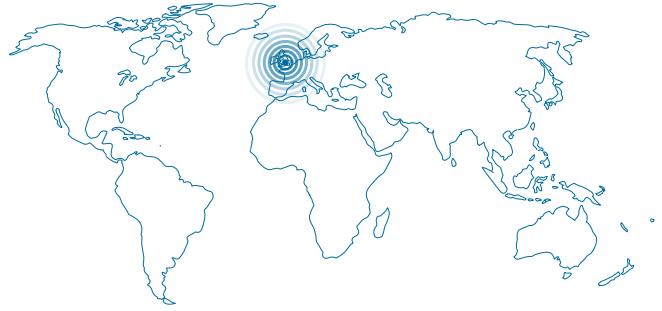


Holding UK companies
to account in the English
courts for harming people
in other countries



This guide was produced by:

CORE and **London Mining Network**.

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CORE is the UK civil society coalition on corporate accountability. We work to improve the regulatory framework to make companies more accountable for their impacts internationally and to improve access to remedy for people adversely affected by corporate activities.

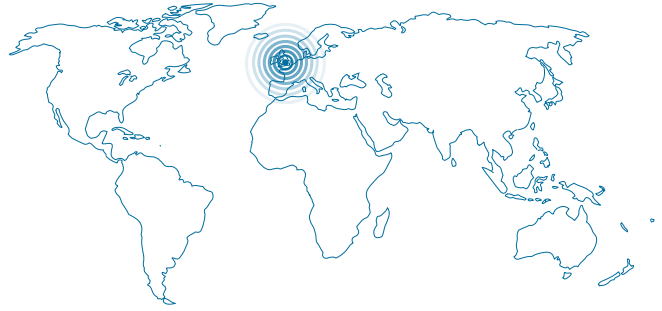
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CORE PUTTING PEOPLE
& THE PLANET AT THE
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London Mining Network is an alliance of human rights, development, environmental and solidarity groups working in support of communities around the world who are badly affected by mining by companies based in, or financed from, London.

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About this guide

The aim of this guide is to help communities, workers, and civil society organisations supporting them, to understand the process of using legal action in England to hold UK companies to account for harming people in other countries.¹

The guide will help you understand the basics of legal action in England against UK companies, but on its own, it does not provide enough information to help assess whether legal action could be an option in a particular situation. This is a complex process which a solicitor will be able to advise you about.

If after reading the guide, you are unsure about whether legal action in England could be an option, and/or you would like to explore what could be possible, you can contact one of the lawyers listed on the Business & Human Rights Resource Centre website here:

<https://business-humanrights.org/en/corporate-legal-accountability/directory-of-business-human-rights-lawyers/europe>

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¹The **LAW/COURTS** referred to throughout the guide are those of England (and Wales), and the position may be different in other parts of the UK. Similarly, the position may be different for UK companies based outside England/Wales.



Introduction

UK companies today operate all over the world, in every sector. While this can bring benefits for communities, sometimes corporate activity can have negative consequences for people and the environment. When this happens, the people who have been harmed often want to seek remedy and to see the company held to account. Legal action in England can be a means of achieving this.

Over the last 20 years, the English courts have established that in certain situations, a UK company operating in another country may owe duties to local communities. If these legal duties are breached, in some circumstances this may entitle members of those affected communities to take legal action against the UK company in the English courts. This is known as a “civil action/litigation” or “suing”. It will not result in anyone from the company being fined or sent to prison; rather, its purpose is usually mainly to secure financial compensation. It could also lead to the company changing its practices.

This guide gives an overview of information on the general situations in which legal action in England against UK companies could be possible, the potential outcomes and a summary of the process. Those contemplating litigation will probably already have considered other options as part of their strategy to achieve their goals. The final section provides links to sources of further information, including information which discusses in more detail some alternatives to litigation.



Q&A

HOW IS IT POSSIBLE TO TAKE LEGAL ACTION IN ENGLAND AGAINST A COMPANY FOR SOMETHING THAT'S HAPPENED IN ANOTHER COUNTRY?

