

Format for communications to the Aarhus Convention Compliance Committee

Important note:

The communication should be no more than 6,000 words (ten A4 pages). If in an exceptionally complex case more than ten pages are required, in no circumstances should the communication be longer than 12,000 words (twenty A4 pages). The paragraphs of the communication should be numbered and a list of annexes provided at the end.

I. Information on correspondent submitting the communication

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If the communication is made by a group of persons, provide the above information for each person and indicate one contact person.

If the communication is submitted by an organization, provide the following information for the contact person authorized to represent the organization in connection with this communication:

Name
Title/Position
Telephone
Email]

II. Party concerned

1. Environment Agency, Information Commissioner and the First Tier Tribunal. Amended Application 14.09.21

III. Facts of the communication

2. [Detail the facts and circumstances of the alleged non-compliance. Include all matters of relevance to the assessment and consideration of your communication. Explain how you consider that the facts and circumstances described represent a lack of compliance with the provisions the Convention.]

The UK system for a member of the public to obtain environmental information is through the

Environment Information Regulations. Since 2008 I have attempted to use this system to try to obtain information from the Environment Agency and on most of these occasions access has been denied as they claim exceptions to disclose under the EIR.

Appeals against refusals to disclose information firstly go through the Information Commissioner, then, if not upheld, through the First Tier Tribunal. The process often takes over a year.

I have always, until now, failed to obtain the information in this way and this has been used to have a blanket refusal under the term ‘manifestly unreasonable’ ‘supported by the ICO’ although with persistence I, and others, managed to have the matter brought to the European Court of Justice (winning against the UK) and the EU Petitions Committee. I believe the use of the EIR and the follow up procedures of the ICO contravene the rights expressed by the Aarhus Convention in Articles 9(1) and Article 9 (2) As an example I now detail the process and outcome of my recent (2019) request to the EA, bearing in mind that the reality of our situation is that in 2019, 760,000 tonnes of untreated sewage flows were discharged to sea here at Whitburn and 3.2 million tonnes of sewage also bypassed treatment at Hendon Treatment Works (Sunderland) to be discharged to sea one mile away from here – an ever increasing problem.

- A)** In 2012 the European Court of Justice Case C – 301/10 found against the UK authorities in that the Whitburn Storm sewage system was not complying with the Urban Waste Water Treatment Directive. The Court were told that the only solution was to increase the capacity of the storm interceptor tunnel by 10,800 m³ and gave the UK authorities 5 years to correct the situation (December 2017).
- B)** On the 31 October 2018 I was provided by the European Parliament with a copy of a note sent to the Members of the Petition Committee. It stated “...*the Whitburn Long Sea Outfall, the situation showed that up to the end August 2018 there were quite a high number of spills (13 in total), with quite high spill volumes (298,000m³ in total)*” Bearing in mind that in there had been only 60% of the average rainfall this showed there had been no improvement. (European Commission Notice to the members of the Petitions)
- C)** I, along with my MEP were asked to make comments to the Petitions Committee so they could discuss the matter further, my MEP Jude Kirton-Darling took part in the meeting. (I enclose her notes and my notes, along with the video of the meeting)
- D)** The Local Authority Flood Prevention Officer informed me on the 17 December 2018 that the Combined Sewer Overflow spill rate had been changed, so using the Environment Information Regulations I requested information from the Environment Agency (EA) on 15 January 2019 asking how this change had come about, they refused. (EA Letter 12 February 2019)
- E)** I went through the Environmental Information Regulations (EIRs) procedure of making my request, 15 January 2019 it was refused. I requested an internal review 12 February 2019 it was also refused. I made a complaint to the Information Commissioner on 4 March 2019 and on 21 August 2019 they issued their decision notice supporting the Environment Agency stating the exception favored non-disclosure. (Information Commissioner Notice dated 21 August 2019)
- F)** Aarhus Convention - On the 21 August 2019 I sought the help of the Aarhus Convention the response: - “*Please note however that if you do decide to submit a new communication, it would be important to show how your case differs from your earlier communication ACCC/C/2013/83*”

as that case was already closed at the Committee's 43rd meeting. It will also be necessary for you to demonstrate that you have exhausted all available domestic remedies in the United Kingdom before submitting a new communication – *"In that regard, I see from the decision of the Information Commissioner's Office attached to your message that you have a right to appeal to the UK's First Tier Tribunal within 28 days of that date (i.e. 18 September). Please note that the Committee may consider this to be an available domestic remedy that should be exhausted before you submit a new communication"* I believe I have gone above and beyond that requirement and for that reason I submit this new communication.

