

Moray Feu Traffic Subcommittee
c/o Whitelaw Wells
9 Ainslie Place
Edinburgh
EH3 6AT

Ms Josephine Toop
Associate Environmental Affairs Officer,
Aarhus Convention Secretariat,
United Nations Economic Commission for Europe
Room 407
Palais des Nations
CH-1211 Geneva 10
Switzerland

22 January 2015

Dear Ms Toop

Re: Decision V/9n concerning compliance by the UK with its obligations under the Aarhus Convention with respect to findings made by the Compliance Committee in Communication 53: Displacement of central Edinburgh traffic into residential areas. (Ref. ACCC/C/2010/53)

Thank you for the opportunity to comment on the UK's first progress report. We would like to highlight the value of the work of the Compliance Committee that led to a direct re-instatement of the established practice of releasing data on environmental measurements as they were taken, allowing all stakeholders in the planning process to have access to evidence on known environmental impacts.

We note however that the UK has persistently challenged the legitimacy of the findings and appears to challenge the authority of the Compliance Committee in its progress report by omitting any reference to Communication 53 in the body of its report, leaving the only explicit reference in an appendix. This appendix contained an earlier statement by the UK that "We do not agree that the Compliance Committee should have made findings in communication 53".

Leaving this statement unqualified in the body of the report fails to recognize that, since making their position clear, the UK were given ample opportunity to argue their objections to the findings in Communication 53 at a Compliance Committee hearing held on the 25 March 2014 in Geneva. At that meeting the Committee adjusted its timetable to accommodate written and oral presentations and cross-examination by both the UK Government (the Party Concerned) and the community affected by displaced traffic (the Communicant).

Mr Azam, the lead UK representative, who had intended to be at our presentation, arrived shortly after it had been completed. He was briefed on the main points of our presentation by the Committee Chair and given a copy of our written submission. The Committee Chair then asked Mr Azam if he would agree to present his response the next day. Mr Azam agreed and the schedule was further modified to accommodate both this, and cross examination of each party. At this point the Committee Chair also asked for a written summary of our presentation to be submitted for circulation to all parties and to be made public on the Aarhus Compliance Committee website thereafter.

On the morning of the 26 March 2014, the UK Government informed the Committee that it no longer intended to address the Committee in relation to its objections to their findings in Communication 53 nor to provide any counter to either the written statement we had circulated before the presentation, or the points we had raised during the previous day's presentation.

On the afternoon of the 26 March 2014, we submitted a written summary of the oral presentation we had made the previous day (Appendix I).

The UK Government's omission in its first progress report of any reference to these written (2) and oral (1) submissions from the Communicant is disappointing given the Compliance Committee's exceptional arrangements to accommodate the exchange and the UK Government's explicit agreement to participate. This suggests that, having withdrawn from any active defence of their refusal to accept the legitimacy of the Compliance Committee's findings in Communication 53, the UK Government has decided to ignore it in their progress report.

Under the circumstances it is hard to draw any conclusion other than the UK has withdrawn any meaningful engagement with the findings in Communication 53 and has refused to meet their reporting obligations in that respect.

Further, following the City of Edinburgh Council's acceptance of the principal obligations of Communication 53 (see Appendix I), it is very disappointing to report that the traffic noise impacts have still not been monitored and that pollution monitoring sites in the area have been reduced at a time when net traffic levels are expected to rise.

Since raising this case, temporary displacement of traffic from commercial into adjacent residential areas have been made the subject of permanent traffic orders. Further restrictions on access to commercial thoroughfares in the centre of the city (Princes Street, George Street and Charlotte Square) have been imposed and/or are currently being proposed for vehicles that include tour buses, and public transport operated by companies outside the City of Edinburgh.

Thus further large vehicles are being actively displaced into residential areas comprised of cobbled streets bordered by 'listed' buildings where double glazing is not allowed for heritage reasons. Air and noise pollution introduced by these measures have already increased by levels at which significant health impacts are expected.

Given growing public concern over the impacts of traffic air and noise pollution on health, the findings of the Compliance Committee in Communication 53 are important for the UK to recognize, respond to and report on. We trust that the Compliance Committee agree and thank them again for giving us the opportunity to present our case.

Yours sincerely,

Dr Ashley D. Lloyd
Moray Feu Traffic Subcommittee

Mr Alistair MacIntosh

APPENDIX I:

Written summary of oral presentation by Communicant in Case ACCC/C/2010/53
[<http://www.unece.org/env/pp/compliance/Compliancecommittee/53TableUK.html>]

Moray Feu Traffic Subcommittee
c/o Whitelaw Wells
9 Ainslie Place
Edinburgh
EH3 6AT

Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Room 429-2
Palais des Nations
CH-1211 Geneva 10
Switzerland

26 March 2014

Dear Ms Marshall

Re: Communications to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with the proposed displacement of central Edinburgh traffic. (Ref. ACCC/C/2010/53)

Thank you for your invitation to address the Compliance Committee yesterday. In response to the Committee's request, I would like to provide a summary of key points from UK C53 that we understand to be relevant to your current deliberations.

