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12 April 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 Jeremy

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 the discharge of an interim injunction(Ref. ACCC/C/2009/23).

Thank you for your letter of 9 March 2010. Please see below a response to the questions set out in the letter.

Please clarify whether it was the communicants, the operator or the Court that first proposed the naming of the Environment Agency and Bath & North East Somerset Council as monitors of the interim injunction?

As is recorded in the transcript of the Judgment of HHJ Seymour at the original hearing, it was the communicants who pursued an application for an injunction, the terms of which they contended had to include the Environment Agency staff. The communicants also sought the addition of Bath and North East Somerset Council as a further monitor of the injunction. This is clear from paragraph 5 of the Judgment dated 9 November 2009 (attached).

If not the operator, what was the response of the operator to the proposal (please point to any available documentary evidence of the operator's response).

The position of the operator was that an injunction was not necessary at all (paragraph 9 of the Judgment). It was a contested hearing and the Court

granted the Order requested by the communicants (but without recourse to the Environment Agency or Bath and North East Somerset Council).

Prior to the naming of the Agency and Council as monitors of the injunction, was the possibility of any other monitor proposed and if so, (a) was that proposal made by the communicants, the operator or the Court and (b) why were the Agency and the Council chosen instead?

It does not appear from the Judgment that consideration of this was given. However once the terms of the injunction were known to the Environment Agency and Bath and North East Somerset Council, those parties suggested to the communicants and the operator that it was appropriate for them to agree an independent third party expert, and for that expert to replace the EA and BANES Council in the order without the need for a Court hearing (letter 26 November 2006). The communicants and the operator failed to agree this which necessitated the Court hearing at which costs were awarded.

With respect to the United Kingdom's obligations under article 3(2) of the Convention, please outline what steps, if any, has the United Kingdom made to endeavour to assist the communicants to seek access to justice in this case, including since the Government received notice of the communication on or around 17 April 2008?

Article 3(2) does not require governments to get directly involved in every individual case. Rather, it concerns the systems which Parties have in place to provide the assistance mentioned, for example, the provision of guidance on how to access legal services and obtain financial aid or the establishment of a Citizens Advice Bureau. A full account of the UK's implementation of this article appears in the UK's Implementation Report of 2008.

Nevertheless, in this particular case the EA and BANES Council agreed not to enforce the costs awarded against the communicants at the Court hearing until the conclusion of their appeal to the Court of Appeal. With regard to the other litigation concerning the site it should also be noted that the UK, through legal aid, has facilitated access to Justice in three Judicial Review cases brought by the daughter of one of the communicants, Mrs Baker. The solicitors representing the communicants can no doubt confirm the level of state funding that it has received to further these cases.

Yours sincerely,



Jane Barton, UK National Focal Point

Cc Richard Buxton