

Corporate social responsibility: Mercury Energy and its low-income electricity consumers

TEACHING NOTES

Synopsis

On 29 May 2007, Folole Muliaga died following the disconnection of her home power supply for an overdue bill of \$NZ168 (US\$87). This apparent act of heartlessness by her state-owned electricity supplier, Mercury Energy, generated intense media interest in New Zealand and was picked up by international news agencies. Mrs Muliaga had been receiving oxygen therapy at home for treatment of breathing difficulties associated with her obesity, and the cessation of oxygen caused by the disconnection led directly to her death. Mercury Energy initially denied any wrongdoing, but in the days following Mrs Muliaga's death it became apparent that Mercury Energy was not compliant with Government guidelines on disconnections involving low income consumers. The guidelines, created by the national regulator, the Electricity Commission, were voluntary rather than compulsory as part of a Government approach which preferred self-regulation by companies to "heavy-handed" regulation by Government. The focus of the case is the social responsibilities of both Mercury Energy and the Government. Mercury Energy undertook many community initiatives as part of its commitments to corporate social responsibility (CSR), but this case shines the spotlight on its less publicised activities. To explore this issue, the case focuses on the actions of Mercury Energy in the period leading up to, and following Mrs Muliaga's death. It also focuses on the role played by the Electricity Commission, both before and following Mrs Muliaga's death and raises questions around whether it acted responsibly in deciding against regulation.

Description of research

The case was written entirely from secondary sources, which included the following:

- The finding of the Coroner's Inquest
- Submissions to the Electricity Commission on the introduction of guidelines on arrangements to assist low-income consumers in 2005, before Mrs Muliaga's death, and a revision of the guidelines in 2007 following her death.
- Official publications of Mercury Energy (for instance, Annual Reports)

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- Background on the regulatory environment of New Zealand's electricity market
- Media reports from New Zealand and international print and broadcast media.

The use of exclusively secondary sources was appropriate given the nature of the case. The Coroner's report provided a detailed account of the events of 29 May 2007 at the Muliaga home, based on an inquest hearing which lasted several weeks and involved all of the key parties. The depth of this investigation could not have been matched by primary research.

A key finding to emerge from the Coroner's report was that Mercury Energy was not compliant with Electricity Commission guidelines around disconnections involving low-income domestic consumers. When the guidelines were first drafted in 2005 and released for public consultation, Mercury Energy argued they were unnecessary and would impact on the company's profitability. Their submission provides a compelling insight into the organisation's attitudes towards protection for low-income consumers. It is unlikely that such a candid response would have been obtained from Mercury Energy had primary research been undertaken after Mrs Muliaga's death. Under intense public scrutiny, Mercury Energy decided not only to meet the Government's voluntary guidelines, but to go beyond them in offering better protection for its vulnerable customers. The secondary sources also provide insight into the position of the Electricity Commission on the need for regulation. Following Mrs Muliaga's death, the Commission revised its guidelines to strengthen the mechanisms for encouraging retailers to comply with them. They remained guidelines rather than regulations, however.

Suggested courses and course type

This case is suitable for a range of Management courses, including general management, organisational behaviour, business ethics and any other course which explores the actions of business in the broader political economy. Corporate Social Responsibility (CSR) is a topic which typically features in undergraduate, postgraduate and post-experience courses on management and organisation, and this case can be used across each of those levels.

The case can also be used in Government/Public Policy courses since it links CSR and business ethics to the role of government's regulatory framework. The "light-handed" regulatory approach outlined in the case reduced the legal obligations on electricity retailers in favour of a belief that these organisations should voluntarily self-regulate, but this case considers whether organisations such as Mercury Energy can be trusted, and whether, in failing to regulate, Government has failed to protect its most vulnerable citizens. This case could be used for any course which looks at how governments make policy and how state-owned organisations are operated.

Teaching objectives

- To demonstrate that CSR is not just about visible programmes in the community, but more importantly, about the day-to-day profit-seeking practices of organisations.
- To highlight the tensions in profit-seeking organisations operating in a capitalist system, between economic responsibilities and social responsibilities
- To consider the social responsibilities of state-owned businesses compared with private sector businesses.
- To explore the relationship between CSR and government attitudes towards regulation.
- To illustrate that under a light-handed approach to regulation, the ethical responsibilities of organisations assume greater importance than in a more tightly regulated environment.

