SUBMISSION TO THE ACCC, 1 September 2015

CORRESPONDENT SUBMITTING THE COMMUNICATION

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PARTY CONCERNED

United Kingdom

FACTS OF THE COMMUNICATION

This communication concerns the alleged non-compliance by the United Kingdom with its obligations under articles 3, 5, 6 and 9 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the "Aarhus Convention").

As a resident living adjacent to the proposed development that is the subject in this communication, I am a member of the "public concerned". I have a degree in physiology and have worked in the life sciences and medicine division of the publishing industry for almost twenty years. I have a particular interest in environmental matters and I feel my background gives me some competence in reviewing scientific reports and understanding the impact upon quality of life and health matters. I do not qualify for Legal Aid, so I have been unable to afford to engage a solicitor and have acted as a self-litigant throughout.

BRIEF OVERVIEW

In February 2012 a planning application was submitted to London Borough of Merton Council for redevelopment of the former Nelson Hospital site on the outskirts of Wimbledon in south west London.

The project entailed demolition of existing hospital buildings on the eastern part of the site and replacement with a new healthcare centre, a pharmacy, café and car park. Buildings on the western part of the site would be demolished and replaced with an "assisted living development" comprising private apartments with communal facilities such as living, dining, laundry, etc. and car parking spaces in the grounds.

In March 2012 the project was screened by Merton Council for its potential environmental effects as Schedule 2 development (urban development of more than 0.5 hectares) under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (the "EIA Regulations").

The public was not notified that the project was subject to an environmental determination. The Council adopted a negative screening opinion (i.e. the opinion that this project would not have a significant impact upon the environment), but the screening opinion was not made available to the public until July 2014, more than two years later.

In December 2012, the Council granted planning permission for the project subject to 50 conditions. The majority of these conditions required the developer to apply for further consent from the Council before the project could commence. For example, the conditions required further ground investigations, noise surveys, details of the electric substation, and proposed mitigation to be submitted for approval. The Decision Notice detailing the grant of permission and the conditions was not made available to the public until September 2013.

Between March 2013 and January 2015 a number of subsequent planning applications were submitted to the Council for approval of various conditions to the initial planning consent. Most of these applications required approval by the Council before development could commence. The others required approval before occupation was permitted.

In February 2013, building work began on the health centre. It is now complete and use began in April 2015. Although most of the pre-commencement conditions for the assisted living development are still awaiting consent, building work began on this part of the site in April 2014.

I consider that:

- the screening opinion adopted for the initial planning application in March 2012 was defective;
- the failure of Merton Council to adopt a screening opinion for the subsequent planning applications is a breach of Regulation 9 of the EIA Regulations;
- by allowing Schedule 2 (i.e. potential EIA) development, which is still awaiting consent and assessment of its effects on the environment, to be implemented without those assessments being made, the Council has infringed Articles 2(1) and 4(2) of the EIA Directive.

On 6 February 2015 I submitted an application to the High Court for permission to apply for judicial review of Merton Council's failure to comply with environmental regulations. Permission was refused on all grounds. The judge also ordered that I pay £5,000 of the Council's costs – the maximum allowed by the cap required for cases considered to be subject to the Aarhus Convention under Civil Procedure Rule 45.41–45.44.

Following receipt of the High Court Order, I had seven days in which to make an application to the Court of Appeal for permission to appeal. I applied for permission to appeal on all grounds of challenge and also to appeal the amount of costs awarded against me. Permission to appeal was denied.

LEGISLATIVE FRAMEWORK

Directive 2011/92/EU (the "EIA Directive") provides the framework for the national regulations governing environmental assessment. The preamble (paragraph (2)) states that Union policy is based on the "precautionary principle" and that effects on the environment should be taken into account "at the earliest possible stage in all the technical planning and decision-making processes". By article 2 the EIA Directive requires member states to adopt all measures necessary to ensure that projects "likely to have a significant effect on the environment" are subject to environmental impact assessment before consent is given. The projects to which it applies are those defined in article 4 and annexes I and II. Projects in annex I require assessment in any event; those in annex II (which covers the present project) require a "determination" by the "competent authority" whether it is likely to have a significant effect, so as to require assessment (article 4(2)). Article 4(3) requires that this determination takes account of the relevant selection criteria set out in annex III. The competent authority is the authority designated for that purpose by the member state (article 1(f)).

In the United Kingdom the environmental assessment procedure is integrated into the procedures for granting planning permission under the planning Acts. The current regulations are the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 (the "EIA Regulations", see attachment 1). The Regulations do not follow precisely the form of the EIA Directive. The starting point is the expression "EIA development", defined by reference to Schedules 1 and 2 (corresponding to annexes I and II of the EIA Directive).

Although the EIA Regulations do not in terms "designate" a "competent authority", this role is given in the first instance to the local planning authority (in this case London Borough of Merton Council), which is given the task of determining whether Schedule 2 development is EIA development.

The mechanism by which the authority determines whether assessment is required is referred to in the EIA Regulations as "screening". A "screening opinion" may be given in response to a specific request by the developer (regulation 5), or, in various circumstances where an application (or subsequent application) is received by the authority for development which may require EIA and is not accompanied by an environmental statement (regulations 7-10). Such an assessment must take into account the criteria identified in Schedule 3 (corresponding to annex III of the EIA Directive) as are relevant to the development.

THE APPLICATION FOR DEVELOPMENT CONSENT

In February 2012 a planning application was submitted to London Borough of Merton Council for redevelopment of the former Nelson Hospital site (planning application reference number 12/P0418). The site covers about 1.3 hectares on the outskirts of Wimbledon in south west London. It falls partly within, and partly adjacent to, three designated conservation areas, some parts of which are also covered by Article 4 Directions which limit changes that can be made to certain properties in order to protect the architectural

integrity of the buildings and the character of the surrounding heritage assets. There is a Grade II listed building situated close to the northeastern corner of the site. The site is within an Archaeological Priority Zone, and the entire borough is a designated Air Quality Management Area (AQMA) because it is failing to meet recommended air pollution limits.

Five different species of bat use the site as commuting and foraging habitat. Of these, soprano pipistrelle *Pipistrellus pygmaeus* and noctule *Nyctalus noctula* are UK Biodiversity Action Plan (UK BAP) priority species, i.e. those species that have been identified as being the most threatened and requiring conservation action. Of the bird species found on site, house sparrow *Passer domesticus* and starling *Sturnus vulgaris* are UK BAP priority species.

