COMPLAINT[1]

TO THE COMMISSION OF THE EUROPEAN COMMUNITIES

CONCERNING FAILURE TO COMPLY WITH COMMUNITY LAW

1. Surname and forename of complainant:

The Anglesey Red Squirrels Trust

2. Where appropriate, represented by:

Dr Craig Michael Shuttleworth

3. Nationality:

British

4. Address or Registered Office[2]:

Llys Goferydd, Stâd Ddiwydiannol Bryn Cefni, Llangefni, Anglesey. LL77 7XA. UK.

5. Telephone/fax/e-mail address:

Telephone: (+44 01248 725700), Fax: (+44 01248 725735),

Email: Conservation@redsquirrels.info

6. Field and place(s) of activity:

Research scientist. Working for a local community conservation group on the island of Anglesey, North Wales, UK.

7. Member State or public body alleged by the complainant not to have complied with Community law:

(a) The Countryside Council for Wales (CCW) the statutory national nature conservation body in Wales, and an agency of the Welsh Assembly Government. (b) The Welsh Assembly Government. These are the competent authorities in respect of this complaint.

---

1 You are not obliged to use this form. You may also submit a complaint by ordinary letter, but it is in your interest to include as much relevant information as possible. You can send this form by ordinary mail to the following address:

Commission of the European Communities
(Attn: Secretary-General)
Rue de la Loi 200,
B-1049 Brussels
BELGIUM

You may also hand in the form at any of the Commission's representative offices in the Member States. The form is accessible on the European Union's Internet server (http://ec.europa.eu/community_law/your_rights/your_rights_forms_en.htm).
To be admissible, your complaint has to relate to an infringement of Community law by a Member State.

2 You should inform the Commission of any change of address and of any event likely to affect the handling of your complaint.

8. Fullest possible account of facts giving rise to complaint:

1. **Developing a Forest Plan within the Abermenai & Aberffraw Dune SAC: Background information**

1.1. The Abermenai to Aberffraw Special Area of Conservation (UK 0020021) is 1871 hectares in area with coastal sand dune and sandy beach habitats (55%) containing five primary Annex I dune habitats (2110, 2120, 2130, 2170, 2190) and two Annex II species (1395 petalwort, 1441 shoredock) features. 92/43/EEC requires these features to be in 'favourable status' following assessments under Common Standards Monitoring (CSM).

1.2. In the 1950s a commercial coniferous plantation was established upon c. 710 hectares of the subsequent SAC designated area (38.7%). This mature woodland is currently managed by Forestry Commission Wales (FCW), a Welsh Assembly Government (WAG) agency, and is an important recreational and amenity site held in trust by WAG for the people of Wales.

1.3. The public estate woodlands must have an approved Forest Design Plan (FDP). Article 6(3) (92/43/EEC) sets that "*Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives*". Imperative reasons of overriding public interest (reference: 92/43/EEC Article 6(4) Guidance Document January 2007) are a consideration within the assessment process, and due diligence should be made to the results of Common Standards Monitoring results for the SAC features. However, as the entire forest represents 38.7% of the SAC, the forest management plan may fall within Article 6(1) and therefore not require assessment.

1.4. In May/June 2004, the basic elements of an FDP outline (*2003 Management Policy Agreement*) were revealed by the Countryside Council for Wales (CCW) and FCW, to residents of a few small villages near the SAC. CCW/FCW called this plan the 'Vision'. The development of this plan would be in accordance with Article 6(1). The plan indicated that large areas of the forest would be removed 'in order to satisfy the requirements of the Habitats Directive'. Vagaries in the *publically presented* plan detail, it is described by CCW as having "*flexibility in precise nature"*, lack of transparency in the decision making processes, failure with respect to Article 6(2) of the Århus Convention, and the proposed removal of 40% of the forest led to a wide public outcry, petition, and widespread local and national media coverage.

1.5. In September 2004, and in the face of public anger, CCW brought in an independent facilitator (Lindsey Colbourne Associates) to bring together government agencies and local community groups in order for them to formulate a mutually agreeable FDP. At a public meeting attended by 250 people, CCW *stated repeatedly* that the Habitats Directive requirements for the SAC were NOT the overriding factor in the development of the FDP (*The meeting was audio-recorded*). The CCW Chief Executive and Regional Director both said that the 2003 Management Policy Agreement plan was shelved, and that plans would be developed in partnership with local community and NGOs.

