Communication numbers ACCC/C/2013/85 & 86

Aarhus Compliance Committee – draft report to 7th session of the Meeting of the Parties to be held 18 to 20 October 2021

On the matter of non-compliance of Art.9, Aarhus Convention by the UK

Comments of Communicants C85 & 86 on the ACC's draft report of 5 July 2021

1. This is a short note on behalf of Communicants C85 and C86 in response to the Compliance Committee's draft report to the seventh session of the Meeting of the Parties on decision VI/8k concerning the UK's compliance and which was circulated on 5 July 2021. Any references we make to paragraph numbers in this note relate to those which appear in the Committee's draft report, unless otherwise stated.

2. This note is made by way of follow up to the Communicants C85 and C86 note of 15 October 2020 which was written in response to the UK's 3rd progress report and we respectfully refer the Committee's attention to that note.

3. The Communicants welcome the comments and findings set out within the Committee's draft report, note and echo the Committee's disappointment with the UK's delay in formally reviewing the Environmental Cost Protection Regime as set out in paragraph 44.

Paragraphs 2 (a), (b) & (d) & 4 of decision VI/8k

4. In relation to the above, the Communicants share the Committee's ongoing frustration that most of the Committee's recommendations remain unaddressed & there remains no clear progression or timetabling by the UK; the Environmental Costs Protection Regime (scheduled April 2020), currently delayed indefinitely. We therefore welcome the Committee's recommendation at paras. 184 & 185 of the draft report for the Meeting of the Parties to reaffirm its decision VI/8k and request that a plan of action and progress report by the UK are sought by the Parties.

5. Among the Committee's recommendations, we particularly welcome the Committee's acknowledgement, that where some costs protection is provided the need to provide financial information is 'an unnecessary burden and … potentially unfair'. Richard Buxton Solicitors share the concerns raised by observers that the requirement to provide a schedule of financial resources is a chilling and invasive process for potential Claimants to go through. Claimants are informed that they have to submit their financial details to a council, and potentially a developer (which may be their neighbour) or face unlimited and unrestricted costs.

6. Further & despite the very rare occurrence that the costs cap is raised, as acknowledged by the Committee at para 74, Richard Buxton's regularly witness the Defendant and Interested Party applying to increase the Claimant's adverse costs cap, with very limited information and reasoning for such an increase to be sought. In effect, this opportunity to vary is being used as a litigation tactic to intimidate the claimant not to pursue the claim. This is particularly effective when the Claimant is dependent on the generosity of others through the crowdfunding, with the associated risk that should the claim fail, and the funds not raised, they will personally be liable as the named claimant for the adverse costs.

7. Finally, as noted at the open session on 9.7.21 the question of costs continues to be used by parties to seek to intimidate and dissuade claimants from being proceedings or otherwise as a litigation tactic. By way of example, the interested party/developer in the recent case of *Abbotskerswell Parish Council v Secretary of State for Housing Communities & Local Government and others* [2020] EWHC 2870 (Admin) persisted in requesting information from the Claimant (within the proceedings and beyond) resulting in the Claimant incurring considerable unrecoverable time and expense with the production of unnecessary witness statements, the incurrence of extra legal advice and assistance, and incurring unnecessary court time in responding to allegations. The outcome of the interested party's application in *Abbotskerswell Parish Council* was that a costs order was made in the terms originally requested by the Claimant and not as alleged by the interested party. The key point is that even where costs protection is provided by the UK e.g. under the Civil Procedure Rules, this is unnecessarily complex and permits costly applications to be made that can be ill-afforded by Claimants.

Paras 2(a),(b) & (d), 4 & 6 of Decision VI/8k relating to private nuisance proceedings

8. The Communicants 85 and 86 fully support the Committee's approach as set out in paragraphs 157 to 160 and, as the Committee notes, the UK has failed to make any concrete progress on the matter since the sixth session of the Meeting of the Parties which took place in 2017.

9. The Communicants 85 and 86 remain extremely frustrated at the UK's failure to act on the recommendations made and/or respond to the suggestion which was made in 2014 and in the Communicants' Joint Note of 13 March 2018.

10. It is noted by Communicants 85 and 86, that in the UK's verbal submission during the open session with the committee on Friday 9 July 2021, the UK spokesperson failed to address or acknowledge, the continuing failure by the UK to respond to the Compliance Committee's findings. Communicants 85 & 86 is an example of the repeated and ongoing failure of the UK government to address the Compliance Committee's ongoing concerns relating to private nuisance proceedings.

11. The Communicants invite the UK to confirm whether it respects the role of the Compliance Committee and/or the Convention. The UK's persistent failure to take any action or make any progress would appear to suggest that it does not.

12. The Communicants welcome and support the Committee's recommendation as set out in paragraphs 184 and 185 that the UK submits its plan of action including a time schedule to the Committee by 1 July 2022 and detailed progress reports to the Committee by 1 October 2023 and 1 October 2024. The Communicants question however whether, and if so, what, penalties will be imposed on the UK in the event of any breach of such recommendation.

Neil Stockdale, Hugh James Solicitors for Communicant C-85
Dr Paul Stookes, Richard Buxton Solicitors for Communicant C-86
19 July 2021