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Sent: Tuesday, October 19, 2021 6:08 PM

To: ECE-Aarhus-Compliance <aarhus.compliance@un.org>

Cc: Fiona Marshall <fiona.marshall@un.org>; Lavis, Adam <Adam.Lavis@defra.gov.uk>; Winstone, Alex <Alex.Winstone@defra.gov.uk>; Hope, Val <Valerie.Hope@defra.gov.uk>

Subject: RE: PRE/ACCC/C/2021/188 (United Kingdom) - communicant's comments

Dear Fiona,

We would like to thank the Compliance Committee for the opportunity to respond on preliminary admissibility to communication PRE/ACCC/C/2021/188. Following the delivery of our statement, we were asked by the Compliance Committee at the open session which took place this afternoon to provide an answer on which body is responsible for the enforcement of First Tier Tribunal decisions. We are now able to provide an answer to this question. We believe that the references to an Upper Tribunal case in the communicant's documentation must have been to *Moss v Information Commissioner & Royal Borough of Kingston upon Thames* [~~2020~~ UKUT 174 (AAC)]. In this appeal, which represents the relevant case-law on the matter, the Upper Tribunal held that it is the FTT that has the power to enforce those decisions. It is worth mentioning that enforcement, in its broadest sense, has two stages to it: Reg 18(2)(b) of the EIRs adopts the appeals process as contained in Part V of FOIA. S.61 FOIA (as substituted by Schedule 19 of paragraph 60 of the Data Protection Act 2018) details the appeals procedure for non-compliance with First Tier Tribunal decisions. The FTT does have the power to *certify* a party's conduct as contempt. The Upper Tribunal then has the power to *commit* the authority for contempt.

We will like to remind the Compliance Committee that in the communicant's particular case, that the Environment Agency in this case did actually do what the First Tier Tribunal decided they should. This is evidenced in the letter from the Environment Agency to the communicant dated 16 December 2021. The Environment Agency complied with the decision of the FTT for the EA to provide a fresh response, so the enforcement of the FTT decision should not be in question here.

We hope that this provides further clarity to the question directed at the United Kingdom at the open session of the Aarhus Convention Compliance Committee this afternoon.

Please do let us know if the Compliance Committee has further questions.

Kindest regards
Grace