1.6 This would not simply be a process where plans are presented to the public, but would instead be driven by active discussions on all elements prior to finalization of an FDP document. The government website http://www.forestry.gov.uk/forestry/infd-62fln6 described the partners involved as the 'Newborough Liaison Partnership' and states that:

"Through local people and organisations such as Anglesey County Council, the Countryside Council for Wales and the Forestry Commission, this partnership aims to improve the design, **management and use of the Newborough Forest and Warren Area**, to enhance its environmental, social and economic value in the long term, by working together as one unit."

When asked to clarify the scope of discussions, and on 8th Nov 2004 CCW/FCW stated that,

"We would like involvement to mean more than just consultation – so we want to work with interested people in actually working up options and evaluating them, rather than just consulting them on a proposal."

Given the involvement of CCW, it was unclear whether they viewed the FDP under development as management of part of the SAC, Article 6(1), or a plan within the context of Article 6(3). In an email sent 23/9/04 to Roger Thomas Chief Executive of CCW, I questioned whether there was indeed a "blank canvas", as he publically stated specifically in terms of management of the SAC woodland. I also asked whether WAG would face infraction proceedings if the woodland remained unchanged, as it had been implied by CCW that the SAC would remain in 'unfavourable status' if this happened. The response to this question from CCW Chief Executive (Copied to Mr C.Atkinson and Mr T. Jones of CCW) was that the agency '*was not aware of any potential for legal action against WAG*', and that '*to answer a hypothetical question at this stage merely serves to usurp a process that has hardly begun*' [email 1/10/04].

1.7. Further, CCW, FCW, and the independent facilitator, had regular meetings separate from the wider public consultation/partnership discussions in 2004-2007. The facilitator has now

confirmed in an email [2nd June 2009] that CCW reiterated at these meetings that there were no non-negotiable or baseline restrictions to the final plan, and the facilitator structured the scope of public discussions in that context. Further, in an email to another member of the local community Lindsey states that;

"*There was the original 'vision'* [2003 Management Policy Agreement CCW/FCW] *document developed by CCW/FCW which set out a reduction in the forest to expand the dunes. And that was what caused the initial outrage, and that was what Roger Thomas/the CCW chair said at the public meeting had been completely thrown out and we were back to the drawing board, with no requirement to get rid of the trees as originally proposed.*"

[Lindsey Colbourne Associates email 1 June 2009]

The CCW position (as shown in Para 1.5- 1.7 in this complaint) is clearly incompatible with respect to the SAC legal obligations under Article 6 of the Habitats Directive *if* the forest were indeed having any adverse effects upon Annex I or Annex II features. CCW have always contended that the forest is having such adverse effects. However, in relation to FDP development, although the agency repeatedly reference Article 6(3) in written statements, the wider documentation; minutes, material outputs and scope of discussion from the consultation process, I believe all demonstrate clearly that CCW, as the competent national authority, singularly failed to ensure that the remedial action they deem scientifically necessary to ensure SAC features *favourable status* was presented during community discussions and subsequent FDP preparation. Further, that body deliberately with held data and reports from the community, and I believe for the following reason.

1.8. In the context of the Abermenai SAC, CCW publicly 'played down' the legal obligations under both Article 6(1) and 6(3) (92/43/EEC) with respect to plans and projects in order to halt the storm of opposition to their 2003 Management Policy Agreement. This is substantiated by the fact that in 2009, a Freedom of Information (FoI) request revealed the existence of a detailed CCW 'Ecosystem Restoration Document' dated July 2002, which was sent to WAG, and in effect was the specific remedial action deemed necessary by CCW to ensure favourable conservation status of the Annex I and II dune habitats and species, the detail hidden behind the 2003 Management Policy Agreement. This document, the detail, and the management prescriptions contained therein, was never presented in May/June 04. It was not presented during, or since the 2004-2006/7 consultation period. A CCW 'briefing note' written on 26/11/04 stated

'that CCW may have no choice but to take a more hard line stance than has hitherto been the case, to ensure compliance with the Habitats Directive. ***This may come as a rude awakening to some of the objectors*** *and could result in CCW being further criticised for*

raising expectations, but this may be unavoidable as a consequence of the legal requirements. In order to avoid this situation, which could have major repercussions for CCW, we recommend that we develop a more incisive approach to the Forest Design Plan, clarifying at an early stage the objectives that are required of FC and CCW' Again, this demonstrates an agency aware that it was playing down information.