The redevelopment project entailed demolition of existing hospital buildings on the eastern part of the site (Site 1) and replacement with a new healthcare centre providing General Practice and other community health services, a pharmacy, café and car park. Buildings on the western part of the site (Site 2) would be demolished and replaced with an "assisted living development" comprising private apartments with communal facilities such as living, dining, laundry, etc. and car parking spaces in the grounds.

Redevelopment of the site includes:

- almost doubling the amount of building area from ~5,600 sqm to ~10,500 sqm;
- approximately fourteenfold increase in the use of the health centre from ~20,000 patients per year to ~275,000 patients per year, and consequential increase in traffic;
- removal of more than 10,000 tons of contaminated soil from the western part of the site;
- removal of ~60 mature trees (some approaching 100 years old and most of which were previously protected by Tree Preservation Orders or by virtue of being situated within the conservation area); and
- relocation of the health centre car park to a position directly behind existing residents' gardens, with the addition of lighting and CCTV.

A number of reports and statements were submitted with the application, including an Archaeological Impact Assessment, Ecology Report (with bat survey), Flood Risk Assessment, Demolition Plan, Transport Assessment, Tree Survey and Landscape Statement – but without the benefit of a Heritage Statement, Air Quality Assessment, Daylight & Sunlight Assessment, Noise Assessment or Ground/Geotechnical Survey.

Planning applications and associated documents are held by the Council on an online planning register called "Planning Explorer", which is available at:
http://planning.merton.gov.uk/Northgate/PlanningExplorerAA/GeneralSearch.aspx.

There are no paper documents available for public scrutiny. The public can access the online planning register via the internet or using computer terminals available in the council offices.

The Council notified local residents of the planning application by letter and a notice was placed in a local newspaper dated 1 March 2012. It did not include any notification that the project was subject to an EIA screening procedure. The public was given 21 days to respond to the notice.

Letters of notification were also posted to statutory consultees, such as Natural England and the Environment Agency, but their responses have never been added to the public register.

THE INITIAL SCREENING OPINION

The initial planning application (12/P0418) included a request from the developer for Merton Council to adopt a screening opinion, as the proposed project is Schedule 2 development (urban development project exceeding 0.5 hectares), under the EIA Regulations.

In ACCC/C/2010/50 the Committee found that the outcome of an EIA screening decision is a determination under article 6(1)(b) (see ECE/MP.PP/C.1/2012/11 paragraph 82) of the Aarhus Convention. As such, the determination is subject to article 9(2).

The outcome of a screening decision is crucial in that it determines whether the subsequent grant of planning permission will be subject to the provisions of article 6 concerning the provision of environmental information to the public and their participation in the decision-making procedure. An erroneous decision at this stage would deprive the public of their right to consultation and involvement in the subsequent decision-making process.

The public was not notified that the project was subject to an environmental determination under the EIA Regulations (i.e. screening).

On 12 March 2012 a negative screening opinion was adopted by the Council (see attachment 2). This is just 11 days after the public notice was published and 10 days before the end of the consultation period. Most of the statutory consultees' responses also post-date the screening opinion. The screening opinion itself was not placed on the planning register, where it could be viewed by the public, until July 2014, more than two years later.

The responses from the statutory consultees have never been added to the public register. The only reason that I am aware of the content of these responses is that I was sent copies by the Local Government Ombudsman (LGO) following an investigation (see later).

On 13 March 2012 the statutory consultee Natural England responded to say that it advised that:

> …permission may be granted subject to appropriate conditions including a detailed mitigation and monitoring strategy for bats … Natural England is broadly satisfied that the mitigation proposals, if implemented, are sufficient to avoid adverse impacts of the local population of bats and therefore avoid affecting favourable conservation status. It is for the local authority to establish whether the proposed development is likely to offend against Article 12(1) of the Habitats Directive.

The fact that mitigation must be implemented to avoid adverse impacts indicates that, without mitigation, there would be adverse impacts. The impact on bats (or other priority species) was not considered in the screening opinion at all, and no conditions requiring mitigation or monitoring were included in the subsequent Decision Notice granting consent to the development.

On 16 May 2012 the Environment Agency responded to say that the proposed development would only be acceptable on condition that it did not begin until a sustainable surface water drainage scheme had been submitted to and approved in writing by the local authority.

English Heritage and the Greater London Archaeological Advisory Service, the statutory consultees for heritage protection, have stated that they did not receive the notification, and therefore did not respond with comments to the Council.

An Environmental Noise Assessment was submitted to the Council in May 2012, but, only added to the register in July 2014. It predicts noise levels from the health centre car park will average over 55 decibels at neighbouring homes, in breach of World Health Organisation recommended limits for the protection of health and quality of life.

Between 19 June and 12 July 2012, new plans for Site 2 were registered, following a request from Merton Council for a change in design as it considered the initial submission was not acceptable. On 20 June 2012 letters were sent to those people who had already responded to the initial notification to inform them of the new plans, and requesting comments by 8 July 2012 (before all the revised plans had been put onto the planning register).

THE DECISION TO GRANT PLANNING PERMISSION

Application 12/P0418 was considered by the Council's planning application committee in September 2012 when the committee resolved to grant planning permission.

In October 2012, as a representative of local residents, I wrote to the Council alleging that the application had not been considered properly, in particular the impacts upon the conservation areas and neighbour amenity, and requesting that the decision be reconsidered.

In December 2012, Merton Council granted planning permission for the project subject to 50 conditions, a significant number of which required further consent from the Council before different "phases" of the development could proceed.

The public was not notified of the decision. Although the Decision Notice (attachment 3) granting conditional planning permission was issued in December 2012, it was not uploaded to the planning register, where it could be viewed by the public, until September 2013.

On 9 January 2013, following a formal two-stage complaints process, the Council sent me a letter explaining that they would not reconsider their decision to grant planning permission. I then submitted a complaint, again on behalf of the residents, to the LGO on 21 January 2013.

During the course of the investigation by the LGO, it was discovered that some documents relating to environmental matters (such as the statutory consultees' responses, the screening opinion and the Environmental Noise Assessment) had not been placed on the planning register and therefore had not been available to the public or the planning committee members during the time leading up to the date of the grant of planning permission.

