that the complaint is frivolous, vexatious or falls outside the Guidelines.

### **3.6 What if the parties reach a settlement before the NCP issues an Initial Assessment?**

If the parties reach a settlement and the complaint is withdrawn before the NCP has issued an Initial Assessment, the NCP will close its file, and the identities of the parties will not be disclosed by the NCP except with the agreement of both parties.

### **3.7 What form does an Initial Assessment take?**

3.7.1 The Initial Assessment, when issued, will include:

- the names of the parties if the case is accepted (the parties will not be named if the case is rejected);
- the substance of the complaint – including reference to those Guidelines alleged to have been breached;
- a statement of the precise nature of the complaint;
- a summary of the process the NCP has followed to date;
- the reasons for accepting or rejecting the complaint;
- a note of any parts or all of the complaint found to be outside the Guidelines, frivolous or vexatious;
- a statement that acceptance of a complaint for further consideration does not mean that the NCP has determined at this stage that the Guidelines have been breached; and
- an outline of the next stages in the NCP's determination.

- 3.7.2 Before issuing the Initial Assessment, the NCP will send a draft of the assessment to the parties, inviting their written comments within not more than 10 working days. When issuing the Initial Assessment, it will be for the NCP's discretion whether to take account of any comments so received.
- 3.7.3 When issued, the Initial Assessment will be sent to the parties and published on the NCP website: <http://www.bis.gov.uk/nationalcontactpoint>.

## **4. Stage 2: from acceptance of a case by the NCP to conclusion of mediation or examination**

### **4.1 The Mediation Process: the role of mediation in resolving Specific Instances**

- 4.1.1 The preferred outcome of any complaint is an agreement between the parties. When the NCP accepts a Specific Instance, it will discuss with the parties involved and offer its “good offices” with the objective of bringing both parties together to discuss the issues and come to mutually agreed resolution without undue delay. Mediation can be viewed as an ‘assisted negotiation’ between the parties with the aim of reaching a settlement agreeable to both; the NCP will facilitate discussions and may make suggestions. The NCP will not pressurise the parties into mediation or any particular outcome.
- 4.1.2 Mediation is voluntary. The published Final Statement will note where the parties refused to undertake mediation and will provide a summary of the reasons why mediation was not undertaken.
- 4.1.3 If the parties are unable to agree on mediation or mediation fails, then the NCP will conduct an examination of the case as set out in paragraph 4.5 below. Whilst mediation is continuing the complaint will not simultaneously be subject to examination.
- 4.1.4 All parties to an NCP mediation need to be clear of what the mediation will entail, what the desired outcomes are, and what the expectations on them are. The parties involved in mediation should be genuinely committed to mediation and should not see the mediation process as a means of gathering further information or as an opportunity to avoid addressing issues and accounting for conduct.
- 4.1.5 The NCP and the parties will agree the most suitable approach to mediation:
- (i) a mediation within the NCP process, or
  - (ii) mediation by a third party agreed by both parties.



If mediation is undertaken within the NCP process the mediation may be conducted by NCP personnel or by professional mediation contracted by the NCP. The final decision as to which course is to be taken by the NCP rests with the NCP.

4.1.6 For each Specific Instance only one of the mediation courses will be chosen.

## **4.2 Mediation within the NCP process**

4.2.1 In mediation conducted by the NCP, the NCP will at all times be neutral. The role of the NCP is to provide a platform and opportunity for each party to discuss the issues raised by the complaint. The mediation is confidential. The Mediation Agreement will be the only record of what happened during the mediation. This will be written and agreed by both parties. This Agreement, or a summary statement also agreed by both parties, will be published as part of the final assessment that the NCP publishes.

4.2.2 When the NCP mediates in a case it will:

- Agree the agenda with both parties before commencing the joint mediation session(s).
- If requested, offer two mediators.
- Chair and facilitate meetings with the parties either separately or together, and encourage both parties to exchange information, build up trust and confidence, and ultimately find a process to resolve the issues.

