

From: George Niblock
Sent: Friday, November 27, 2020 12:40 AM
To: ECE-Aarhus-Compliance; Peter Silverman; John Hemming
Subject: RE: ACCC/C/2016/142 (United Kingdom) - Party concerned's submissions and reply to Committee's questions

FAO Fiona Marshall

Dear Aarhus Convention secretariat, I note with some regret but no real surprise, that the UK response has discounted my submission, noting that the legal system is different in Scotland from the rest of the UK.

The matter complained of refers to a United Kingdom statutory instrument, applicable almost uniformly across the United Kingdom. It is true that the Scottish legal system is different but that should not be a valid reason for discounting the evidence given.

Applications for a Litter Abatement Order are dealt with as a civil matter within the Sheriff Court system in Scotland. Cases in England are dealt with within the Magistrates Court system. My understanding is that the system in England and Wales is a lower level court system. As such, it is my belief that the Scottish system may pose greater consequential liabilities for parties, in the award of costs.

In the case taken against Aberdeenshire Council, costs were awarded to the defendant. The defendant proposed to claim Judicial Expenses rather than actual costs which were believed to be significantly lower. The defendant refused to provide details of actual costs. The potential for incurring further cost, in challenging that expenses claim resulted in little choice but to agree a negotiated settlement out of court. The settlement figure was agreed with the defendant knowing that it would put the community-based organisation out of operation after 30 years of voluntary works. The potential financial implications also weighed heavily to exclude the consideration of appeals against the original judgements.

Accordingly, in recognition of the potential for indeterminate and uncontrollable costs being awarded, acting as a significant deterrent to applicants for a Litter Abatement Order within the Scottish court system, I would recommend that the United Kingdom be invited to respond to my earlier submission.

Thank you for considering this further observation.

Best regards

George M Niblock