(i) The Value and Usefulness of the ACCC Forum: In the experience of the Communicants this forum has provided the only opportunity for case review in which the roles of Principal and Agent have been clearly distinguished and the scope has allowed both process and content issues to be considered. We believe this to be very important in allowing complex issues to be adequately discussed.

The value of the recommendation made by the ACCC is twofold:

(a) it resulted in a change of practice at The City of Edinburgh Council (CEC). The CEC official who had previously recommended that such data be withheld, given the likelihood that it would prejudice CEC plans for traffic displacement, stated (Figure 1): *"It has been decided to adopt the recommendation of the Aarhus Convention Compliance Committee"*

(b) it explicitly ties data release to its relevance to ongoing decision-making processes, and thereby improves prospects for meaningful public participation

Given UK DEFRA endorsement of the decision to start withholding data that was claimed by CEC and the lack of direct intervention by DEFRA since the case was brought to the attention of the ACCC, we are confident that **the ACCC ruling is the only reason we have been able to re-establish access to this data**, and hence feel strongly that it should be included in the agenda for the Meeting of Parties.

(ii) The definition and relevance of an "alternative remedy": The explicit link in the ACCC recommendation between access to data and relevance to a decision-making process provides a useful test of whether a 'remedy' has any prospect of redress. In this case we were able to show that CEC had judged that they could delay release of the uncorrected data without any risk of censure, as the first stage of an appeal to the

APPENDIX I:

Written summary of oral presentation by Communicant in Case ACCC/C/2010/53
[<http://www.unece.org/env/pp/compliance/Compliancecommittee/53TableUK.html>]

Scottish Information Commissioner produces simply a repeat of the information request at a later date. At this stage it would be possible for the CEC to have prevented meaningful participation in a decision process that had already concluded and to avoid censure simply by releasing the requested data at that later date.

The timing of access to existing environmental data is therefore key. Any delay produces information asymmetry and reduces the evidence base on which decisions are taken. To delay access to the point where decisions recommended by CEC are not informed by relevant data that they hold is clearly unsafe. Hence the working definition adopted by ACCC that a potential remedy is irrelevant should 'application be unreasonably prolonged or obviously does not provide an effective and sufficient means of redress' clearly applies in this case. We endorse the ACCC's definition and **reject UK DEFRA's assertion that this has neither been discussed nor shown to apply in this case** (Document **frUKC53_05.03.2014.pdf**, Paragraph 9.c.).

(iii) Compliance with ACCC recommendations by the Party concerned: In **frcommc53_21.03.2014.pdf** we raise concerns about inferences drawn from current environmental monitoring by CEC used to argue that no health impacts from mass displacement of traffic are likely. These include 'proof' that no street canyon effect occurs, that air quality is not materially affected by the transit of over 17,000 vehicles per day through such a canyon, and that such transits over cobbled streets do not warrant any noise measurement. These conclusions have been passed to the ACCC with the implicit endorsement of UK DEFRA despite their evident incompatibility with reputable academic studies. The same arguments are now being used to reverse moderating measures reported by the Party concerned to the ACCC as evidence of meaningful public participation. Specifically, CEC has closed down the Traffic Workshops, barred the Communicant from participating in its replacement, and is now promoting schemes that will reduce the capacity of Hope Street as an alternative route and hence displace more traffic from non-residential to residential areas, with a net negative impact on the health of the city overall.

Throughout this process UK DEFRA support has been cited and the apparently unqualified support from the Party concerned for **frcommc53_21.03.2014.pdf** suggests that without ACCC's recommendations and support there was no prospect of any domestic remedy providing 'effective and sufficient means of redress'.

(iv) The Value of Dialogue: As the preceding points highlight, the Communicants appreciate the time given to dialogue in this case and, as people with no legal training, feel that the latitude given to relate procedural issues to tangible impacts is key to ensuring that all parties understand the significance of the issues discussed.

We trust that the above helps to bring the UK C53 recommendations to the Meeting of Parties and are happy to provide any further clarification.

Yours sincerely,

Dr Ashley D. Lloyd
Moray Feu Traffic Subcommittee

Mr Alistair MacIntosh

APPENDIX I:

Written summary of oral presentation by Communicant in Case ACCC/C/2010/53
[<http://www.unece.org/env/pp/compliance/Compliancecommittee/53TableUK.html>]

From: Andrew Mackie
Subject: RE: Air quality Monitoring Data
Date: 10 October 2012 11:04:55 BST
To: LLOYD Ashley

Dear Dr Lloyd

It has been decided to adopt the recommendation of the Aarhus Convention Compliance Committee that monthly air monitoring data should be made available to the public. The data should be published on the Council website within the next two weeks and will be updated regularly thereafter. You will be able to access the data from the website once it has been posted.

Regards
Andrew Mackie

Dr Andrew Mackie | Environmental Health & Scientific Services Manager |
The City of Edinburgh Council | Chesser House, 500 Gorgie Road,
Edinburgh EH11 3YT | Tel. No. 0131 469 5925 Fax 0131 469 5849 | E-mail
andrew.mackie@edinburgh.gov.uk

Figure 1: e-Mail from Dr Mackie, The City of Edinburgh Council, noting the direct impact of the ACCC ruling on practice of releasing uncorrected Environmental measurements.