

29 October 2020

Ms. Danielle Angelopoulou  
Department of Environment, Food & Rural Affairs  
United Kingdom

Mr. John Hemming  
United Kingdom

Dear Ms. Angelopoulou,  
Dear Mr. Hemming,

**Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom regarding access to justice in connection with waste management (ACCC/C/2016/142)**

I write to inform you that, after taking into account the views of the Party concerned and communicant dated 13 October and 29 September 2020 respectively, the Committee has decided to commence its deliberations on the substance of the above communication without holding a hearing. In deciding to proceed in this manner, the Committee noted that it reserved the possibility to revisit its decision at a later date if it became evident in the course of its deliberations that a hearing would in fact be necessary to clarify certain legal or factual points.

The Committee will accordingly commence its deliberations on the substance of the communication at its 68<sup>th</sup> meeting (23-27 November 2020), in closed session. To assist it in this regard, the Committee invites the Party concerned to provide its written reply to the enclosed questions. The Committee would be grateful to receive the reply of the Party concerned to the enclosed questions to [aarhus.compliance@un.org](mailto:aarhus.compliance@un.org) by **25 November 2020**. The communicant will thereafter have two weeks to provide his comments on the Party concerned's reply.

In addition, while there is no obligation to do so, if either the Party concerned or the communicant wish to submit any final written submissions, each is invited to do so by the same date.

Finally, the Committee has asked me to convey to you that, in accordance with paragraph 113 of the Guide to the Compliance Committee, <http://www.unece.org/index.php?id=54512>, since by the present letter the parties are informed that the Committee has scheduled to commence its deliberations on the substance of the case, its determination of admissibility is now final and no further submissions regarding admissibility will be considered.

Please do not hesitate to contact the secretariat if you have any questions regarding the above.

Yours sincerely,



---

Fiona Marshall  
Secretary to the Aarhus Convention Compliance Committee

Cc: Permanent Delegation of the United Kingdom of Great Britain and Northern Ireland to the United Nations Office and other international organizations in Geneva

Enc: Questions from the Committee to the Party concerned

**Questions from the Committee to the Party concerned:**

1. Do the Party concerned accept that an application made by a member of the public under section 91 of the Environmental Protection Act against the person who has the duty to keep the land clean under section 89(1) of that Act is a procedure within the scope of article 9(3) of the Convention?
2. Section 91(5) of the Environmental Protection Act requires the complainant to give at least five days written notice of his/her intention to make the complaint. Section 91 does not state that the applicant must meet with the respondent before filing proceedings. Nor does the Council's email to Mr Hemming of 7 May 2014 indicate that if he met with the Council, it would inform him of its planned action to clear the litter in the coming days. The Council could equally have informed Mr. Hemming of the planned litter blitz itself by telephone.

In these circumstances, please explain how it was "fair" within the meaning of article 9(4) of the Convention that Mr Hemming was required to pay the Birmingham City Council's legal costs when it is not disputed that at the time he filed the section 91 proceedings: (a) the litter was still on the ground and (b) the Council had not informed him of its intention to clean up the litter on 17 and 18 May?

3. In paragraph (c) of its response to the communication, the Party concerned states: "At no stage of the proceedings before the Magistrate's Court...did the communicant request any quantitative limit his liability to pay the Council's costs on the basis that the proceedings would otherwise be prohibitively expensive."

At paragraph 105 of its findings on communication ACCC/C/2008/33 (United Kingdom), the Committee noted that the Sullivan Report stated that the cost of seeking a protective costs order was in the order of £2,500–£7,500 plus VAT.

Please explain what mechanisms Mr. Hemming could have used in May 2014 to limit his costs exposure in his proceedings under section 91 of the Environmental Protection Act and what would have been the typical cost, if any, for a member of the public to do so.

4. With respect to your reply to question 3 above, what mechanisms exist at the present time for a member of the public who commences proceedings under section 91 of the Environmental Protection Act to limit his/her costs exposure? What would be the typical cost, if any, at the present time for a member of the public to access those costs protection mechanisms?