

Handling allegations of corruption

A report by the Parliamentary Ombudsman
on an investigation into a complaint about the
Department for International Development

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Presented to Parliament pursuant to Section 10(4)
of the Parliamentary Commissioner Act 1967

Ordered by
the House of Commons
to be printed on 25 February 2014

HC 1074

London: The Stationery Office

£16.00

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You can download this publication from our website at www.ombudsman.org.uk.

ISBN: 9780102988024

Printed in the UK for The Stationery Office Limited

on behalf of the Controller of Her Majesty's Stationery Office

ID P002623536 02/14

Printed on paper containing 75% recycled fibre content minimum

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Foreword

I am laying before Parliament, under section 10(4) of the Parliamentary Commissioner Act 1967, this report of an investigation into a complaint made by Mr F to the Parliamentary Ombudsman.

Mr F complained that the Department for International Development (DFID) failed to conduct a thorough and independent investigation of his allegations concerning the inappropriate use of funds, or exercise reasonable oversight. Also, he complained about the way in which DFID handled the information he had sent them.

We did not find any reason to question the outcome of DFID's investigation but we found that they had failed to communicate effectively; failed to give reasons for decisions, or to be open and transparent about those decisions; and failed to maintain reliable and useable records. All that was maladministration.

We also found that DFID failed to protect Mr F's identity and to ensure the confidentiality he sought.

DFIF accepted our findings and now has acted on our recommendations.

Dame Julie Mellor, DBE
Parliamentary Ombudsman

February 2014

The complaint

1. Mr F complains that:
 - The Department for International Development (DFID) failed to conduct a thorough and independent investigation into his allegations, or exercise reasonable oversight of CDC Group plc (CDC); and
 - DFID did not appropriately handle the allegations and information that Mr F sent.

Mr F's allegations concerned inappropriate use of funds by one of the fund managers in whom CDC invested. He says he has been caused outrage as a result of DFID's actions and says that because DFID did not secure his anonymity he has suffered threats and has been unable to return to his life in Nigeria.

The decision

2. We partly uphold Mr F's complaint. We have found maladministration in the way DFID investigated and reported on its consideration of Mr F's allegations. However, we have not found that DFID was unreasonable in its conclusions. We have found that DFID did not ensure Mr F's confidentiality, but we did not find that this led to all the injustice Mr F claims.

The Parliamentary Ombudsman's jurisdiction and role

3. The *Parliamentary Commissioner Act 1967* says that the Ombudsman's role is to investigate the administrative actions taken by, or on behalf of, public organisations in her jurisdiction. Complaints are passed to us by a Member of the House of Commons (MP) on behalf of a member of the public who claims injustice because of maladministration by the organisation when they took administrative actions. In this case, DFID is within the Ombudsman's jurisdiction, but CDC is not. As such, we cannot comment on CDC's actions.
4. Our approach when conducting an investigation is to decide whether there is evidence to show that maladministration has occurred that has led to an injustice that has not been remedied. If there is an unremedied injustice, we will recommend that the organisation provides the complainant with an appropriate remedy in line with the *Principles for Remedy*.

The investigation

5. During our investigation we looked at DFID's files and spoke to staff there. We also looked at the papers Mr F gave us and spoke to him. We have not included all the information found during the course of the investigation. However, we are satisfied that nothing of significance to the complaint and our findings has been left out.

The basis for the Ombudsman's determination of the complaint

6. In simple terms, we generally begin by comparing what actually happened with what should have happened. To decide what should have happened, we use general standards that we apply to all cases, as well as standards specific to the complaint at the time the events complained about occurred. We then assess the facts against the standards. Specifically, we assess whether the organisation has done something that did not meet the standards. If the organisation's actions fall far short of the standards, we decide if that is serious enough to be maladministration. The standards that we have applied to this investigation are explained below.

The Ombudsman's Principles

7. The Ombudsman's *Principles of Good Administration*, *Principles of Good Complaint Handling* and *Principles for Remedy* are broad statements of what public bodies should do to deliver good administration and customer service, and how to respond when things go wrong.¹
8. The Principles relevant to this complaint are:
 - '*Getting it right*' – In their decision making, public bodies should take account of all relevant considerations, ignore irrelevant ones and balance the evidence appropriately.

'*Being customer focused*' – Public bodies should communicate effectively, using clear language that people can understand and that is appropriate to them and their circumstances.

'*Being open and accountable*' – Public administration should be transparent and information should be handled as openly as the law allows. Public bodies should be open and truthful when accounting for their decisions and actions. They should state their criteria for decision making and give reasons for their decisions. Public bodies should create and maintain reliable and useable records as evidence of their activities.

'*Acting fairly and proportionately*' – When taking decisions, public bodies should behave reasonably and ensure that the measures taken are proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned.

'*Putting things right*' – When mistakes happen, public bodies should acknowledge them, apologise, explain what went wrong and put things right quickly and effectively. Putting things right may include reviewing any decisions found to be incorrect; and reviewing and amending any policies and procedures found to be ineffective, unworkable or unfair.

The Department for International Development

9. DFID's website says that it leads the UK Government's fight against global poverty. It runs long term projects to help stop the underlying causes of poverty and respond to humanitarian emergencies.

¹ The *Ombudsman's Principles* can be found at www.ombudsman.org.uk.

CDC Group plc

10. In 1948 CDC was set up as a statutory corporation to allow the UK Government to invest in foreign companies. The investment was intended to support the building of businesses, create jobs and make a lasting difference to people's lives. It was also intended to demonstrate to other investors that commercially sustainable and responsible investments could be made in developing countries.
11. In 1999 CDC was turned into a publicly limited company (CDC Group plc), with DFID as the 100% shareholder. DFID is not involved in the day to day running of CDC, although it does appoint the Chair and two non-executive directors to CDC's board. CDC has not drawn on any government funding since 1995 and reinvests the profits that it makes. In 2009 CDC operated solely as a fund of funds. That is, it funds fund managers who then invest in a portfolio of companies. The benefits of the fund of funds model was said to be that CDC investments acted as a catalyst to enable and encourage other investors to invest in sectors and countries they would not normally invest in. This made economic performance of the funds a central goal, but meant that CDC made no investment decisions about precisely which companies were invested in or at what value.
12. A 2010 International Development Committee (a select committee of Parliament) report (see paragraphs 23 and 24 for more information) listed the advantages and disadvantages of the fund of funds model² compiled from the oral and written evidence they received. This is helpful in understanding the model:

Advantages

- Enables a wider investment footprint.
- Utilises expertise of local fund managers.
- CDC has a respected reputation as an equity expert.
- Effective for mobilising third party capital.
- Less management-intensive, fewer human resources needed.
- Local fund managers can make an ongoing valuable contribution to investee companies.
- Individual funds can make smaller investments than CDC could.
- Local fund managers are best equipped to find sound viable investment options.
- Builds capacity in the investment profession in developing countries.

Disadvantages

- CDC is one step removed from the investee businesses. Investment decisions are taken by fund managers not CDC, so CDC has reduced control to target investments.
- Tends to support the countries and sectors with the most 'investment-ready' opportunities, not those in greatest need of support.
- Reduces transparency and impairs the public's ability to scrutinise CDC.
- Reduces the ability of CDC to conduct due diligence, manage risk and development impact and influence investee companies.

² www.publications.parliament.uk/pa/cm201011/cmselect/cmintdev/607/607.pdf.

- Requires long-term capital commitments (10-15 years) so is a far less flexible model.
- The model relies on leverage and influence, but the positive effect of increasing private investment flows is largely unproven.
- Cost of others managing the fund.
- Tend to invest through offshore financial centres.

DFID's role in CDC

13. DFID approves an Investment Policy for CDC, which sets out the sectors, countries and financial instruments that they can and will invest in. DFID sets targets for CDC's performance. DFID also agrees a remuneration framework for staff. Since 1 January 2009 DFID has agreed an Investment Code with CDC which explains CDC's principles in respect of environmental, social and governance matters. Prior to that, Business Principles were agreed with DFID as part of the Investment Policy.

DFID requires CDC to provide them with:

- An annual budget.
- An annual financial and a non-financial risk assessment report.
- An annual performance report.
- An annual assurance on compliance with the remuneration framework.
- A report on any use of any borrowing facility.

DFID also has meetings with CDC:

- A quarterly meeting with the Chair, the Chief Executive, senior executives and a representative from the shareholder executive.

- An annual meeting with the Remuneration Committee.
- An annual meeting with the Chairman of CDC's Audit, Compliance and Risk Committee.
- At least an annual meeting between the Permanent Secretary of DFID and the Board.
- An annual meeting between the Secretary of State, the Chair and the Chief Executive.

Memorandum of Understanding between DFID and CDC

14. A Memorandum of Understanding between the Secretary of State for International Development (I will refer to DFID for ease) and CDC, dated July 2009, provides a record of their intent about how the two parties should operate, although it does not form any legal contract.
15. The Memorandum recognises that as 100% shareholder, DFID has certain rights, but says that they will have regard, '*along with other relevant considerations*', to the purpose of CDC before invoking those. It says that DFID will agree clear objectives with CDC and hold the CDC Board responsible for the delivery of CDC's objectives (which are largely set out in the Investment Policy) but would leave the day to day management of the company to CDC and its Board.

CDC's Investment Code

16. On 1 January 2009, CDC introduced its Investment Code. It defines CDC's principles, objectives, policies and management systems for sustainable and responsible investment with respect to environmental, social and governance (ESG) matters. The Investment Code is aligned with international standards.