I consider the failure of the Council to possess the environmental information essential for each determination (the screening opinion and the grant of planning permission) is a failure to comply with article 5(1)(a) of the Aarhus Convention. The failure to inform the public of the results of the determinations and to make important documents relating to the decision-making process available to the public in a timely manner is a failure to comply with article 5(2).

On 10 March 2014, the LGO issued its decision that there had been maladministration of a number of aspects of Merton Council's consideration of the original planning application. However the LGO did not suggest any remedy as it determined that "*It is not possible to conclude that the outcome would have been different*". I challenged this decision on the basis that the LGO investigation had failed to take account of planning legislation and had ascribed too much weight to the unsupported word of the Council whilst ignoring the facts and evidence before them. The LGO agreed that the decision could not stand and a new investigation was begun.

SUBSEQUENT APPLICATIONS AND DECISIONS

Authorisation within the meaning of EIA Directive 85/337 may consist of a combination of several distinct decisions when the national procedure which allows the developer to be authorised to proceed with a project includes several consecutive steps. See Cases C-508/03 *Commission* v *United Kingdom* [2006] ECR I-3969, paragraphs 100-103, and C-290/03 *Barker* [2006], paragraph 48. Such a "multi-stage" decision requires consideration of the environmental effects before subsequent consent can be granted (see, to that effect, Case C-201/02 *Wells* [2004] ECR I-723, paragraph 42). In practice, this includes both those situations where (i) it was decided at the initial screening stage that the project was unlikely to have significant environmental effects and thus no EIA was done; and (ii) an EIA was carried out at the earlier stage, but it subsequently becomes apparent that the project is likely to have further significant environmental effects that have not been assessed.

Accordingly, the grant of planning permission in this case is a "multi-stage" decision. To comply with the EIA Directive, those subsequent decisions that allow the developer to proceed with a project require reconsideration of the environmental effects. In the UK such reconsideration is implemented under regulation 9 of the EIA Regulations which requires a screening opinion to be adopted where an application which is before them for determination— (i) is a subsequent application in relation to Schedule 1 or Schedule 2 development; (ii) has not itself been the subject of a screening opinion or screening direction.

If it is found, at the subsequent stage, that a significant environmental effect is likely, then a full assessment is required for any effects which have not yet been assessed or which need a fresh assessment. Reconsideration of the environmental effects of such subsequent decisions, such as a screening opinion adopted under regulation 9, would be a determination under article 6(1)(b), and subject to article 9(2) of the Aarhus Convention.

Between March 2013 and January 2015 a number of subsequent planning applications were submitted to the Council in order to discharge conditions to the initial planning consent (for full details of the subsequent applications see Chronology of Events in attachment 4). Most of these applications required approval by the Council before development could commence. The others required approval before occupation was permitted.

Some of these subsequent applications have been approved, some are still awaiting consent. None of the subsequent applications concerning this project have undergone reconsideration of whether the activity/project is likely to have a significant effect on the environment, nor been issued with a screening opinion. I consider this to infringe regulation 9 of the EIA Regulations, Articles 2(1) and 4(2) of the EIA Directive, and article 6(1)(b) of the Aarhus Convention.

In February 2013, building work began on Site 1, the health centre. It is now complete and use began in April 2015. Although most of the pre-commencement conditions for Site 2, the assisted living development, are still awaiting consent, building work began on this part of the site in April 2014.

Allowing Schedule 2 development, which is still awaiting consent and assessment of its effects on the environment, to be implemented without those assessments being made, infringes Articles 2(1) and 4(2) of the EIA Directive.

REQUEST TO SECRETARY OF STATE FOR A SCREENING DIRECTION

In April 2014, I wrote to the Secretary of State for Communities and Local Government at the National Planning Unit to explain that there did not appear to be a screening opinion for the initial application 12/P0418, and to request that he provide an opinion and screening direction for subsequent application 13/P2192 under regulation 4(8)(b) of the EIA Regulations (see attachment 5).

As a result, staff at the National Planning Unit began correspondence with Merton Council and by July 2014 they managed to obtain a copy of the Council's original screening opinion dated March 2012 (for application 12/P0418) – a copy was sent to me and the Council uploaded a copy to the planning register. This was the first time that the public was given sight of the screening opinion.

I consider that the screening opinion of March 2012 was defective because:

1. It failed to conform with procedural requirements of the EIA Regulations (and EIA Directive), including the failure to be made available to the public and the failure to consider relevant criteria required by Schedule 3 (and Annex III);
2. It was substantially deficient due to the lack of consideration of important environmental effects; the failure to consider the fourteenfold increase in use of Site 1 and the consequential increase in traffic, noise and air pollution; the failure to give adequate reasons for the decision; and the reliance upon future, unspecified mitigation to control environmental impacts.

Civil Procedure Rule 54.5 of the UK Courts requires that a judicial review claim is filed not later than six weeks after the grounds to make the claim first arose. However, applying for judicial review of the screening opinion at this stage seemed pointless because a) I was still awaiting a response from the Secretary of State, b) it could have been argued that the screening opinion was valid at the time it was written and that environmental information received after that date would be considered in a new assessment, and c) a fresh assessment was, in any event, already required by legislation for the subsequent applications.

On 20 August 2014, a Senior Planning Manager from the National Planning Unit responded to me to say that the Secretary of State "*declines to issue a screening opinion in this case*" (see attachment 6).

[Please note that in his letter the Secretary of State defends his decision not to issue a screening direction by restricting his consideration to Site 2 only, as he considers that the planning permission for Site 1 has already been implemented. Such "project-splitting" is not permitted under the EIA Directive.]

REQUEST TO COUNCIL FOR SCREENING OPINION

It was now too late to challenge the original screening opinion, so, as the Secretary of State has the discretion not to provide a screening Direction, I was left with no option but to make a request to Merton Council to adopt a screening opinion for planning application 13/P2192 under regulation 9 of the EIA Regulations, in light of the inadequacy of the original screening opinion for the initial application (12/P0418) and the emergence of new environmental information. This request was submitted on 28 August 2014.

