

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/9o & ACCC/C/2013/86
Our ref. PS/ACCC/C-86/Ffos-y-fran

By e-mail

15 September 2014

Dear Sirs

Decision V/9o - Continuing non-compliance by the UK & ACCC/C-86

We write further to our letter of 5 September 2014 providing a reply to the Committee's questions relating to the above for ACCC/C/85 & 86.

We wish simply to refer the Committee to recent correspondence in the High Court highlighting the continuing unduly restrictive approach of the UK Government in relation to the Aarhus Convention in the public law case of *Keogh v Secretary of State* CO/3955/14. We recognise that it may not be directly relevant to Communications C85 and C86 which concern private nuisance claims and we not wish to overload the Committee with more information or feel the need to raise further clarification. Rather, we wish simply to record:

- a) that the latest correspondence affirms the narrow interpretation of CPR 45.41-44 by the UK. This is a similar to the approach by the UK in *Venn v Sec. of State* referred to at para. 20(6) of the Communicants' Reply of 5.9.14 for C-85 & 86, which cannot therefore be regarded as an exceptional case; and
- b) that the UK is seeking to rely upon what we say is an unduly restrictive approach of the Court of Appeal judgment in *Austin v Miller Argent* in seeking to justify why costs protection in a public law environmental claim should not be granted.

We note the lateness of this in relation to any consideration of C-85 & 86, but believe it assists in highlighting the continuing problems facing individuals and NGOs in the UK seeking to secure access to justice in environmental matters.

Please note we are copying this letter to the UK Government and the representatives for C-85 for their information.

Yours faithfully

Richard Buxton

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