

# RICHARD BUXTON

ENVIRONMENTAL & PUBLIC LAW

19B Victoria Street  
Cambridge CB1 1JP

Tel: (01223) 328933

Fax: (01223) 301308

[www.richardbuxton.co.uk](http://www.richardbuxton.co.uk)

[law@richardbuxton.co.uk](mailto:law@richardbuxton.co.uk)

Secretary to the Aarhus Convention Compliance Committee  
UNECE  
Bureau 348  
Palais de Nations  
CH-1211 Geneva 10  
Switzerland

Attn: Fiona Marshall

Your ref: Decision V/9n & ACCC/C/2013/85 & 86  
Our ref. PS/C-86/Ffos-y-fran

## By e-mail

9 March 2015

Dear Sirs

## ACCC/C-85 & 86 draft findings

Thank you for your letter of 23 February in relation to the above.

We enclose a copy of the UK Supreme Court's decision refusing Mrs Austin (the communicant for C-86) permission to appeal the adverse Court of Appeal costs decision. We enclose this in view of the draft findings comment that Mrs Austin has applied for permission to appeal to the Supreme Court (§28).

Unfortunately, Mrs Austin has now exhausted her legal options in the UK. This is despite findings by the High Court and Court of Appeal that there is an arguable case that noise pollution and dust from the nearby opencast coal mine constitutes a nuisance and also findings that Mrs Austin is of modest means. It is also despite the UK Courts being aware that there were a large number of other residents experiencing similar problems. This is unsurprising; Mrs Austin does not live in an isolated location but within the town of Merthyr Tydfil.

In the light of the above, and while we recognise that the question of the Supreme Court application was not central to the communication, we make two suggested revisions to the draft findings:

Partners: Richard Buxton\* MA (Cantab) MES (Yale), Susan Ring\* LLM Env (London), Adrienne Copithorne\* BA (Cantab) MA (UC Berkeley),  
Lisa Foster Juris D MSc (UEA) MA (York)  
Associates: Caroline Chilvers BA (Hons), Carolyn Beckwith BA (Hons) LLM  
London office: 419 Richmond Road, East Twickenham TW1 2EX Tel: 020 8296 1881  
Consultant: Paul Stookes\* PhD MSc LLB  
Practice Manager: Sheryl Taylor

Authorised and regulated by the Solicitors Regulation Authority No.74899

\* Solicitor-advocate

At the end of §28 we suggest:

... The communicant has applied to the Supreme Court for permission to appeal the Court of Appeal judgment. This application was refused on 24 February 2015.

For §70 we propose:

70. The Committee decides not to consider the specific allegations of the ACCC/C/20143/86 communicant concerning her private nuisance case regarding noise and dust deposition emanating from opencast coal mining operations because at the time of submitting the communication, the domestic remedies had not been exhausted by the communicant and at the time of the Committee's deliberations the case was still ongoing at the domestic level. After publication of the draft findings on 23 February 2015, the UK Supreme Court refused permission to appeal, this being the final determination of the matter. The Committee ~~however~~ therefore takes this case into account as one of the examples illustrating the practice of private nuisance proceedings in the Party concerned.

We trust that the above assists and look forward to hearing from you in due course.

Yours faithfully



Richard Buxton Environmental & Public Law

cc Hugh James Solicitors (Neil Stockdale, Gareth Morgan) for ELF (C-85)  
Defra (Ahmed Azam)