

Our Ref: CHTS/HSA110-1129056/NMMA
 Your Ref: ACCC/2/2014/100
 11 November 2016

Secretary to the Aarhus Convention
 United Nations Economic Commission for Europe
 Environment and Human Settlement Division
 Palais des Nations, Room 429-4
 CH-1211 GENEVA 10

For the Attention of Fiona Marshall

Dear Fiona

Communications to the Aarhus Convention Compliance Committee ("the Committee") concerning compliance by the United Kingdom in connection with the proposed construction of the "High Speed 2" railway (ACCC/C2014/100) ("the Communication")

Please find below the Communicant's comments on the responses of the Party concerned to the Committee's questions of 26 September 2016.

The Communicant's response to the Party's response to Question 1

- (a) The alternative configurations had already been discounted in the March 2010 paper.
- (i) A 'reasonable reader' consultee seeing the material relied upon by the UK Government itself (AoS Section 5 at Volume 3 of the UK Additional Docs, paragraphs 5.1.3-5.1.5.) and the Feb 2011 consultation questions (a) would not have considered that the reverse E and S were back in the frame and (b) did not, in any event, have any basis on which to compare their environmental impacts to those of the Y.
- (ii) The same applies to conventional speed for the reasons already given in our response of last week. As we state there, the question re the principle of high speed rail was on the basis of value for money only.
- (b) The Government's answer is predicated on the premise that consultees were able to comment on matters that went beyond the questions posed. There are two problems with this.

First: The *consultation* was in fact on the questions posed – no more, no less. The fact that a small number of the more bold, sophisticated and uncooperative consultees ignored the clear limitation on the scope of invited responses makes no difference to this.

Second: The common law duties (under Gunning and Coughlan) to take into account of consultation responses were not engaged in relation to matters about which the public were not asked.

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The Communicant's response to the Party's response to Question 2

(i) The Environmental Impact Assessment for the Hybrid Bill was after the adoption of the plan which is the subject of our communication (the DNS was of course published in Jan 2012).

(ii) The Environmental Statement describes as *historic fact* the consideration of alternatives. It does not treat them as a live issue, on which comments can make a difference to future courses of action. See the UK Additional Documents, Volume 5, Tab 31(iii), pages 177-202 and in particular paragraphs 10.3.1, 10.3.9-10.3.10, 10.3.12-10.3-14, and 10.3.20-10.3.21.

(iii) The stages of consideration of the principle of the Bill were ones in which only MPs were involved. Under the UK Parliamentary system, (where in practice the Government controls Parliament through what is termed as the whipping system), the principle of the Bill (based on the Government policy statement of DNS 2012--the subject of this communication) cannot realistically be considered (a) to be subject to *public* consultation and (b) still less at an early and effective stage .

(iv) It was only through the petitioning process that the public had any real opportunity to participate in decision making on the Bill. But petitioning relates only to the details of the works. Its scope does not extend to alternatives such as those of the E, S configuration or conventional rail. Petitioners have been refused permission to appear before the Select Committee considering the Bill where they have sought to raise alternatives.

(v) The Addition Provision Environmental Statements and Supplementary Environmental Statements did not relate to the alternatives of E, S or conventional rail.

The Communicant's response to the Party's response to Question 3

We rely on our answers and reply to Question 1 and Question 2.

The Communicant's response to the Party's response to Question 4

We invite the Committee to rely on the *agreed* Statement of Facts and Issues (Tab 5 of our Appendix 1) before the Supreme Court which has the key stages up to the DNS (and shortly afterwards). The legal representatives both of the UK Government and the Communicants jointly engaged in drafting it.

If I can be of any further assistance do not hesitate to contact me.

Yours sincerely



Christopher Stanwell
Partner
for DAC Beachcroft LLP

cc: Mr Ahmed Azam, Department of Environment, Food and Rural Affairs, United Kingdom
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