17. When CDC invests in a fund manager it places the fund manager under a legal obligation to adhere to the principles set out in the Investment Code. All funds that CDC invested in from 1 January 2009 were placed under this obligation. For funds they had invested in before then, CDC obtained ongoing commitment to the Business Principles and, after it was introduced, tried to secure voluntary agreement to adhere to the code, although those efforts were not always successful. CDC say that where a fund manager has, *'significant influence, the management of portfolio companies themselves adopt either the Investment Code or an alternative but substantially similar code'*. In 2009 CDC introduced a requirement for fund managers to confirm that they had, *'obtained sign up to the Investment Code, where they have control or significant influence'*.
18. As part of the Investment Code, CDC expects fund managers to monitor portfolio companies' performance on ESG.
19. Prior to the Investment Code being introduced, CDC had a set of business principles. The business principles covered business integrity, social issues, the environment, and health and safety. CDC expected fund managers to adhere to the business principles. It also required fund managers to procure an undertaking from portfolio companies that they would adhere to the spirit of the business principles, and help companies create action plans for improvement if they did not. Fund managers were expected to audit the implementation of the business principles and report to CDC about their portfolio companies' performance. Of importance to the matters we are looking at in this report, the business principles said that CDC sought (and therefore expected this from fund managers and portfolio

companies) to invest in businesses that uphold high standards of business integrity and honesty and operate in accordance with local and international laws and good practice, *'including those intended to prevent extortion, bribery and financial crime'*. However, it is clear that the business principles were not as detailed as the Investment Code. When the investments that Mr F made his allegations about were made, it was the business principles that were in place.

CDC's 2009 development report

20. CDC's 2009 development report gives an indication of CDC's practices in respect of ESG matters at the time Mr F made his allegations. Pages 64 to 66 of the report outline CDC's role in ensuring its investments are responsible in respect of ESG. It says that CDC operates through an intermediary model (a fund of funds). As a result, CDC is one step removed from portfolio companies and has to rely on its fund managers to check the portfolio companies' compliance with the business principles and Investment Code. That is, CDC has no legal relationship with portfolio companies. The development report also notes that the fund managers may not always have significant control or influence over the actions of their portfolio companies because they will often only be one of a number of investors in that company. On page 67, the report noted that it had been challenging to get fund managers who had received investment prior to 1 January 2009 to sign up to the terms of the Investment Code, because there was no obligation for them to change the terms of their contract. However, on page 65 of the report, CDC say that it monitors the fund managers' implementation of the Investment Code. It does this by participation on funds'

advisory boards and by receiving annual ESG reports from fund managers. The report says CDC has most influence with a fund manager when raising a successor fund, at which time CDC may also conduct a mid-point evaluation of the investment.

21. In 2010 CDC asked KPMG to audit their management processes for monitoring and implementing their Investment Code. The audit provided assurance that CDC's systems were robust. However, KPMG said that the audit did not cover whether fund managers and portfolio companies were actually complying with the Investment Code. It recognised that there were limitations on CDC's ability to monitor that because of the fund of funds model.

The Public Accounts Committee report on DFID's oversight of CDC

22. In December 2008 the Public Accounts Committee produced a report into DFID's role as 100% shareholder and considered whether DFID had appropriate oversight of CDC. One recommendation is of significance to this report. It was:

'Compliance by businesses and fund managers with CDC's ethical business principles is not independently verified. Reporting on these principles represents a contractual obligation on fund managers, but CDC depends largely on their objectivity and honesty ... DFID now accepts that it must work with CDC to strengthen the governance of business principles. It should ensure that assurance and assessment are independent of CDC and fund managers, and that the assessments

cover the portfolio as a whole, with an agreed format for reports.'

The investments that were the subject of Mr F's allegations were made before the issue of this report. The Investment Code was introduced after the issue of this report.

Changes to the way CDC operates

23. In October 2010 DFID announced that there would be a public consultation into the future of CDC. The ministerial statement said that CDC would be reformed to focus more on development.³ This, in turn, led to the International Development Committee reporting on the matter.⁴

24. Of note in the Committee report was a similar recommendation to that made in the 2008 Public Accounts Committee report. That was:

'We acknowledge the difficulty some companies have in complying with CDC's Investment Code during initial stages and support the notion of encouraging improvement in Environmental, Social and Governance standards. However, CDC's Investment Code must set a clear baseline standard of compliance for investments. We are concerned by the claims that some of the funds in which CDC has invested have not met these standards. We recommend that CDC ensure that thorough due diligence and monitoring is conducted on all CDC-backed investments.'

³ www.publications.parliament.uk/pa/cm201011/cmhansrd/cm101012/wmstext/101012m0001.htm.

⁴ www.publications.parliament.uk/pa/cm201011/cmselect/cmintdev/607/607.pdf.

The Public Interest Disclosure Act 1998

25. The Public Interest Disclosure Act sets out a number of protections for whistle blowers. The protections in the Act are described as being for ‘workers’ who whistle blow about the actions of their employers.

DFID’s counter fraud and anti-corruption policy

26. DFID has a policy for investigating fraud. It says that its Counter Fraud Unit acts as a central point for reporting all cases of fraud where DFID funds, assets or interests are involved. It says the Counter Fraud Unit initiates and carries out investigations. The Counter Fraud Unit comprises an intelligence section, which acts as an initial point to record new allegations and develop the investigation and an investigation section that goes on to investigate in detail. The policy says that staff receiving allegations should not discuss those with anyone other than those the policy states (generally the Counter Fraud Unit) because not all the people involved in a case of fraud or corruption may be known until the end of the investigation and it may undermine the investigation. The Counter Fraud Unit do not necessarily conduct the investigation themselves, the investigation section can advise and direct DFID staff about how to conduct an investigation.

Background

27. From late 2008 Mr F contacted various agencies about his concerns that one of the fund managers CDC was invested in was itself investing in portfolio companies in Nigeria that might be being used for money laundering. Mr F’s allegations were that a number of the other investors and directors of those portfolio companies could be linked to a former politician in Nigeria who had been charged with a number of offences including embezzling state funds and money laundering. Mr F’s allegation was that the fund manager had either not conducted appropriate checks (called due diligence) on the companies it was investing in, or that they were deliberately investing in those companies for their own gain. Mr F’s allegations were evidenced by an affidavit filed in a Nigerian court which made these connections. The affidavit was a statement of an officer of the Nigerian Economic and Financial Crimes Commission dated 30 October 2007.
28. Mr F appears to have contacted Transparency International⁵ and Norman Lamb MP (who he contacted in his own name), to ask them to look into his allegations (they subsequently raised his concerns with DFID on his behalf), and he also contacted DFID directly. His email to DFID was passed to the Global Funds and Development Finance Institutions Directorate of DFID. At about the same time, Mr F also contacted other, non-UK, Development Finance Institutions [DFIs]⁶ because they also invested in the same fund manager. These included the US, Danish and Swedish government Development Finance Institutions as

⁵ A non-governmental organisation concerned with monitoring and reporting corruption.

⁶ These are institutions that invest with the specific mandate to promote development, like CDC.

well as the European Investment Bank (EIB). He has told us he wrote to all those institutions (other than his MP) under an alias and sent them all a report in which his real name was embedded in the metadata.

DFID's actions to investigate the allegations made by Mr F

29. A submission from the Global Funds and Development Finance Institutions Directorate to Ministers for International Development dated 23 February 2009 identified Mr F's allegations as serious. It said the allegations raised important questions about how comprehensive the fund manager's due diligence of the relevant investments had been. The submission said a meeting had already been held with CDC on 20 February 2009 and that CDC had agreed to contact the fund manager. It said the Counter Fraud Unit would liaise with the police for more information about the politician who was facing corruption charges.
30. A note of the meeting on 20 February 2009 between CDC and DFID says that CDC provided assurance that the due diligence carried out by the fund manager in 2006/2007 (prior to making the investments) did not find anything untoward about one of the portfolio companies. A further note said that CDC had, '*carried out a Quality Assurance on the Due Diligence by [the fund manager]*'.
31. A telephone note of 26 February 2009 says the Metropolitan Police (the police) confirmed to the Counter Fraud Unit that they had evidence that three of the people Mr F alleged to be linked to the politician could be linked to him from 2001.
32. Internal email exchanges dated 26 February 2009 say that the intelligence analyst in the Counter Fraud Unit who was looking into Mr F's allegations was passing the '*criminal case*' to the police,⁷ but that the Counter Fraud Unit would continue to look at the due diligence conducted by the fund manager and CDC. Internal documents say that the analyst shared documents about the allegations with the police on the same date. In his email the analyst said:

'it would seem that the police have evidence that links [the corrupt politician] to the directors of [one of the portfolio companies involved in the allegations] prior to the date of [the fund manager's] due diligence report.'
33. In the same exchange, the Global Funds and Development Finance Institutions Directorate said that CDC had said that the fund manager was, '*probably not contractually obliged to provide this information [about their due diligence] to CDC*'. The response from the Counter Fraud Unit noted that this was contrary with CDC's claim (paragraph 30) that they conducted a quality assurance of the fund manager's due diligence. In the same exchange the Global Funds and Development Finance Institutions Directorate said that the investment in the portfolio to which the director was linked was made in March 2007.
34. A preliminary assessment by the intelligence analyst, dated 2 March 2009, recommended that Mr F's allegations required further investigation. It suggested that the Counter Fraud Unit review the fund manager's selection of portfolio companies, review the fund manager's due

⁷ The Metropolitan Police would only have jurisdiction over crimes committed in the UK and therefore their role was limited. However, at the time of these events the Metropolitan Police were investigating the Nigerian politician for money laundering in the UK. As such, Mr F's allegations may have been relevant to that investigation.

diligence of those companies, and review CDC's QA of that due diligence.