4.2.3 There are three main stages to the mediation process:

- The NCP will meet both parties separately to prepare for the mediation. These meetings will explore the issues, explain the mediation process, and answer questions on the how the process will work. These meetings will have an agenda and be minuted.
- The NCP will bring both parties together in a meeting or meetings which will always commence with providing each party with a period of time to explain their views and will provide ample opportunity to clarify outstanding issues. The initial meeting may result in a settlement or will end by mapping out a process of on-going dialogue.
- At the end of a successful mediation process the parties, with the assistance of the NCP if they wish, will draft a Mediation Agreement and, if the full agreement is not to be published, a summary for publication.

4.2.4 In cases where the NCP contracts an external mediator the NCP will prepare terms of reference to be agreed by both parties and the mediator. The mediator will be agreed by the NCP and both the parties. The mediator will be responsible for agreeing with the parties the methods and processes for mediation. The NCP will request an update of progress from the mediator every 2 months.

4.2.5 Should the mediation process fail, then the NCP will start to examine the complaint. If mediation was successful on some aspects of a complaint, the Mediation Agreement or summary will be annexed to the Final Statement and the NCP will examine those aspects where mediation failed. In any case where the majority of key concerns of the complaint were mediated and where the parties are content for the NCP not to investigate the remaining issues, this will be written into the Mediation Agreement.

### **4.3 Responsibilities of both parties in the NCP mediation process**

- 4.3.1 Both parties enter into the mediation in the spirit of seeking to reach a resolution on the issues at hand. Parties are expected to adhere to the agenda and not raise new issues not known to the NCP or the other party beforehand.
- 4.3.2 It must be clear that the persons taking part in mediation have the authority to implement a proposed agreement. If the persons taking part are subject to higher authority within that party, this must be made clear from the outset.
- 4.3.3 Mediation procedures need to be informal and confidential, in order to encourage open discussion. Mediation sessions will not therefore be minuted by the NCP but a summary of the final conclusions from a meeting may be provided by the NCP merely to note progress made and solely for the purpose of informing the following meeting. Parties will agree to observe confidentiality except to the extent that it is necessary to seek professional advice or guidance from within their organisation. In these circumstances those consulted will be expected to observe confidentiality.

### **4.4 Mediation outside the NCP process**

The filing of a complaint with the NCP sometimes results in the parties asking to resolve any complaint amongst themselves. At any stage, the parties may realise that they may be able to settle their differences without further intervention by the NCP. They are free to seek mediation outside the NCP process. If the NCP receives written notification from both parties that they wish to mediate outside the NCP process, the NCP will suspend the case. The NCP will request an update of progress every 2 months to determine whether the Specific Instance procedure needs to be reopened. If mediation outside the system is successful, the NCP will close the case. If this is achieved before the Initial Assessment is completed, a note closing the complaint without identifying the parties will be published. If this is achieved after the Initial Assessment stage, a reduced Final Statement will be published explaining that the parties have achieved a mediated settlement outside the NCP process.

### **4.5 The Examination Process**

- 4.5.1 If mediation is refused or fails to achieve agreement, the complaint will return to the NCP for examination. The objective of the examination is for the NCP to investigate the complaint in order to assess whether the complaint is justified.
- 4.5.2 At the outset of the investigation the NCP will identify the steps it intends to take in order to proceed with the investigation and will notify both parties in writing. The NCP will inform both parties in writing of any amendments it considers necessary to these steps. If, as a result of the investigation, the NCP decides that additional steps are required in order to complete the investigation, it will notify both parties of the additional steps it intends to take.

- 4.5.3 The examination is likely to involve the NCP collecting further information or statements from the complainant or the company. It may also seek advice from other relevant government departments, UK diplomatic missions or overseas DFID offices, business associations, NGOs or other agencies. If appropriate it will seek informed independent opinion.
- 4.5.4 The examination may also involve further meetings between the NCP and the parties. In each case the meeting will have an agenda and be minuted.
- 4.5.5 In exceptional cases the NCP may consider it necessary to undertake a field visit. The NCP will seek to agree terms of reference for the field visit with both parties in advance of the visit. The NCP will share a report of the visit with both parties for their comment.
- 4.5.6 Unless a good case is made out for information to be withheld, all the information and evidence received by the NCP will be shared with the parties.
- 4.5.7 The NCP will then review all the information it has gathered and make a decision as to whether the Guidelines have been breached.