1.9. Of similar concern is the fact that documents and reports of Common Standard Monitoring assessments for the Abermenai SAC, were not made available [see below, with respect to availability of environmental information] to the consultation groups. Yet again, the facts demonstrate that CCW allowed the lengthy process of FDP development to take place whilst failing to make available technical information and scientific assessments which they would at a later date rely upon when challenging the appropriate assessment of the FDP made by FCW as the competent authority.

1.10. Thus, CCW were partners in developing an FDP plan for woodland within the SAC, alongside FCW and the local community, only to then reject it under Article 6(3). There are clearly implications of this with regard to Directives on public participation and transparency, and good governance, given what we now know. The CCW Technical Services Group (TSG) scientists produced a paper 11/12/2008 outlining why they believed the FDP did not satisfy Article 6(3), none of these experts presented any opinion or scientific information during the three year long consultation partnership, a fact which CCW justified [Tim Jones email 11/12/2008 to Lindsey Colbourne Associates] by stating that:

"*These individuals [TSG Scientists] are dealing with the process as required by national and European legislation, as they would any other proposal affecting a designated site. It would be wholly inappropriate to allow social/political issues to influence the formal assessment process at this stage. The legal framework - in particular under Article 6 of the Habitats Directive - requires a clear separation between consideration of the ecological issues and social/cultural considerations*."

1.11 What Mr. Jones failed to recognize is that Article 6(3) actually permits social considerations because it is subject to the provisions in Article 6(4). CCW have a duty to carry out legal obligations within (92/43/EEC), but crucially to do so *in respect of the Århus Convention*, a legal framework within which EU Directives must be delivered. (see section 2 below, and the emphasis of my complaint). And so importantly, the TSG scientists, had scientific information and *data underpinning* their assessments that would be *materially relevant to FDP development*, should have made it available through CCW colleagues to the community partners. This would have no bearing upon the later independent function of CCW staf securitizing FCWs plan under Article 6(3). In effect what CCW did in an attempt to divorce certain scientists from the FDP development

process, was also to divorce scientific evidence from it. In addition, CCW were now rejecting a written CCW/FCW statement on 8th November 2004 when the agencies said,

"*We will have to take account of the Special Area of Conservation's guidance on nature conservation interests but also the Arhus convention in terms of consulting people. This means keeping site in good condition for nature conservation interest in cooperation with local people.*"

1.12 The fact that technical experts were utilizing data and information that had been available but withheld from the public during the previous years is at discord with the Århus Convention (See section 2 below). The community partnership encompassed 14 plenary meetings. In addition, five task and finish groups were established, and *each* comprised between 6 and 15 independent meetings. There were also two rounds of wider public consultation, including a forest fair. This is an impressive collaborative attempt at co-developing an FDP, but one that relied *upon all relevant material being made available*.

2. Public interest and involvement in environmental decision making.

2.1 Environmental information, including 'plans' and 'programmes' should be systematically available and distributed to the public (2003/4/EEC Directive transposed into UK Environmental Information Regulations (EIR) 2004). A Code of discharge of the obligations of public authorities under the Environmental Info Regulations 2004 (SI 2004, No. 3391) plainly sets out that,

'All communications to a public authority, including those not in writing… potentially amount to a request for information within the meaning of EIR' under Regulation 4 a public authority has a duty to make information available to the public, and to take reasonable steps to organize information relevant to its function with a view to active and systematic dissemination.'

2.2 In addition, Article 7 of the Århus Convention (UNECE) states that each party shall make '*appropriate practical and other provisions*' to facilitate public participation concerning environmental plans and programmes. The Århus convention (Article 7) crucially recognizes that citizens "*may need assistance*" in order to exercise their rights and enshrines transparency in decision making and access to information in order to '*strengthen public support for decisions on the environment*'.

