

UK SUPREME COURT TAKES JURISDICTION IN PARENT COMPANY DUTY OF CARE CLAIM

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Legal Briefings

The UK Supreme Court has handed down its judgment in [Okpabi v Royal Dutch Shell Plc](#), finding that the English Court has jurisdiction over claims relating to environmental damage allegedly caused by a Nigerian joint venture, operated by a Nigerian subsidiary of Royal Dutch Shell plc in Nigeria.

We consider this decision and its potential impact in detail [here](#).

This decision provides further consideration of the circumstances in which a parent company may owe a duty of care to those affected by the acts or omissions of its foreign subsidiary, focussing on “*the extent to which the parent did take over or share with the subsidiary the management of the relevant activity*”. This could include the promulgation and/or implementation of group-wide policies.

Whilst UK parent companies will want to give careful consideration to their management structures, policies and practices in light of this judgment, significant uncertainty remains as to the precise circumstances in which a parent company duty of care will in fact arise.

As it had previously done when reaching its decision in [Vedanta v Lungowe](#), the UK Supreme Court sought to emphasise the issue of proportionality in assessing whether the English Court has jurisdiction. In particular, the UK Supreme Court stated that a judge should accept the factual assertions made in support of the claim by the claimants “*unless, exceptionally, they are demonstrably untrue or unsupportable*”.

Whilst this could give rise to a concern that a multinational enterprise will become more vulnerable to weak and speculative claims being allowed to proceed in the English courts, the UK Supreme Court was clearly mindful of the fact that litigation of this type is complex, time-consuming and costly. In this regard, this case further demonstrates the benefit (for all parties) of a company designing and implementing an effective and efficient local operational-level grievance mechanism ("**OLGM**"), as set out in the UN Guiding Principles on Business and Human Rights.

An effective OLGM should be established in consultation with, and sensitive to the culture of, local stakeholders; it should be accessible (offering equal access to all groups within the local context) and it should offer effective and efficient remediation where appropriate (including a broad range of practical remediation steps that will best impact any affected stakeholders).

Such an effective OLGM can help a company mitigate risk by providing a method for the quick identification of issues and a mechanism for any such issues to be resolved effectively, efficiently and to the satisfaction of the local community. It can therefore also help the company to maintain its social licence.

From the perspective of local stakeholders, who may feel that they have been adversely impacted by a business' operations, a credible and effective OLGM offers a much better option for ensuring that their grievance is heard and, if appropriate, remediated suitably and efficiently.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



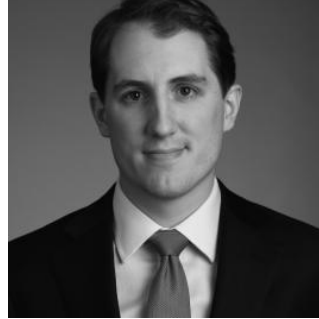
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