

Cookies on GOV.UK

We use some essential cookies to make this website work.

We'd like to set additional cookies to understand how you use GOV.UK, remember your settings and improve government services.

We also use cookies set by other sites to help us deliver content from their services.

Accept additional cookies

Reject additional cookies

[View cookies \(/help/cookies\)](/help/cookies)



Coronavirus (COVID-19) (/coronavirus)

Guidance and support

1. [Home \(https://www.gov.uk/\)](https://www.gov.uk/)
 2. [Business and industry \(https://www.gov.uk/business-and-industry\)](https://www.gov.uk/business-and-industry)
 3. [Corporate governance \(https://www.gov.uk/business-and-industry/corporate-governance\)](https://www.gov.uk/business-and-industry/corporate-governance)
 4. [Lawyers for Palestinian Human Rights complaint to UK NCP about JCB \(https://www.gov.uk/government/publications/lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb\)](https://www.gov.uk/government/publications/lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb)
- [UK National Contact Point \(https://www.gov.uk/government/organisations/uk-national-contact-point\)](https://www.gov.uk/government/organisations/uk-national-contact-point)

Decision

Final Statement: Lawyers for Palestinian Human Rights complaint to UK NCP about JCB

Updated 12 November 2021

Contents

1. Summary
2. Findings and recommendations
3. UK NCP procedure
4. Details of the parties involved
5. The UK NCP process
6. Initial Assessment
7. Mediation
8. Further Examination: Detailed analysis of the Complaint
9. UK NCP findings
10. Conclusions



© Crown copyright 2021

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at <https://www.gov.uk/government/publications/lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb/final-statement-lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb>

This statement was published on 12 November 2021 by UK National Contact Point (UK NCP) for the OECD Guidelines for Multinational Enterprises.

1. Summary

In December 2019 the Lawyers for Palestinians Human Rights (LPHR) filed a complaint with the UK NCP against the UK-based company JCB Bamford Excavators Limited (JCB).

The complaint alleged that JCB's products and construction machinery were used in the demolition of Palestinian properties and settlement-related construction that caused adverse human rights impacts.

At the Initial Assessment stage, the United Kingdom's National Contact Point (UK NCP) for the OECD Guidelines for Multinational Enterprises (the Guidelines) accepted the complaint for further examination under paragraphs 3, 4 and 5 of Chapter IV of the Guidelines. The UK NCP rejected the complaint under paragraph 1 and 2 of the Guidelines. The [Initial Assessment](https://www.gov.uk/government/publications/lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb/initial-assessment-lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb) (<https://www.gov.uk/government/publications/lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb/initial-assessment-lawyers-for-palestinian-human-rights-complaint-to-uk-ncp-about-jcb>) was published 12 October 2020, subsequently the parties were offered mediation, which was declined by JCB.

During the further examination process, the UK NCP examined the evidence, submissions and documents provided by both parties. The UK NCP in particular examined JCB's business relationship with Comasco and if the alleged human rights impacts can be linked to JCB directly or indirectly by the virtue of its business relationship.

2. Findings and recommendations

During its examination, the UK NCP assessed if JCB had observed its obligations under paragraphs 3, 4 and 5 of Chapter IV of the Guidelines.

The UK NCP has concluded the following:

- During its examination the UK NCP found that JCB did not breach its obligation under paragraph 3 of Chapter IV of the Guidelines by virtue of its relationship with Comasco.
- The UK NCP concluded that JCB did not fully observe the Guidelines under paragraph 4 of Chapter IV by not having a policy commitment to respect human rights.
- The UK NCP also found that JCB did not observe its obligations under paragraph 5 of Chapter IV by not carrying out human rights due diligence in its supply chain

The UK NCP recommends JCB to:

- Write a statement of policy which expressly states its commitment to respect human rights as stated in paragraphs 74 and 75 below. This statement should be separate from its statement on Modern Slavery, Supplier's Code of Conduct and the Dealer's Charter.
- Carry out human rights due diligence to assess actual and potential human rights impacts. In line with the OECD Guidelines and Due Diligence Guidance, JCB should also set out a plan on how it will integrate and act upon the findings of its due diligence – including how impacts will be addressed – if adverse human rights impacts are identified in its supply chain. This process should

go beyond simply identifying and managing material risks to the enterprise. As the human rights risks may change over time, due diligence should be a regular, on-going exercise, which should be part of JCB's policy statement on human rights

The UK NCP will issue a follow-up report to this Final Statement one year after its publication.