2.3 In short, in discharging community law Article 6(3) and 6(4) of the Habitats Directive, there is a legal requirement that public consultation takes place with a presumption that all environmental information will be available. One would naturally assume that consultation be dispensed in a transparent manner, and that documents and other relevant material are not deliberately withheld, and that any terms of reference (including legal limitations) are clarified. Moreover, Article 7 of the Århus convention puts a responsibility upon agencies to be *proactive* with environmental information, where there is public consultation there should be an expectation that agencies actively *highlight* what information is available and outline those relevant to community discussions.

2.4 In discharging their legal obligations under 92/43/EEC, Community Law, CCW and WAG have systematically failed to enable unhindered and informed involvement of EU Citizens. Despite carrying out assessment of the conservation condition of SAC features in 2005 as part of Community Members reporting, neither this action nor the resulting reports were presented to local people involved in the development of the FDP. The government agency was in effect developing plans in partnership with the community, but divorced and parallel to, assessments and EU reporting that were of significant material relevance to the production of the plans and 38.7% of the SAC area. The fact that, unbeknown to the community, some documents may have eventually been available on government websites, is no defense, particularly in the context of stakeholder meetings (see paragraph 1.6 of this complaint) where "*…the purpose of establishing the group is to get all relevant material on the table.*' [CCW Chief Executive statement 1/10/04]

2.5 Of great concern, is that CCW were active partners in the development of the FDP, in a process that from 2005 onwards made only one dimensional reference to the documents and indeed the mechanics and legal process of ensuring that the SAC features were not adversely affected by the plan. However, the Terms of Reference of the public/private partnership, as agreed by CCW, were such that the group discussed management options for the whole SAC area and as such the FDP was viewed by many as an Article 6(1) plan.

2.6 It is crucial that the plans developed, and agreements made by community groups and the public, either in partnership or consultation with, competent national authorities (92/43/EEC) were based upon all the facts and were therefore were truly fully informed. **With the national competent authority involved in FDP production, for woodland that is 38.7% of the SAC, it is natural that community and FCW would assume that CCW would guide them through the three year process to ensure that the FDP would deliver Article 6(1) management, rather than a plan that became mired in failed**

CCW scrutiny of FCW favourable assessments within Article 6(3), yet this is what has happened.

2.7. An FDP document was completed in 2008 for the management of the woodland on 38.7% of the SAC area. At the instruction of CCW, FCW (the competent authority with respect to the FDP), carried out a formal appropriate assessment, as required under 92/43/EEC Article 6(3) using a 'Habitats Directive Assessment for a Forest Design Plan' form. CCW rejected the plans as being detrimental to the SAC, but crucially, the reasons and justification for this decision were not presented as *the relevant section within the FCW form was left blank and unsigned by CCW*. Thus there was no direct and available paper audit trail for the public to see the rationale for the CCW decision to reject the draft FDP as being detrimental to the SAC.

2.8. There was other material, written communication from CCW to FCW alongside letters and emails asking that meetings take place to discuss the redrafting of the FDP. The assertion that plans "*lacks detail and content and that, as a result, it is not possible for CCW at this stage to consider whether the proposed mitigation/avoidance measures proposed would be sufficient to negate likely significant effects*" is made [Keith Davies CCW to Iwan Parry FCW 1st May 2008], whilst a statement that '*consensus of opinion was that the draft FDP would not adequately address the ecological requirements of the …SAC*' [email 12th Feb 09 from CCW CE to FCW Director] is also presented. Whether the precautionary principle was being applied was not clear, and if it were, the process of scientific assessment was not presented in these documents. Further confusion is added by reference to Directive 92/34/EEC as being the Habitats Directive, and by arguments relating to the design of the Habitats Directive Assessment Form completed by FCW in their assessment process.

2.9. However, later community group FOI requests made in 2009, revealed the existence a version (File name *final draft*) of a CCW TSG document (11/12/08) outlining the necessity in respect to Article 6 (2), to avoid SAC feature deterioration, by amongst other things, a 500m wide coastal band of woodland being removed with extensive felling elsewhere (I have referred to this document in paragraph 1.10). This was in effect reinstating the (CCW/FCW) *2003 Management Policy Agreement* which the public were told had been abandoned in 2004 in order to have a facilitated government/community partnership approach to FDP development (see paragraph 1.4 above). It is also the prescriptions that CCW as an agency had said in 2004 were no longer necessary (see paragraph 1.5-1.7 above).