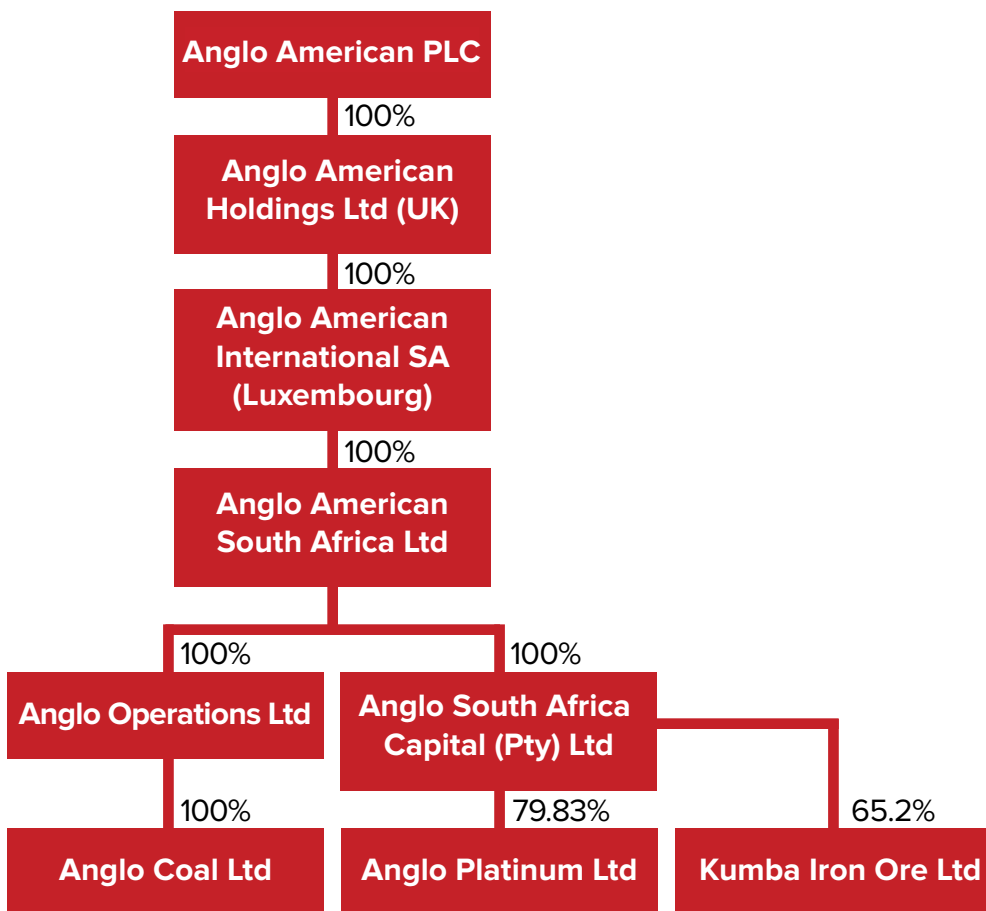
Sometimes, a UK company is connected to a company or companies in other countries. This could be because:

- » the UK company owns, or part-owns the foreign company (the foreign company is a subsidiary of the UK company);
- » the UK company has a contract with the foreign company.

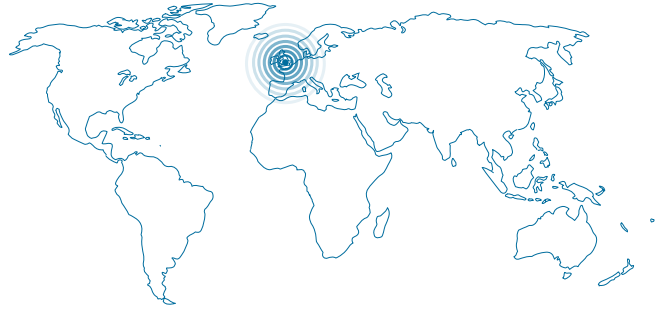
One of the first stages in the process of establishing whether legal action in England is an option is to work out if and how the local company is connected to a UK company, and to understand what role the UK company plays or used to play in the local company's operations. If you are unsure about if and how a UK company is involved, you will need to seek advice from a solicitor (see above).