3. UK NCP procedure

The OECD Guidelines are voluntary principles for responsible business conduct in areas including employment, human rights and the environment.

Each country adhering to the Guidelines is required to maintain a National Contact Point (NCP) to consider complaints under the Guidelines.

The UK government maintains the UK NCP to meet this requirement. The NCP is not part of the OECD and has no wider responsibilities for OECD functions.

The UK NCP is staffed by officials in the Department for International Trade (DIT). It operates independently of Ministers, who have no role in UK NCP decision making on complaints.

The UK NCP follows published procedures in handling any complaint, including:

- An initial assessment to decide whether a complaint is accepted for further examination
- An offer of mediation if a complaint is accepted
- A further examination if mediation is refused or fails to produce an agreement between the parties
- A Final Statement reporting the outcome of mediation or further examination

An Initial Assessment of this complaint was published on 12 October 2020. Following the publication of the Initial Assessment, the NCP offered mediation to both parties which was accepted by the LPHR but declined by JCB in November 2020. The UK NCP began its further examination of the complaint in December 2020.

4. Details of the parties involved

4.1 The complainant

The complaint is made by LPHR, which is a legal charity in the UK working on legal issues focused on 'protecting and promoting Palestinian human rights.'^{[footnote 1](#)} The UK NCP notes that the complaint appears to be made on behalf of the Palestinian community generally rather than on behalf of a specific individual or group.

The UK NCP also notes that the information provided by LPHR was collected through three organisations, namely B'Tselem, Al-Haq and EyeWitness to Atrocities.

4.2 The company

The complaint is against J.C. Bamford Excavators Limited (JCB), a private limited company incorporated and headquartered in the United Kingdom. JCB is a leading manufacturer of construction equipment.

5. The UK NCP process

5.1 Process of the complaint by the UK NCP

Date	Action
10 December 2019	The <u>UK NCP</u> receives complaint
17 December 2019	The <u>UK NCP</u> acknowledges receipt of the complaint by return of email to the complainant
19 December 2019	The <u>UK NCP</u> contacts <u>JCB</u> to inform them of the complaint
23 December 2019	The <u>UK NCP</u> confirms UK handling to the complainant
20 January 2020	The <u>UK NCP</u> speaks with Israel NCP about the handling of the complaint
22 January 2020	The <u>UK NCP</u> meets with representatives of <u>LPHR</u> to explain the complaint process
28 January 2020	The <u>UK NCP</u> speaks with representatives of <u>JCB</u> to explain the complaint process
3 February 2020	The <u>UK NCP</u> receives an email from <u>JCB</u> in response to the complaint
18 February 2020	The <u>UK NCP</u> shares <u>JCB</u> 's response with <u>LPHR</u>
1 April 2020	The <u>UK NCP</u> notifies both parties there may be delays due to Covid-19
14 July 2020	The <u>UK NCP</u> issues draft initial assessment to the parties
17 August 2020	The <u>UK NCP</u> receives comments back from <u>LPHR</u>
28 August 2020	The <u>UK NCP</u> receives comments back from <u>JCB</u>

