

## ***The Cultra Residents' Association***

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17<sup>th</sup> March 2014

Ms. Fiona Marshall  
Secretary to the Aarhus Convention Compliance Committee  
United Nations,  
Economic Commission for Europe  
Palais des Nations, Room 492-2  
CH-1211 Geneva 10.

**Your Ref:** Decision IV/9i of the Meeting of the Parties

**Re:** Draft report of the Aarhus Convention compliance Committee on the implementation of decision IV/9i of the Meeting of the Parties concerning compliance by the United Kingdom.

Dear Ms. Fiona Marshall,

I wish to acknowledge receipt of your letter of 28<sup>th</sup> February 2014 enclosing a copy of the above draft report addressed to me as the representative of the Cultra Residents Association (communicant in ACCC/C/2008/27).

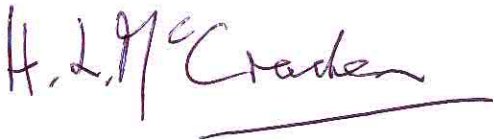
I have read the draft report with interest and I am very gratified by its detailed content and the thrust of its text. I am, of course, disappointed that the United Kingdom has not yet fully addressed the points of non-compliance with its obligations under the provisions of the Aarhus Convention but I am pleased to note that the Compliance Committee is seeking to obtain the full implementation of its recommendations to the United Kingdom. However, arising from my experience with Judicial Reviews relating to environmental matters in Northern Ireland and also from the Discussion in Geneva in respect of Communication ACCC/C/208/27 there are several matters on which I would like to comment briefly, namely as follows:-

1. It is my practical experience that the provision in regulation 3(2) of the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 providing that "in an Aarhus Convention case the Court shall order that any costs recoverable from an applicant shall not exceed £5,000.00 where the applicant is an individual and £10,000.00 where the applicant is a legal person or an individual applying in the name of a legal entity or unincorporated association" sets unrealistically high levels for the cost caps. I am personally aware that such amounts can be prohibitive and unfair and are clearly at levels which are likely to deter possible applicants seeking relief under the provisions of the Aarhus Convention.

2. I feel strongly that the provisions in the Northern Ireland Regulations which provide that the liability of the defendant for a successful claimant's costs is capped at £35,000.00 is grossly unfair to any potential claimants and will clearly deter them from initiating otherwise well founded proceedings. I personally was involved in a judicial review in respect of environmental problems which was successful and the Court ordered the Department of the Environment for Northern Ireland to pay the applicant's costs. These costs amounted to £70,553.99 (inclusive of VAT of £11,668.66) and the Department discharged the full amount without any dispute, indicating that the Department was satisfied with the figure claimed.
  
3. It is noted that in Paragraph 48 of the Draft Report that the United Kingdom claim that the applicants could be "entitled to legal aid (subject to the usual means and merits tests)." It is however the writer's experience in Northern Ireland that in public interest cases legal aid will not be granted. In one such case the writer applied for legal aid on behalf of an applicant of very limited financial means and legal aid was refused in the first instance and again refused on appeal.
  
4. It is the writer's view that cross undertakings for damages are wholly inappropriate and unacceptable in cases where the applicant is seeking relief under the provisions of the Aarhus Convention.

I hope that my brief comments may be of some interest to you.

Yours faithfully,

A handwritten signature in black ink that reads "H. L. McCracken". The signature is written in a cursive style and is underlined with a single horizontal line.

**H. L. McCracken**

For Cultra Residents Association