

THE GSL SPECIFIC INSTANCE

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The GSL Specific Instance is held up as an exemplar of effective process and that is as it should be. We came together with the five complainants in an atmosphere of good will; we endeavoured to understand each others' positions; we learned much from the experience; and we signed off on important agreed outcomes, which GSL has worked hard to honour and implement.

It certainly wasn't like that to begin with, though, and I thought it would be instructive to revisit the process and share with you how, at least from our perspective, we went from what I can gently describe as sullen irritation to an outcome that delighted us all. As our concerns are likely to be shared by every other company that finds itself the subject of a similar unwelcome complaint, they may be helped by GSL's experience.

We got a letter from Treasury telling us that five NGOs, two of them not even Australian, had filed a complaint that we had breached the Human Rights and Consumer Interest Principles of the *OECD Guidelines for Multinational Enterprises*, through our management of immigration detention centres. The letter was signed by Gerry Antioch, then the Australian National Contact Point for the Guidelines, and it advised us that he was going to formally investigate the complaints. You will believe me when I tell you that it was not a letter that filled my Managing Director, to whom it was addressed, with much joy.

I'll come back in a moment to what we knew about the Guidelines. But you are aware of the business that we are in, and so you may easily understand that there is probably no other company in the land which is more defined by its commitment to ensuring the human rights of those in its care. No one, and certainly not GSL, takes comfortably to being told that they have failed in their duty of care.

To put what we do in some perspective, we run prisons for the Victorian and South Australian governments, and we provide prisoner transportation for the whole of South Australia and Western Australia and much of Victoria. We provide security at secure forensic psychiatric hospitals in Tasmania and Victoria. We electronically tag prisoners in South Australia. We run non-emergency ambulances in Melbourne. And of course we operate all the mainland immigration detention centres and Christmas Island for the Commonwealth, which was the target for the complaint. We have about 2000 employees in Australia and we are just rejoining our old parent company G4S which employs 500,000 employees in 111 countries where our core businesses are also in security. We are not lacking in experience.

It became very clear to us and, judging by the correspondence between the ANCP and the Complainants, to the ANCP as well, that GSL was just a surrogate target. Denied by the OECD Guidelines the ability to pursue their real target, the Commonwealth and the Commonwealth's policy of mandatorily detaining unlawful non-citizens as required by the *Migration Act*, the Complainants turned their attention on to GSL, the Australian subsidiary of a British multinational which was actually running the detention centres. The ANCP wrote to the Complainants, "I note that a significant part of the submission and supplementary material addresses Australia's mandatory detention policy and its relationship to international conventions through the activities of GSL. It is therefore hard to escape the conclusion that those concerns overshadow other concerns expressed about specific behaviours of GSL that are alleged to be in breach of the guidelines." At that point GSL was very close to backing out.

There are those in the community who are implacably opposed to the operation of prisons and immigration detention centres by the private sector. With some difficulty we understand their position, but we don't debate it. And we were certainly not going to participate in the OECD process if that was where it was going to take us.

That the process didn't disintegrate was initially achieved almost entirely by the ANCP's firm line in focusing the scope of the complaint. In particular, Gerry Antioch excluded those parts of the Complainants' submission and supplementary material which addressed "Australia's mandatory detention policy and its relationship to international conventions through the activities of GSL." The objective, he stated, was mediation, not at all any finding of guilt. This was a seminal turning point for GSL.

When the Complainants and GSL finally agreed on the ANCP's proposal for moving to the Specific Instance phase, and then on to the agenda for a mediation meeting, the logjam had been broken and the process progressed rapidly and with considerable goodwill. It was perhaps the most critical lesson for those coming after us. Agree on the agenda and then don't get side-tracked.

A second hurdle that we all had to get over was our respective expectations for the outcome of the process. GSL wanted a Win-Win outcome. It is not a legal process, nor even quasi-legal or arbitral. It is non-adversarial – and as Gerry Antioch wrote, it is crucial to preserve that. There is no judgement passed, no finding of guilt, no blame assigned, no penalties that can be imposed. The main sanction available to the ANCP is to embarrass one of the parties. It is a process designed to encourage discussion and mediation, a learning process from which both sides come out better informed of the other's position and of changes that should be made. It is, above all, a two-way process. It is not intended to be an opportunity for disgruntled complainants to set about poking the respondent with sharp sticks. And should this ever change, in my opinion, the process is bound to fail.