Date	Action
12 October 2020	The <u>UK NCP</u> publishes the Initial Assessment online on the <u>UK NCP</u> Case Statement Page
26 October 2020	The <u>UK NCP</u> sends mediation offer letter to both parties
2 November 2020	The <u>UK NCP</u> receives notification from <u>LPHR</u> that they have accepted the offer of mediation
9 November 2020	The <u>UK NCP</u> receives a note from <u>JCB</u> that they have decided to decline the offer of mediation
16 December 2020	Both parties are informed that the case will not enter the mediation stage as <u>UK NCP</u> will now proceed with further examination
24 February 2021	<u>UK NCP</u> sends a letter to <u>JCB</u> with a set of questions on the complaint
10 March 2021	<u>LPHR</u> submits additional information
16 April 2021	<u>JCB</u> submits its detailed response
8 June 2021	<u>LPHR</u> submits more information
24 June 2021	<u>JCB</u> informs <u>UK NCP</u> about its objection to the Expert Opinion included in the <u>LPHR</u> submission of 8 June
29 June 2021	<u>UK NCP</u> responds to <u>JCB</u> 's objection and offers the opportunity to prepare its own submission in response to the Expert Opinion
1 July 2021	<u>JCB</u> sends another letter to <u>UK NCP</u> reiterating its objection to the Expert Opinion
6 July 2021	<u>UK NCP</u> responds to <u>JCB</u> 's second letter and offers again the opportunity to prepare a submission with its own expert opinion
7 July 2021	<u>JCB</u> declines <u>UK NCP</u> offer stating that it does not intend to submit its own expert evidence
8 October 2021	<u>UK NCP</u> shares the draft final statement with parties

6. Initial Assessment

The UK.NCP received the complaint from LPHR on 10 December 2019 and published its Initial Assessment on 12 October 2020.

The UK.NCP's Initial Assessment decided to accept the complaint for further examination on the issues related to JCB's obligation under Chapter IV, paragraphs 3, 4 and 5. The UK.NCP rejected the complaint under paragraph 1 and 2 of the Guidelines. The UK.NCP's Initial Assessment of the complaint can be found here.

The UK.NCP accepted issues with regard to the following Guidelines obligations:

6.1 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:

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. [...]

7. Mediation

Within the UK.NCP's processes, mediation is voluntary. JCB declined the UK.NCP's mediation offer. Pursuant to section 4.1.3. of the UK.NCP's [Rules of Procedures](https://www.gov.uk/government/publications/uk-national-contact-point-procedures-for-complaints-brought-under-the-oecd-guidelines-for-multinational-enterprises) (<https://www.gov.uk/government/publications/uk-national-contact-point-procedures-for-complaints-brought-under-the-oecd-guidelines-for-multinational-enterprises>), if the parties are unable to agree on mediation the UK.NCP proceeds with further examination as set out in section 4.6 of the Rules of Procedures. As such, the UK.NCP proceeded with the further examination stage after JCB declined mediation.

8. Further Examination: Detailed analysis of the Complaint

8.1 The complaint

The Complainant claims that JCB is not operating in line with the OECD Guidelines as their products and construction machinery are used in the demolition of Palestinian property and settlement-related construction. They claim JCB is in breach of the Guidelines by:

(a) contributing to adverse human rights impacts by selling products that facilitates another entity to cause harms;

(b) failing to stop the sales of products that facilitates another entity to cause adverse impacts once there is knowledge of these harms occurring;

(c) failing to seek ways to prevent and mitigate human rights impacts that are directly linked to their business operations and products;

(d) failing to have a human rights policy in place;

(e) failing to carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risks

This assessment has only looked at the complaint under (c), (d) and (e) above which correspond to paragraphs 3, 4 and 5 of Chapter IV of the Guidelines. UK NCP has not assessed the complaint under paragraphs 1 and 2 of the Guidelines, which were rejected at the IA stage.