35. The Counter Fraud Unit asked the Global Funds and Development Finance Institutions Directorate to liaise with CDC to obtain information so CDC could review the due diligence as described in paragraph 34. The Counter Fraud Unit also indicated they would like an external audit of the fund manager's due diligence. The Global Funds and Development Finance Institutions Directorate responded that it did not think DFID had any right to request information from the fund manager.
36. The Counter Fraud Unit and the Global Funds and Development Finance Institutions Directorate met with CDC on 12 June 2009. CDC said that it had a limited partnership with the fund manager and had no legal right to request information from them. CDC said there would be a mid-point evaluation of the fund later in the year. At that meeting the Counter Fraud Unit asked to see CDC's due diligence, which CDC said it would share with DFID if it could. CDC also agreed to ask the fund manager what information they would agree to provide.
37. There is no evidence that CDC subsequently provided DFID with any of the information discussed at the above meeting. On 25 June 2009 CDC wrote to the Global Funds and Development Finance Institutions Directorate and told it that the fund manager had no presence in the UK, that DFID had no contractual or legal right to the fund manager's information, that CDC had limited access to the fund manager's information, and a limited ability to share any of that information with DFID. CDC said that it would therefore do an internal review of its own due diligence and report to DFID. CDC also said that a mid-point evaluation of the fund manager would be done, possibly using external consultants. DFID has told us that the outcome of the internal review was reported to it at a meeting from which it has no notes. DFID has told us that it was not given a copy of the mid-point evaluation.
38. In August 2009 a number of Nigerian banks were found to have serious liquidity problems. This was a problem with many banks in Nigeria at the time. The Central Bank of Nigeria had conducted analyses of the banks and found them to have: a high level of non-performing loans and non-adherence to credit risk management practices; over exposure to the riskier oil and gas sector; and undercapitalisation. The Central Bank of Nigeria acted to remove the managing directors and executive directors of those banks. The fund manager was invested in one of these banks and had been since June 2007. DFID asked for information from CDC about this. CDC said they intended to have an advisory board meeting with the fund manager who was proposing to exit their investment with the bank.
39. A note of a meeting between CDC and the police on 29 October 2009, recorded by a member of the Global Funds and Development Finance Institutions Directorate who was present, said that the fund manager and the portfolio companies named in Mr F's allegations were not currently part of the police investigation into the politician, but that this could not be ruled out in future.
40. A minute dated 5 November 2009 from the Counter Fraud Unit to the Global Funds and Development Finance Institutions Directorate and copied to other departments in DFID, including the permanent secretary's office, set out the background about the actions taken on

Mr F's allegations. The 'Detailed findings' of that document are reproduced below.

'8. DFID has an "arms-length" relationship with CDC, governed by the Investment Policy, and CDC has an arms-length relationship with its Fund Managers which is governed via contracts.

9. The main issues for consideration are three-fold:

- Firstly, to establish whether there is merit to the allegations regarding the selection of [the portfolio companies].*
- Secondly, to provide assurance that CDC due diligence procedures and oversight/control of its fund managers are adequate and in compliance with the Investment Code, for this and future investments.*
- Thirdly, to confirm whether there has been any wrongdoing, inadvertent or otherwise, on the part of CDC.*

10. Furthermore, DFID needs to (a) understand what CDC propose to do with respect to [the fund manager] from now on, (b) understand CDC's options in this regard, (c) determine whether DFID is content that CDC has chosen the right option, and (d) if not, decide how best to raise this with the CDC Board.

11. To respond to the second issue in paragraph 9 above, CDC appointed an internal committee to review the due diligence which had been performed by CDC prior to investing in [the fund manager] ... CDC has just allowed DFID

to view a summary of the findings of its internal due diligence review, and this is currently being studied by DFID management.

12. Although there is no allegation of wrongdoing by CDC in this case, there is nonetheless a risk that any internal assessment by CDC may not (or may not be perceived to) adequately address all the areas on which DFID requires comfort and that GFDD may not be able to place sufficient reliance on the integrity of such a review to demonstrate that DFID has taken appropriate steps to gain assurance over how significant sums of public money are being controlled. As an alternative assurance path, we have recommended that GFDD should consider an independent review by an external consultant of the due diligence conducted by CDC.

13. The recent NAO⁸ and Public Accounts Committee reports on CDC raised the issue that compliance by businesses and fund managers with CDC's ethical business principles is not independently verified. Reporting on these principles represents a contractual obligation on fund managers, but CDC depends largely on their objectivity and honesty to assess and report compliance accurately. DFID and CDC are planning to respond to this issue through CDC undertaking and providing to DFID annually results of an independent audit both of its implementation processes in relation to the Investment Code and of a sample of Fund Managers' and investee companies' compliance. In light of the allegations against [the fund manager], GFDD should consider whether CDC's

⁸ The National Audit Office.

independent ethical compliance audit could include [the fund manager] specifically as part of its sample. This ethical compliance audit could also provide assurance as to whether [the fund manager's] due diligence procedures are adequate....'

41. On 30 November 2009 the Global Funds and Development Finance Institutions Directorate responded to the 5 November 2009 minute with an update on the actions it had taken. The Global Funds and Development Finance Institutions Directorate said that it had met with CDC's Chief Operating Officer to discuss the internal review and spoken to the Chairman and Audit Committee Chairman. It said that as part of improving DFID's governance oversight of CDC, it had met with CDC's Audit and Risk Committee Chairman and CDC's auditors. It said that on the basis of, *'the thoroughness of CDC's internal due diligence review'* and meetings, the Global Funds and Development Finance Institutions Directorate considered that CDC's processes were adequate and that the Board maintains adequate oversight of investing in funds. The Global Funds and Development Finance Institutions Directorate said that CDC's process documentation should have been stronger but that it was similar to industry standards of the time. The Global Funds and Development Finance Institutions Directorate said that it had strengthened their oversight of risk management in CDC, but did not expand on how it had done that.
42. A note dated 6 May 2010, recorded a meeting on 23 April 2010 between DFID, CDC, the police and the Serious Fraud Office. It says the police said a director of one of the portfolio companies was

linked to the corrupt politician, although the company he was a director of had not been. It said the police explained that their jurisdiction meant they were only concerned with money laundering offences in the UK, rather than investments in foreign companies for the purposes of laundering/corruption.

43. Following that meeting, the Global Funds and Development Finance Institutions Directorate followed up with CDC on the matter of the director named by the police. An email dated 4 June 2010 from the Global Funds and Development Finance Institutions Directorate to the Counter Fraud Unit says:

'... CDC decided ... to ascertain whether there indeed is or was any evidence of links between [the director] and [the corrupt politician] as has been alleged.

CDC say that ... there is evidence of links between [them] prior to 2007 and that therefore he could have been acting as a front man for [the politician]. This was not picked-up in the integrity checks commissioned by the Fund Manager at the time of the investment in [the portfolio company] as it appears that [the director] came into the ... deal at the eleventh hour and after the checks had been done. The checks were not re-done and anyway [the director] was apparently below the mandatory threshold for such checks (he was not classed as a "major beneficiary" and as such was effectively "off the radar").

CDC understand that [the director] has now resigned from the board of [the portfolio company] (which CDC were pressing for) and that he has also disappeared.

Although there is no evidence and we may never know for sure, the possibility exists and cannot be ruled out, that one or more of the [portfolio companies] may have been used by [the director] as a vehicle for moving [the corrupt politician's] money.

CDC is discussing next steps with [the fund manager]. They understand that [the fund manager] is looking to exit from the ... investment in tranches by the end of the year...

Comment

On the face of it, this is not good news as it appears to confirm some of the allegations that were originally brought to DFID's attention. On the other hand, it is not that surprising either.

This could appear (and may well be viewed as such by some) to bring these allegations one step nearer to CDC and therefore to DFID in terms of reputational risk. But this is not necessarily the case or that the reputational risk is any greater than it was previously.

The due diligence carried out by CDC is at the level of the fund and the Fund Manager. Thereafter, CDC is reliant on the Fund Manager to perform due diligence on individual investments. What this latest information tells us is that, with the benefit of hindsight, the integrity checks commissioned by the Fund Manager should probably have been revisited after [the director] came into the deal.

This case is also an illustration of the sort of risks attached to the intermediated business model and of doing business in challenging markets like Nigeria. DFID, as CDC's owner,

needs to be honest about these risks and acknowledge the existence of them, while ensuring that CDC and its Fund Managers operates a zero tolerance policy and carries out all appropriate background checks.

This new information may bring further calls for an independent review of CDC's own due diligence. If there was any indication that CDC's procedures were flawed or had not been followed or that CDC was somehow implicated, then there might be merit to such a suggestion. But, and given the circumstances outlined above, it is not clear how an independent review of CDC due diligence would serve any useful purpose as that is not where the problem appears to lay

We understand from CDC that the Fund Manager has acknowledged that, with hindsight, they should have run checks on [the director] and that they are working to upgrade their anti-money laundering and integrity checking procedures as a result of this ...

At this stage, we propose (i) to write to CDC requesting them to consider what more they might be able to do with Fund Managers as a result of this case to further tighten Fund Manager due diligence in the area of background checks etc ...'