Further correspondence followed as summarised below:

29 Sep 2014	I remind the Council that I am still awaiting a response
30 Sep	The Head of the Planning Department at the Council responds to say, confusingly (and erroneously), that an Environmental Statement is not required as one accompanied the initial planning permission
17 Oct	I send a Letter Before Claim challenging the decision in the Council's email of 30 September

22 Oct	Council's solicitor responds to say that he is taking instructions
31 Oct	Council requests more time to respond
04 Nov	Council claims the email of 30 September 2014 should not be taken as a formal decision and agrees to review its position regarding the need for a screening opinion
05 Nov	I respond and explain that there are other subsequent applications pending which will also require screening
12 Nov	Council solicitor indicates that he is taking instruction and requests clarification of my understanding of which factors should be considered in a screening opinion
13 Nov	I respond to explain that I understand that all environmental impacts of the project in its entirety should be considered
17 Nov	Council solicitor confirms receipt of my email
21 Nov	Following a telephone conversation with the Council's solicitor, I forward contact details of the interested parties
21 Nov	Council solicitor confirms receipt and explains that he is still awaiting instructions from the planning department of the Council
29 Nov	Following a telephone conversation with the Council's solicitor, I email to summarise/confirm my concerns and objectives, and request confirmation of the Council's decision regarding the screening opinion by 5 December
08 Dec	Council fails to respond, so I send a second Letter Before Claim
16 Dec	Council solicitor emails to acknowledge receipt of my Letter Before Claim and to say that he is taking instructions
23 Dec	I remind the Council that deadline for receipt of response to my Letter Before Claim has passed
23 Dec	Council solicitor replies to say he is still seeking further instructions and that they are unlikely to be able to respond until after Christmas
05 Jan 2015	I alert the Council that Application 14/P4189 has just been approved and that this will be added to my challenge. I remind them that I am still awaiting a response to my Letter Before Claim
12 Jan	I forward copies of the draft judicial review claim form and draft Statement of Facts. I ask the Council to confirm if it intends to contest these grounds
12 Jan	Council solicitor confirms receipt and says that he anticipates the Council will contest the grounds
16 Jan	Council solicitor apologises for delay, explains that he thinks that my draft claim refers to some new issues and says that he hopes to respond to my Letter Before Claim by the end of the following week
21 Jan	I reply to say that there are no new issues – my grounds of challenge remain the same
04 Feb	I remind the Council that I intend to submit my claim to Court on 6 February and ask for confirmation of whether it intends to adopt a screening opinion by 6pm, 5 February
05 Feb	At 15.23h the Council emails its response to my Letter Before Claim

PRE-ACTION PROTOCOL

The Civil Procedure Rules of the courts require that, before submitting an application for judicial review, a claimant should comply with the procedure laid out in the "pre-action protocol", namely, the claimant should send a letter to the defendant before taking action, identifying the decision/act/omission challenged and setting out a summary of the facts and the reasons for challenging them. The defendant should respond to the claim within 14 days indicating which parts of the claim, if any, it concedes. The pre-action protocol

should normally be complied with, but is not a mandatory part of bringing a claim for judicial review, though if a party does not follow the protocol, it may be penalized in costs.

On 8 December 2014 I sent a "Letter Before Claim" to Merton Council in compliance with the pre-action protocol. Despite various reminders, Merton Council did not respond until 5 February 2015, following notice that I would be submitting my application for judicial review on 6 February.

Throughout the period leading up to the submission of my judicial review claim, the Council demonstrated a consistent lack of cooperation and unwillingness to address my concerns about the environmental impacts of the development. The Council repeatedly delayed responding to my emails, provided erroneous and misleading information concerning the "environmental statement" and whether or not the email from the Head of Planning could be considered to represent a formal decision, promised to review its decision to adopt a new screening opinion and then failed to do so, and failed to comply with the pre-action protocol, finally responding to my Letter Before Claim almost eight weeks later.

I consider the actions of the Council fail to comply with its obligation to assist and provide guidance to the public in seeking access to justice in environmental matters under article 3(2) of the Aarhus Convention.

APPLICATION FOR JUDICIAL REVIEW

In England and Wales, permission to apply for judicial review must first be granted by a High Court Judge. Where permission is refused, and the judge determines the claim to be "totally without merit", under Civil Procedure Rule 54.12(7) the claimant may not request that the decision to refuse permission be reconsidered at an oral hearing.

On 6 February 2015 I submitted an application to the High Court for permission to apply for judicial review of Merton Council's failure to comply with environmental regulations on the following grounds:

Ground 1
The failure of Merton Council to adopt a screening opinion for subsequent planning applications 13/P2192, 14/P4189, 14/P4301 and 15/P0121 is a breach of Regulation 9 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011.

Ground 2
The adoption of the negative screening opinion for the principal planning application 12/P0418 was defective – in the absence of a valid screening opinion Merton Council is allowing Schedule 2 development to proceed unlawfully.

Ground 3
Even if the original screening opinion (for principal planning application 12/P0418) was valid at the time it was adopted, Merton Council has a duty to reassess the environmental impacts of the project before granting subsequent consents because subsequent environmental information has become available which was not considered in the original screening opinion.

The full Statement of facts and grounds, and a letter to the court clarifying matters are available in attachments 7 and 8.

On 20 March 2015 my application was refused on all grounds (see attachment 9). It was deemed to be "hopelessly out of time" and "totally without merit". The "totally without merit" determination meant that I was unable to request the decision be reconsidered at an oral hearing.

The judge also ordered that I pay the Council's costs of preparing and filing its acknowledgement of service, which the judge assessed at £6,000, but limited to £5,000 - the maximum allowed by the cap required for cases considered to be subject to the Aarhus Convention under Civil Procedure Rule 45.41–45.44.

The opportunity to dispute costs is usually afforded during the permission hearing. However, I was given no opportunity to dispute the costs, either in principle or in relation to the amount, before the Order was issued.

Following receipt of the Order, I had seven days in which to make an application to the Appeal Court for permission to appeal. I applied for permission to appeal on all grounds of challenge and also for permission to appeal the amount of costs awarded against me (see attachment 10 for my Skeleton Argument that was submitted to the Court of Appeal).

[On 20 April 2015 the LGO issued its final decision. This time the Council was again found to have made a number of faults but, as the LGO could not conclude that planning permission would not have been granted, they refused to ask for mitigation of any environmental impacts. Instead they awarded compensation of £500 to me to cover the time and effort in bringing the complaint.]