9. UK NCP findings

9.1 UK NCP's assessment of the complaint under paragraph 3

The OECD Guidelines

Paragraph 3 of Chapter IV of the Guidelines states enterprises should '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.' [\[footnote 2\]](#)

The commentary on paragraph 3 of Chapter IV provides further clarification on how to interpret paragraph 3. It says that 'Paragraph 3 addresses more complex situations where an enterprise has not contributed to an adverse human rights impact, but that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity. Paragraph 3 is not intended to shift responsibility from the entity causing an adverse human rights impact to the enterprise with which it has a business relationship. Meeting the expectation in paragraph 3 would entail an enterprise, acting alone or in co-operation with other entities, as appropriate, to use its leverage to influence the entity causing the adverse human rights impact to prevent or mitigate that impact. 'Business relationships' include relationships with business partners, entities in its supply chain, and any other non-State or State entity directly linked to its business operations, products or services. Among the factors that will enter into the determination of the appropriate action in such situations are the enterprise's leverage over the entity concerned, how crucial the relationship is to the enterprise, the severity of the impact, and whether terminating the relationship with the entity itself would have adverse human rights impacts.' [\[footnote 3\]](#).

The Complainant's arguments

The Complainant in its original complaint submitted on 10 December, and subsequent submissions to the UK NCP, argued that JCB has failed to comply with its obligations under paragraph 3 of Chapter IV by not seeking ways to prevent or mitigate adverse human rights impacts that are directly linked to its business operations and products, by a business relationship.

LPHR's main argument is that the adverse human rights impacts, as indicated in paragraph 22 above, are directly linked to JCB because it has a business relationship with Comasco which is the exclusive distributor of JCB products in Israel. LPHR claims, by virtue of this relationship, Comasco is the likely source of the JCB products used in the alleged human rights violations.

Further, LPHR has claimed that these demolitions are run by either the Israeli authorities or by private companies through an “administrative order”. According to LPHR, in both cases the likely source of JCB products is Comasco.

LPHR has further argued in their submission that JCB products have directly contributed to the adverse human rights impacts as they have been frequently used in demolitions in the Occupied Palestinian Territories (OPT). LPHR claims that it has a record of JCB products being involved in ‘at least 60 out of the 266 demolitions’ in one year. UK.NCP has not verified this claim.

JCB’s response

JCB submitted a full response to the UK.NCP on 16 April 2021. JCB has clarified that it only has an arm’s length contractual relationship with Comasco, which is an independent dealer for the sale and servicing of JCB products in Israel.

JCB has argued that it does not have any management or financial control of Comasco and ‘the contract with them expressly prohibits Comasco from holding itself out, directly or indirectly, as the agent or representative of JCB.’

JCB has also confirmed that while Comasco is not an exclusive dealer in Israel, it is JCB’s only dealer in that location.

JCB, commenting on the photographic evidence provided by LPHR which depicted JCB machines involved in demolitions, claimed that there is no evidence to suggest that the products in photographs and video were supplied by Comasco.

JCB has informed the UK.NCP that without a serial number, the history of any JCB branded machine cannot be traced and therefore impossible to determine where they have originated from.

JCB has also argued that there is an established second-hand market for construction machinery in Israel. JCB claims that machines could therefore be purchased second-hand from sellers within Israel, from neighbouring countries via the internet or international auctions or brought in by sea.

9.2 UK.NCP’s assessment

During its assessment the UK.NCP did a thorough analysis of OECD Guidelines and OECD Due Diligence Guidance. The UK.NCP also benefited from the interpretation of the UN Guiding Principles.

The main analysis question during this assessment was whether JCB products used for demolition as depicted in the LPHR’s evidence pack submitted on 10 December 2019 can be traced back to JCB because of its contractual relationship with Comasco. The UK.NCP also analysed what leverage JCB has over the customers of Comasco to influence any change in their business practises.

The commentary of paragraph 3 defines business relationship in the context of the OECD Guidelines. It explains that ‘business relationships include relationship with business partners, entities in its supply chain, and any other non-State or State entity’. This explanation is also confirmed by the Interpretive Guide of the UN Guiding Principles.