## **5. Stage 3: drafting and publication of the Final Statement**

- 5.1 The NCP's Final Statement will include the following:
- details of allegation and those chapters/paragraphs of the Guidelines that it is alleged have been breached;
  - details of the parties involved i.e. complainant and the company;
  - a summary of the process the NCP has followed;
  - the outcomes of any mediation, or a summary, in a statement agreed between the parties;
  - the results of examination (if any), which will include an argued rationale behind each conclusion including:
    - a clear statement as to whether or not the company is in breach of the Guidelines; and
    - details of any frivolous or vexatious aspects of the complaint not identified in the Initial Assessment;
  - where appropriate, the NCP will make specific recommendations to the company so that its conduct may be brought into line with the Guidelines;
  - a date by which both parties will be asked to submit to the NCP an update on measurable progress towards meeting the recommendations (if any); and
  - where the NCP has found examples of good company practice consistent with the Guidelines this information will also be included.
- 5.2 Once the NCP has drafted its Final Statement, it will be passed, to the Minister at the same time as it is sent to the parties. Upon finalisation the Minister will be asked by the NCP to inform the Chairman of the BIS Select Committee that the NCP's statement is to be lodged with the House of Commons and House of Lords libraries. At the same time the NCP's statement will be sent to the parties for

factual checking, with a deadline of 10 working days for comments. The NCP will, in its discretion, then incorporate any necessary factual changes before sending the finalised statement to the parties, together with information of how they can seek a review if they consider that the process set out in this note has not been properly followed. The Review Procedure is explained in separately and appears on the NCP website: <http://www.bis.gov.uk/nationalcontactpoint>.

- 5.3 Any request for review will have to be made within 10 working days of the date the Final Statement is sent to the parties. This also applies for request by a complainant for review of a case where the NCP does not accept the case as a Specific Instance. At the end of this period the statement will be published on the NCP website (<http://www.bis.gov.uk/nationalcontactpoint>) and lodged with House of Commons and House of Lords libraries.

## 6. Follow up to Final Statements

- 6.1 Where the Final Statement includes recommendations to the company, it will also specify a date by which both parties are asked to provide the NCP with a substantiated update on the company's progress towards implementing these recommendations. The NCP will then prepare a Follow Up Statement reflecting the parties' response and, where appropriate, the NCP's conclusions thereon. The NCP will submit this statement to the Minister at the same time as it is sent to the parties. The NCP will ask the parties to send factual comments on the Follow Up Statement within 10 working days. The NCP will, in its discretion, then incorporate any necessary factual changes before sending the finalised Follow Up Statement to the parties and publishing the finalised Follow Up Statement on the NCP's website.

## 7. Useful contacts

The following organisations may be a source of either additional information or assistance in making a complaint or responding to a complaint.

### **OECD Guidelines for Multinational Enterprises**

Website [www.oecd.org/daf/investment/guidelines](http://www.oecd.org/daf/investment/guidelines)

E-mail [investment@oecd.org](mailto:investment@oecd.org)

### **Trades Unions (for example)**

- Trades Union Congress (TUC)

Website <http://www.tuc.org.uk/>

- Trade Union Advisory Committee to the OECD

Website <http://www.tuac.org/en/public/index.phtml>

E-mail [tuac@tuac.org](mailto:tuac@tuac.org)

### **Business (for example)**

- Confederation of British Industry (CBI)

Website <http://www.cbi.org.uk>

- The Business and Industry Advisory Committee to the OECD

Website <http://www.biac.org/>

E-mail [biac@biac.org](mailto:biac@biac.org)