In July 2015 permission to appeal the High Court Order was denied on all grounds (see attachment 11). Permission to appeal the award of costs was also denied as the judge considered that the decision was "…well within the ambit of [the High Court judge's] discretion". The appeal judge also upheld the "totally without merit" determination which meant that I was unable to request the decision be reconsidered at an oral hearing (CPR Rule 52.15(1A)(b)).

I consider that the rulings of the Courts have infringed my rights of access to justice under article 9, paragraphs 2, 3 and 4.

PROVISIONS OF THE CONVENTION ALLEGED TO BE IN NON-COMPLIANCE

I consider that the Party concerned has failed to comply with articles 3(2), 3(8), 5(1)(a), 5(2) and 6(1)(b) of the Aarhus Convention in relation to my specific case, and has failed to comply with articles 9(2), 9(3) and 9(4) both in relation to my specific case and in general.

NATURE OF ALLEGED NON-COMPLIANCE

ARTICLES 3(2) and 3(8)

Lack of assistance from the Council, the LGO and the Secretary of State

Article 3, paragraph 2, states that "each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in, inter alia, seeking access to justice in environmental matters".

Throughout the period leading up to the submission of my judicial review claim, the Council demonstrated a consistent lack of cooperation and an unwillingness to address my concerns about the environmental impacts of the development. The Council has procrastinated, provided erroneous and misleading information; promised to review its decision to adopt a new screening opinion and then failed to do so; and failed to comply with the pre-action protocol, which required a response within 14 days, finally responding to my Letter Before Claim almost eight weeks later.

The LGO took over a year to complete its initial investigation into my complaint of maladministration by the Council. It agreed that, due to mistakes made by the LGO, the first decision could not stand and a second investigation was instigated. The second investigation was not concluded until another year later.

I consider that the conduct of the Party concerned does not meet its obligation in this case – in fact, I consider that the actions of the Council and the LGO, together with the decision by the Secretary of State not to issue a screening direction, have actively hindered my attempts to seek access to justice in environmental matters, contrary to the obligation in article 3(2).

Designation as "totally without merit"

To apply for judicial review, a claimant first has to seek the permission of the High Court. A High Court judge looks at whether the claimant has an arguable case for judicial review, which justifies full investigation. The permission process therefore acts as a form of filter before a full hearing.

Permission is usually assessed on the papers alone. If rejected on the papers, a claimant may apply to have an application reconsidered at an oral hearing. If permission is refused again at the oral hearing, a claimant can apply to the Court of Appeal for permission to appeal that decision.

However, under reforms to the judicial review procedure made in July 2013, if the High Court judge reviewing the papers for the first time considers an application to be totally without merit (TWM), the judge must record this fact in the decision (CPR rule 23.12). As a result, a claimant is then unable to request reconsideration at an oral hearing in the High Court (CPR rule 54.12(7)). The right to apply for permission to appeal the decision to the Court of Appeal remains, but that application is, again, determined on papers only.

This effectively halves the number of opportunities that a claimant has to persuade a court to grant permission.

The Court of Appeal has held that "totally without merit" means simply "bound to fail" (*R (Grace) v Secretary of State for the Home Department* [2014] EWCA Civ 1091).

I consider that the TWM designation has severe consequences on access to justice and to the potential award of costs, effectively penalising the claimant, contrary to the requirements of article 3(8).

Firstly, it prevents the claimant from being able to present their case in person at a fair and public hearing before a judge. I consider this to be an unfair restriction which fails to comply with the obligation to assist the public in seeking access to justice in environmental matters.

Secondly, I believe that the TWM designation has influenced the judge's decision in the apportioning of costs, resulting in a greater proportion of costs being awarded against me than would have been the case otherwise. The decision to designate the challenge as TWM fails to ensure that access to justice is not prohibitively expensive as required by article 9(4).

I feel particularly aggrieved that the TWM designation in this case appears, primarily, to be a result of a perceived delay in bringing the judicial review claim which, in turn, was caused by the actions of the public authorities preceding the claim (e.g. the Council withholding decisions and environmental information from the public, procrastination and prevarication when asked to screen the subsequent applications, the Secretary of State's delays in responding and decision not to issue a screening direction).

Demand for payment plus interest

On 20 July 2015 I received a request from the Council's solicitor to pay £4,500 (the sum of the costs awarded by the Court less the £500 awarded to me by the LGO). I responded with a request for copies of the invoices from SLLP (the solicitors) and Landmark Chambers (the barristers), as I was concerned about discrepancies between the amounts claimed and the amounts actually charged. I explained that I was preparing documentation to submit to the Aarhus Convention Compliance Committee as I considered the award of costs to be unfair, inequitable and prohibitively expensive, and therefore not in compliance with article 9(4) of the Aarhus Convention.

On 20 August I received an email from the Council's solicitor demanding payment with additional interest of 8% on the entire £5,000 (significantly higher than the current commercial rate) backdated to 20 March 2015 (the date of the High Court Order). The email also threatened referral of the debt to the High Court Sheriff, which would incur further enforcement costs, should the debt not be paid within 21 days.

I have offered to place the amount due into an interest-bearing account pending the outcome of the communication with the ACCC, however the Council has said that it is not prepared to wait. Correspondence on this issue is still ongoing.

In its findings on communication ACCC/C/2008/27 (United Kingdom), the Compliance Committee noted that, while article 3, paragraph 8, does not affect the powers of national courts to award reasonable costs in judicial proceedings, the Committee did not exclude that pursuing costs in certain contexts may be unreasonable and amount to penalization or harassment within the meaning of article 3, paragraph 8. The Committee made similar observations in its findings on communication ACCC/C/2008/23 (United Kingdom).

I consider the punitive interest rate charge and threat to involve a High Court bailiff is unreasonable considering that I had already explained that I would be forwarding a communication to the ACCC, and may amount to penalization or harassment within the meaning of article 3(8). The Council's demand for immediate payment does not assist my attempts to seek access to justice in environmental matters as required by article 3(2).

ARTICLES 5(1)(a) AND 5(2)

Article 5(1)(a) requires public authorities to possess and update environmental information relevant to their functions. Article 5(2) requires that information to be made available in an open and transparent manner and that it is genuinely accessible.