The UN Guiding Principles defines leverage ‘an advantage that gives power to influence. It refers to the ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights impact.’

The UK.NCP does not accept JCB's argument that it has only an arms-length relationship with Comasco as indicated above.

The UK.NCP's assessment suggests that there is a clear business relationship between JCB and Comasco. JCB sells its products to Comasco and even if – as JCB has argued – JCB has no influence over Comasco's management and the ownership of products once sold to Comasco, JCB does have a clear, contractual business relationship with Comasco, which meets the definition of 'business relationship' set out by the OECD Guidelines.

However, once the products are passed on to Comasco, as JCB has claimed, Comasco is free to sell to anyone and it has no control over Comasco's customers. Comasco's website indicates that it 'imports hundreds of different models of mechanical engineering tools and equipment and provides service to over 5,000 customers in Israel and to a significant number of Israeli contractors abroad.' [\[footnote 4\]](#)

The UK.NCP notes that Comasco is the sole dealer of JCB products in Israel, but the link between the JCB products used for demolitions and Comasco cannot be clearly established.

The UK.NCP understands that Comasco could have sold JCB products to third parties, individuals, small dealers, construction companies, or the Israeli Government (or its public authorities). The JCB products being used to demolish Palestinian properties in the OPT may be owned by those who have commissioned the demolition, be on hire, or be equipment owned by contractors employed to do the work. This creates a complex web of supply chain which goes beyond the business relationship between JCB and Comasco.

UK.NCP also notes that JCB products are also used for routine construction business purposes and humanitarian activities like construction of hospitals, roads and schools.

UK.NCP also accepts that the JCB products depicted in the photographs could have also come from the second-hand market, as identified by JCB. Products purchased from this route will have no connection with either Comasco or JCB.

This effectively means that the products used for alleged adverse human rights impacts as depicted in the photographs and videos could have come from multiple sources.

The UK.NCP cannot verify whether the JCB products used in demolition as depicted in photographs and videos were directly bought from Comasco, unless a clear business relationship can be evidenced between Comasco and those operating JCB products in the OPT to demolish Palestinian properties.

LPHR has alleged that these demolitions are directly run by the Israeli authorities or third parties under the instructions of the Israeli authorities. This is outside the scope of this complaint, but even if these allegations are true, there is no evidence to suggest that the Israeli authorities or third parties operating on the instructions of Israeli authorities have purchased the JCB products depicted in demolition directly from Comasco.

Assessing the question about leverage, the UK.NCP accepts that JCB does have some leverage over Comasco due to its business relationship. Yet, the UK.NCP could not determine how this leverage could influence those operating JCB products causing alleged human rights impacts in the OPT. Had there been evidence that those products were directly purchased from Comasco, it might have been possible to establish the link between JCB products used in the alleged human rights violations and JCB.

The complex web of supply chain, and the nature of the business relationship between JCB and Comasco, as indicated above, means that JCB does not have any leverage over suppliers and customers beyond the first tier of its business relationship with Comasco. The UK.NCP cannot decisively establish the source of the JCB products used in the alleged adverse human rights impacts; therefore, has not found that JCB can influence those who sold the products to those committing the alleged human rights impacts in the Occupied Palestinian Territories.

UK.NCP concludes that the alleged adverse human rights activities as depicted in the photographs and videos cannot be conclusively linked to JCB because of their business relationship with Comasco. Therefore, UK.NCP did not find JCB in breach of its obligations under article 3 of Chapter IV.

9.3 UK.NCP's assessment of the complaint under paragraph 5

The OECD Guidelines

UK.NCP's assessment of this section should be read together with its assessment of the complaint under paragraph 3, detailed in paragraphs 36-52 above.

Para 5 of the Chapter IV says that enterprises should '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.'