- G)** I made a complaint to the First Tier Tribunal and following my appearance before a judge and panel they made a decision allowing my appeal EA/2019/0347 on the 4 March 2020, over a year since I made my request for information under the Environmental Information Regulations. (First Tier Tribunal Decision 4 March 2020)
- H)** Information Commissioner Office - As nothing was forthcoming I contacted the Information Commissioner because the appeal to the First Tier Tribunal was against the Information Commissioner's Office not the Environment Agency they replied on the 2 April 2020: - *"Thank you for your email received yesterday. Your question isn't clear but I'm assuming it concerns when you'll receive a fresh response from the Environment Agency as result of the recent First Tier tribunal decision. If so, you should direct that question of the First Tier Tribunal decision. If so. So you should direct that question to the Tribunal as it is not one that the Commissioner is able to answer"* (ICO email 2 April 2020)
- I)** FTT - I approached the First Tier Tribunal they replied on the 9 April 2020 *The Tribunal has made its decision, you are free to send a copy of the decision to the public authority involved so that you can be sure they are aware of what the Tribunal has now decided they should do* – *"The Tribunal's position is that any enforcement of that decision (i.e. requiring the public authority to comply with it) is for the Information Commission's Office: I am aware the Information Commission's Office disagrees with this and there is a case awaiting decision in the Upper Tribunal which may resolve the issue"* (FTT email 9 April 2020)
- J)** ICO – 14 April 2020 *"At paragraph 17 of its decision the First Tier Tribunal (FTT) required the Environment Agency (not the Commissioner) to issue a fresh response to you not relying on regulation 12(4)(b) RIR. The Environment Agency is aware of the FTT's decision and steps set out" – "it may be useful to say that, whilst the Commissioner has a power (rather than a duty) under section 54 FOIA to consider compliance with the steps in notices issued by herself, the Commissioner does not consider those powers extend to her considering compliance with any steps in a decision of the FTT. The issue of to whom considering compliance with any steps in a decision of the FTT decision falls is currently awaiting judicial consideration by the Upper Tribunal; this is the case to which the FTT refers below"*(ICO email 14 April 2020)
- K)** EA 20 April 2020 – *"I refer to the ruling of the First Tier Tribunal dated 4 March 2020 regarding your information request of 19 January 2019 and note that the EA has been instructed to provide a response to the 3 questions at paragraph 10, and the further question at paragraph 11 in your request. I note that we have already responded to your last question at paragraph 13" (untrue) "In the current circumstances of lockdown all our offices are closed and staff are working from home due to the Covid-19 pandemic. As a result we are unable to access the paper files we need to provide the required response. We will provide a response as*

soon as we are reasonably able after the current situations changes and our offices are opened once again. I will contact you again to advise on timings when the situation changes” (EA email 20 April 2020)

- L)** EA 14 August 2020 *“Further to my email to you dated 20 April 2020, I write to advise that the Environment Agency is still restricting staff access to offices due to the Coronavirus pandemic, and it is very likely that this will continue for some time to come” (EA email date 14 August 2020 including other information which was incorrect)*
- M)** EC email 21 October 2020 *“Given the continued elevated level of spills since December 2017, both in terms of frequency and quantity, the Commission is of the opinion that the main elements of the judgment of the Court in Case – 301/10 with regard to Whitburn have not been met” (European Commission email dated 21 October 2020 including the discharge records showing over 760,000m3 of untreated sewage was discharged in only 8 months of 2019)*
- N)** EA email 18 November 2020 – *“I refer to your information request of 19 January 2019 which we were required to respond to following the First Tier Tribunal decision of 4 March 2020. We provided a response to you via email on the 14 August as 16.29. The message indicated that we may need further access to the office to complete the response. However on review, we consider that have responded fully to the best of our knowledge and understanding and there is no outstanding information in relation to the response that we would need to obtain from paper or electronic records held in the office. We therefore consider the response to be complete” (EA email dated 18 November 2020)N*
- O)** I contacted the FTT to inform them that the EA had NOT supplied all the information I was entitled to have. FTT email 26 November 2020 – *“As stated in my previous email I need an application to progress these applications for enforcement of FTT decisions, as I understand you have had issues with your eyes, would you like me to complete the form with all the basis info that we have on record and then you can just complete the Grounds of appeal” – “Please let me know if you would like me to do this for you. We are working on the process to deal with this type of appeal as it is something new to the Tribunal FTT 26 November 2020)*
- P)** FTT email 23 February 2021 *“Mr Latimer has not used the form which is available from the Tribunal for a person seeking to lodge application for certification. However, it seems that his position is as follows” (FTT decision I enclose this decision) It is claimed that the FTT refused to extend time to admit notice application. I did not want to appeal - the judge had allowed my appeal why would I want to appeal again? I was told I was waiting for the Upper Tribunal to decide on another case) - Paragraph 11 – “As the Information Commissioner’s Office is the regulator of the FOA Act 2000, it is appropriate that they have the rights associated with being a party. They are, therefore joined to these proceedings as the Second Respondent. However as the proceedings are ended they need only play a part if they seek rule 4(3) reconsideration of my decision to refuse the out of time application” I have made no out of time application so how could I be out of time? I could understand the problems with the Coronavirus situation but not really for this long. It is rather ironic when you consider I was doing what I was told to - wait for the Upper Tribunal decision. (Mrs R Worth 23 February 2021)*
- Q)** FTT 23 March 2021 – *“Having considered the matter afresh pursuant to rule 4 (3) of the Tribunal Procedure (FTT) (GRC) rules 2009, I have decided that the Registrar’s Directions of 23 February 2021 should stand” (Judge Lynne Griffin 23 March 2021)*

