

19th May 2011

Ms Aphrodite Smagadi
Secretary to the Aarhus Convention Compliance Committee
Environment Division
Bureau 332
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Ms Smagadi,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with access to information held by privatised water companies (Ref. ACCC/C/2010/55)

I act for SmartSource Drainage and Water Limited ('SmartSource').

SmartSource was the original appellant against the decision of the UK Information Commissioner that the privatised water companies within England and Wales (although not Scotland and Northern Ireland) were not covered by the Environmental Information Regulations 2004 which implement both the European Directive and the Aarhus Convention (in respect of the provisions in relation to access for information) in the United Kingdom.

I am in receipt of your correspondence with Ms Jane Barton of the Department for Environment, Food and Rural Affairs (DEFRA) of 1st February 2011.

My client would wish to support wholeheartedly the communication made to the Aarhus Convention's Compliance Committee by Fish Legal, one of the remaining appellants.

Although the decision of the Upper Tribunal was that the water companies were not covered by the provisions on access to environmental information, my client remains firmly of the view that this decision was incorrect and most unfortunate.

My client would be grateful if you would register this letter either as a separate communication or as a 'co-complaint' with the Fish Legal communication.

My client is concerned that the Committee may be interested in why it did not seek to appeal the decision of the Upper Tribunal to the Court of Appeal. The reason there was no appeal is very straightforward and it relates to the threat of a substantial costs order against my client in the event that an appeal was heard and lost. We are aware of the current activity of both the Committee and the European Commission in relation to the matter of costs in environmental cases within the UK, but would like to record that the over-riding reason why it did not proceed with an appeal was that the appeal presented a great financial risk and could, ultimately, have resulted in the financial demise of the company if an appeal had been lost.

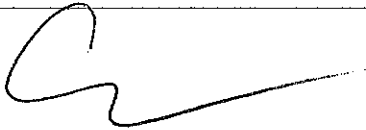
In that respect, my client would suggest that this 'de facto' inability to appeal to the Court of Appeal represents a further example of a failure of the UK to comply with Article 9 of the Convention in respect of the prohibitively expensive nature of the appeal mechanism from the Upper Tribunal.

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Finally, my client would be grateful to the Committee if it could be kept abreast of all developments in relation to this and the Fish Legal communication and specifically any correspondence with the UK Government over whether or not the public right to environmental information from the water companies will be re-established by law.

If you have any queries at all, please do not hesitate to contact me on guy@linley-adams.co.uk and I would be more than happy to assist the Committee in any way it sees fit.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Guy Linley-Adams', written in a cursive style.

Guy Linley-Adams
Solicitor