44. In the exchange of emails that followed the above, the Global Funds and Development Finance Institutions Directorate, among other things, confirmed to the Counter Fraud Unit that CDC had no rights to investigate a fund manager other than where those rights were set out in the contract CDC had with that fund manager. The Global Funds and Development

Finance Institutions Directorate said that more recent contracts between CDC and their fund managers did contain a side letter under which a fund manager would allow CDC limited rights to its accounts and other records. However, the contract with the fund manager involved here, predated that practice. The Global Funds and Development Finance Institutions Directorate also confirmed that CDC could not force any fund manager to exit from investments already made.

45. On 29 June 2010 a group of non-governmental organisations made a complaint to DFID along much the same lines as that already made by Mr F. When seeking the Secretary of State's approval for a holding reply, the Global Funds and Development Finance Institutions Directorate provided some background to the issues. In particular, DFID said that it had met with CDC and was happy with their due diligence procedures. The Global Funds and Development Finance Institutions Directorate said it saw no reason to undertake any independent assessment of CDC's due diligence. It acknowledged, however, that the fund manager had '*in retrospect*' placed too much reliance on their local networks in respect of one co-investor now linked to the corrupt politician. However, the Global Funds and Development Finance Institutions Directorate said CDC was satisfied that the fund manager had carried out all the necessary due diligence checks. The Global Funds and Development Finance Institutions Directorate also provided detailed information about CDC's due diligence. In particular they said:

- CDC was regulated by the Financial Services Authority and was required to comply with the UK's 'anti-money laundering' and 'know your customer'

(AML/KYC) laws. Following changes to the UK regulations in 2007, CDC updated their relevant policy with the assistance of outside legal counsel.

- CDC carry out AML/KYC checks on all fund managers, fund sponsors and significant co-investors before they invested in a fund manager.
- From January 2009, fund managers were required to act in accordance with the Investment Code.
- CDC has limited rights to access AML/KYC checks conducted by the fund managers, but they attempt to circumvent that by adding a side letter to all new contracts. The side letter required fund managers to confirm to CDC that they had not been in breach of, and they were complying with, AML/KYC legislation in respect of each investor and investment, every time CDC drew funds.
- CDC does not have the right to carry out AML/KYC checks on portfolio companies.
- As part of a focus on corporate governance in 2010 CDC commissioned an independent review of their compliance with Financial Service Authority regulations.
- CDC was continually evolving their practice and in new contracts sought to include a clause that gave them the right to monitor fund manager's compliance with the Investment Code. CDC also sought to negotiate a provision where it can cease to make capital contributions for future investments without penalty where the fund manager repeatedly fails to meet, apply, or enforce (with portfolio companies) the Investment Code.

46. Mr F sent an email to CDC on 1 July 2010, which referred to a meeting he had had with them. The email said that he was keen to work with CDC to improve corporate governance. He said that he was pleased to note that the director had resigned from the board of one of the portfolio companies. CDC's reply to that email acknowledged Mr F's comments and said that the fund manager had also reduced the value of their investment in that company. The email also said:

'The private sector in Africa is still quite immature, and its interface with PEPs [politically exposed persons] is a complex issue. We do caution, but we do not seek to prohibit our fund managers from making investments that have an interface with a PEP, and emphasise the importance of enhanced due diligence in such cases.'

47. A submission to DFID ministers from the Global Funds and Development Finance Institutions Directorate dated 13 December 2010 recommended that the Secretary of State send a report that CDC and the fund managers had written in response to the allegations by the non-governmental organisations under cover of a letter that endorsed that response. In that submission, the Global Funds and Development Finance Institutions Directorate said that the fund manager had conducted an independent review of their due diligence of the relevant portfolio companies, which showed that there was no public or verifiable information available at the time of the investment which would have raised a 'red flag'. In respect of the director the Global Funds and Development Finance Institutions Directorate said the fund manager's due diligence indicated that he raised funds for his investment through legal means. The submission concluded that there was no

evidence that CDC or the fund manager, *'failed to comply with the relevant due diligence rules and procedures as they existed at the time the investments were made.'*

48. A document titled 'A note on CDC's due diligence procedures', also dated 13 December 2010 and written by a member of DFID's anti-corruption team raised concerns about how pro-actively, and how adequately, CDC assured itself of fund manager's performance in respect of the Investment Code and AML/KYC legislation. It is not clear for what or for who this document was written.
49. DFID wrote to Mr F and the non-governmental organisations on 8 January 2011, enclosing the report compiled by CDC into the allegations raised. It included a response to the allegations from the fund manager. The most notable and relevant parts of the report are listed below:
- In September 2009, CDC met with the fund manager's local Nigerian legal advisers, who had themselves met with senior officials from the Economic and Financial Crimes Commission and searched local court records. The legal advisers had not found any charges filed against any of the parties named in Mr F's or the non-governmental organisations' allegations.
 - CDC had been working with the fund manager to improve its ESG management and reporting. The fund manager had appointed outside consultants to create a firm-wide training programme.
 - CDC 'understands' the fund manager had commissioned an independent review of their due diligence procedures, which found that there was

no publicly verifiable information at the time of the investment that would have raised significant concerns.

- In addition to the actions CDC were taking as described in paragraph 41 to implement the Investment Code and ensure ESG matters were taken into full consideration, CDC said that:
 - Its current investment agreements sought the right to visit the fund manager and its portfolio companies, as well as have reasonable access to their books and records in order to monitor compliance with the Investment Code and AML/KYC.
 - Its investment agreements allowed it the right to be excused from the fund manager's investment in a portfolio company if the portfolio company fails to sign an undertaking that they will comply with the Investment Code.
 - It conducted evaluations on each fund manager at the mid-point of a fund and on the funds' closing. CDC said that the evaluations were performed by CDC staff or external consultants. Evaluations examine all aspects of a fund's performance including ESG. Evaluations included site visits to portfolio companies. (DFID told us the evaluations were reported on a limited basis in the annual review.)
 - CDC might conduct site visits as part of evaluations or in response to heightened risk, such as a high ESG risk rating (fund managers were required, as part of the

Investment Code to risk rate their portfolio companies and report this to CDC). Site visits allowed for direct assessment of the compliance procedures in place.

- The ESG toolkit (which CDC introduced in 2007, was made available to all fund managers, and gave advice on ESG issues and due diligence) included advice on the need to check late entrants into funds, and the special requirements regarding politically exposed persons, and the need for enhanced due diligence in those cases.
- The fund manager said that the affidavit on which the allegations were based was based on information that may only have been available to the Economic and Financial Crimes Commission as a government agency and was not in the public domain at the time of the investment. They said that while the affidavit had been lodged with a court, the only way of knowing would have been by searching the records of that particular court. The fund manager said they became aware of the allegations in 2008 and at that time were assured by lawyers that the allegations contained in the affidavit in respect of their investments had not been pursued by the Nigerian authorities. The fund manager also said they interviewed the directors mentioned in the allegations and actively sought information to substantiate whether there had been any money laundering or illegal payments. They said they did not find any. Nevertheless, the fund manager said they had taken comprehensive actions in response to the allegations including:

- demanding the director resign from the board of the portfolio company;
- negotiating the right to appoint principal officers to finance and technical positions in the portfolio company;
- negotiating the right to approve cash expenditures and cash flows to ensure full transparency;
- securing the amendment of the Shareholders Agreement for the portfolio company to facilitate the removal of board members who were shown not to be of good standing.

50. A letter dated 5 October 2011, was sent by DFID to Caroline Lucas MP in response to a complaint Mr F had made about the handling of his allegations and DFID's investigation of them. Part of that complaint was that the affidavit had been in the public domain and so there was evidence that the fund manager had not conducted appropriate due diligence. In that letter, the then Secretary of State said that the fund manager had given CDC more information about the affidavit. The Secretary of State said that the fund manager said:

'after the existence of the [affidavit] was brought to our attention [we] underwent a due diligence check to see if we should have reasonably known about the affidavit prior to our [investment]. [Our] local counsel confirmed [we] could not have known this based on the then publicly available information.'

51. The Counter Fraud Unit produced a case closure document dated 2 June 2011. The document was completed by

the lead fraud investigator and set out the background and findings of the investigation, as well as making a recommendation to close the case. The document noted that the questions in the memorandum from the non-governmental organisations related largely to information contained in the affidavit that Mr F referred to in his allegations. It explained that the fund manager had said that their due diligence did not substantiate the allegation in the affidavit regarding where the director secured his funds for his investment in one of the portfolio companies. It said the fund manager said the bank that was implicated in the allegations was only implicated insofar as the director had accounts and loans with that bank. The document did note that the director had more recently been named as a co-conspirator in money laundering charges against the corrupt politician's associates.

52. In the conclusion of the case closure document the Counter Fraud Unit said that this was a complex case but that the response from CDC and the fund manager was as substantive as could 'reasonably be expected' although they said an independent review of CDC's due diligence would have strengthened the transparency of the process. It also concluded that whether money had been laundered through the portfolio companies was a question beyond the scope of the document, but that the possibility could not be ruled out. It also said that it was clear there were some linkages between some of the portfolio companies and the people Mr F had alleged were associated with the corrupt politician. It said a judgment on what those linkages were was ultimately for a court to make. In closing, the document noted that CDC was continuing to strengthen their

AML/KYC procedures and to work with fund managers to improve theirs. It noted that CDC was also making their contracts more flexible to respond to issues such as this once an investment had been made. The Counter Fraud Unit recommended that the case be closed but said, *'while we are not closing the door on this matter, we are drawing a line under it in the absence of any new information'*.

