

## PRE/ACCC/C/184/2020 – Christine Gibson vs UK and EU

Written Submission to the Aarhus Convention Compliant Committee in Response to UK Government's (DEFRA's) Submission (received by email 1615hrs on Friday 22 January 2021) for 69<sup>th</sup> meeting of the Committee to be held on 25 January 2021.

Firstly I would like to highlight the tardiness in receiving the DEFRA communication but notwithstanding the little time I had to prepare a response, I have written this document so that I am afforded an equal footing for the determination of admissibility at the meeting to be held on 25 January 2021.

*For ease of reading I will refer to each point in order as has been outlined in DEFRA's communication and I am making the assumption that DEFRA who is the only Party representing the UK Government, have received an electronic copy of my Communication and that all links within that Communication were working.*

1. Contrary to what is written here, I have provided evidence that the various parties mentioned in my Communications have breached the Convention egs P2 4 footnote links, p3 4 footnote links p4 1 footnote link etc... In addition to these links I have also provided links within two of the annexes that I have provided, namely the letter to Mr Tusk and the letter to all NI MLAs as well as the letter from the EU Commission that corroborates my allegations of general non-conformity of the Convention as are mirrored by EU Directives that the Commission has confirmed have not been transposed effectively.

With regards to my references to Brexit, my complaint is in relation to the way it was managed or ill managed in my, and others' opinion, in that nothing was put in place to safeguard adherence to the Convention prior to leaving and no attempt was made to extend the "transitional period" to ensure compliance well before the deadline to enable any irrational (or otherwise) decision to be challenged and remedied.

2. The Communication does not fall outwith the scope of Decision 1/7.
3. DEFRA, although offering to assist and provide further information to the Committee, have not provided any evidence to counter-argue any of my numerous complaints.
4. Contrary to what DEFRA has stated, at **paragraph g** I have supplied a link directly to a FOI that is material to this Complaint and highlights that the Council do not share environmental information as is obligated by the Convention. **Paragraph h**, yes, I omitted (apologies) their [website link](#)). **Paragraph i** again I should have annotated that the "GRC Decision" appended to the Communication was relevant to this paragraph (administrative error).

**Paragraph j, k, m:** I have stated that there is no body responsible, for which DEFRA has not refuted. In addition, I have provided two infographics demonstrating environmental responsibility ie on p6, "Water Governance Structure in NI" (Diagram 2) and P7, the Air Quality Legal Responsibility for South Down (Diagram 4), neither of which are corrected. Also I have provided numerous links to sites that demonstrate either the information does not exist or that the information is out-of-date or lacking, therefore making its purpose, ineffective.

**Paragraph l:** The 50 FOIs include those I brought to Court and those found on the [whatdotheyknow](#) website under my name. I did not want to provide copious amounts of

documents as directed in the guidance and therefore have indicated that I will provide any examples as necessary going forward. It would be very irrational of me to provide a signed document on the internet that states that I have over 50 FOIs if this is not the case and further to state that a substantial number were brought to High Court.

**Paragraph n:** No I cannot provide evidence of this as the evidence was what was presented at the various stakeholder engagement events for public consultations. However, it would be useful for DEFRA to demonstrate how EU legislation is adhered to if the EU deem this is not the case. Further, that it would be helpful if DEFRA could provide evidence that these organisations refer to the Convention on any of their public information.

5. See **Paragraph g** above at 4.
6. See **Paragraphs g, h and j** from the Communication.
7. See **Paragraph l** above and from the Communication. For the second part of this point I have evidently made reference to DAERA and its role and provided examples where information is lacking eg air and water quality, see **Paragraph j** (iii for water and iv to ix for air) from the Communication. As I have stated in my Communication the information is not gathered by DAERA but by private organisations and uploaded onto DAERA's website (**see Paragraph j iii**) but is insufficient in its frequency and lacking in a robust process of assessment to provide any effective protection mechanism.
8. DEFRA infer that NIEA "protect and enhance NI's environment" however they provide no evidence of this and they do not refute any of my complaints with evidence other than that they exist. In addition DEFRA also allude to the Council's role in environmental health but if we look back at **Paragraph g** I have already noted that from an FOI request response, the Council hold **no** environmental information. I can provide further evidence of the Environmental Health Department not having a clear remit as regards to environmental protection if requested (a lengthy email trail).

Where DEFRA have the opinion that my "claim" is "manifestly unreasonable" I would like to highlight that in the absence of an EPA and MMO (the latter due to the discriminatory nature of the Marine Coastal and Access Act 2009 listed on page

9. This statement is repeating their allegations above.
10. Statement confirming part of my complaint, no feedback from DEFRA either in agreement or not.
11. This point is regarding consultations that I have taken part in and responded to as an individual or on my own. **Paragraphs y and z** gives examples of six of these and provides links to each in the footnotes which also explain why my submissions were disregarded eg that the documents (Local Area Development Plan and Marine Plan) have not been updated since the consultation that took place in 2018.
12. A statement of the content of my Communication.