By failing to include the responses of the statutory consultees, the screening opinion and the environmental noise assessment on the planning register, essential environmental information was effectively withheld from

the public (infringing article 5(2)). A further consequence was that this information was not available to members of the Council's planning committee at the time that they made the decision to grant planning permission for the project (infringing article 5(1)(a)).

In addition, the LGO determined that the Council failed to properly assess the impact of the development on the Conservation Area and on the amenity of neighbouring homes. Yet the Council continued to refuse to re-screen the project despite the finding of maladministration. I consider this failure to undertake adequate assessment of the environmental effects also breaches article 5(1)(a).

The failure of the Council to put the Decision Notice onto the planning register in a timely manner also infringes article 5(2).

Failing to make the environmental information and the decisions of the Council available to the public in a timely manner has hindered attempts to seek access to justice through the Courts, infringing article 9(3), see below.

ARTICLE 6(1)(b)

If assessment of the environmental impacts had been done properly/adequately during consideration of the initial planning application (12/P0418), and the screening procedure had been undertaken correctly, I believe that the decisions on the project would have been determined to be "environmental decisions" and would have then fallen under the remit of the remaining paragraphs of article 6. The public has been denied the right to participate effectively in the decision-making process.

In any case, for each subsequent determination (i.e. for each subsequent planning application), the failure of the Council either to adopt subsequent screening opinions, or to consider whether the activity/project "may have a significant effect on the environment" causing it to fall within the remit of article 6, is a failure to comply with the requirements of article 6(1)(b).

In the Appeal Court Order of 6 July 2015 (see attachment 11), the judge states that there is no reason to require reconsideration of the environmental effects before granting further consents because the original screening opinion is considered lawful. Apart from the fact that the original screening opinion is only considered lawful because it was not challenged within the required six-week time limit, a lawful negative screening opinion does not automatically mean that there is no further obligation to assess the environmental effects when undertaking subsequent determinations.

The EIA Directive has been interpreted by the ECJ to require an environmental impact assessment to be carried out if it becomes apparent, in the course of the later stage, that the project is likely to have significant effects on the environment by virtue of its nature, size or location (C-290/03, *Barker* [2006]).

The Appeal Court judge also states:

> (i) The challenge to the negative screening opinion which was adopted in March 2012 is hopelessly out of time. The contention that the Council "is allowing Schedule 2 development to proceed unlawfully" is, in substance, a challenge to the lawfulness of the negative screening opinion.

I do not agree that my ground of challenge should be artificially constrained to the existing screening opinion alone.

Ground 2 of my judicial review challenge was, in fact, that the Council has failed to comply with the requirements of the EIA Directive by allowing potential EIA development to proceed without due consideration of its environmental effects and without consent. This ground could stand irrespective of whether the initial screening opinion was lawful or not. The important point is whether or not the project was likely to have a significant impact upon the environment at the time that subsequent consents were granted (or being considered), and at the time of development proceeding (more than a year later and without final consent).

This "reassignment" of my ground of challenge has enabled the Court to declare my challenge to be out of time.

In paragraph (ii), the judge states:

> (ii) On the premise (see (i) above) that there was a lawful negative screening opinion in March 2012 there is no reason why the discharge of pre-commencement and pre-occupation conditions pursuant to the planning permission dated 18th December 2012 should give rise to the need for any further screening opinion(s). In reality no new issues have been raised.

In effect, in the absence of an in-time challenge, the initial screening opinion has been deemed "lawful" (regardless of its adequacy), and all subsequent decisions have been granted immunity from screening. I consider this fails to comply with the EIA Directive and article 6(1)(b) of the Aarhus Convention.

This reasoning appears to prevent a challenge in a situation where there is an ongoing breach of environmental legislation, such as in this case where the outstanding consents have not yet been granted, but the project has already been allowed to commence.

By effectively sitting on the application and making no determination on the remaining conditions, Merton Council is avoiding producing another event (i.e. a decision) which would trigger the start of another six-week period for a challenge. By this (lack of) action, they are able to circumvent the legal requirement that a project which has potentially significant effects on the environment is subject to assessment and consent before it can proceed.

ARTICLES 9(2), 9(3) AND 9(4)

Article 9(4) requires that all access to justice procedures provide adequate and effective remedies, and are fair, equitable, timely and not prohibitively expensive.

Adequate and effective remedy

In the Appeal Court Order of 6 July 2015, the judge refused permission to appeal the High Court's refusal to grant permission to apply for judicial review of the Council's failure to screen planning application 15/P0121 because he considered that my remedy was to apply to the Secretary of State for a screening direction (see paragraph (v)).

A request for a screening direction can be made by a third party under regulation 4(8)(b) of the EIA regulations which states that the Secretary of State "may" (not "shall") make a screening direction if requested to do so in writing by any person.

As is apparent from my attempts to obtain a screening direction for application 13/P2192, there was no guarantee that the Secretary of State would make a screening direction. I do not consider this to be an effective remedy as required by article 9(4).

In paragraph (vi), the judge states:

> (vi) It is clear in any event that relief would be refused as a matter of discretion given the fact that the 2012 permission has been substantially implemented (site 1 is operational).

I consider that to refuse any remedy purely on this basis (despite the fact that some of the environmental effects would be caused by the ongoing use of the development) fails to meet the requirement of article 9(4) for the provision of adequate and effective remedy.

Fairness and rules on timing

Civil Procedure Rule 54.5 of the UK Courts requires that a judicial review claim is filed not later than six weeks after the grounds to make the claim first arose.

Six weeks is a very short time within which to prepare and apply for judicial review. It is virtually impossible to squeeze into a mere six-week period actions such as: finding and briefing a solicitor; making and receiving Freedom of Information requests; issue of a Letter Before Claim to the defendant and all interested bodies (indeed tracking down the interested parties can be difficult in itself); consideration of their responses; and compilation of a coherent and well-argued case. It is also too short a time to seek a remedy via other administrative routes such as the local authority's formal complaints procedure, the LGO or Secretary of State, as evidenced in this particular case.

In the case of application 15/P0121, although it appeared that my claim for judicial review was within the time limit, I was refused permission on the grounds that my remedy was to apply to the Secretary of State for a screening direction. However, as evidenced by my earlier request for a screening direction (which took four months for a response), there is no guarantee that the Secretary of State would have responded in less than six weeks, which would have pushed me beyond the time limit for applying for judicial review again.