DFID's disclosure of Mr F's name to CDC

53. When, on 3 February 2009, Mr F sent an email to DFID containing his allegations, he did so under an alias. The next day, the Global Funds and Development Finance Institutions Directorate asked Mr F to provide more information. Mr F did so in the form of a report. On 6 February 2009, the Global Funds and Development Finance Institutions Directorate forwarded Mr F's report to CDC. In its covering email DFID did not say that CDC should keep Mr F's identity confidential (although mention of his alias had been redacted) and said, *'These are serious allegations that need to be looked at by the appropriate Committee of the Board'*. CDC subsequently forwarded that report to the fund manager on 16 February 2009.
54. Also on 16 February 2009, Transparency International contacted DFID after Mr F sent them the same allegations. Transparency International did not name Mr F by his own name or by his alias. That email was sent to the Counter Fraud Unit.
55. The Global Funds and Development Finance Institutions Directorate received an email dated 12 February 2009 from Norman Lamb MP, which forwarded an email Mr F had sent him about the same allegations. Mr F had written to Norman Lamb MP in his own name. GFDD referred this to the Counter Fraud Unit on 19 February 2009.
56. On 25 February the Global Funds and Development Finance Institutions Directorate sent an internal email outlining the correspondence that DFID had received. In that email the Global Funds and Development Finance Institutions Directorate said, *'it turns out that the report was written by the same person [Mr F] who wrote to Norman Lamb recently'*.
57. On 5 October 2009, the fund manager sent an email to their development finance institution investors about Mr F and his allegations. The email referred to him contacting other regulatory authorities about his allegations. The email said that the fund manager had tried to engage with Mr F, but Mr F had refused to do so. The email said that the fund manager had therefore engaged a private investigation firm and an international counsel, to, *'pursue appropriate measures against him'*.
58. Mr F emailed CDC on 3 November 2009. While the majority of that email concerned his allegations, he also said, *'I can confirm that my details have been made available against my wishes with the attendant risks to my security and wellbeing ...'*. CDC replied on 19 November 2009 and said that Mr F had written to it on several occasions since 1 June 2009, in his own name. CDC also said that it was aware Mr F had also contacted MPs and other investors in his own name. CDC further said that it was not aware of any correspondence external to CDC and DFID in which Mr F's name had been mentioned prior to 8 October 2009.
59. The non-governmental organisations' complaint of June 2010 comments briefly

on the issue of Mr F's identity being released. It says:

'[Mr F] received an unsolicited email from [the fund manager] on 28 August 2009, seeking a meeting. [Mr F] did not respond, because he had requested anonymity and confidentiality when his report was initially sent to DFID and CDC. He subsequently became aware in October 2009 that Nigerian lawyers acting on behalf of [the fund manager] and [the portfolio company] had been making substantial efforts to reach him through friends and family. After unsolicited text messages were sent to his spouse, [Mr F] agreed to meet with the [fund manager] in London on 27 October 2009.'

60. It appears that the first formal complaint Mr F made to DFID about the disclosure of his identity was in a letter from his MP dated 7 February 2011. In response, it appears that DFID contacted CDC to ask them whether they provided Mr F's details to the fund manager. CDC's response was that it did not 'believe' that they had provided the fund manager with Mr F's contact details at any time prior to his meeting with them in October 2009. CDC said that it did forward Mr F's report to the fund manager in early 2009 to enable them to respond to the allegations contained in it. CDC said that the fund manager had told it that they had received Mr F's email address from a Danish government investment fund on 28 August 2009.
61. On 8 March 2011, DFID wrote to Mr F's MP. Their letter said, 'you requested me to ask CDC to confirm or deny whether they

disclosed your constituent's email address to the fund manager ...' The letter said that CDC had confirmed with the fund manager that it was not CDC who told the fund manager Mr F's contact details. The letter passed on the information from CDC that it appeared that it was the Danish government investment fund who had given the fund manager Mr F's email address on 28 August 2009. DFID again responded along the same lines to the MP on 31 July 2011 and 5 October 2011. In the 5 October 2011 letter, DFID said that that CDC provided the report to the fund manager on 16 February 2009 and that the fund manager had subsequently sought the identity of the author, who they thought would be helpful in determining whether the allegations were true.

62. Mr F received a letter from the EIB on 17 October 2011. The letter appears to respond to a complaint Mr F had made to them about the disclosure of his identity to the fund manager. The letter said that the EIB had contacted the fund manager who had told them that they had obtained Mr F's name from the report sent to them by CDC, because it was embedded in it. The EIB said that the fund manager had then used an internet search to find Mr F's contact details. Mr F wrote to CDC on 21 November 2011 with the information he had received from EIB. In that letter, Mr F also said that another government investment fund had, with agreement of other DFIs, passed on his correspondence and email address to the fund manager on 27 August 2009. Mr F said that the fund had said that it was a decision of institutional investors in the fund manager to do that.⁹ He also said that his wife was texted by

⁹ Note: Mr F has provided us with an email to support his comments. However, DFID has told us that they are aware this is disputed by other institutional investors. We are not making any findings as to the veracity of the email, or Mr F's claims.

a lawyer for the fund manager and the portfolio company on 15 October 2009. He said that the lawyer was a known associate of the politician involved in his allegations. He told us that text said:

'Hi [name]. Trust u r doing ok. Can u meet wiv my clients – ECP – here in Ldn lunchtime 2moro (Thurs) or on Friday? Pls revert. Best regards.'

63. It wasn't until 17 January 2012, that DFID wrote to Mr F (on 19 January) and his MP (on 17 January) and emailed him (on 17 January) to say that DFID had inadvertently disclosed his name to CDC when it sent CDC his report (paragraph 53). They said that this was done by accidentally leaving his name embedded in the document. DFID apologised *'unreservedly'* and ordered an internal review to ensure that did not happen again.

The findings of the internal review

64. The internal review found that the Global Funds and Development Finance Institutions Directorate did not deal with Mr F's correspondence in accordance with DFID's anti-corruption policy, which required all such correspondence to be sent to the Counter Fraud Unit. It found that unbeknown to DFID, Mr F's name was embedded in the report that they forwarded to CDC and they therefore disclosed his identity. They said it was clear DFID was responsible for the disclosure and it happened because the allegations were not passed to the Counter Fraud Unit in the first instance. DFID said at the point of disclosure, DFID did not know that Mr F was the same person as his alias and that they had removed all references to his alias

from the correspondence forwarded to CDC. The review found that neither DFID nor CDC disclosed Mr F's contact details.

65. The internal review also found that CDC had learnt that Mr F's identity had been disclosed through the forwarding of the report, but did not inform GFDD of that until October 2011,¹⁰ and then the Global Funds and Development Finance Institutions Directorate did not inform Mr F or Ministers of that until January 2012. The review could find no good explanations for those delays.
66. The internal review also concluded that in assessing Mr F's allegations Global Funds and Development Finance Institutions Directorate did not consider whether DFID's whistle blowing procedures were relevant when they should have done. A further review of the whistle blowing procedures found that they were not well known or understood across DFID. It recognised that the Committee on Standards in Public Life recommended that effective whistle blowing procedures explained, among other things, when and how a concern may be safely raised by someone outside the organisation. The internal review concluded that DFID should consolidate the information available about whistle blowing into guidance for whistle blowers (defined as employees in accordance with the Public Interest Disclosure Act), guidance for line managers, and a statement for external sources (not employees), *'which should offer similar guarantees on confidentiality and treatment [to employees]'*. It said that latter document should be prominent on DFID's website and point all sources directly to the Counter Fraud Unit.

¹⁰ In his comments on this draft report, Mr F has provided information from CDC that says they told GFDD of this sooner than October 2011. We do not know when GFDD became aware of the allegations, but it is clear that Ministers were not told until January 2012.

67. DFID's website¹¹ does clearly tell people how to report fraud. However, that information is not accompanied by any guidance or document that says how DFID will protect external whistle blowers. Further, it does not appear that it has been shared with Mr F or his MP.

DFID's comments

68. DFID told us that they considered that Mr F's allegations had been investigated properly and thoroughly. They said that the National Audit Office and the Financial Services Authority agreed that DFID and CDC had acted quickly, appropriately and proportionately to the issues.
69. DFID explained about the National Audit Office's consideration of their actions. They explained that the National Audit Office considered what DFID had done in response to Mr F's allegations after receiving a complaint from Mr F. They explained that DFID, as a shareholder, has no role in the day to day operations of CDC and that the National Audit Office had found that DFID had conducted proportionate enquiries consistent with its responsibilities as a shareholder.
70. The information that DFID received from National Audit Office were emails dated 1 and 22 February 2010. The 1 February email said that the National Audit Office had received correspondence arising from a National Audit Office report about DFID's oversight of CDC.¹² It said they had received a complaint that allegations had been made to DFID (Note: these were allegations from Mr F) which had not been responded to substantively. In that email National Audit Office asked DFID for an explanation of their consideration of the

allegations and more broad questions about their chain of reporting and oversight of CDC. On 22 February, NAO shared the response they sent to Mr F which said that they were satisfied that DFID conducted appropriate enquiries into the allegations and had taken Mr F's points into account when developing its oversight of CDC and CDC's arrangements for due diligence and monitoring of fund managers.