- R)** RL to the FTT - 25 March 2021 – *“In response to the decision made by Judge Lynn Griffin, it is important I say that no appeal has been requested by me. My appeal was allowed by Judge Brian Kennedy QC so why would I request an appeal? The fault lies with the administration of the First Tier Tribunal – ‘notice to extend time notice of application’ I have made no application, on the contrary I was told to wait until the Upper Tribunal come to a decision from another case, I am still waiting. I must add it seems extraordinary that a Judge should make such a decision on timing when you consider I made the request for information to the Environment Agency on the 19 January 2019”* – *“my appeal was allowed please get the Environment Agency to provide the requested information.”* – *“Could you please provide correspondence where the FTT informed me of any time limit placed on myself?”* (RL – email 25 March 2021) The Moss Case - I received details of the decision in February 2021. I enclose the link:
https://assets.publishing.service.gov.uk/media/5ee72eede90e070432b489b8/GIA_1940_2018.pdf
- S)** FTT email 26 March 2021 – *“Thank you for your email which I understand is a request to appeal Judge Griffin Rule 4.3 Decision dated 23/3/21. Please can you complete the attached form T96 for Permission to Appeal so that I can log it and refer it to the Judge”* – (Mrs Sharda Mistry FTT 26 March 2021) (I have made no appeal)

IV. Provisions of the Convention with which non-compliance is alleged

3. List as precisely as possible the provisions (articles, paragraphs, subparagraphs) of the Convention that you allege the Party concerned has not complied with.]

Access to environmental information

V. Nature of alleged non-compliance

4. [For each of the provisions with which you allege non-compliance, clearly explain how you consider that the Party concerned has failed to comply with that provision based on the facts of your case. (Provide as attachments to your communication the key supporting documentation that will help to substantiate your allegations).]

Failed to provide information through all available systems as detailed above and enclosed.

5. [Also indicate whether the communication concerns a specific case of a person’s rights of access to information, public participation or access to justice being violated as a result of the alleged non-compliance of the Party concerned, or whether it relates to a general failure by the Party concerned to implement, or to implement correctly, the provisions of the Convention. If you consider that the non-compliance concerns a general failure by the Party concerned, provide as attachments to your communication any key supporting documentation that will help to substantiate that it is a general failure.]

General failure to implement the EIR particularly the Public Interest Test, using the exceptions incorrectly.

VI. Use of domestic remedies

6. [Describe which, if any, domestic remedies have been invoked to address the particular matter of non-compliance which is the subject of the communication. Specify which domestic remedies were used, when they were used, what claims were made, what the results were and whether there are any other domestic remedies available.]

Request for information, internal review, complaint to the Information Commissioner, appeal to the first tier tribunal (allowed, but no information supplied)

7. [If no domestic remedies have been invoked or if there are other domestic remedies available, explain why they have not been used. This information will be important for the Compliance Committee's decision on admissibility of the case.]

VII. Use of other international procedures

8. [Indicate if any international procedures besides the Aarhus Convention Compliance Committee have been invoked to address the issue of non-compliance which is the subject of the communication. If so, specify which procedures were used, when they were used, what claims were made and what the results were.]

European Commission

VIII. Confidentiality

9. [Note that unless you expressly request it, none of the information contained in your communication will be kept confidential. If you are concerned that you may be penalized, harassed or persecuted, you may request that information contained in your communication, including information on your identity, be kept confidential. If you request any information to be kept confidential, clearly indicate which information. It is also helpful for the Committee to know why confidentiality is requested.]

IX. Supporting documentation (copies, not originals)

10. [Insert a list of annexes at the end of your communication. Clearly specify in your communication which paragraph of your communication each annexed document relates to. For each annexed document, highlight those parts which are essential to your case.]

11. [Avoid including extraneous, superfluous or bulky documentation. Attach only documentation essential to your case, including:

- Relevant national legislation, highlighting the most relevant provisions.
- Relevant decisions/results of other review procedures, highlighting the most relevant sections.

- Relevant correspondence with public authorities of the Party concerned or other documentation that substantiates your allegations of non-compliance, highlighting the most relevant sections.]

12. [Provide all supporting documentation in the original language, together with a legal standard English translation thereof, or if that is not possible, a legal standard translation in either Russian or French.]

X. Signature *Robert Latimer*

13. [Sign and date the communication. If the communication is submitted by an organization, a person authorized to sign on behalf of that organization must sign it.]

XI. Sending the communication

14. Send the communication by email to the Secretary to the Compliance Committee at the following address:

aarhus.compliance@un.org

15. In the exceptional case that you do not receive an acknowledgement of receipt from the secretariat by email within one week, send the communication by registered post to the following address:

Secretary to the Aarhus Convention Compliance Committee
United Nations Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10, Switzerland