The Commentary of paragraph 5 of Chapter IV recommends that 'enterprises carry out human rights due diligence. The process entails assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses as well as communicating how impacts are addressed. Human rights due diligence can be included within broader enterprise risk management systems provided that it goes beyond simply identifying and managing material risks to the enterprise itself to include the risks to rights-holders. It is an on-going exercise, recognising that human rights risks may change over time as the enterprise's operations and operating context evolve.'

Complementary guidance on due diligence, including in relation to supply chains, and appropriate responses to risks arising in supply chains are provided under paragraphs A.10 to A.12 of the Chapter II of the Guidelines.

The Complainant's arguments

The Complainant has alleged that JCB has breached paragraph 5 of Chapter IV as there is no evidence that JCB had conducted human rights due diligence.

JCB's response

JCB's response submitted to the UK.NCP did not indicate if the company has any human rights due diligence process in place. They have informed the UK.NCP of the existence of the Supplier Code of Conduct and Dealer's Charter.

9.4 UK.NCP's assessment

JCB's response suggests that their approach is primarily based on the premise that as the adverse human rights impacts cannot be attributed to the company, any human rights due diligence checks will not be necessary. Also, the Supplier Code of Conduct and the Dealer's Charter are not human rights due

diligence documents as set out by the OECD Guidelines and the Due Diligence guidance.

UK.NCP believes that this approach is not in line with the aspirations set out in the OECD Guidelines and other international instruments on responsible business conduct. The scale of alleged adverse human rights impact and the evidence of JCB products used in demolition of houses in OPT are sufficient reasons to carry out an assessment of actual and potential human rights risks and impacts, even if JCB believed that those human rights impacts cannot be linked to the company.

Even in the absence of any adverse human rights impacts, an enterprise is expected to act responsibly and regularly conduct human rights due diligence as the OECD Due Diligence guidance notes 'human rights risks may change over time as the enterprise's operations and operating context evolve.'

For these reasons, the UK.NCP's conclusion under paragraph 52 above does not mean that JCB should ignore the use of their products in demolitions in the OPT and cannot dismiss JCB from its responsibilities to ensure it implements OECD Guidelines in letter and spirit and play a greater role in adopting responsible business practices.

It is unfortunate that JCB, which is a leading British manufacturer of world-class products, did not take any steps to conduct human rights due diligence of any kind despite being aware of alleged adverse human rights impacts and that its products are potentially contributing to those impacts.

In its response submitted on 16 April, JCB acknowledged that they were aware of the photographic and video depiction of JCB products being used in demolitions.

Since February 2020, JCB is also aware of the UN Office of High Commissioner for Human Rights (UN OHCHR)'s database which has put JCB on the list of business enterprises involved in listed activities in the OPT that may have 'raised particular human rights impacts.' JCB has informed UK.NCP that they are challenging its inclusion in the UN OHCHR database.

Given these allegations and as part of its responsible business practices in line with the Guidelines, JCB should have undertaken a comprehensive due diligence exercise to identify opportunities for it to engage with companies with whom it has a business relationship on their human rights policies, uncover any potential human rights issues and ensure there is no risk of adverse human rights impacts in its supply chain.

JCB's response that as it has no control over its products once they have been sold to Comasco and that they are not responsible for the adverse human rights impact caused by their products does not reflect the spirit of the OECD Guidelines on Responsible Business Conduct.

The OECD Due Diligence Guidance recommends that 'each enterprise in a business relationship has its own responsibility to identify and address adverse impacts.' The due diligence responsibility should not be 'shifted to other entities in the supply chain.' [\[footnote 5\]](#).

The UK.NCP therefore recommends that JCB carry out human rights due diligence, assessing actual and potential human rights impacts. Paragraphs 70-71 set out how JCB can organise human rights due diligence and make it a regular feature of its business operations.

The [OECD Due Diligence Guidance for Responsible Business Conduct](https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm) (<https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>) provides practical support to enterprises on the implementation of the Guidelines. The explanation in this document is provided in a plain language and includes additional tips and illustrative example of due diligence.