71. DFID told us that the Financial Services Authority visited CDC in May 2012 to look into how CDC investigated Mr F's allegations and its due diligence procedures. They said the Financial Services Authority was satisfied with what CDC had done. However, when we asked them for more information about the Financial Services Authority review, DFID told us that they had had no direct contact with or from the Financial Services Authority.
72. We asked DFID about the documents they held regarding CDC's internal review of their due diligence and their mid-point evaluation of the fund manager (paragraph 36). They told us that the internal review reported to CDC's board and the outcome of the review was, *'conveyed to DFID via separate meetings (not minuted) with CDC's Chief of Operations and with the CDC Chairman and Audit Committee Chair'*. DFID said that the outcome of the review was that the due diligence of the fund manager was correct in accordance with the processes at the time. DFID said that they did not have a copy of the mid-point evaluation.
73. DFID accepted that they revealed Mr F's name to CDC, but that at no point did they disclose anything that linked Mr F's

¹¹ www.gov.uk/government/organisations/department-for-international-development/about#reporting-fraud.

¹² www.nao.org.uk/wp-content/uploads/2008/12/080918.pdf.

alias to his real identity. DFID noted that Mr F contacted a large number of organisations in 2009 without making any effort to conceal his identity. DFID said they understood that it was one of those organisations that provided the fund manager with Mr F's contact details. DFID said that once they became aware that they had disclosed Mr F's identity they apologised and undertook the review (the results of which are described above).

Mr F's comments

74. Mr F told us he had come across the allegations as a result of his interest and business which was to produce and distribute videos. In 2007, it was the run up to the Nigerian presidential elections and, at that time, the Economic and Financial Crimes Commission were *'going after'* corrupt politicians and officials. Mr F decided to do a documentary about it and it was then that Mr F saw the affidavit from which he started to investigate the matter. When he realised that DFI funds were involved, he thought the relevant people should be made aware.
75. Mr F said that as a result of making his allegations he expected DFID to carry out an investigation and sanction the fund manager for wrongdoing. He assumed that they would also come back to him to clarify things. While he understood that it was not necessarily for DFID to prove or disprove the allegations, he thought they should have referred the matter to other agencies in order for them to do that. Mr F said that, in fact, he had to do that.
76. Mr F felt that even while DFID may not be able to prove the allegations true, there were issues about the quality of the fund manager's due diligence that DFID should have been concerned with. There was no evidence that DFID had attempted to do anything about that. He thought DFID did not critically consider or use any independent information in order to assess what they were being told. For example, the fund manager said that they had relied on a government minister's assurances that the investment in one of the portfolio companies was a good one. However, that was against the Nigerian financial crime commission's rules. The fund manager had even said that the affidavit was not in the public domain, which it clearly was. He said that he did not think the fund manager could be trusted to provide an honest response, particularly because they arranged covert surveillance on him. He said that all this suggests that there might be an issue with the fund manager's due diligence. Mr F also thought that the report should not have been passed to CDC to look into. He felt that this was not in accordance with DFID's anti-corruption policy and may have allowed CDC to cover up what it had done.
77. Mr F said that it was not right that DFID continued to deny the allegations. In doing so they effectively sanctioned the attitude towards him that he needed to be *'sorted out'*. He said that different links have been and continue to be proved. For example, the director has been forced to resign from the board of one of the portfolio companies. He was also named as a co-conspirator in the UK trial of the politician.
78. Mr F acknowledged that he had contact with a number of other agencies about the fund manager. He said that OPIC (the US government's development institution) and the EIB had accepted the fund manager's assurances. However, he thought that OLAF (the European anti-fraud agency) were still investigating, and the Metropolitan Police were still investigating

some of the portfolio companies as potentially companies from which they could recover laundered money linked to the politician in Mr F's allegations.

79. Mr F said he was most concerned by the injustice to him as a result of the leaking of his name. He said that he had to have an alarm fitted by the police in his house. He said that he has to live with the fear for the rest of his life. He said he returned to Nigeria this year and people were very concerned for him. He said that at the time his name was leaked, the politician's lawyer came to the UK to talk to him and made specific and implied threats. Mr F believed that the politician had been convicted, and that his report was used as part of the investigation that secured that conviction. He believed that meant the threat to him was as great as ever. This is particularly because his report explained the connection with one of the portfolio companies, which he thought was one of politician's biggest assets and believed it to be one that the police are now trying to seize.
80. Mr F said that when he made the allegations he was visiting family for Christmas in the UK. He said that he had been living and working in Nigeria at the time and fully intended to carry on doing so. He said that he was unable to return now. He said that he would find it difficult to do business now that he had been labelled a whistle blower. He said he can now only go to Nigeria discreetly. He explained that he personally knew many of the people involved in the allegations and involved in the companies in his report. He said that there were extensive connections between him, his friends, and his family and people who worked for the companies he had spoken out about. Mr F said that his wife is convinced that an attempt will be made on his life. He said that his children check behind them in the car, because they are worried that someone will be following them.
81. With regard to the leaking of his name, Mr F explained that he had started being harassed because, he believed, the fund manager had called a meeting with one of the portfolio companies and asked members of staff to try to contact him. That was when his friends and family started receiving text messages from people trying to contact him. These were not necessarily threatening, but they were constant. He said that he had become aware of these contacts in May or June 2009.
82. Mr F said once his identity was revealed he decided not to '*lie low*'. He said he had taken the opposite approach and decided to continue to make his case to try to ensure that the politician was brought to justice. He said he wanted to bring the matter to a conclusion. He said that the best thing to do in a threatening situation like that was to make it more public who you were and what you were doing. He told us that he therefore started corresponding with organisations in his own name, using his own email address in June 2009. We asked Mr F why he had not complained about his name being leaked before November 2009. He explained that he delayed complaining because he suspected his name had been deliberately leaked by DFID and CDC. He said he thought that if he complained the pressure being put on him by the fund manager and portfolio companies would increase because DFID and CDC would tell the fund manager and the portfolio companies that he was aware they were trying to contact him. He explained their pressure would

increase because they would know they were being successful.

83. Mr F has provided details of people who would be able to say they had been contacted by staff of the portfolio company and the fund manager who were trying to get in touch with Mr F prior to June 2009, as well as later. In particular Mr F described contact one of his friends had from the lawyer who later contacted his wife. That lawyer appears to have been acting on behalf of the fund manager, but Mr F said he was also an associate of the corrupt politician. However, Mr F acknowledged that when other people were contacted they were not all told the contact was on behalf of the politician, or that they were employees of the portfolio company or the fund manager. He said that many of the contacts were made under other pretexts. Mr F said that after his wife received a text message from a lawyer for the portfolio company, he agreed to meet with the fund manager in order to try to relieve some of the pressure that they were putting on him and his friends and family.

Findings

Maladministration

DFID's investigation of Mr F's allegations and their oversight of CDC

84. The first part of Mr F's complaint is about whether DFID looked into his allegations in a reasonable way. Mr F says that DFID did not conduct an adequate or thorough investigation. He expected more to have been done.
85. It was not for DFID to prove or disprove Mr F's allegations – that was for the criminal justice system, and Mr F understands that. However, DFID should have responded to the allegations in a way that was appropriate to their position of 100% shareholder in CDC and given that CDC was set up to meet DFID's development goals. DFID should have responded to the allegations in a way that was appropriate to the fact that the allegations concerned a potential misuse of public funds (regardless of the fact that those funds no longer came directly from the public purse). DFID's role was to ensure that CDC and the funds they invested in had used appropriate procedures to ensure, as far as possible, that portfolio companies were not corrupt or assisting corruption.
86. However, there would have been limitations to any investigation by DFID. DFID is, and was, only a shareholder in CDC. They had some legal rights of access to CDC's information, but they would have been largely dependent on CDC's agreement about what to release. Nevertheless, as 100% shareholder, DFID could clearly have had significant influence over CDC and the actions they took in response to Mr F's allegations if they wanted to. Despite the limitation on

their access to information, DFID should and could have assured themselves that everything that needed to be done had been done to ensure that Mr F's allegations had been adequately considered.

87. We should note that while DFID may have had influence with CDC, they had no relationship or influence with the fund manager; they do not with any of CDC's fund managers. The fund manager in this case is a private company registered in the US with no contractual ties to DFID. Mr F's hope that DFID would 'sanction' the fund manager was unrealistic – DFID would never be able to do that. Mr F would have had to approach the appropriate financial regulatory body, which would have been in the US, if that was the outcome he sought.

88. As can be seen in paragraphs 11 and 25, the fund of funds model also meant CDC had limited control and influence over some of their fund managers. In this case, CDC invested in the fund manager both prior to the Investment Code being introduced and before they made amendments to the contracts they made with fund managers to allow them more oversight of ESG matters. The fund manager was only required to provide CDC with assurances that they and their portfolio companies were acting in accordance with the, relatively limited, Business Principles. However, this still meant that the fund manager was expected to ensure that they and their portfolio companies acted within the relevant laws and procedures of the time (paragraph 19).

89. In addition to the limited oversight of fund managers by both DFID and CDC, the limited contractual relationships DFID and CDC had with the fund manager prevented them from having any significant input into the investment decisions made by the fund manager (paragraph 12).

90. The cause of the lack of powers, rights and influence that both DFID and CDC had in this situation was a result of the way in which DFID:

- agreed their relationship with CDC as set out in the Memorandum of Understanding (paragraph 14); and
- the fund of funds model that was adopted; and
- the contractual relationship CDC had with the fund manager.

