Moray Feu Traffic Subcommittee
c/o Whitelaw Wells
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Ms Fiona Marshall
Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland (By email only)

9 October 2019

Dear Fiona

Re: Decision VI/8k concerning compliance by the United Kingdom with its obligations under the Aarhus Convention

Thank you for your email of the 2 October 2019 regarding the second progress report of the Party concerned regarding the implementation of decision VI/8K (United Kingdom).

As a private individual who has taken an action under the Aarhus Convention with the support of a community (Ref. ACCC/C/2010/53) I have found the meetings of the Compliance Committee informative and instructive. In those discussions, presentations by the United Kingdom have attempted to cast doubt on whether the following might have a 'chilling effect' on participation:

- Cost caps varied retrospectively
- Cost caps assessed for each associated individual

- and argued that their proposals would not have a material impact on the quality of cases coming forward.

Since both of the above measures make the total costs of any action hard, if not impossible, for any individual to assess with certainty ex ante, I do not find this position credible.

The second progress report of the Party concerned can be used to illustrate a particular difficulty that arises from their position with respect to the award of pre-action costs [Para 19] "Where there is extensive dispute conducted through correspondence". Such an award may lead to a marked inequality when an individual, or community, takes action against an authority. It is clear from an accounting perspective that the multiplier attached to any person's time within an organisation to reflect 'overheads' can scale with the size of the organisation. It follows that the overhead attributed to the individual complainant will be small, whilst the time spent by the authority responding

to complaints, which in our case included review of correspondence by the local authority's Head of Legal Counsel and Chief Executive Officer, may result in an attributed cost of time and overheads for one single letter that effectively turns a 'cap' into a minimum cost.

When this cap can be so easily reached from an accounting perspective, the perceived risk associated with retrospective variation of cost caps and expansion of scope to include pre-action costs, would certainly have a chilling effect on individuals and communities challenging local authorities.

It seems probable that the Compliance Committee has a direct way of assessing this. If you were to approach all the individuals who have successfully brought cases under the Aarhus Convention you need only ask whether these new rules, had they been in place at the time of their own case, would have deterred that action.

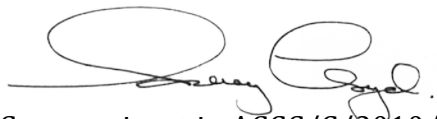
If the potential impact on personal and community exposure to costs were fully understood – if indeed this is possible for any situation where the scope of costs can be retrospectively enlarged - then I am sure you would get a very well-informed 'yes' from the majority, and find many who would be prepared to explain why in a meeting of the Compliance Committee with the United Kingdom. This is certainly true in ACCC/C/2010/53 when we were advised that our case, though merited and winnable in the UK courts, would require at least £0.5m of reserves if we were to be sure of seeing the case to the end. Faced with such prohibitive costs, taking our case to the Aarhus Compliance Committee was the only viable route.

Like others participating in meetings of the Compliance Committee, whose communications have informed my own position, I find the United Kingdom's response has failed to take reasonable account of the concerns raised by Communicants. I would be grateful if the Compliance Committee considers my suggestion of empirically testing the adequacy of the UK Government's assertions with regards to the impacts of its decisions on both the quality and quantity of cases coming forward.

I would be happy to participate in the formulation and application of a suitable research instrument with other UK Communicants and their representatives.

Yours sincerely,

Dr Ashley D. Lloyd PhD MBA CPhys



Communicant in ACCC/C/2010/53
Chair, Moray Feu Traffic Subcommittee