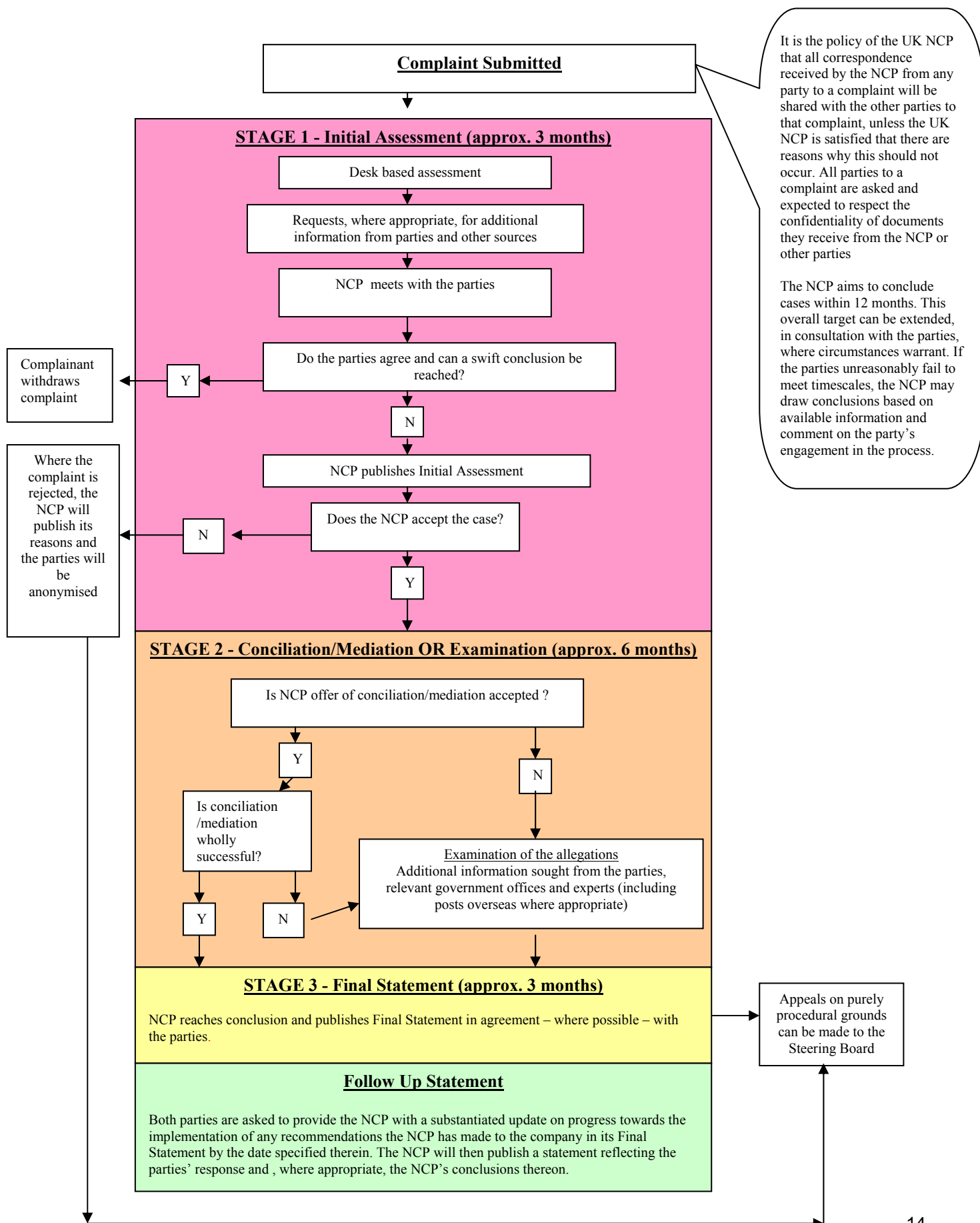
**The NGO Community (for example)**

- OECD Watch

Website [www.oecdwatch.org](http://www.oecdwatch.org)

E-mail [info@oecdwatch.org](mailto:info@oecdwatch.org)

# FLOWCHART OF THE UK NCP COMPLAINT PROCESS



It is the policy of the UK NCP that all correspondence received by the NCP from any party to a complaint will be shared with the other parties to that complaint, unless the UK NCP is satisfied that there are reasons why this should not occur. All parties to a complaint are asked and expected to respect the confidentiality of documents they receive from the NCP or other parties

The NCP aims to conclude cases within 12 months. This overall target can be extended, in consultation with the parties, where circumstances warrant. If the parties unreasonably fail to meet timescales, the NCP may draw conclusions based on available information and comment on the party's engagement in the process.

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