The due diligence guide sets out six steps for conducting a due diligence check. These steps are:

- Embed responsible business conduct into policies and management systems
- Identify and assess actual and potential adverse impacts associated with the enterprise's operations, products or services
- Cease, prevent and mitigate adverse impacts
- Track implementation and results
- Communicate how impacts are addressed
- Provide for or cooperate in remediation when appropriate

~~UK NCP~~ therefore concludes that ~~JCB~~ did not observe paragraph 5 of Chapter IV of ~~the Guidelines~~.

~~UK NCP~~ recommends that ~~JCB~~ carry out human rights due diligence to assess actual and potential human rights impacts. In line with the ~~OECD~~ Guidelines and Due Diligence Guidance, ~~JCB~~ should also set out a plan on how it will integrate and act upon the findings of its due diligence – including how impacts will be addressed – if adverse human rights impacts are identified in its supply chain. This process should go beyond simply identifying and managing material risks to the enterprise. As the human rights risks may change over time, due diligence should be a regular, on-going exercise, which should be part of ~~JCB~~'s policy statement on human rights

9.5 ~~UK NCP~~'s assessment of the complaint under paragraph 4

The ~~OECD~~ Guidelines

Paragraph 4 of Chapter IV states that enterprises should have a policy commitment to respect human rights.

The ~~OECD~~ commentary on paragraph 4 recommends that the statement of policy on human rights should:

- (i) be approved at the most senior level of the enterprise;
- (ii) be informed by relevant internal and/or external expertise;
- (iii) stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
- (iv) be publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- (v) be reflected in operational policies and procedures necessary to embed it throughout the enterprise.

The Complainant's arguments

In its complaint, the Complainant highlighted that ~~JCB~~ has breached ~~the Guidelines~~ by not having a statement of policy on human rights.

The Complainant alleged that no information of a policy commitment statement on human rights can be found on ~~JCB~~'s website. The website does have a page on ~~JCB~~'s corporate responsibility which focusses on environmental sustainability. The website also has sections on health, safety and

environment policy, a health and wellbeing policy statement, a modern slavery statement and a supplier code of conduct, but it does not have any statement on human rights commitments. JCB's most recent annual accounts also do not appear to make any reference to human rights risks or their management.

JCB's response

In response JCB argued that 'there is no lawful requirement for JCB to have a policy on the sole subject of human rights' and acknowledges that it does not have a single policy on human rights as it has argued that rather than having 'such a single policy, JCB has extensive policies which enshrine human rights protections.'

JCB claims that its approach is more appropriate for its business operations as it has contractual arm's length relationships with its independent dealers. Once its products have been sold to those dealers, JCB does not have any legal control over the final destination or use of JCB products. According to JCB, it is therefore more effective for them to focus its policies on its relationships with its suppliers.

JCB suggests that it is possible for businesses to respect and promote human without having a specific policy on this issue.

JCB further informed the UK NCP that it has a Supplier Code of Conduct which explains that 'all suppliers must comply with any all applicable laws, rules and legal regulations in the countries in which they operate and must maintain a system to monitor compliance with such laws, rules and legal regulations'. JCB have argued that this would, by definition, include all 'human rights related laws, rules and regulations in any relevant jurisdiction'.

JCB further informed the UK NCP that it also has a Modern Slavery statement and a Dealer Charter, which 'requires JCB dealers to agree that they will "never pursue business that requires them or JCB to engage in unethical or illegal activity".'

JCB has also informed UK NCP that it has contributed extensively to humanitarian aid in many disaster zones over the years. UK NCP acknowledges this.

9.6 UK NCP's assessment

UK NCP notes that JCB has not supplied any evidence of its policies enshrining human rights protection other than that it has a Supplier's Code, Dealer's Charter and Statement on Modern Slavery.

UK NCP commends JCB for having a Dealers Charter, Supplier's Code of Conduct, its significant environmental initiatives, and its humanitarian aid in disaster zones.