2.10. Following the initial FDP appropriate assessment in late 2008, the plan was rewritten by FCW in early 2009 and underwent appropriate assessment once again. However, CCW were unable to endorse the plan, and in fact never actually reviewed whether the plans would cause damage to SAC features or not. This was because WAG instructed immediate felling licenses to be applied for to remove woodland on the dunes, and also asked that the FDP be rewritten, this time by CCW guidance over-riding the agreements made within the 3 year community consultation. The reason for WAG intervention was a written complaint being sent to the EU. The complaint suggested that the SAC management (in relation to the FDP) was in breach of community law, but DGE informed us that, with the available information, the Commission believed that no breach of Community law had taken place because the plans were covered by Article 6(1) and not 6(3). [email from Directorate Generale Environment 25 May 2009].

2.11. Thus, although the FDP was assessed by the competent authority as not damaging SAC features, a single complaint has led to *the assumption* that it is damaging. This action did not follow from any science based response to the FCW 'appropriate assessment' from CCW as the national authority. Instead, FDP redrafting is to be done simply on the basis of an allegation made by a member of the public, and the 'threat of infraction proceedings' that WAG perceived. This is not transparent due process, and therefore is not in accordance with EU Directives on public participation.

2.12. To summarize the above, the Welsh Assembly Government, have through their agencies CCW and FCW, produced Forest Design Plans in partnership with local community groups over a three year period of discussion. This was presumably with regard to Article 6(1) that Member states must establish the necessary conservation measures, corresponding to the ecological requirements of the habitats and species present within SAC sites. As the Statutory Nature Conservation agency in Wales, and managers of the Abermenai & Aberffraw Dune SAC, CCW should have presented detailed evidence relating to the SAC requirements necessary to be included with the FDP. The plans effectively jointly co-authored by CCW were deemed by that very same agency to be unsatisfactory; the agency must therefore now be considering FDP plans developed within Article 6(1) as plans not directly connected with SAC management for biodiversity conservation purposes, and hence instead covered by Article 6(3) alone. The agency has now returned to re-impose much of the *2003 Management Policy Agreement* that they abandoned in 2004 following fierce community opposition.

2.13. The current rewriting of the FDP is being carried out independently of the wider community, and is in discord with the agreements made by these agencies within the

"Newborough Forest & Warren Conclusions & Recommendations Document" (December 2006) within which it was stated clearly that community would "*be consulted as the detail of proposals and the Forest Design Plan are developed*."

CCW have to date failed to formally provide the public with the specific and precise details of the amount of woodland that they wish to remove, but have stated that they must act immediately in order to avoid infraction proceedings that may arise from the next EU Package Meeting to be held this autumn. FCW have stated that the only guidance they now have from CCW is the TSG document (attached).

2.14 In a press release 5th May 2009, FCW stated that "*The Liaison Partnership* [public partnership group] *has helped FCW to develop a Forest Design Plan but it could not be approved because the plan did not enable enough of the sand dune habitat to come into favourable ecological condition - a key requirement of the Habitats Directive.*" The FDP went through appropriate assessment (by FCW), but the assessment was never reviewed/scrutinized by CCW as the competent national authority, thus there is no basis in fact for the FCW statement.

2.15 Currently, the wider local interest in the FDP is biased towards the views of the individual who made the complaint to the EU, a bias incompatible with both 2003/4/EEC and the Århus Convention. In a recent Position Statement, WAG repeatedly refer to the threat of EU 'infraction' proceedings, but fail to reflect the equally legitimate risk of 'infringements' of EU Citizens rights, and to date have failed to safeguard compliance with the access to Justice Principle, even having failed to respond to written requests about the third pillar of the Århus Convention i.e. the right to recourse to administrative or judicial procedures to dispute acts and omissions of private persons and public authorities violating the provisions of environmental law.