The diagram below gives an example of ownership structure within a corporate group, showing how foreign subsidiaries of the mining company Anglo American PLC are connected to each other and to the UK companies in the group.²



² The diagram is given as an example of a corporate group structure at a certain point in time and should not be taken as a representation of the current structure of the named company.



IN WHAT SITUATIONS COULD LEGAL ACTION IN ENGLAND BE AN OPTION?

Legal action in England could be an option if people have been harmed due to something that a UK company did or something it should have done but failed to do, either on its own or through the actions of its subsidiary for which it might be liable.

In general, the harm might include:

- » death, including where people have died as the result of an accident or illness
- » torture
- » rape or sexual assault
- » injury
- » forced labour (including work without pay)
- » illness (for instance, due to pollution or working conditions)
- » damage to livelihoods (for instance, as the result of pollution, damage to land or illegal eviction)

These are complex issues that will be assessed depending on the particular situation. Other relevant factors may include the number of people affected and the severity of the impacts.

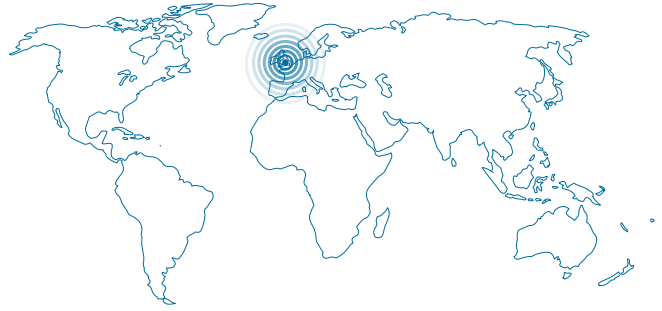


WHAT COULD HAPPEN AS A RESULT OF THE LEGAL ACTION?

The case would be “issued” (started in the courts) and go through a court process. This could culminate in a trial at which those affected normally need to give evidence. At the trial, a judge would decide whether the UK company is at fault and if so what it must do.

The vast majority of cases end in a settlement before the trial. This might happen before or during the court process, at any time up to the start of the trial. A settlement is an agreement between the two sides in the case, with the company agreeing to pay money to the people who were harmed. Sometimes, the company also agrees to take additional actions, such as cleaning up an area contaminated by pollution.

It is worth noting that as part of the settlement, there is usually no admission of liability by the company, meaning that it does not admit to any wrongdoing. It is not unusual for companies reaching settlements to impose conditions on the agreement which communities can find problematic. These conditions can include requirements to keep confidential some or all of the terms of the settlement and/or restrictions on the ability of the community or its lawyers to bring further cases on the issue or in the area.



WILL THE LEGAL ACTION COST MONEY?

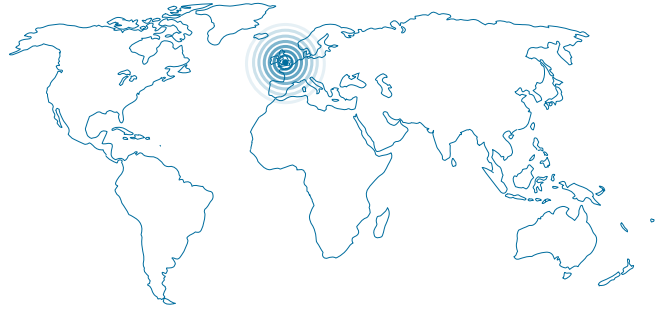
There are certain funding options available in the UK which take into account what is financially affordable for an individual, and these include “no win, no fee” agreements. If your costs are covered by a “no win, no fee” agreement, this means that if you don’t win you don’t pay, and if you win, your contribution is capped at a certain percentage of the damages you recover. The full range of possible funding options must be explored with lawyers on a case by case basis.