The specific relationship DFID chose to have with CDC was ultimately a matter for DFID and CDC, as were the decisions to use a fund of funds model and the type of contracts CDC relied on. The disadvantages of the relationships and the model are clear in this case, because they limit the powers of both DFID and CDC to investigate Mr F's allegations. It is also relevant because Mr F may have hoped DFID and CDC to have greater control and influence over the fund manager's investment decisions (that is, which portfolio companies received investment) than they had. While Mr F may have felt that a different model may have been preferable, we have seen nothing that suggests that we need to investigate any potential maladministration by DFID in respect of their choice of relationship and investment model. Mr F has not complained about any maladministration in that respect either. As such, in making our findings we have to accept that there were limitations on the actions DFID could take in response to Mr F's allegations and also a limit on the actions they could expect CDC to take with the fund manager.

91. It is probably also important to note, as highlighted in the Global Funds and Development Finance Institutions Directorate's email of 4 June 2010 (paragraph 43), that investing in emerging

markets will necessarily be riskier than investments made in markets that are more established. While DFID should have ensured that those risks were mitigated as far as possible, not all risks can be foreseen. In that case, it is DFID's response to information that demonstrates the processes are not robust enough that is the matter that needs to be considered. That is also the matter we are considering here.

92. Mr F's allegations were solely about the fund manager. He alleged that either they were deliberately investing in portfolio companies that might have been laundering money, or that the fund manager's due diligence processes were not sufficient to identify that. He alleged that the information he had found was publicly available and publicly available at the time the fund manager invested in the respective portfolio companies. He alleged the fund manager either should have, or did, know about it. Mr F's allegations relied significantly on the affidavit issued by the Economic and Financial Crimes Commission (paragraph 27). His allegations only implicated CDC insofar as they should have adequate processes for the selection and oversight of fund managers. That is, they should not invest in fund managers who might be involved in investing in portfolio companies involved in allegations of corruption.
93. Initially, (excepting the actions of the Global Funds and Development Finance Institutions Directorate in forwarding Mr F's report to CDC, which we will address below) DFID appear to have taken reasonable and appropriate steps to consider Mr F's allegations. The allegations were referred to the Counter Fraud Unit, which was the appropriate department to deal with them; DFID contacted, and met with, the police and CDC (paragraphs 30

and 31); and made a submission to ministers to appraise them of the allegations (paragraph 29), which escalated the matter to an appropriate level of seniority. As a result of the contacts DFID had with the police and CDC they had information that suggested both that the substance of the allegations might have some truth to them, at least in respect of the associations between the corrupt politician and the people Mr F named in his allegations, and that CDC thought that the due diligence conducted by the fund manager in 2006/2007 (paragraph 30), which they said they had quality assured, did not substantiate the allegations regarding one of the portfolio companies. Mr F says (paragraph 76) that by telling CDC about the allegations, and sending them their report, DFID acted outside their anti-corruption policy. However, while the Global Funds and Development Finance Institutions Directorate did not pass the allegations straight to the Counter Fraud Unit, which they should have done (which we will address below), the allegations were about fraud in the portfolio companies. The allegations against CDC concerned the quality of their due diligence, not that CDC was fraudulent. DFID had no reason to suspect fraud by a DFID employee or anyone DFID themselves would be able to sanction. In addition, the police were already involved with respect to any potential criminal activity. Therefore, it seems reasonable that the allegations were passed to CDC in full.

94. Given that there was some uncertainty at this time about the due diligence (paragraphs 32 and 33) DFID subsequently made an entirely reasonable assessment of the steps that it had to take and the lines of investigation that needed to be followed to determine if they were assured that CDC's and the fund manager's due

diligence were sufficient. DFID suggested lines of investigation into CDC's choice of the fund manager (and the due diligence carried out at that point), the fund manager's due diligence, and CDC's oversight of that. These very reasonable lines of enquiry were broadly repeated in the note dated 5 November 2009. At the meeting with CDC on 12 June 2009 (paragraph 34) these were indeed the lines of enquiry DFID appear to have pursued, although they did discover at that point that their access to information from the fund manager might be limited (as was CDC's access).

95. Subsequent to that meeting, DFID's involvement appears to have become less proactive both in respect of its investigation of CDC's due diligence and in respect of the investigation into the fund manager's due diligence – two of the three considerations, above.
96. In respect of CDC's due diligence, DFID accepted CDC's decision not to provide DFID with their due diligence of the fund manager and to conduct an internal review instead (paragraph 35). DFID may not have had a legal right to more primary information about CDC's due diligence, but DFID have not provided any evidence to show that they explored whether there was any legal restriction on DFID or an external consultant having it, or part of it. The problems with not pursuing a more independent consideration of the due diligence are neatly set out in paragraph 12 of the Counter Fraud Unit's note of 5 November 2009 (paragraph 38). This also set out the questions DFID needed to answer.
97. However, in the context of the limited rights to information that DFID had, it does seem that the Global Funds and Development Finance Institutions

Directorate gave reasonable consideration to the need for an independent review of CDC's due diligence of the fund manager. It appears that DFID decided that it was unnecessary because of the thoroughness of the internal review by CDC (paragraph 39), and because the allegations were primarily about wrongdoing by the fund manager at the stage of choosing investments (paragraph 41). CDC would have had no involvement in those decisions under the fund of funds model and the individual investment decisions would have been after CDC's investment in the fund (which therefore would not have affected the due diligence). The ultimate decision not to have an independent review was also taken by the Secretary of State, which was an appropriate level for the decision to be taken at (paragraph 45).

98. DFID was entitled to decide how to look into CDC's due diligence and it was within their gift to choose to allow CDC to conduct their own internal review. As above, DFID appear to have given the matter due consideration and there is actually nothing to suggest that CDC's due diligence was lacking (because the allegations remain unproven) or that DFID's decision to rely on CDC's internal review was unreasonable. The Financial Services Authority's involvement and the police's confirmation that they were not investigating CDC support that. Therefore the decision appears reasonable.
99. However, there is a significant lack of transparency around DFID's decision making in this regard. DFID has no records or summaries of CDC's internal review, what it looked at, or any records of their discussions about it or why DFID found it to be thorough. Similarly there is no mention of the outcome of the mid-point

review CDC assured them would happen, which would have given DFID reassurance about CDC's ongoing/future investment in the fund manager. DFID also has no records of their meetings with CDC. That provides very scant reassurance to anyone outside of DFID that CDC's internal review was thorough or satisfactory. Similarly, DFID's response to Mr F's allegations also did not explain in full **why** it was satisfied with what CDC had done and why they felt an independent review was not warranted (that is, for the reasons set out in paragraph 97).

100. With respect to the fund manager's due diligence, DFID's final response to Mr F relied on the fund manager's claim that they had sought assurances from a legal firm that there was no publicly verifiable information at the time of their investment in the relevant portfolio companies that substantiated the allegations (paragraphs 45 and 48). However, this largely seems to refer to whether the fund manager could have known about the affidavit and/or any criminal convictions and charges against the people in the allegations. Therefore, this was not necessarily assurance that the fund manager could not have known about the associations Mr F alleged (paragraph 47). However, in respect of the affidavit at least, DFID's acceptance of the fund manager's account is reasonable. Mr F relies on the affidavit being lodged in a court prior to the fund manager making the relevant investments, but the affidavit was lodged in October 2007 and the fund manager's investments in the portfolio companies that were subsequently of most interest (those involving the director and the bank – paragraphs 38 and 42), were made in March and June 2007, respectively. The fund manager could not possibly have known of the affidavit at that point.

The remainder of the fund manager's investments were made very shortly after the lodging of the affidavit. The fund manager said they could not necessarily be expected to search every court record in the country during due diligence, and that is a reasonable response. The fund manager would not have known to search for the affidavit so soon after it had been lodged. DFID had no rights to the fund manager's due diligence or other information. It therefore had to rely on what the fund manager told them. If DFID felt the responses were unreasonable then it may have been able to ask CDC to do more. However, for the reasons above, it was reasonable for DFID to accept the fund manager's account in this respect.

101. Nevertheless, there remains the possibility that the fund manager's due diligence was not good enough because of the admission that the director came late into the fund (paragraph 42) and information in DFID's files that repeatedly confirms the likely existence of associations as alleged by Mr F (paragraphs 31, 38 and 40) at the time the fund manager made the relevant investments. DFID could not possibly have found out whether due diligence done differently at the time could have uncovered any association, because it is not possible to determine what evidence would have been available at the time, even if it could be established the associations existed. Equally, any independent investigation of the due diligence would not achieve that. Nevertheless, DFID were unable to say the due diligence was adequate. That is not the same as saying that the due diligence was not done in accordance with the processes required at the time, which it might have been, it may just not have been good enough to uncover the associations. DFID's

inability to reach a definite conclusion was compounded by the fact that DFID was not able to check on CDC's quality assurance or consideration of the fund manager's due diligence and, likewise, CDC had limited ability to check compliance other than what was reported to it by the fund manager (paragraphs 12, 19, 20 and 21).

102. DFID should have explained this to Mr F. Instead they simply referred Mr F to the responses from CDC and the fund manager, which did not refer to the clear uncertainty over the due diligence that existed. While DFID were unable to reach definite conclusions about the due diligence, DFID should have explained what DFID, CDC, and the fund manager, were doing about the due diligence (if anything – this may have been an acceptable risk). In fact, DFID should have been able to explain how it assured itself, and how far it was assured, about the due diligence on the basis of the information they had. DFID may well have so assured itself. However, there is no explanation of that in the correspondence to Mr F and the non-governmental organisations. I am therefore not surprised that Mr F believes DFID simply took the word of the fund manager and CDC, without question.

