

14.03.2011

Many thanks for your email of today's date.

As you will be aware, CAJE submitted comments on the UK Government's response to the findings of the Compliance Committee regarding ACCC/C/2008/33 to the Secretariat on 21st February 2011. We would be grateful if the Compliance Committee could also take the contents of this email in consideration when discussing the adoption of the final report.

CAJE remains concerned that, even if implemented, the UK's proposals would not bring the UK into compliance with the provisions of Article 9(4) of the Aarhus Convention regarding prohibitive expense. Our reasons are fully articulated in our response to the Compliance Committee dated 21st February 2011, however, for ease of reference I summarise them here again as follows: (1) the UK's proposals only extend to cases covered by the EC Public Participation Directive not to all civil environmental cases as covered by the Convention; (2) the automatic imposition of a costs-cap of £25,000 for individuals will not address concerns regarding prohibitive expense - the vast majority of the population will still be unable to contemplate embarking upon legal review; (3) the position with regard to community groups and NGOs remains entirely unclear; (iv) all of the problems associated with cross-caps (as discussed by CAJE and Lord Justice Sullivan's Working Group on Access to Environmental Justice) will remain; and (v) significant concerns will persist in relation to the imposition of cross-undertakings in damages in relation to interim relief.

CAJE is concerned that the draft report of the Compliance Committee suggests that the UK may be in compliance with the Convention once proposals have been implemented by the UK (see paragraph 25 of the draft report). For the reasons articulated by CAJE in previous correspondence and above, it is our view that the proposals will not address the concerns raised by CAJE and others in ACCC/C/2008/33 - even when implemented. Accordingly, we are concerned about the wording of paragraph 25 of the draft report and we would ask the Compliance Committee to consider an alternative form of wording.

We would also ask that, whilst welcoming the UK Government's recognition that action is urgently needed to bring the UK into compliance with the Convention and welcoming the efforts made thus far, the Compliance Committee is explicit that further action will be needed to address the findings and recommendations of the Compliance Committee in this case.

Please do not hesitate to contact me should you require clarification in relation to any of the points made in this email, or CAJE's earlier submission.

With best wishes.

Yours sincerely,

Carol Day

Solicitor
WWF-UK (on behalf of CAJE)