13. It is evident here that DEFRA have misunderstood my complaint at Paragraph a. By adhering to Article 3 (2 and 9) of the Convention, I would not be discriminated against if I were living elsewhere in the UK other than NI in not being given “guidance” for access to justice by “officials or authorities”. Here I am highlighting the Law Society as one such “authority” and I provide evidence in the footnote to their website.

With regards to costs, I have not provided these as I am not seeking a remedy for my case as this complaint is one against the system failure where my case is being presented as evidence of this systemic failure. Further to respond to the question whether I had taken advantage of the Aarhus Convention Cost Protection Rules, it seems that the author has missed the information in Paragraph d where I stated that I had instigated new regulations (Aarhus Regulations 2017) with regards to Appeal Court costs.

DEFRA also state that it is their interpretation of the Convention that judicial challenges should **not** “be free of costs” which is, in my opinion contrary to what Article 9 para 5 states that “each party... shall consider the establishment of appropriate assistance mechanisms to remove or reduce financial and other barriers to access to justice”.

14. With reference to Paragraph e, I stated that the Court was in breach of Article 9 by delaying my case for a year and half and by the way they obfuscated the process. In **Paragraph f** I explained how my case judgements were not publicly available on the judiciary website which is also in breach of the Article 9 (I had found them elsewhere see **footnote 11 on p4**). **If** the judgements were available on line on the Judiciary website there would be evidence that the cases were delayed and that they date of publication was 12 months after the oral judgement was presented.

I could provide copies of the judgements that I have which are lengthy (approximately 30 pages each), if requested, or a copy of the Chronology of Events that were submitted to Court as part of my submission.

15. Contrary to what is stated here I believe that I have provided evidence that I have used every opportunity that is open to me that I am aware of both nationally and internationally to remedy the lack of protection mechanisms in NI. In all cases that I had brought, in complaints procedures (GRC) and in engaging in consultations, I have experienced “unreasonably prolonged” processes and/or where none have provided “an effective and sufficient means of redress”. I have also alluded to the fact that **all** Aarhus cases brought by LiPs have not been effective in their redress of impugned decisions. Two cases won (mine and another female LiP) were both conditions which were withdrawn before the Hearing. No Hearing led by an Aarhus LiP has made any positive environmental impact on NI.

I refute that I have not demonstrated that I have “engaged with the requirements of the Convention” as stated by DEFRA as I have provided numerous examples of breaches of the Convention (**Paragraphs a-aa**) with evidence as well as numerous examples of my actions seeking remedies (**Paragraph 19**).

16. Contrary to what is stated here I have stated one law change in the last year which I explained was in breach of the Convention as it provided no recourse for public participation and gave decision-making to civil servants who could in future make decisions without consultations within or out with their remits (see **Paragraph x**).

Further at **paragraph 4** of the Communication on pages 2 and 3, I have also highlighted the fact that no new environmental legislation has been ratified in relation to NI and neither has any amendments to existing legislation (as post Brexit legislation) been vetted against human rights. I have also provided corroborated evidence to support my statements in the links provided.

If DEFRA held a contrasting opinion, I would welcome examples of environmental laws pertaining to NI that are compatible with human rights. DEFRA also state that they “*view that these [claims] do not fall within the remit of the ACCC*”. I would beg to differ in that the Aarhus Convention is reliant upon national legislation to be effective in its application and purpose and refers to “national legislation” seven times within the Convention text. In other words, if national legislation is not fit for purpose, the ACCC cannot feasibly be effective in achieving its objective at Article 1.

17. (and 18) I do not believe that I do not provide enough evidence that is corroborated to prove that there is a “general failure”. Please see paragraph 6 of the Communication and corroborating evidence in those links in footnotes on p2 and p3 (at nos 2, 3, 6, 7, 8 and 9).

*“The subject of this complaint, therefore, is far reaching, complex and one that invokes responsibility on a matrix of public bodies both within the UK and in the EU. Notwithstanding that each body has their individual role to play in the overall effectiveness of our environmental protectionisms, they together, in my opinion, are responsible for allowing that overarching yet fundamental responsibility to fall to no one and therefore, to ultimately fail.”* (Paragraph 6 P3)

19. With respect to DEFRA I believe that they have been misguided in their understanding of the environmental protectionisms in NI. It involves a very complex matrix of public, private and quasi-public/private organisations with not one independent competent authority to provide the essential due diligence that is required to provide effective environmental protection.

My case is focused on the strategic issue of environmental protection rather than each individual complaint, however to provide evidence of the systemic failure of environmental governance in NI, I have had to provide a wide range of examples covering most if not all Articles of the Convention. I am not, at this juncture expected to outline any of the merits of the case to the Committee.

Signed



Dated 24 January 2021