Guide questions and answers

Did Mercury act with social responsibility in the period leading up to Mrs Muliaga's death?

There are many different ways of approaching this question. It is suggested that students first treat Mercury Energy as a corporate organisation and following that, consider whether its state ownership places additional obligations on it.

Carroll (1979) provides a useful conceptual framework for assessing corporate social performance. The model has four levels of social responsibility:

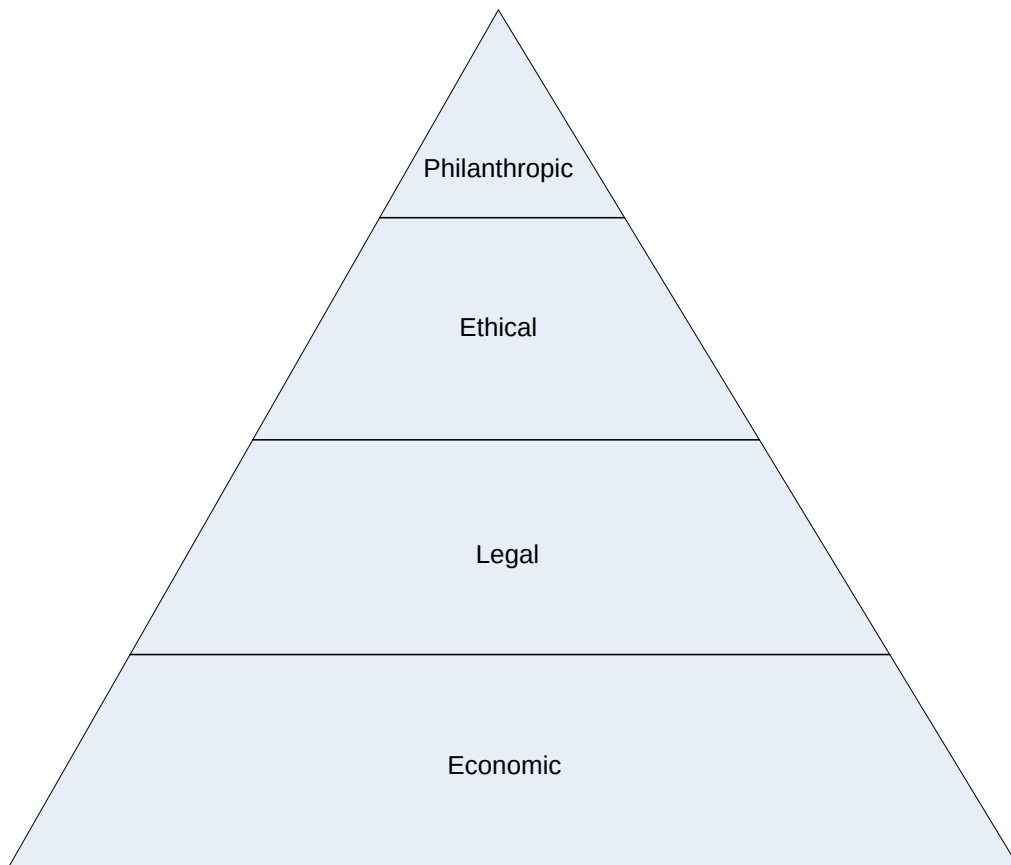
Economic – the responsibility to produce goods and services that society wants and to sell them at a profit.

Legal – the pursuit of economic responsibilities with the framework of laws and regulations

Ethical – standards, norms or expectations that reflect a concern for what stakeholders (consumers, employees, shareholders etc) regard as fair and just.

Philanthropic or discretionary – being a good corporate citizen by voluntarily engaging in actions which promote human welfare.

These are often depicted as a pyramid (see over):



Carroll concludes that socially responsible organisations should strive to make a profit, obey the law, be ethical and be a good corporate citizen. To what extent was Mercury Energy fulfilling each of these responsibilities?