COULD SOMEONE FROM THE COMPANY BE FINED OR GO TO PRISON?

Not as a direct outcome of this process. Fines and prison sentences result from criminal cases usually brought in the country where the impacts have occurred. These are different and separate from suing the company for compensation in a “civil” case.

COULD THE COMPANY BE MADE TO CHANGE THE WAY IT OPERATES?

The main purpose of this kind of English legal action is to secure compensation for people who have been harmed. It is not possible to bring a legal action against a company with the specific purpose of making it change the way it operates, but as an outcome of the case, a company may end up doing so, or agree to change certain practices.



COULD THE PROCESS BE USED TO STOP A COMPANY FROM GOING AHEAD WITH A PROJECT (FOR EXAMPLE, A MINE) THAT HASN'T YET STARTED?

Bringing legal action in England does not necessarily put a stop to a proposed development project which involves a UK based company even where there is evidence the project is likely to negatively impact local people and/or the environment.

However, even if the project hasn't started, legal action may still be an option if someone has been harmed because of something that the UK company did or failed to do.

For instance, if it could be shown that someone protesting against a project was killed or seriously injured because of the action or inaction of the UK company, it may be possible for the victim(s) to sue the company concerned. If the case were successful, the company may have to compensate the victim(s). Such a case might also slow the development of the project and prompt investors to withdraw their money, but there is no guarantee that the process would lead the company to abandon the project completely.



WILL THE PEOPLE INVOLVED IN THE CASE HAVE TO GO TO THE COURT IN ENGLAND?

If the case goes to trial, then those involved will probably have to give evidence to an English Court. Evidence can principally be given in two ways - physically attending court in England to give evidence or being based in the country of residence and giving evidence through video link to the English Court. If translation of evidence is required, such services are usually arranged as part of the trial.

HOW LONG WILL IT TAKE?

It depends on how complicated the issues are, how many people are involved, how complicated the evidence gathering could be and the approach that the company takes to the process. If the case is settled early without the need for the case to be formally lodged in court (“issued”) or settled soon after the case is formally lodged in court, it might be over relatively quickly. But if court proceedings are required, and the matter is robustly defended by the Defendant company/companies (including if the case goes to full trial), it is unlikely to be resolved in less than 2-5 years.



HOW IS TAKING LEGAL ACTION IN ENGLAND DIFFERENT FROM TAKING THE COMPANY TO COURT IN THE COUNTRY WHERE PEOPLE WERE HARMED?

The ability to bring such claims in the country where people were harmed depends on a number of factors. For instance, finding a lawyer in the country in which people were harmed may be very difficult, not least because many countries do not have public funding for such cases, and therefore there is often no way for people of limited means to bring these complex and potentially costly actions. Sometimes local courts do not have experience of adjudicating complex, high value, politically sensitive cases, or the legal system and processes in the country where harm has occurred may not be sufficiently developed to deal with such cases. There may even be fears that the judicial process is compromised in some way because of the subject matter of the claims, such that the judges may, for example, be under pressure not to rule against a large foreign investor.

On the other hand, in some cases it is not ideal for the case to be brought so far away from the situation in which the harm occurred, where sometimes the judges may be more knowledgeable about, and sympathetic to the culture and context in which people are living.



THERE IS, OR HAS BEEN A COURT CASE IN THE COUNTRY WHERE PEOPLE WERE HARMED; COULD LEGAL ACTION IN ENGLAND STILL BE POSSIBLE?

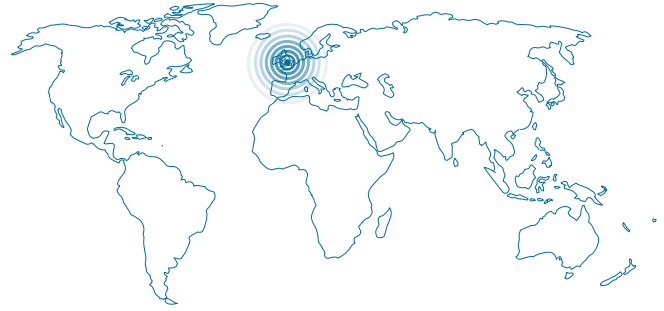
It may be possible, depending on who was involved in the “local” claim and what it was about. It would depend on the particular circumstances of the case.