The current time limit is overly restrictive and does not meet the obligation of article 9(4) to provide access to justice procedures which are fair, equitable, timely and not prohibitively expensive.

Procedural equality of arms

As I am not eligible to claim legal aid, and have been unable to find a solicitor prepared to act on a pro bono or "no win, no fee" basis, I have had to represent myself as a self-litigant throughout.

In conjunction with its Acknowledgement of Service, the Council submitted costs to the Court amounting to £3,500 of solicitor's fees (charged at £250 per hour), and an additional barrister's fee of £2,500, making a total of £6,000.

The amount which may be allowed to a self represented litigant under CPR rule 46.5 is £19 per hour. The claimant bringing the challenge must also pay Court fees in advance of submitting the claim forms (in my case the fees totalled £375). Further substantial fees would be required if permission to proceed is granted.

Firstly, I question whether the Council, as the "competent authority" responsible for undertaking the EIA procedure, really required the services of both a Grade A solicitor and central London barrister of over 30 years experience – particularly when I was acting as a self litigant and the claim was still at the permission stage. My challenge ultimately involved an interest common to both parties, namely, ensuring that the law is upheld and the environment is protected.

In consideration of Case C-530/11, AG Kocott gave the following opinion:

> 24. Denmark is correct to point out, however, that in certain review proceedings professional representation may be unnecessary. This is conceivable, for example, if the competent body concerned has extensive responsibility for the procedure and, for that reason, investigates of its own motion all the relevant arguments and circumstances. However, the possibility that representation may be unnecessary must be assessed in the context of each specific case having regard to all the legal and practical circumstances and custom and practice.

Secondly, the fact that I would potentially be liable for solicitor's costs accruing at £250 per hour plus a barrister's fee, whereas the Council would only be liable for costs accruing at £19 per hour instantly puts us on an inequitable footing and seems manifestly unfair.

I consider the action of the Council in engaging a solicitor and barrister at a total cost of £6,000 was unnecessary and out of all proportion to the issue at hand where the overriding aim is to protect the environment. Surely it would have been more sensible, and in the interest of the public tax payer, to avoid a costly and time-consuming court case and to address the environmental concerns directly – for example, by re-screening or even just by reconsidering the environmental effects.

The action of the Council in this case is unfair, inequitable and has caused the judicial procedure to be prohibitively expensive for me, therefore failing to uphold the principles of article 9(4).

Profiteering

South London Legal Partnership (SLLP) is a four-borough shared legal service which has an agreement to provide legal services to Merton Council at £55 per hour. However, the costs submitted by the Council to the Court included fees for the SLLP solicitor of £250 per hour.

In August 2015, following a request from the Council's solicitor for payment of the costs awarded by the Court, I wrote to request a copy of the invoice or other proof of payment, and for an explanation of why the charges differed by such a large amount.

At the current time, I have not received confirmation of the actual charges made by SLLP to the Council.

I consider that by demanding I pay costs of £250 per hour for the Council's solicitor (and an additional charge of 8% interest) the Council is effectively profiting from my failure to bring a judicial review claim. Such profiteering is unfair and serves to increase the prohibitive expense, contrary to article 9(4).

Costs prohibitively expensive

The general rule that "costs follow the event" is contained in CPR rule 44.2, which states:

> 1. The court has discretion as to —
> (a) whether costs are payable by one party to another;
> (b) the amount of those costs; and
> (c) when they are to be paid.
>
> 2. If the court decides to make an order about costs —
> (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
> (b) the court may make a different order.
>
> …
>
> (4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –
> (a) the conduct of all the parties;
> (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
> (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply.
>
> (5) The conduct of the parties includes –
> (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
> (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
> (c) the manner in which a party has pursued or defended its case or a particular allegation or issue; and
> (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

CPR rule 44.4 lists the factors to be taken into account in deciding the amount of costs. At 44.4(3) it states:

> (3) The court will also have regard to –
> (a) the conduct of all the parties, including in particular –
> (i) conduct before, as well as during, the proceedings; and
> (ii) the efforts made, if any, before and during the proceedings in order to try to resolve the dispute;
> (b) the amount or value of any money or property involved;
> (c) the importance of the matter to all the parties;
> (d) the particular complexity of the matter or the difficulty or novelty of the questions raised;
> (e) the skill, effort, specialised knowledge and responsibility involved;
> (f) the time spent on the case;
> (g) the place where and the circumstances in which work or any part of it was done; and
> (h) the receiving party's last approved or agreed budget.

Following decision IV/9i of the Meeting of the Parties (see ECE/MP.PP/2011/2/Add.1), the Party concerned introduced changes to its Civil Procedure Rules with respect to the award of costs in claims within the scope of the Aarhus Convention. Practice Direction 45 provides for a protective costs order of "£5,000 where the claimant is claiming only as an individual and not as, or on behalf of, a business or other legal person; ... in all other cases, £10,000". The liability of the defendant for a successful claimant's costs is capped at £35,000. The amended rules entered into effect for England and Wales on 1 April 2013.

To a lay person inexperienced in legal matters and the Civil Procedure Rules, it is not at all clear that the protective costs order only applies to the court of first instance. The fact that further protective costs orders must be sought from the Court of Appeal and the Supreme Court, which are also discretionary, means that the claimant is left uncertain as to what the final cost of making a challenge will be.

Exposing a claimant to the maximum £5,000 to cover the defendant's cost of preparing and submitting the Acknowledgement of Service merely at the permission stage is not compatible with the obligation of the Party concerned to ensure that access to judicial review in matters relating to the environment is not

prohibitively expensive. Exposure of claimants to such costs would serve as a serious deterrent to individuals wishing to seek judicial review in environmental matters.

In apportioning the costs, the High Court judge gives no reason why he has awarded costs against me at the maximum limit possible. He does not appear to have taken account of the pre-action conduct of the Council, the public interest nature of the claim, or the obligation to ensure that access to justice is fair, equitable and not prohibitively expensive.

Similarly, the Appeal Court judge refuses permission to appeal the award of costs as he says the decision was "…well within the ambit of [the High Court judge's] discretion". The judge in this case has also failed to take account of the obligations under article 9(4) to ensure that access to justice is fair, equitable and not prohibitively expensive.