The complainants in our case didn't want Win-Win, arguing that a Win-Win approach diffused and negated, as they described it, the seriousness of the issues being raised. The ANCP disagreed, responding that the discipline of finding workable solutions ought to focus the greatest energy on the things that truly matter. It is not, he wrote nicely, nor should it be seen as a way to simply pick the low hanging fruit.

I mentioned earlier the question of how much we knew about the Guidelines before we received the advice that the ANCP was investigating the NGOs' complaints and the truthful answer is 'very little'. Probably more than most companies, we were acutely conscious of our human rights obligations because of the area in which we work. We thought that what we were doing was best practice. We equated human rights and duty of care with justice, fairness and decency. As our then Managing Director Peter Olszak put it, 'I ask myself the simple question: is it right? And if I can't answer yes, then we don't do it.'

We were certainly conscious of the Global Compact and the two principles that most impacted on us: Principle 1 demanding that we should support and respect the protection of internationally proclaimed human rights, and Principle 2 that we should make sure we are not complicit in human rights abuses. But the OECD Guidelines had never come on to our radar.

Why we eventually agreed to participate when we had such reservations initially was in the end quite simple. Once ground rules had been established that we could work within, we saw it as a unique opportunity to explain those practices of the company which most concerned the complainants. We genuinely wanted to build bridges. Even more importantly, we wanted to learn from the complainants' expertise and experience in human rights issues. And learn we did. Throughout the mediation process, the complainants demonstrated that they understood the complexity and sensitivity of the business in which GSL operates and they were generous in their advice.

What did we get out of it all? I can only speak for GSL but for us, the answer is a lot. This is a conference dedicated to raising the bar and the mediation process enabled us to raise our bar and we will keep on raising it. It is a timely opportunity to place on record that it was our Managing Director Peter Olszak's personal commitment to engage with the NGOs and to seize the opportunity to find new ways of meeting our human rights obligations, which ensured that the mediation went ahead and with such a satisfactory outcome. Peter died at Christmas time, but he would have dearly liked to have been here today.

The exercise unquestionably gave us a much clearer understanding of the guidelines and their implications. GSL has always had zero tolerance for human rights breaches. We learned many lessons which we are constantly implementing. Our target is small incremental improvements, not massive changes in a small time frame. We

enhanced the training curriculum through the inclusion of human rights materials, and at virtually every staff meeting, staff are now reminded of their obligations. Every advertisement placed by the company carries the statement, "An understanding of, and commitment to Human Rights is a pre-requisite for every position with GSL".

We still don't get it right all the time and Graeme Innes and his team are always there to remind us when we don't. HREOC do not make our life more comfortable and nor should they. But they are an essential link in the chain.

In total, GSL agreed to implement some 34 agreements relating to human rights in our detention facilities. Some related to specific issues such as interpreters, food and operations at the now closed Baxter facility. At the top of the list is the acknowledgement by GSL of the "value of using a human rights framework as the appropriate standard to guide operations and assist the company to 'do the right thing' in all aspects of its operation and service delivery."

Midway through the negotiations, the Government changed its policy with regard to children in detention, which was a major component of the complaint, and by the time we came to mediation, the last child had left.

There were lessons that we picked up along the way. There were the big tickets items that I have mentioned. Limit the scope of the complaint. Keep it non-adversarial. Never lose sight of achieving a Win-Win outcome. Get the ground rules clearly established and agreed at a very early stage and don't deviate from them, only to find that they are not acceptable to one of the parties at the eleventh hour.

And one useful tip. Leave the lawyers at home. It is not a legal process and if it is to have value, it shouldn't be bogged down by lawyers.

It was undeniably, from our perspective, a successful exercise. When we ask ourselves why, I suspect we were lucky. First there was the low-key but efficient handling of the whole specific instance by the ANCP and his team. It was the first one they had done but it never showed. The Specific Instance could so easily have been derailed on multiple occasions, with nobody deriving any benefit from it at all. That it wasn't was in large part - and I think Serena [Lilleywhite] would agree with this - because it was well managed.

Secondly, I think we were helped by the fact that the subject of the complaint and the principal players - and the National Contact Point - were all in the same country. Many Specific Instances won't be.

And thirdly, we were very fortunate in our complainants. They were informed, constructive and a delight to work with. I am sure that their views about mandatory detention and our role in it didn't shift one iota, but having agreed on the rules, they stuck to them

punctiliously. The discussions were open and frank and the atmosphere friendly. The mediation session demonstrated that we shared a commitment to adherence to universally recognised standards of human rights that was much greater than our differences. For GSL it was a very valuable outcome.

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