

Nobel House
17 Smith Square
London SW1A 3JR

Telephone 08459 335577
Email Jane.Barton@defra.gsi.gov.uk
Website www.defra.gov.uk



11 January 2010

Jeremy Wates
Secretary – Aarhus Convention
Economic Commission for Europe
Environment, Housing and Land Management Division
Bureau 332
Palais des Nations
CH-1211 Geneva 10
Switzerland

Dear Sirs,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with the provisions of the Convention in connection with costs associated with discharge of an interim injunction (Ref. ACCC/C/2009/23).

Thank you for your letter of 8 January.

As the Committee will be aware, neither the UK Government, nor any Governmental body, is a party to the claim being brought by Mr Morgan and Mrs Baker, nor did they appear in the Court of Appeal (given the claimants' agreement to meet the costs of the Environment Agency and the Local Authority in any event, as ordered by the judge below). We have, however, reviewed the complainants' response of 8 January 2010 to the Committee's recent enquiry, together with the order made by the Court of Appeal, and would not suggest that the complainants are wrong in their view that their costs liability to the Agency and Local Authority may not now be recovered from the Defendant.

The order reflects the judgment of the Court of Appeal, who clearly considered that the Agency and the Local Authority had been "wrongly included in the order" by the Claimants: see paragraph 53 of the judgment. That was the conclusion of the judge below, and not challenged by the claimants / complainants on appeal to the Court of Appeal. The Court of Appeal's judgment states:

"53. For reasons we have explained, the order in favour of the two authorities has not been the subject of argument, but in any event we would find it hard to see any objection to it. There being no appeal from

the judge's decision that they were wrongly included in the order, they were entitled to their costs on ordinary principles. Since they would be no longer involved as parties to the case, it was obviously appropriate to deal with them then and there."

Separately, in relation to the Claimants' liability for the Defendant's costs on the interim injunction application (which was a live issue before the Court of Appeal), the Court of Appeal concluded:

"58. On this issue, therefore, we will allow the appeal and substitute an order that the costs of the defendant be reserved to the trial judge"

It may therefore be seen that the amended order merely reflects what the Court of Appeal had decided in its judgment and (in relation to the Claimant's liability to the public bodies) what had been agreed by the Claimants before the hearing and was not sought to be appealed by them.

Yours faithfully,

A handwritten signature in cursive script, appearing to read 'J. M. Barton'.

Jane Barton, UK national focal point.

Cc Richard Buxton