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Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland
(By email only)

9 July 2017

Dear Ms Marshall

**Re: Communication to the Aarhus Convention Compliance Committee
concerning compliance by the United Kingdom regarding access to justice in
connection with waste management (ACCC/C/2016/142)**

1. The United Kingdom reiterates, without repeating, its observations dated 20th September 2016. What follows below should be read in conjunction with those observations.
2. It is noted that the Communicant has, in his document entitled *Addendum following discussion with Compliance Committee and response from Government*, withdrawn his allegations of non-compliance with paragraphs 2 and 3 of Article 9 of the Convention. The focus communication is therefore now exclusively on paragraphs 4 and 5 of Article 9.

Article 9, Paragraph 4

3. The Communicant's legal action was considered by independent judges at three tiers of the judiciary: the Magistrates' Court, the High Court and the Court of Appeal.
4. The following features of the chronology are of particular relevance:
 - a. By the date of the hearing before the Magistrates' Court, the specific sites complained of had been cleared of litter. The Magistrates' Court (District Judge Zara) also found that there was no legal power for it to entertain a more general complaint covering the whole of the Communicant's constituency. These findings were not appealed.
 - b. The decision of the Magistrates' Court to require the Communicant to pay Birmingham City Council's reasonable costs of the proceedings before that Court was based upon its conclusion that the Communicant did not have reasonable grounds for bringing his complaint. That conclusion was based

upon the Court's finding of fact that, if the Communicant had taken up the offer of a meeting before bringing his legal action against the Council, the Council would have told him in confidence of its planned cleaning-up exercise (see for example paragraph 44 of Mr Justice Wilkie's judgment and paragraph 10 of Lord Justice Beatson's judgment). This finding of fact was not appealed.

- c. At no stage of the proceedings before the Magistrates' Court (either before or after its decision that the Communicant should pay Birmingham City Council's legal costs) did the Communicant request any quantitative limit his liability to pay the Council's costs on the basis that the proceedings would otherwise be prohibitively expensive.
- d. The High Court concluded that the Magistrates Court was entitled to conclude that the Communicant did not have reasonable grounds for bringing his complaint.
- e. In the light of that conclusion the Communicant's legal representative did not object to an order requiring the Communicant to pay the Council's reasonable costs of the High Court proceedings (see paragraphs 63 and 89-92 of the High Court post-judgment transcript). Nor was there any suggestion to the High Court by or on behalf of the Communicant that the amount of that costs liability should be limited in order to avoid the proceedings being prohibitively expensive.
- f. The Court of Appeal found that the Magistrates' Court and the High Court had been entitled, on the facts of the case, to reach the findings that they did.
- g. The Communicant did not have to pay the Council's costs of the Court of Appeal proceedings.

5. It is clear from the above that:

- a. The Communicant's complaint and appeals failed not because there was anything inadequate, ineffective or unfair about the process but because his arguments were rejected by these independent judges in the light of their application of the law to the facts of his case.
- b. There can be no objection to the Communicant having been required in principle to pay the Council's reasonable costs of the Magistrates' Court proceedings, in circumstances where the Court's finding on the facts of the case (upheld on appeal) was that he did not have reasonable grounds to bring his complaint, nor can there be any objection to him being required in principle to pay the Council's reasonable costs of the High Court appeal in circumstances where that appeal was found to be without merit.
- c. It is untenable for him now to complain that the amount of the costs before the Magistrates' Court and/or the High Court was prohibitively expensive in circumstances where he did not at the time seek a limit to the amount of his liability on that basis. In effect, the Communicant is asking the Compliance Committee to criticize the domestic courts for failing to do something that he did not ask them to do. The proper analysis is that the Communicant has failed in this regard to exhaust domestic remedies and/or that the costs cannot be viewed as having been prohibitive in these circumstances.

Article 9, Paragraph 5

6. The Communicant plainly had sufficient information about the judicial review procedures available to him, since availed himself of those procedures. His true grievance is that, having done so, he did not succeed on the facts of his case. That does not reveal any breach of Article 9, paragraph 5 of the Convention.
7. The United Kingdom has not failed to consider the establishment of appropriate assistance mechanisms in the context of litter abatement. It is in fact actively considering this issue. The Litter Strategy for England, published by the Department for Environment, Food and Rural Affairs on 10 April 2017 (enclosed) states on page 60:

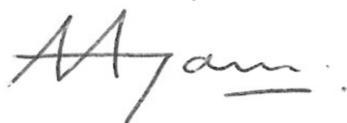
“By the end of this Parliament, we will also review the mechanism by which councils and other land-managers can be held to account for maintaining their land to the standards set out in the Code of Practice¹, considering a range of options to make it easier for citizens to hold land-managers to account for delivering their responsibilities.”

8. At the time this was written, it was envisaged that the “*end of this Parliament*” would be in 2020. Subsequently, on 3 May 2017 the United Kingdom Parliament was dissolved following the decision of Parliament that an early general election should be held on 8 June 2017. Nonetheless, the in-principle commitment to which the above passage remains even though that review will now have to be undertaken during the currency of the new Parliament following the 8 June 2017 general election.

Conclusion

9. The Committee is invited to conclude that the remaining allegations of non-compliance with the Convention are without merit.

Yours sincerely



Ahmed Azam
United Kingdom National Focal Point to the UNECE Aarhus Convention

¹ The Code of Practice on Litter and Refuse (1 April 2013), published by the Department for Environment, Food and Rural Affairs pursuant to s.89(7) of the Environmental Protection Act 1990.