In its findings in ACCC/C/2008/33 (ECE/MP.PP/C.1/2010/6/Add.3), at paragraph 134, the Committee found:

> 134. Moreover, in accordance with its findings in ACCC/C/2008/23 (United Kingdom) and ACCC/C/2008/27 (United Kingdom), the Committee considers that in legal proceedings within the scope of article 9 of the Convention the public interest nature of the environmental claims under consideration does not seem to be given sufficient consideration in the apportioning of costs by the courts.

In Case C-530/11 the Court of Justice of the European Union (CJEU) found, at paragraph 55:

> 55. However, it is not apparent from the various factors put forward by the United Kingdom and discussed, in particular, at the hearing that national courts are obliged by a rule of law to ensure that the proceedings are not prohibitively expensive for the claimant, which alone would permit the conclusion that Directive 2003/35 has been transposed correctly.

In case ACCC/C/2012/77 concerning the award of costs of £8,000 against Greenpeace at the permission stage of an application for judicial review, the Committee found the UK had failed to comply with article 9, paragraph 4, of the Convention since the cost order awarded against the communicant in this case made the procedure prohibitively expensive (ECE/MP.PP/C.1/2015/3, paragraph 81).

In February 2011 the Coalition on Access to Justice for the Environment submitted comments to the ACCC on Case 2008/33, which included a copy of the response from Lord Justice Sullivan's Working Group on Access to Justice to a Ministry of Justice Consultation Paper, "*Proposals for the Reform of Legal Aid in England and Wales*".

A copy is provided as attachment 12. Under the 15th bullet point, the Working Party states:

> In paragraphs 163-164 the report notes Sir Rupert Jackson's consideration (and then rejection) of a system of tariffs: say £3,000 to the grant of permission, £5,000 for the full proceedings. The report resurrects that proposal, with the additional refinement that a defendant could apply at the start of the case to lift the cap when faced with a wealthy claimant. We have no objection in principle to the use of tariffs (they can give certainty) provided they are set at a level which is not prohibitively expensive for an ordinary person. But the figures suggested are plainly well above that level. Moreover, whatever view is taken about exposure post-permission, we consider it wrong in principle (particularly in the context of Aarhus claims) for a claimant to face more than a minimal cost (such as the court fee which already discourages completely frivolous claims) for commencing proceedings. The pre-permission stage is an important constitutional opportunity for members of the public to bring to the attention of a judge potential illegality by the state. Nor should the cost of responding to claims at the permission stage be disproportionate for defendants, provided they respond appropriately and bear in mind the function of the permission process rather than incurring a significant proportion of the costs which might ultimately be required to respond to the JR if permission is granted (see thus Davey). The permission stage then acts as a filter to prevent defendants being inappropriately exposed to the more substantial costs of responding to claims through to a full hearing.

In light of the above, I consider that: (i) the UK has failed to comply with Article 9(4) by failing to ensure that the costs of litigation are not prohibitively expensive; and (ii) that the Costs awarded against me in this case are in breach of Article 9(4).

USE OF DOMESTIC REMEDIES

Council formal complaints procedure

In October 2012 I made a formal complaint on behalf of a number of local residents to Merton Council alleging that the initial planning application (12/P0418) had not been properly considered, in particular the impacts that the development would have on the surrounding conservation area and neighbour amenity. We requested that the decision on the planning application be reconsidered before the final Decision Notice was issued.

On 9 January 2013 (after the Decision Notice had been issued) the Council gave its final response to the complaint. It determined that there were some minor errors in the report given to the planning committee members but these were not considered to be so significant that the decision to grant planning permission was unlawful.

Local Government Ombudsman

In January 2013 I submitted a formal complaint to the LGO alleging maladministration by Merton Council in its consideration of planning application 12/P0418. The LGO will only consider administrative fault, they will not consider the substantive merits of the case.

On 10 March 2014 the LGO produced its final decision on the complaint, determining that there were some aspects of administrative fault by Merton Council but that it was not possible to conclude that the outcome would have been different. No remedy was recommended.

I challenged this decision in a Letter Before Claim on 26 May 2014 on the basis that LGO had failed to take account of, or give sufficient weight to, the legislation and policy that provides the framework for how a Council should assess and determine a planning application, and had failed to address relevant questions/considerations required in determining maladministration and injustice.

On 24 July the LGO confirmed that the decision could not stand and that the complaint would be reconsidered.

On 20 April 2015 the LGO issued its revised final decision. The decision was that there had been a number of faults by the Council but that it could not be certain that, without the faults, a different decision would have been reached by the Council. A remedy of £500 was recommended.

High Court/Court of Appeal – application for Judicial Review

On 6 February 2015 I submitted an application for permission to proceed with a judicial review claim challenging the failure of Merton Council to comply with environmental legislation. Permission was refused on 20 March 2015.

On 27 March 2015 I applied to the Court of Appeal for permission to appeal the High Court refusal. Permission was refused on 6 July 2015.

USE OF OTHER INTERNATIONAL PROCEDURES

None

CONFIDENTIALITY

Not required

SUPPORTING DOCUMENTATION

Attachment 01: EIA Regulations 2011
Attachment 02: Screening Opinion dated March 2012
Attachment 03: Decision Notice for the initial planning application 12/P0418
Attachment 04: Chronology of Events
Attachment 05: Request to Secretary of State for screening direction for application 13/P2192
Attachment 06: Reply from Secretary of State regarding screening direction
Attachment 07: Statement of Facts and Grounds submitted to High Court 6 February 2015
Attachment 08: Follow-up letter to the Court clarifying matters raised in the Acknowledgement of Service
Attachment 09: High Court Order dated 20 March 2015, made by Mr Justice Mitting
Attachment 10: Skeleton Argument submitted to the Court of Appeal
Attachment 11: Appeal Court Order dated 6 July 2015, made by Lord Justice Sullivan
Attachment 12: Response from Lord Justice Sullivan's Working Group on Access to Justice

I have tried to limit the number of attached documents in the first instance, but I am happy to provide any further material on request. I have documentation to support all statements made in this communication.

Thank you for your consideration of this matter.

Tracy Breakell
1 September 2015