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Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
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Dear Ms Marshall

PRE/ACCC/C/2015/131: UK comments on admissibility

Summary

1. This communicant has made a number of allegations of non-compliance against the United Kingdom that relate to a decision made by the London Borough of Merton Council ("LBMC"). The decision in question was a screening opinion on the development of a former hospital site in London.
2. We submit that the communication, or alternatively individual grounds in the communication, should be considered **inadmissible** for the following reasons:
 - Many of the communicant's arguments are based on the correctness of a screening decision by LBMC. The correctness of that decision is **outside the scope of the Convention**, as are allegations of non-compliance predicated on that decision being taken in the way that it was. These are not matters that the Committee is able to consider.
 - The communicant's other arguments are **unsubstantiated** and appear, in some instances, to be an **abuse of the right to bring a communication**. There is also an example of the communicant's argument being **manifestly unreasonable**. In accordance with paragraph 20 of the annex to decision I/7, the Committee should not consider these allegations further.
3. The issues the communicant raises on the costs of bringing a judicial review have **already been considered** by the Committee. The United Kingdom will soon be providing the Committee with an update in accordance with decision V/9n, which we would maintain is the appropriate means by which to conduct further discussions on this topic, where no new issues are raised, as is the case here. Notwithstanding that we would consider some of the points to be **unsubstantiated** and an **abuse of the**



right to bring a communication, we would urge the Committee to act consistently with recent practice by not taking these aspects further.

4. The Committee's present workload has significantly increased in recent months. In order to be able to maintain its ability to give communications the scrutiny they deserve within a speedy timetable, we would urge the Committee not to give further consideration to communications such as this, which include a number of inadmissible unsubstantiated and irrelevant allegations as well as raising issues which are already being examined in detail by the Committee.

Submissions on admissibility

5. The communicant has questioned the correctness of the screening opinion, as well as decisions by both LBMC and the Secretary of State for Communities and Local Government not to undertake further screening of the proposed development.
6. The Convention does not deal with the correctness of decisions on whether to carry out an environmental assessment. The Committee was clear on this point in its findings in ACCC/C/2008/24 (Spain):

“Accordingly, the factual accuracy, impartiality and legality of screening decisions are not subject to the provisions of the Convention, in particular the decisions that there is no need for environmental assessment, even if such decisions are taken in breach of applicable national or international laws related to environmental assessment, and cannot thus be considered as failing to comply with article 6, paragraph 1, of the Convention.”

7. Those allegations are therefore **out of scope** in terms of the Convention and what the Committee is able to consider.
8. The United Kingdom submits that the communicant's allegations – so far as they are stated to be linked to particular provisions of the Convention – are also inadmissible or relate to matters that are already under active consideration by the Committee.

a. Article 3(2)

The communicant's allegations regarding article 3(2) are **unsubstantiated**, amounting to assertions about the information provided to them by LBMC, compliance with rules on pre-litigation procedures, compliance with a court order against the communicant and conduct of an investigation by the Local Government Ombudsman. The communicant does not support their assertion that the United Kingdom has failed to “endeavour to ensure that officials and authorities assist and provide guidance to the public” in respect of the procedural rights given by the Convention. The communicant also appears to allege that the Secretary of State's decision not to issue a screening opinion amounts to a breach of article 3(2). For the reasons mentioned above, this is **out of scope**.

b. Article 3(8)

The communicant's allegation that the court's designation of her case as being "totally without merit" – following consideration by the court of the communicant's submissions – amounts to "penalization, persecution or harassment" is similarly **unsubstantiated**. The making of such allegations may be considered an **abuse of the right to make a communication**, as this simply appears to be a failure by the communicant to accept the findings of the court.

The allegation that demands for the communicant to comply with a court order made against her for costs is again **unsubstantiated** and an **abuse of the right to make a communication**.

We note that the communicant has indicated that they do not intend to comply with a court order pending the Committee's consideration of this communication. It would be helpful for the Committee to remind the communicant in this case that it is not a court, that it cannot set aside a court order and that the compliance mechanism is not a judicial process. The communicant may wish to reconsider their position with regard to their compliance with the binding court order given these circumstances.

c. Article 5(1)(a) and (2)

The communicant's allegations in respect of article 5 are centred on the alleged failure to undertake an adequate assessment of the effects and its decision not to screen the development again. As set out above, this is **outside the scope** of the Convention.

d. Article 6(1)(b)

The allegations concerning article 6(1)(b) appear to be predicated on the correctness of the screening decision, which is **outside the scope** of the Convention and not an issue that the Committee can give a view on. The communicant restates the substance of some of their arguments on the lawfulness of the screening opinion by reference to the Environmental Impact Assessment Directive, which is not relevant to compliance with the Convention.

e. Article 9(2), (3) and (4)

The communicant raises the issue of the costs of bringing a judicial review claim. This particular **matter has already been considered** by the Committee, and remains the subject of an ongoing review in the United Kingdom, as the Committee is aware. The United Kingdom is due to provide the latest update on costs in accordance with decision V/9n by the end of October. Given that the issue of costs is already being addressed and that the Committee's caseload has significantly increased in recent months, we

would question the need for these issues to be given any further consideration by the Committee.

Notwithstanding this, the communicant's suggestion that LBMC should not have defended the case brought by the communicant or sought legal counsel to assist them – incurring costs in the process – is **manifestly unreasonable**. The allegations of “profiteering” appear to be **unsubstantiated**, and therefore, given their nature, amount to an **abuse of the right to make a communication**.

The communicant appears to complain that the fact that the Secretary of State is not under a duty to make a screening direction when requested amounts to a failure to provide an adequate remedy under article 9(4). Questions on whether a screening decision should or should not have been made are **outside the scope of the Convention**. In any case, the communicant clearly had the opportunity to seek an effective remedy by bringing a judicial review. The fact that the communicant's case was dismissed by the High Court and that they were not given leave to appeal does not amount to a breach of article 9(4).

The communicant's allegations regarding the six week time limit for bringing a judicial review claim in a planning case are **unsubstantiated**. General assertions are made suggesting that the time period is problematic. However, the communicant's claim related to decisions or actions taken up to three years before, and the communicant does not demonstrate any correlation between the rejection of their challenge as being “hopelessly out of time” with the six week time limit.

9. We are of course happy to provide the Committee with any further information on these points should these be considered necessary for its preliminary determination on admissibility.

Yours sincerely



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United Kingdom National Focal Point
to the UNECE Aarhus Convention