3. Precautionary principle and SAC habitat quality

3.1 The precautionary principle is not expressly provided for in Article 6(3) of the Habitats Directive 92/43/EEC, but is strongly suggested. Within this Directive any precautionary principle would be subject to public interest safeguards. In addition, the principle does not facilitate the deliberate use of subjective scientific assessment but essentially requires that a balanced and critical review of data, opinion and information takes place in order to make a conclusion; that there is no certainty that the site will not be adversely affected, and that "*reasonable scientific doubt remains*" (see European Court decision on Waddensee cockle fishing).

3.2 The Countryside Council for Wales, as the competent national authority, has often deliberately ignored the voracity and weight of some scientific evidence and material considerations in formulating views with regard to whether or not the forest is having adverse affects upon dune hydrology and geomorphic processes; including an emphasis upon hydrological reports that had been criticized by independent government review (i.e. Centre for Hydrology and Ecology Review document). This continued lack of clarity of scientific fact continues in advice given by the agency to WAG [email CCW to Mr Chris Worker WAG on 3/3/09].

3.3. Further, where there may be doubt about whether the forest is having a detrimental impact upon SAC designated features, the precautionary principle must expect remedial actions to be proportionate and balanced. Written CCW guidance and opinion given to WAG exaggerate the extent to which the forest may have hydrological implications on for example dune slacks, and the realm of scientific uncertainty is being deliberately widened to facilitate much greater remedial action than an objective assessment would recommend e.g. CCW 'Ecosystem Restoration Document' dated July 2002 (see Para 1.8, this complaint) and the CCW TSG response to the FDP in 2008 which states that:

"*The plantation has also resulted in fundamental changes in the hydrology of the site, most notably water table depression, with adverse consequences for the humid dune slack feature in particular, and dependent species/species assemblages.*"

This is a jaundiced perspective on available data, as it fails to differentiate between the hydrological effects beneath the 38.7% SAC Forest area and, relative to rainfall patterns and drainage elsewhere, the scientific understanding of woodland impact upon the adjacent 55% SAC Sand dune/beach areas with the Annex I features.

3.4 In 2005 CCW carried out assessments of SAC features (under Article 17) of the directive. These showed many Annex I habitats that were found to be in good condition, but which were only classified as 'unfavourable' by the application of a criterion that 'zonation should be intact along 95% of the coastal frontage'. The Directive (92/43/EEC) requires the habitats present at the time of SAC designation are those that should be protected and monitored, that would sensibly encompass the zonation present and identified when the SAC was designated. I can find no Directive requirement to artificially create idealized dune zonation - a progression from beach to mobile dunes to fixed dunes - along the whole coastline of the SAC, and once again, if such an important legal principle exists, it should have been presented as such during the three year consultation and discussed as a non-negotiable FDP management prescription.

3.5 Reading through Nature 2000 Standard Data Form (SAC: UK0020021), a document that identifies Annex I habitats, our community heritage, the forest area (37.8% SAC) does not appear to contain any of the Annex I habitat. These lists presumably encompass the total area of an Annex I habitat irrespective of condition, including if a fifty year old mature forest was growing upon part of the Annex I habitat. Such forested areas of Annex I habitat should have been included when calculating total habitat area of the relevant Annex I habitat (Section 3.1). The damage, in terms of, for example geomorphical processes of the trees, should have been reflected in the conservation grade (Section 3.1.). They were not, because the forest contains no Annex I habitat. There must be a clear audit trail in order to monitor baseline changes in SAC features, given the legal obligations, it would seem appropriate to use the state at designation as the baseline. Thus the 38.7% forest is not a constituent part of the designated and audited Annex I habitat areas.

3.6 A final point is that, Member States are expected to redress any factors that cause SAC features to deteriorate or fail to reach favourable status, whether these are within a SAC area or adjacent to it. In this respect CCW and WAG have since at least 2002 had the opportunity to address any adverse effects that the forest is having, after all the land is owned by the state. In this regard the WAG agencies, rather than taking responsibility for the SAC issues on behalf of the Member State, have repeatedly shifted emphasis towards the EU, recently making reference to impending threats of infraction proceedings as a justification for paying lip service to Citizens consultation rights, and wider considerations; public interest and socio-economic factors, and beneficial consequences of primary importance for the environment (Article 6(4) of the Habitats Directive).