Economic – the financial data shows that Mercury Energy’s earnings (EBITDA) had increased each year between 2003 and 2007 but its return on average shareholders’ equity had been in decline. In its submission on the draft 2005 guidelines for the protection of low-income consumers, Mercury Energy was concerned that they might increase the level of bad debts amongst low-income consumers. This would reduce the profitability of the organisation, so it could be argued that Mercury Energy’s stance was consistent with its economic responsibilities to operate profitably.

Legal – there is no evidence that Mercury Energy broke any laws or regulations in this case, so their actions were consistent with their social responsibility to obey the law. It is important to highlight that the guidelines were voluntary, not compulsory.

Ethical – this is the most contentious category in this case. An assessment of Mercury Energy’s actions depends on what is considered to be the community’s expectations for fair and just dealing with low-income consumers.

Carroll argues that changes in ethics and values tend to precede changes in laws or regulations. Ethical responsibilities can therefore be seen as community expectations which reflect a higher standard than currently required by the law, but which are likely to be codified at a point in the future. Their ill-defined nature makes them difficult for businesses to deal with.

In this case, the critical point is whether the Electricity Commission's 2005 guidelines for the protection of low-income domestic consumers accurately reflect community expectations for how electricity retailers should deal with these consumers. Do people expect that electricity retailers should not just have policies on disconnection in place for dealing with customers with medical conditions, but also inform customers on how to identify themselves as such? Or, put more broadly, should Mercury Energy have implemented the Electricity Commission's 2005 guidelines even though this might have increased the risk of bad debts and reduced the organisation's profitability? If the answer is yes, then it is possible to conclude that by failing to provide the Muliaga family with information on how to identify themselves as a vulnerable customer, Mercury Energy failed to meet its ethical responsibilities.

On the other hand, in defence of Mercury Energy it could be argued that Government had the opportunity to protect low-income domestic consumers through the creation of regulations rather than the provision of guidelines. It is clear from the case that this option was considered when the guidelines were first drafted in 2005. Government decided not to regulate, which is consistent with a light-handed approach to regulation which places trust in organisations to self-regulate responsibly. It could be argued therefore, that the Electricity Commission failed its responsibilities to the community by not recommending regulation in this area.

The Electricity Commission again considered regulations in 2007, following Mrs Muliaga's death. As stated in the case, the idea behind light-handed regulation is that regulations are kept to a minimum, with additional measures introduced when weaknesses arise. While Mrs Muliaga's death did identify a weakness in the system, the Electricity Commission felt that enhanced compliance procedures, rather than regulation, was all that was required. The concluding quote from MP Sue Bradford raises the issue of whether this response is satisfactory.

This case is a useful illustration that under light-handed regulation, ethical responsibilities assume critical importance. Whereas Carroll's framework assumes that ethical responsibilities will foreshadow legislation, this case shows that not necessarily to be the case. Therefore, from the organisation's point of view, close attention needs to be given to what the organisation considers fair and just treatment to be.

Philanthropic – Mercury Energy did meet these responsibilities to be a good corporate citizen, being active in community initiatives such as the provision of insulation in the homes of children with respiratory illnesses. Through forums such as its website and annual reports, the company publicised these efforts and portrayed itself as a socially responsible organisation. It could be argued that these efforts deflect critical scrutiny from their less well-publicised actions to generate profits, for example their failure to implement the Electricity Commission's guidelines on low-income consumers. Its submission on the 2005 guidelines shows the company was not in favour of guidelines or regulations that would have offered low-income customers additional protection from disconnection.

In sum, it could be argued that Mercury Energy fulfilled all four aspects of its social responsibility, or alternatively, it could be argued that the company failed to fulfil its ethical responsibilities.

Should state-owned businesses such as Mercury Energy be expected to operate at higher levels of socially responsible behaviour than their private sector competitors? If so, does this disadvantage them relative to their competitors?

Here reference can be made to the requirements of the State Owned Enterprise Act, under which Mercury Energy operated. The Act states that the principal objective of every State Enterprise shall be to operate as a successful business – to be profitable and efficient, a good employer and socially responsible. It should be noted that whilst these three objectives align with standard definitions of CSR, for SOEs they are compulsory rather than voluntary.