The Guidelines require enterprises to have a clear and separate human rights policy statement. While JCB's approach to have policies to enshrine human rights protection is a step in the right direction, it is not sufficient to meet its obligations under the Guidelines.

For JCB to fully adhere to the Guidelines, it should express their commitment to respect human rights through a statement of policy as set out in paragraph 75 above.

UK NCP agrees that it is possible to respect human rights without having a policy statement, but in an increasingly complex environment of business operations – particularly in human rights high-risk or conflict zones – it is important for businesses to expressly commit to the protection of human rights. An express commitment to respect and protect human rights by businesses provides clarity of their position

to their employees, suppliers, stakeholders and customers. The policy should also set out how it is operationalised, for example who is responsible for due diligence assessments and how any findings from them should be acted on and reviewed periodically.

UK.NCP also acknowledges JCB's point that there is no legal requirement for JCB to have a human rights policy statement. UK.NCP would like to stress that while the OECD Guidelines for Multinational Enterprises provide voluntary principles and standards, they are internationally recognised standards for responsible business conduct which also mirror the United Nations Guiding Principles and good business practice standards adopted by many multilateral organisations.

In light of the evidence provided by JCB in response to the complaint made by LPHR, the UK.NCP concludes that JCB did not fully observe paragraph 4 of Chapter IV of the Guidelines.

UK.NCP recommends that JCB draft a statement of policy which should expressly state its commitment to respect human rights as stated in paragraphs 74 and 75 above. This statement should be separate from its statement on Modern Slavery, Supplier's Code of Conduct and the Dealer's Charter.

10. Conclusions

On the basis of its further examination, the UK.NCP decides that JCB did not breach its obligations under paragraph 3 of Chapter IV but concludes that JCB did not act consistently with the provisions of paragraphs 4 and 5 of Chapter IV of the Guidelines.

10.1 Examples of company good practice

The UK.NCP would like to stress the following as company's good practice:

- Company's approach to innovative sustainable solutions and environment friendly initiatives it has undertaken, which includes promoting diversity, encouraging general waste recycling and manufacturing fuel efficient machines

10.2 Recommendations to the company and follow-up

As stated above, the NCP recommends that JCB:

- UK.NCP recommends that JCB write a statement of policy which should expressly state its commitment to respect human rights as stated in paragraphs 74 and 75 above. This statement should be separate from its statement on Modern Slavery, Supplier's Code of Conduct and the Dealer's Charter.
- UK.NCP recommends that JCB carry out human rights due diligence to assess actual and potential human rights impacts. In line with the OECD Guidelines and Due Diligence Guidance, JCB should also set out a plan on how it will integrate and act upon the findings of its due diligence – including how impacts will be addressed – if adverse human rights impacts are identified in its supply chain. This process should go beyond simply identifying and managing material risks to the enterprise. As the human rights risks may change over time, due diligence should be a regular, on-going exercise, which should be part of JCB's policy statement on human rights
- The UK.NCP will request an update from both parties after one year of the publication of the final statement. Both parties will be informed of the exact date at a later stage

1. <https://lphr.org.uk/> (<https://lphr.org.uk/>)
 2. [OECD Guidelines for Multinational Enterprises \(2011\)](https://mneguidelines.oecd.org/mneguidelines/) (<https://mneguidelines.oecd.org/mneguidelines/>), p.31.
 3. [OECD Guidelines for Multinational Enterprises \(2011\)](https://mneguidelines.oecd.org/mneguidelines/) (<https://mneguidelines.oecd.org/mneguidelines/>), p.33.
 4. [Comasco website](https://eng.comasco.co.il/) (<https://eng.comasco.co.il/>)
 5. [The OECD Due Diligence Guidance](https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm) (<https://www.oecd.org/investment/due-diligence-guidance-for-responsible-business-conduct.htm>)
-

OGL

All content is available under the Open Government Licence v3.0, except where otherwise stated

© Crown copyright