9. As far as possible, specify the provisions of Community law (treaties, regulations, directives, decisions, etc.) which the complainant considers to have been infringed by the Member State concerned:

The Countryside Council for Wales is the competent national authority in Wales with respect to (92/43/EEC). Article 6(3) requires that the component national authorities can "…agree to a plan or project only *after having ascertained that it will not adversely affect the integrity of the site concerned*..." CCW have a duty to carry out this, and other legal obligations, and crucially to do so in respect of the Århus Convention, a legal framework within which EU Directives must be delivered.

The Århus Convention is not only an environmental agreement; it is also a Convention about government accountability, transparency and responsiveness. In delivering their legal responsibilities under Articles 6(1) and 6(3) of (92/43/EEC), CCW have systematically denied the public their rights enshrined within the Århus Convention:

including amongst others, Article 6(8) & Article 7. The failure to disclose the scientific evidence *underpinning* the 11/1/208 *CCW TSG Report* at an early stage is one clear example.

Moreover, the current redrafting of the FDP document prior to the autumn EU Habitats Directive Packaging meeting, will not allow participants to prepare or respond to the plan (Article 6, Århus Convention) given the technical detail involved. Further, a consultation driven singularly by fear of EU infraction proceedings, has now exacerbated the legal failings with respect to Citizens rights in environmental decision making.

Finally, I believe that there has also been a failure to meet the requirements of Article 2(3) (92/43/EEC) and also by failing to provide environmental information to the community partnership s*et up to review all available information*, a breach of 2003/4/EEC.

10. Where appropriate, mention the involvement of a Community funding scheme (with references if possible) from which the Member State concerned benefits or stands to benefit, in relation to the facts giving rise to the complaint:

European Leader program and European Objective One funding for eradication of non indigenous grey squirrels from the Abermenai SAC 38.7% (710 hectares) woodland area and reintroduction of arboreal native red squirrels.

11. Details of any approaches already made to the Commission's services (if possible, attach copies of correspondence):

None

12. Details of any approaches already made to other Community bodies or authorities (e.g. European Parliament Committee on Petitions, European Ombudsman). If possible, give the reference assigned to the complainant's approach by the body concerned:

None

13. Approaches already made to national authorities, whether central, regional or local (if possible, attach copies of correspondence):

13.1 Administrative approaches (e.g. complaint to the relevant national administrative authorities, whether central, regional or local, and/or to a national or regional ombudsman):

- Letter dated 11th June 2009 written on behalf of the Newborough Forest Liaison Partnership (Community Groups) to WAG First Minister Mr Rhodri Morgan AM (copied to Deputy First Minister, Biodiversity Minster and Rural Affairs Minister)
- Written communication dated 3rd July 2009 to Mr Chris Worker Welsh Assembly Nature Conservation branch.
- Letter dated 30th June 2009 from Ian Miller, on behalf of community groups to Diana Reynolds WAG.
- Letter dated 2nd May 2009 to Mr Christopher Hussey at UK Governments Customer Contact Unit.

13.2 Recourse to national courts or other procedures (e.g. arbitration or conciliation). (State whether there has already been a decision or award and attach a copy if appropriate):

On 4th May, A letter to the Welsh Assembly was sent asking:

'The Arhus Convention provides EU Citizens with a number of rights, what compliance mechanism is place in Wales? And have WAG put in place the means by which EU Citizens can have access to legal justice when their rights under the Convention are breached or denied?

The letter was acknowledged in May, with a statement that WAG was consulting legal departments. However since then no response has been received.

14. Specify any documents or evidence which may be submitted in support of the complaint, including the national measures concerned (attach copies):

- Nature 2000 Standard Data Form (SAC: UK0020021) JNCC 17/5/2006. – **UK0020021.PDF**
- Email communication to CCW Chief Executive 23/9/04 [**Email to CCW 23rd Sept04.doc**] and response received 1/10/04 [**Email 1stOct04 from CCW.doc**].