WHAT IF THE PEOPLE WHO WERE HARMED AND/OR THEIR FAMILIES HAVE ALREADY MADE A COMPLAINT, EITHER DIRECTLY TO THE COMPANY INVOLVED OR THROUGH ANOTHER PROCESS?

Again, prior complaints do not mean that legal action in England is impossible, but if victims have already accepted some form of compensation under another process, this could affect their ability to pursue court action either locally or in England.

PEOPLE WERE HARMED SEVERAL YEARS AGO, IS IT STILL POSSIBLE TO BEGIN LEGAL ACTION?

There are rules in place which mean cases must be brought within a certain time period after people were harmed. These rules vary from country to country. It is usually essential to start the claim before these time limits expire.



The litigation process

INVESTIGATION

- » Gathering evidence about the UK company and other local company involvement in the harm that has occurred
- » May involve UK lawyers visiting impacted communities
- » Collating documents and statements
- » Decision on viability of claim

START OF PROCEEDINGS

- » A series of steps have to be undertaken before the court action is commenced - these are set out in the court rules.
- » These steps will usually include a “Letter of Claim” sent to the proposed Defendant(s) setting out the basis of the claim
- » Proceedings may then be started and court documentation sent to the Defendant(s)

COURT PROCEEDINGS

- » Defendant(s) provide a detailed response to claim
- » Then the court gets involved to “manage” the court action - initially setting a timetable, which will include:
- » Parties disclose relevant documents
- » Parties exchange statements of witnesses and experts



The litigation process (cont.)

TRIAL

- » Parties get ready for trial - preparing bundles of documents and arranging for witnesses to attend court
- » At the trial, both parties present their case and witnesses and experts give evidence (usually in person)
- » The length of the trial will vary according to the complexity of the case and the number of witnesses/experts
- » The judgment is usually given within a few months

AFTER TRIAL

- » If the case is successful, some mechanism will then need to be set up to ensure the damages are paid to the Claimants
- » Costs will need to be resolved - sometimes damages cannot be paid until this has been done
- » If the case is unsuccessful, consideration may be given to whether there are grounds to appeal
- » if the case is successful, the Defendant(s) may appeal

As mentioned above, the vast majority of cases end in a settlement before the trial. This might happen before or during the court process, at any time up to the start of the trial.

Further information

The International Federation for Human Rights booklet, ‘Corporate Accountability for Human Rights Abuses: a guide for victims and NGOs on recourse mechanisms’ is a practical tool for victims, and their (legal) representatives, NGOs and other civil society groups to seek justice and obtain reparation for victims of human rights abuses involving multinational corporations. The guide explores the different judicial and non-judicial recourse mechanisms available to victims. A pdf of the guide is available at

https://www.fidh.org/IMG/pdf/corporate_accountability_guide_version_web.pdf

Business and Human Rights Resource Centre hub on corporate legal accountability for human rights abuses highlights significant lawsuits in all parts of the world. It is a gateway into each of the lawsuits – users can search cases by industry, company, country, and issues. This portal provides clear and easily accessible information about profiles of key lawsuits as well as other useful resources such as expert commentaries about corporate legal accountability. See

<https://business-humanrights.org/en/corporate-legal-accountability>

Using 11 case studies, EJOLT’s (Environmental Justice Organisations, Liabilities and Trade) report ‘Legal avenues for Environmental Justice Organisations to claim environmental liability’ examines the scope for different courses of legal action against environmental injustice, wherever it takes place: from the national to the international. The report is on the EJOLT website at

<http://www.ejolt.org/2012/05/legal-avenues-for-ejos-to-claim-environmental-liability/>