This raises the question of whether state-owned organisations are disadvantaged vis-à-vis any private sector competitors. While mainstream approaches to CSR regularly claim that engaging in socially responsible actions represents “enlightened self-interest” and a “win-win” situation for the organisation and its stakeholders, this argument is typically predicated on the assumption that CSR activities can be used to as a branding/marketing tool. This is more easily done when CSR involves visible community activities, such as those Mercury Energy engages in and publicises, than its less visible business processes such as disconnection policies. It is clear from Mercury Energy’s submission on the 2005 guidelines that the organisation felt additional protection for the low-income customers would be a “win” for the customers and a “loss” for the organisation.

How would you assess Mercury Energy’s actions after Mrs Muliaga’s death? Do you think they were sincere or cynical?

Mercury Energy’s actions could be interpreted either as a sincere recognition of wrongdoing or as a cynical attempt to minimise the consequences of her death. The “sincere” explanation would highlight Mercury Energy’s show of remorse by the visit of its senior executives to the Muliaga family home. The efforts they made to learn about the Samoan restorative justice custom of *ifoga*, and to dress appropriately for the ceremony could be interpreted as demonstrating their cultural sensitivity. The steps the company took to voluntarily improve their processes for dealing with vulnerable customers, even before the new guidelines were introduced following Mrs Muliaga’s death, could be cited as further evidence of their responsibility and good corporate citizenship.

The “cynical” explanation would highlight that Mercury Energy initially denied any wrongdoing but shifted its stance several days after Mrs Muliaga’s death when details of the case emerged. On the day of her death the company refused to reconnect power to the Muliaga home, even when told that Mrs Muliaga had died. The cynic might conclude that Mercury softened its stance once it became clear it had breached the Electricity Commission guidelines. Mercury Energy’s voluntary changes to its processes could be interpreted as a cynical attempt to prevent government regulation, which was ultimately successful, since the Electricity Commission decided to continue with more stringent guidelines rather than to regulate.

The contractor who disconnected the power to the Muliaga home was heavily criticised in the days following the incident. Mrs Muliaga's son, Ietitaia, remembered his mother saying "Please give us a chance" to which the contractor said "I'm just doing my job". The contractor was subsequently cleared of blame by the Coroner, but assuming Ietitaia's recollections are correct, do you think the contractor acted ethically in this situation?

Within the mainstream of studies on ethics, it is generally assumed that the increased concern with ethics at the level of the organisation results in improved ethical conduct. In contrast, Bauman (1989, 1993) highlights how giving managers the power to define and control the ethics of other members of the organisation can actually increase unethical organisational practices. Bauman argues that an effect of organisational pressures towards conformity and uniformity is that individual ethical responsibility is removed from the organisation, with individuals not making and acting upon moral judgements about their behaviour and the behaviour of others in the organisation. According to Wary-Bliss (2007) this might explain how in today's organisations, well-intentioned people who act morally in their private lives may act unethically at work.

This is relevant when considering the actions of the VirCom employee in disconnecting power to the Muliaga family home. Whilst the Coroner accepted the man's explanation that he was unaware that Mrs Muliaga was reliant on electricity oxygen therapy and that he would not have disconnected the power had he known, it is notable that Ietitaia Muliaga remembered the contractor saying "I'm just doing my job". The defence of his actions on the basis that he was carrying out the orders of others suggests it might have been a factor in his decision to disconnect the power, despite observing that Mrs Muliaga had plastic tubes coming from her nose. In addition, we are unaware of the details of the contract between Mercury Energy and VirCom and of how the contractor received remuneration from VirCom. If VirCom and the contractor were paid per disconnection, might that have contributed to the man's failure to enquire about Mrs Muliaga's health?

This is a speculative and hypothetical line of questioning, but raises important issues about the ethical responsibilities of organisations and individuals and the possibility that individuals suspend their own moral judgements when at work, which can result in unethical organisational behaviour.

Do you think the lessons of Mrs Muliaga's death have been learnt by Mercury Energy and the Electricity Commission?

The Coroner noted in his findings that Mercury Energy had demonstrated that it had learnt the lessons of Mrs Muliaga's death by voluntarily changing its disconnection practices and indeed going further than required by the revised guidelines released by the Electricity Commission. However, it is debatable whether this is a sincere or cynical response.

