

NATIONS UNIES ОБЪЕДИНЕННЫЕ НАЦИИ UNITED NATIONS ——— COMMISSION
ÉCONOMIQUE EUROPÉENNE ЭКОНОМИЧЕСКАЯ КОМИССИЯ ДЛЯ ЕВРОПЫ
ECONOMIC COMMISSION FOR EUROPE

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Ref: Pre-admissibility

19 November 2014

Dr Ian Miller
1 OFF Hill St.
Menai Bridge
Anglesey/Ynys Môn
LL59 5AG
United Kingdom

Dear Dr Miller,

Re: Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom with provisions of the Convention in connection with the management of the Newborough Forest

At its forty-sixth meeting (Geneva, 22-25 September 2014), the Aarhus Convention Compliance Committee considered the preliminary admissibility of the communication submitted by you on 16 July 2014. The communication alleged non-compliance with articles 4, 6, and 9 of the Convention in connection with the management of the Newborough Forest. The Committee agreed to defer its preliminary determination of admissibility to its forty-seventh meeting in order to ask you to clarify and further substantiate your allegations.

Please find attached a set of questions prepared by the Committee for your attention. We would be very grateful to receive your response to the attached questions by **Wednesday, 17 December 2014**, in order that they may be considered by the Committee at its forty-seventh meeting (Geneva, 16-19 December 2014).

Please do not hesitate to contact the secretariat if you have any questions.

Yours sincerely,

Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
Enc: Questions for the communicant

Questions for the communicant

1. Have you applied to the Information Commissioner with respect to the alleged failure to provide the requested information? If so, what was the result? If not, why not?

No, I had been asked by CCW/NRW to wait until the documents, supposedly in a draft form, were available, I felt I had to give the agency the benefit of the doubt and in doing so exceeded the three month deadline allowed for complaints to the Information Commissioner.

In addition to the formal FoI request to NRW for information the communicant had informal contact with an appropriate NRW regional manager, Nick Thomas, NRW's North Wales Protected Sites Manager. He had attended a public meeting [5th Sept., 2013] called by the independent participants in the Science Review to inform the Newborough community of NRW's clearfelling plans. The public at that time were unaware of NRW's plans. Nick Thomas stated to the communicant that he would check to see why the requested information was not forthcoming [see enclosed email from Nick Thomas 25/09/13].

The communicant had made a formal request to NRW's 'Access to Information Team' and made informal attempts to urge the agency to provide the requested information [contact with Nick Thomas]. Neither request produced the dune habitat assessment reports and the 25/09/13 was the last contact with NRW.

[See enclosed email from Nick Thomas].

2. With respect to your allegations under article 6, you state that the "failure to comply with the Convention relates to a specific decision requiring a permit (clearfelling licence)". Has the clearfelling licence yet been granted? If so, on what date? Do you have a copy of this licence which you could provide to the Committee?

The licence was granted in December 2010, approved on 1st December, 2010, in anticipation of proceeding with clearfelling outlined in the 2010-15 Forest Management Plan. It was granted by Forestry Commission Wales (FCW) to itself. A request for a copy of the licence has been made to the responsible officer in NRW, the agency that superseded FCW - an amalgamation of Environment Agency Wales, CCW and FCW. The officer has kindly provide the FCW clearfelling 'Approval form' and the actual licence is being sent to the officer by colleagues elsewhere in the agency. He will send on a copy of the licence when it is available. [See enclosed Approval document and email from Kim Burnham, NRW]

3. In your communication you state that the agencies involved "failed to inform the public at all until after the decision-making process was concluded and a Forest Management Plan signed off". Are you alleging that the Forest Management Plan 2010-2015 should have been subject to public participation that met the requirements of the Convention, or are your allegations focused on the decision to grant the clearfelling licence itself?