- Extensive archive of email communications with CCW, JNCC, DEFRA, WAG in the period June 2004 to present (NOT INCLUDED).
- Document produced in the CCW/FCW/Community partnership producing an FDP for the SAC woodland habitats and management of other SAC areas. **Finalrecommendations.PDF**
- Letter and briefing note to Welsh Assembly Government July 2002 and two page Ecosystem Restoration Options (the basis for the *CCW/FCW 2003 Management Policy Agreement*) [**July 2002 CCW WAG communications parts 1,2,3.doc**]
- Letter dated 30th June 2009 from Ian Miller, on behalf of community groups to Diana Reynolds WAG. **Community letter to WAG regarding dunes 30 June 09.doc**
- CCW consideration of FDP appropriate assessment. **TSGFDPresponseDecember08finaldraft.doc**

15. Confidentiality (tick one box)[3]:

X "I authorize the Commission to disclose my identity in its contacts with the authorities of the Member State against which the complaint is made."

16. Place, date and signature of complainant/representative:

UK, 11th July 2009 –

[3] Please note that the disclosure of your identity by the Commission's services may, in some cases, be indispensable to the handling of the complaint.

(Explanatory note to appear on back of complaint form)

Each Member State is responsible for the implementation of Community law (adoption of implementing measures before a specified deadline, conformity and correct application) within its own legal system. Under the Treaties, the Commission of the European Communities is responsible for ensuring that Community law is correctly applied. Consequently, where a Member State fails to comply with Community law, the Commission has powers of its own (action for non-compliance) to try to bring the infringement to an end and, if necessary, may refer the case to the Court of Justice of the European Communities. The Commission takes whatever action it deems appropriate in response to either a complaint or indications of infringements which it detects itself.

Non-compliance means failure by a Member State to fulfill its obligations under Community law, whether by action or by omission. The term State is taken to mean the Member State which infringes Community law, irrespective of the authority - central, regional or local - to which the non-compliance is attributable.

Anyone may lodge a complaint with the Commission against a Member State about any measure (law, regulation or administrative action) or practice which they consider incompatible with a provision or a principle of Community law. Complainants do not have to demonstrate a formal interest in bringing proceedings. Neither do they have to prove that they are principally and directly concerned by the infringement complained of. To be admissible, a complaint has to relate to an infringement of Community law by a Member State. It should be borne in mind that the Commission's services may decide whether or not further action should be taken on a complaint in the light of the rules and priorities laid down by the Commission for opening and pursuing infringement procedures.

Anyone who considers a measure (law, regulation or administrative action) or administrative practice to be incompatible with Community law is invited, before or at the same time as lodging a complaint with the Commission, to seek redress from the national administrative or judicial authorities (including the national or regional ombudsman and/or arbitration and conciliation procedures available). The Commission advises the prior use of such national means of redress, whether administrative, judicial or other, before lodging a complaint with the Commission, because of the advantages they may offer for complainants.

By using the means of redress available at national level, complainants should, as a rule, be able to assert their rights more directly and more personally (e.g. a court order to an administrative body, repeal of a national decision and/or damages) than they would following an infringement procedure successfully brought by the Commission which may take some time. Indeed, before referring a case to the Court of Justice, the Commission is obliged to hold a series of contacts with the Member State concerned to try to terminate the infringement.

Furthermore, any finding of an infringement by the Court of Justice has no impact on the rights of the complainant, since it does not serve to resolve individual cases. It merely obliges the Member State to comply with Community law. More specifically, any individual claims for damages would have to be brought by complainants before the national courts.

The following administrative guarantees exist for the benefit of the complainant:

(a) Once it has been registered with the Commission's Secretariat-General, any complaint found admissible will be assigned an official reference number. An acknowledgment bearing the reference number, which should be quoted in any correspondence, will immediately be sent to the complainant. However, the assignment of an official reference number to a complaint does not necessarily mean that an infringement procedure will be opened against the Member State in question.

(b) Where the Commission's services make representations to the authorities of the Member State against which the complaint has been made, they will abide by the choice made by the complainant in Section 15 of this form.

(c) The Commission will endeavour to take a decision on the substance (either to open infringement proceedings or to close the case) within twelve months of registration of the complaint with its Secretariat-General.

(d) The complainant will be notified in advance by the relevant department if it plans to propose that the Commission close the case. The Commission's services will keep the complainant informed of the course of any infringement procedure.

***