Has Government has learnt lessons about the dangers of a light-handed approach to regulation? The Electricity Commission's revised guidelines provide stronger compliance mechanisms than previously, in the form of "naming and shaming"

organisations who fail to implement them, but they remain voluntary, with the Government deciding against regulation.

Suggested teaching plan

This case can be taught effectively in a 90 minute session.

Review the key issues from the case and the actions of the parties involved (e.g. Mercury Energy/Mighty River Power, the VirCom contractor, Electricity Commission, Government, Mrs Muliaga's family)	15 minutes
Break the class into small groups and have each group assess the extent to which Mercury Energy acted with social responsibility in the period leading to Mrs Muliaga's death, using Carroll's conceptual framework	20 minutes
Get the groups to report back on their findings and discuss the role of the role of Government's light-handed regulatory approach and in particular, the role of the Electricity Commission. After considering this, have any of the groups changed their assessment of Mercury Energy's level of social responsibility?	20 minutes
Discuss the actions of Mercury Energy following Mrs Muliaga's death. How sincere has their response been?	15 minutes
Discuss whether the actions of the contractor were ethical and whether rule-following in organisations might be unethical in some situations.	10 minutes
Discuss what lessons from Mrs Muliaga's death could be learnt by Mercury Energy and the Electricity Commission.	10 minutes

Reference list of related resources

Written Resources

This case can be supplemented by readings on CSR and business ethics.

An excellent overview of Carroll's conceptual model is:

Carroll, A.B. (1979), "A three-dimensional conceptual model of corporate performance". *Academy of Management Review*, 4(4), 497-505.

While 30 years old, this remains a “classic” on CSR and although it is an academic journal article, it is written in a style that is accessible for undergraduates. Alternatively, many chapters on CSR in management and organisation behaviour texts provide an overview of Carroll’s framework.

Another highly recommended reading is the chapter on “Ethics at work” by Edward Wray-Bliss in:

Knights, D and Willmott, H. (2007). *Introducing Organizational Behaviour and Management*. Thomson, London.

This chapter provides an excellent introduction to both “mainstream” and “critical” approaches to CSR. It makes the argument that in mainstream approaches, business ethics and CSR are often reduced to a corporate branding exercise which becomes just one more attempt to maximise profits. This has removed from ethics much of its critical potential and thereby ignored the “big picture” of the ethics of business in general.

In the context of this case, it encourages students to consider Mercury Energy’s efforts to improve their profitability, and not their well-publicised community activities, in their evaluations of the extent to which the organisation exhibited a sense of social responsibility

Another useful chapter from the Knights and Willmott textbook is “Bureaucracy and post-bureaucracy” by Christopher Grey. This chapter considers the limitations and potential dangers of rule-following, with reference to Bauman, and is useful for debating the role played by the VirCom contractor in this case.

For a more detailed examination of the issues raised by Bauman, students could be directed to:

Bauman, Z. (1989). *Modernity and the Holocaust*. Oxford: Polity Press.
Bauman, Z. (1993). *Post-modern ethics*. Oxford: Blackwell.

Audiovisual resources

Television New Zealand has an archive of news bulletins about all aspects of the case, from Mrs Muliaga’s death to the release of the Coroner’s report. These clips will help students connect with the plot and characters of the case.

Anger grows after power cut death
<http://tvnz.co.nz/content/1161111/video>

Mercury Energy bosses visit the Muliaga home
<http://tvnz.co.nz/content/1161721/video>

Prime Minister Helen Clark wants power cut practices changed
<http://tvnz.co.nz/content/1161257/video>

Mercury Energy unmoved by Prime Minister’s criticism
<http://tvnz.co.nz/content/1162422/video>

Humanity lost in corporate world?
<http://tvnz.co.nz/content/1159758/video>

Coroner critical of Mercury Energy
<http://tvnz.co.nz/content/2099512/video>

Muliagas push for compensation following release of Coroner's findings
<http://tvnz.co.nz/content/2098373/video>

An international perspective on the case is available from the BBC at:
NZ Police probe power cut death", *BBC*, 30 May 2007. Available at
<http://news.bbc.co.uk/2/hi/asia-pacific/6703395.stm>