The claim relates to the development of the FMP not the clearfelling licence itself. The conservation agency and FCW were fully aware of the public concern regarding any plans that involved permanent removal of sections of forest. The public should have been involved in the development of the FMP. By avoiding public involvement the conservation agency was able to 'imbed' their clearfelling agenda into the FMP without public opposition.

The FMP was developed through bi-partisan dialogue between the conservation agency and FCW. It was presented to the public for 'comment' as a finalized document in late 2010. It was

clear that there was never any intention of making changes of any substance and the timing and approval of a clearfelling licence emphasizes this point. The issue of whether clearfelling was justified was supposed to be informed by the outcome of the Science Review and impartial independent arbitration. The FMP inclusion of clearfelling plans and clearfelling licence precede and pre-empt arbitration. If one was overly generous you could call the allowance of public 'comment' on the finalized FMP as *pro forma* consultation. The communicant and public would consider that an overly generous assessment.

Caveats included in the FMP text, that arbitration would have to have resolved disputed issues before any clearfelling took place, proved to be worthless. Clearfelling began after the Welsh Government internal review by a WG officer; independent impartial arbitration has never taken place.

4. On page 11 of your communication you provide a link to "Public Relations slanted News story on the NRW website subsequently provided information on the initial phase of the planned clearfelling operation". This link no longer works. Please provide the Committee with an electronic copy of this document and any other documents for which you have provided only weblinks, as such links often change over time.

[enclosed with this communication]

5. You state that you have complained to the Ombudsman for Wales on a "closely related Newborough environmental information issue and once that is resolved will consider whether a complaint regarding breaches of the Aarhus Convention should also be addressed to the ombudsman". Regarding which of the following would it be possible for you to make a complaint to the Ombudsman:

- a. The failure of the Welsh authorities to provide the requested information?
- b. The failure to ensure effective public participation in the decision-making to clearfell the forest?
- c. The failure of the Welsh authorities to follow through on its commitment to resolve the situation through independent and impartial arbitration?

Why have you not taken this step prior to submitting your communication to the Compliance Committee?

The communicant has sought advice from the Ombudsman [contacted Wed. 26/11/14] on whether these issues could be brought before the Ombudsman service. To date, Fri., 05/12/14, no response to this query has been received.

It is unclear to the communicant whether the Ombudsman service has the remit or scope to deal with the issues whereas it is clear that the conservation agency's actions in concert with the Welsh Government are a clear breach of the key pillars of the Convention. The communicant's understanding is that the Ombudsman service is a quasi-legal authority and would only consider the issues from a strictly legal perspective. The communicant felt that it was important that the Compliance Committee was made aware of failures to ensure compliance with the Convention.

6. With respect to your allegations under article 9, have you or other members of the public sought to challenge before the UK courts any of the following:

- a. The failure of the Welsh authorities to provide the requested information?
- b. The failure to ensure effective public participation in the decision-making to clearfell the forest?

c. The failure of the Welsh authorities to follow through on its commitment to resolve the situation through independent and impartial arbitration?

If so, what was the outcome of the court proceedings? If not, why have court proceedings not been issued?

The communicant & Newborough community have not instigated court proceedings. This area is economically depressed so much so that it is in receipt of economic assistance from the EU via 'Convergence' funding through the European Regional Development Fund. The small local community at Newborough does not have the financial resources to engage legal representation and instigate potentially very costly legal expenses. Judicial reviews in the UK can typically cost over £30,000. [see enclosed guidance from the UK Environmental Law Association]

7. What is the current status of the investigation CHAP (2013) 02967 14/10/13 by the Directorate- General Environment?

DG-Environment have not communicated regarding their investigation, CHAP (2013) 02967 14/10/13. We do not know the current status or outcome of DG-Environment's investigation of our complaint.

The DG-Environment have not sought clarification of details of the dune management issues brought to their attention and have previously indicated they are loath to intervene at national level except in extreme circumstances, for example, when a former Polish government planned to build a major motorway across one of Europe's finest wetlands.