103. In the event, DFID, CDC and the fund manager do appear to have taken steps that addressed this. In particular, attempts appear to have been made to exit the affected investments, and increase influence in the portfolio company (paragraphs 36, 41 and 47). They would not have done this if they did not concede that the allegations raised several questions (even if they could not prove the allegations to be true or false). CDC was also taking steps to strengthen their oversight of ESG matters and, by the time of DFID's response to Mr F, it required their fund managers' adherence with the

updated Investment Code (paragraphs 43, 47 and 50). In addition, DFID was also taking action in respect of the select committee's findings and their growing dissatisfaction with the fund of funds model to redesign the way CDC operated.

104. DFID's decision to rely on CDC's and the fund manager's responses about their due diligence was reasonable in the circumstances where DFID had limited scope to intervene or obtain information, and the sparse evidence that Mr F could provide that showed the fund manager should have been aware of the associations he was alleging (the affidavit). However, DFID failed to be open and transparent about exactly what it had found, what that meant, why it was assured by what CDC and the fund manager had done, and what DFID was doing in response to the select committee's recommendations about securing better governance over CDC.

105. There are no reasons to question the overall outcome of DFID's investigation. That is, there are no reasons to question DFID's decision not to pursue matters further than it, CDC, and the fund manager had already done. DFID appear to have weighed the evidence to arrive at a reasonable conclusion and took relevant considerations (such as the limitations on what they could do) into account when it took that decision. That was 'getting it right'. However, for the reasons in paragraphs 99 to 104, DFID also failed in a number of respects. It failed to communicate effectively; failed to give reasons for its decisions, or be open and transparent about those decisions; and failed to maintain reliable and useable records. That was not 'customer focused', 'open and accountable' or 'acting fairly and proportionately'. All that was maladministration.

DFID's disclosure of Mr F's name to CDC

106. There is no doubt that DFID forwarded the report Mr F wrote with his name embedded in the metadata. There is no doubt that this was a failure to protect his identity and ensure the confidentiality he sought. There is no doubt that staff did not follow DFID's anti-corruption policy. This has been admitted by DFID and has been the subject of an Information Commissioner's investigation. I see no reason to do anything other than agree that DFID's actions were a failure to 'get it right' and were maladministrative.
107. On discovering the error, DFID did initially take reasonable steps to put things right by having the internal review (paragraph 64). The review discovered the source of the mistake and made recommendations that would help to prevent an occurrence in future. The internal review found that Mr F's allegations should have initially been considered under DFID's whistle blowing policy, and that the policy was not well known across DFID. The review further recommended that a document for people external to DFID making allegations should be produced. I would have expected DFID to provide the external whistle blowers policy to Mr F, but it did not. Further, DFID did not explain to him what action it was taking in response to the failure of CDC and its own staff to tell him sooner that his name had been disclosed. The internal review was unable to determine why CDC and the Global Funds and Development Finance Institutions Directorate delayed in telling ministers that DFID had accidentally released Mr F's name to CDC, but that did not prevent DFID from trying to determine this, or put this right. DFID should have done that. DFID failed to provide a full response to Mr F's concerns and that was a failure to 'get it right'. That was also maladministration.

Injustice

DFID's investigation of Mr F's allegations and their oversight of CDC

108. Mr F has been caused outrage as a result of DFID not explaining in full the outcome of the investigations of his concerns. He has not received a thorough explanation of why DFID took the decisions it did and why it considers CDC's and the fund manager's actions to have been reasonable. DFID's maladministration has also led to him not having faith in the process or in DFID's oversight of CDC.

DFID's disclosure of Mr F's name to CDC

109. Mr F is clearly convinced that DFID's disclosure of his name led to a series of events including his being followed by a private investigator, harassed by texts and visits from people associated with the politician in his report, and his inability to return to Nigeria where he was living previously. Mr F said that as a result of DFID passing his report to CDC, CDC passed it to the fund manager, who found his name in the metadata, searched on the internet to find his email address, and then called a meeting at the portfolio company to ask them to contact him (paragraph 81). Mr F said that the staff at the portfolio company were associates of the politician and were known to him in Nigeria, and this is how he (through his friends and family) started to be harassed. He said that this harassment occurred before he contacted other DFIs and CDC with the same concerns in his own name (that is, before June 2009 – paragraph 83). He says that he only used his own name after he became aware that his friends and family were being harassed because there was no reason not to (paragraph 82). He said that other organisations only released his

correspondence (containing his personal email) after that.

110. In support of Mr F's account, we know that DFID forwarded the report to CDC on 6 February 2009. When it did so it did not ask for Mr F's identity to be kept secret, presumably because it thought it had redacted all of his personal information from the report. DFID advised CDC that the allegations should be looked at by the appropriate committee of the board. It does not appear that DFID had any expectation that CDC would forward the report to the fund manager. However, CDC did forward the report to the fund manager on 16 February 2009. Like DFID, CDC also failed to remove Mr F's name from the metadata.
111. There is also evidence to show that the fund manager told the EIB that they found Mr F's name in the properties of the report and then sought out his contact details. As such, there appears to be a link between DFID's release of the report to CDC, and the fund manager finding out Mr F's identity. As we will go on to explain, however, there is also evidence that the fund manager obtained Mr F's details independently of DFID. It is also not clear how much the fund manager had to do with the harassment Mr F experienced. Therefore, what is less easily ascertained is whether the injustice Mr F claims, which relates to the politician's threats preventing him from returning to Nigeria, can be linked to DFID.
112. Mr F has provided an account of his harassment which he says can be substantiated by his friends (paragraph 83).

We have no reason to doubt that. Other evidence we have is:

- a number of organisations had received Mr F's report in late 2008 and early 2009;
 - Mr F wrote to his MP in his own name as early as February 2009 (paragraph 29);
 - the fund manager told CDC they obtained Mr F's details from another organisation, which appears from Mr F's evidence to have probably happened in August 2009, but we do not know that for certain (paragraph 61);
 - the NGO's memorandum states that Mr F became aware of contacts to his friends and family after 28 August 2009;
 - Mr F's wife was not contacted by a representative of the fund manager until October 2009;
 - Mr F did not complain¹³ about the harassment until November 2009 (paragraph 58) and then only complained to CDC.
113. The evidence does not provide a coherent account of what happened. What the evidence we do have tells us is that in early 2009 there were a number of organisations who had relationships with the fund manager, who had Mr F's report. It tells us that there are at least two different explanations of how the fund manager obtained Mr F's information. It tells us that organisations other than DFID also released Mr F's correspondence and identity to the fund manager. We know that some organisations probably did that in August 2009, but we do not

¹³ Mr F has said he did not complain sooner because of his fear of what might happen (paragraph 82).

know if an organisation might have done so before then, or what they released. The evidence does not show that the fund manager attempted to contact Mr F through the portfolio companies and his friends and family, or what information the fund manager shared with the portfolio companies. Neither of the explanations as to how the fund manager came by Mr F's details say that it tried to contact him prior to him using his own name in correspondence. The evidence does not show that other organisations would not have released Mr F's correspondence to the fund manager if DFID had not.

114. There are clearly a number of uncertainties in this case about the chain of events that led to Mr F being harassed. Given the number of organisations and individuals involved, further investigation is highly unlikely to uncover what the truth of the matter is and would not be proportionate. This is particularly so in this case because obtaining more information would be very unlikely to lead to our concluding that DFID should remedy all of the injustice Mr F claims. That is because:

- if DFID had not made the mistake they did, it appears very likely that the fund manager would have obtained Mr F's details from another source, with exactly the same consequences for Mr F;
- we could never say DFID should be held wholly responsible for the actions of CDC, the fund manager and the portfolio companies over whom they had no control.

115. DFID's maladministration is a part of a whole series of events that all contributed to the final outcome that Mr F alleges. Those events cannot be completely untangled. What we can say is that DFID have contributed in a small way to the situation Mr F finds himself in and, in particular, their denial for over a year that they did anything wrong has compounded the stress Mr F felt. While we could never calculate exactly what impact DFID's role has had on Mr F, it is incumbent on them to provide a remedy proportionate to the amount they have contributed to the injustice Mr F has suffered.

Recommendations

116. Within six weeks of the issue of the final report, DFID should write to Mr F acknowledging the failings we have found here. In particular, DFID should:
- Acknowledge the shortcomings in its investigation of his allegations and the resulting explanation it gave him. DFID should ensure that it gives Mr F a full and frank explanation of its decision making that addresses the shortcomings identified in paragraphs 99 and 104.
 - DFID should consider whether there are any actions it should be taking to improve any future investigations and explain what those actions will be.
 - DFID should give Mr F the whistleblowing policy for external whistle blowers recommended by the internal review.
 - DFID should give Mr F an explanation of what it has done in respect of the internal reviewer's findings that CDC and the Global Funds and Development Finance Institutions Directorate failed to tell ministers that DFID had disclosed his name to try and find out how that happened and how it would prevent it happening again.
117. Within six weeks of the issue of the final report DFID should pay Mr F £2,000 in recognition of its part in the situation whereby Mr F is being harassed, and is unable to return to Nigeria. This amount is also in recognition of the distress DFID caused Mr F by not acknowledging that it revealed his name, despite CDC and its own staff being aware of that.

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ISBN 978-0-10-298802-4



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