

**COMMENTS FROM THE PARTY CONCERNED
ON DRAFT FINDINGS AND RECOMMENDATIONS**

1. The Party Concerned, the United Kingdom, is grateful for the opportunity to make comments on the Draft Findings and Recommendations published by the Compliance Committee on 15 June 2021. References to paragraph numbers, unless otherwise clear from the context, are to the Draft Findings and Recommendations (“DFRs”).
2. At para. 12, the DFRs note that the Communicant and the United Kingdom did not consider a hearing was necessary. It is correct that the United Kingdom does not object to this specific Communication being considered without a hearing. However, the United Kingdom respectfully requests that it is made clear in the Findings that its agreement to proceeding without a hearing was one in the circumstances of this Communication.¹
3. In the second sentence of para. 18, the DFRs refer to a duty to keep certain locations clean. The United Kingdom respectfully requests that the reference to “clean” is amended to “clear of litter and refuse”, so as to reflect the wording of the legislation (as is correctly quoted in the second sentence). Section 89(1) of the Environmental Protection Act 1990 does not impose a duty to keep an area clean, with s.89 drawing a distinction between the duty to keep an area clear of litter and refuse in s.89(1), and a duty to keep an area clean in s.89(2).
4. Paragraph 19 of the DFRs refer to “litter and rubbish”. The word “rubbish” is not used in s.89 (or indeed in s.91). The statutory terms are “litter” and “refuse”. The United Kingdom respectfully requests that in para. 19 of the DFRs, and at any time when reference is made to the statutory obligation,² the statutory terminology is used.

¹ See Party’s Reply as to Need for Hearing, 13 October 2020; Party’s Final Submission, 25 November 2020, para. 1;

² For instance, at paras 95 and 98 of the DFRs.

5. Paragraph 24 refers to “Section 5(2) of the policy of Birmingham City Council...”. As this is a reference to policy, rather than legislation, the United Kingdom respectfully suggests that the word “Section” is changed to “Paragraph”. The same applies to references to “Section” in paras 25 and 26 of the DFRs.
6. The United Kingdom respectfully suggests that, in para. 38, the reference to “the Magistrates’ Courts’ Act” should be to “the Magistrates’ Courts Act”, i.e. that the second apostrophe should be removed.
7. Where the DFRs refer to the specific Magistrates’ Court considering the Communicant’s complaint (such as at paras 40, 41, 43, 45 etc), the United Kingdom respectfully suggests that “Magistrates’ Court” should be capitalised.
8. In the first line of para. 54, there is a reference to “the court”, as the Court of Appeal deciding the Communicant’s appeal. The United Kingdom respectfully suggests that “Court” here should be capitalised.
9. Also in para. 54, there is a reference to “at the first instance”. The United Kingdom respectfully observes that, at least in domestic legal parlance, the phrase would be “at first instance”.
10. Paragraph 60 uses the terminology of “Aarhus claim”. However, in rule 45.41 of the Civil Procedure Rules, to which para. 60 also refers, the wording is “Aarhus Convention claim”. The United Kingdom respectfully suggests that, in para. 60, “Aarhus claim” is amended to “Aarhus Convention claim”.
11. In para. 77, the United Kingdom respectfully suggests that “come” should read “comes”.
12. In para. 79, the DFRs use the phrase “pay the Council’s cost”. The United Kingdom respectfully suggests that this should be amended to “pay the Council’s costs”.
13. At para. 81, the DFRs state that the review of the mechanism by which councils and other land-managers can be held to account for maintaining land had been envisaged to be carried out by the end of 2020, but that an intervening general election had altered the

timeframes. The United Kingdom is conscious of the guidance not to include new information at the stage of comments on draft findings and recommendations.³ However, without wishing to seek to change the Committee's views as to compliance, the United Kingdom would respectfully observe that the global COVID-19 pandemic, and EU Exit, also resulted in an adjustment to the department's priorities, which impacted progress in relation to litter policy. The United Kingdom suggests that consideration is given to the inclusion of these factors in para. 81.

14. At para. 88, there is a reference to "the Court of Appeals' refusal...". In England and Wales (the applicable jurisdiction), the title of the Court of Appeal is singular. The United Kingdom therefore respectfully suggests that the apostrophe should come before the final "s": "the Court of Appeal's refusal...".
15. At para. 92, there is a reference to "paragraph 2(a) of decision IV/9k". The United Kingdom respectfully suggests that this should be a reference to "paragraph 2(a) of decision VI/8k".
16. Paragraph 111 starts "Paragraph 7 of the Magistrates' Courts...". The United Kingdom respectfully suggests that this should read "Paragraph 7 of the Magistrates' Court's...".
17. Paragraph 113 states that the approach of the Magistrates' Court "creates a strong incentive for public authorities not to take action to clear litter until members of the public finally resort to court proceedings...". The United Kingdom is concerned that this implies that public authorities have no reason to comply with the law unless they are compelled to by a judicial decision. Whilst the United Kingdom does not discount in the slightest the important contribution of litigation to public bodies' compliance with the law, in societies governed by the rule of law the expectation should be that public bodies will comply with the law without requiring an order of the court for them to do so. To suggest otherwise may be retrogressive in terms of environmental protection. The United Kingdom respectfully requests that para. 113 of the DFRs is removed.
18. Paragraph 115 says "the costs order against the communicant under section 64(1) can only be seen as a kind of sanction against the communicant". The costs order was made in

³ *Guide to the Aarhus Convention Compliance Committee*, para. 201.

favour of the BCC, to reimburse it for its legal costs incurred in the litigation. There is no suggestion in the DFRs that these costs were not truly and properly incurred by BCC. The United Kingdom respectfully requests that the word “only” be removed from para. 115.

19. In the second line of para. 120, the DFRs state “mentioned in paragraph 117 117above”. The United Kingdom respectfully suggests that this be amended to “mentioned in paragraph 117 above”.

20. The United Kingdom respectfully requests that the Compliance Committee does not make substantive amendments to the DFRs, other than those set out above, without giving the United Kingdom the opportunity to comment upon them.

ALISTAIR MILLS
Landmark Chambers
Wednesday, 21 July 2021