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**By e-mail only**

16 January 2010

Dear Sirs

### **Communication to Compliance Committee ACCC/C/2008/23**

Thank you for forwarding the letter from Defra of 11 January 2010.

Defra is quite wrong to state that the Communicants' did not challenge the order to pay the Agency/BANES costs. See §9 (& fn 2) and 62 of the appeal skeleton argument (attached).

Further, the Agency and BANES know full well that the agreement between the Communicants and themselves followed threats of further costs if they were at the appeal. We advised the Compliance Committee of this at the 24<sup>th</sup> meeting on 1 July 2009. For example, a without prejudice letter from the Agency of 12 November 2009 stated:

"(4) Furthermore, both the modest level of the costs ordered in favour of the Agency and BANES (£5130 in total) and the fact that your clients have been able to produce these funds to be held in a solicitor's account pending the determination of the proposed appeal, seem to indicate that the order has not impeded access to environmental justice - providing support for the view that the Agency and BANES are not relevant to your appeal.

(5) Set against this, the continued involvement of the Agency and BANES would put your clients at significant risks of an additional costs order against them in the event that their appeal fails (either through refusal of permission, or on a substantive hearing). The hearing is listed for 2 days, at your request, before the Court of Appeal. The costs of the Agency and BANES associated with this are, you will appreciate, likely to be substantial, even with the saving to be achieved through the Agency and BANES being jointly represented by one counsel."

Yours faithfully

*Richard Buxton*

Richard Buxton

cc Jane Barton, Defra