



Department
for Environment
Food & Rural Affairs

Millbank c/o
Nobel House
Area 2D
17 Smith Square
London
SW1P 3JR

+44 (0) 2027 238 0082
Jane.beeko@defra.gsi.gov.uk
www.gov.uk/defra

Ms Fiona Marshall
Secretary to the Aarhus Convention Compliance Committee
UN Economic Commission for Europe
Environment Division
Palais des Nations
CH-1211 Geneva 10
Switzerland

Your ref:
Our ref:
Date: 9 March 2018

Dear Ms Marshall

PRE/ACCC/C/2017/157: UK comments on admissibility

1. Thank you for informing us of the pre admissibility meeting which will take place on Monday 12 March. To assist the Committee, we wanted to provide you with a brief note in advance of the meeting which sets out why the United Kingdom considers communication PRE/ACCC/C/2017/157 to be inadmissible.

Submissions on admissibility

2. This communication makes the following allegations in respect of the UK:
 - (i) Non-compliance with Article 9(3) as the 'Environmental Costs Protection Regime' ('ECPR') does not extend to planning challenges brought under s.288 of the Town and Country Planning Act 1990; and
 - (ii) Non-compliance with Article 9(3) due to the "chilling effect" that the disclosure of private financial information will have, since claimants will be reluctant to bring environmental challenges.
3. The communicant has not sought to utilise or exhaust domestic remedies before approaching the Committee, in accordance with paragraph 21 of the Annex to Decision I/7 and paragraph 6(b) of Decision V/9. It is noted that the communicant states he was advised by Counsel that challenging the Secretary of State's decision in respect of the amendment to ECPR would be "extremely costly and could fail". It should be noted that if Counsel is providing advice in such terms, it is likely that

Counsel was aware that the communicant has an unmeritorious claim and therefore risked losing the matter. The UK wishes to highlight that the communicant should have utilised or exhausted the available domestic remedies (in this instance seeking a statutory review of the Secretary of State's decision) before submitting this communication before the ACCC. This is therefore **an abuse of the right to bring a communication (paragraph 20(b) of the Annex to Decision I/7)**.

4. The communicant's allegations concerning the 'chilling effect' of the disclosure of financial information is unsubstantiated. The Committee should note that following the judgment in *the Royal Society for the Protection of Birds & Ors v Secretary of State for Justice & Anr*, the Administrative Court (which is part of the High Court of England and Wales) put in place remedial arrangements to ensure litigants, lawyers and court staff are aware that all hearings for an application to vary a cost cap should be held in private until further notice. These remedial arrangements are subject to confirmation by an ongoing 'open justice review', and the UK expects this temporary change to be confirmed by way of an amendment to the relevant Practice Direction to the Civil Procedure Rules. This further emphasises the point that this communication is **an abuse of the right to bring a communication (paragraph 20(b) of the Annex to Decision I/7)** as this issue has fallen away.
5. The Committee has an extremely heavy workload. Therefore, in order for it to be able to maintain its ability to give communications the scrutiny they deserve, we would urge the Committee not to give further consideration to this communication. An international compliance mechanism needs to be able to consider a Party's compliance by looking at the whole system that is relied upon to provide compliance with the Convention. A failure to utilise domestic remedies – due at least in part, by the communicant's own admission, to the lack of merit to their claim – means that the Committee is only able to consider part of how the United Kingdom complies.
6. We therefore respectfully request that the Committee finds the communication as a whole to be inadmissible.

We would be happy to provide further clarification on any points to assist the Committee in its deliberations.

Yours sincerely

Jane Beeko and Brian Ruddle