

## Annex C

**Copies of all submissions received during the review period from the industry.**

### Item 1

**From** [REDACTED]@defra.gov.uk  
**Sent:** 02 October 2019 15:06  
**To:** [REDACTED]@britishgamealliance.co.uk  
**Subject:** RE: Helping Defra enforce policy on shooting estates

Hi [REDACTED]

I write further to my voicemail message a short time ago in connection with your email to Lord Gardiner below.

As I said in my message, I'll give you a call again in around a couple of weeks' time and we can then look to schedule a meeting after that.

My contact details are below in the meantime.

Many thanks

[REDACTED]

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[REDACTED]

Senior Policy Adviser – General Licensing & Gamebird Release Review Team | Wildlife, International, Climate & Forestry Directorate

Department for Environment, Food and Rural Affairs

**Email:** [REDACTED]@defra.gov.uk | **Telephone:** [REDACTED] **Mobile:** [REDACTED]

I am a contractually home-based worker. All hard copy correspondence should be sent marked for my attention to: Mail Hub, c/o Natural England, County Hall, Spetchley Road, Worcester, WR5 2NP.

**From:** [REDACTED]@britishgamealliance.co.uk  
**Sent:** Sunday, September 29, 2019 1:57:25 PM  
**To:** GARDINER OF KIMBLE, Lord <[GARDINERJ@parliament.uk](mailto:GARDINERJ@parliament.uk)>  
**Subject:** Helping Defra enforce policy on shooting estates

Dear Lord Gardiner,

I am not sure who is conducting the Defra review of game birds on or near protected areas but would you be able to help me get in front of them to discuss what the BGA as per below can offer them.

As Defra modernises its policy framework for the shooting sector it faces the perennial problem of finding reliable evidence while navigating vociferous campaigners and entrenched landowners.

Yet the public benefit of such policy work is undermined by lack of enforcement across millions of acres of remote countryside. Simply put, Defra and its partner agencies do not have enough boots on the ground.

This letter is to alert you to the new opportunity provided by the hundreds of annual inspections now being carried out by Lloyds Register on behalf of the British Game Alliance. Its inspectors started work last year and have been trained to monitor the 23 land and animal welfare standards required by the BGA. These standards are closely aligned to Defra policy.

Just 18 months after our formation, our membership footprint already covers over 600 estates representing well over one-third of the total birds released. This rapid growth is because the sector recognises that its expansion over the last decade requires enhanced oversight to ensure that the net environmental impact is positive. The issues our inspectors track include carbon sequestration, stocking densities, medicated grit, plastic and food safety.

Our ability to enforce does not just stem from the sector's desire for political palatability. It also derives from our parallel role as the game marketing board through which we provide a market for the increased number of shoots. Our mission is to make sure that every bird ends up on a plate. On this, we are profoundly grateful to Defra and other Departments for help in finding new markets for British game.

Your Department's thoughtfulness to us deserves reciprocation. One suggestion is that the Lloyds Register inspectors might one day provide Defra with environmental compliance akin to what Authorised Economic Operator status does for HMRC.

Would a meeting be helpful to consider how shooting's growing receptiveness to regulation could be harvested?

Yours,

[REDACTED]

[REDACTED]

[REDACTED]

**British Game Alliance**

T: [REDACTED]

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W: [www.britishgamealliance.co.uk](http://www.britishgamealliance.co.uk)



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Item 2

**From:** SM-Defra-GLTeam (DEFRA) <GLTeam@defra.gov.uk>

**Sent:** 21 February 2020 14:49

**To:** SM-Defra-GLTeam (DEFRA) <GLTeam@defra.gov.uk>

**Subject:** Defra announcement on gamebird review

Dear Stakeholder

Today Defra has set out the details of a review into the way the release of gamebirds on protected sites is managed. This has been published on gov.uk at the following link:

[www.gov.uk/government/news/defra-sets-out-review-into-releasing-gamebirds-on-protected-sites](http://www.gov.uk/government/news/defra-sets-out-review-into-releasing-gamebirds-on-protected-sites)

The Gamebird Release Review team can be contacted on [GLTeam@defra.gov.uk](mailto:GLTeam@defra.gov.uk) for further information.

General Licensing Review Team

Department for Environment, Food and Rural Affairs

Item 3

**From:** [REDACTED]@fieldfisher.com

**Sent:** 23 November 2020 18:20

**To:** [REDACTED]governmentlegal.gov.uk

**Cc:** [REDACTED] [REDACTED]@fieldfisher.com; [REDACTED]@fieldfisher.com

**Subject:** Letter Fieldfisher to GLD 23 November 2020 [FFW-DOCS.FID6237641]

**Importance:** High

Dear [REDACTED]

I attach a letter on behalf of my clients, the Game Farmers' Association, National Gamekeepers Organisation, Countryside Alliance and British Association for Shooting and Conservation.

I should be grateful if you could please acknowledge receipt.

With kind regards,

[REDACTED]

[REDACTED]

D:[REDACTED]

M:[REDACTED]

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Fieldfisher, Riverbank House, 2 Swan Lane, London EC4R 3TT.

[www.fieldfisher.com](http://www.fieldfisher.com)

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Item 4

[REDACTED]

Senior Lawyer

Planning, Infrastructure and Environment Team

Justice and Development Division

Litigation Group

Government Legal Department

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Westminster

London

SW1H 9GL

**By Email:** [REDACTED]@governmentlegal.gov.uk

Our Ref: OR1/EB17/UK01-2006855-00003/92051488 v2

Dear Sir

**fieldfisher**

Riverbank House

2 Swan Lane

London EC4R 3TT

[REDACTED]

Partner

[REDACTED] (Direct Dial) [REDACTED] (Mobile) [REDACTED]

23 November 2020

1. We write on behalf of the Game Farmers' Association, National Gamekeepers Organisation, Countryside Alliance and British Association for Shooting and Conservation.
2. On 19 November 2020, our clients attended a stakeholders meeting in relation to the Secretary of State's current proposal to introduce measures in response to the Gamebird Review. At that meeting, they were informed that the scope of the consultation proposed to run from 8 – 22 February 2020 would be limited to:
  - (a) The terms of the draft statutory instrument to be laid before Parliament; and
  - (b) The form of the general and model individual licences to be used under s.16 of the 1981 Act.
3. From this, it would appear that the Secretary of State's position is that the principle of an interim licensing regime has been decided upon and is not to be subject to consultation.
4. However, this is inconsistent with previous communication from yourselves and your instructed counsel in relation to claim CO/731/2020 which have consistently portrayed the Secretary of State's position as being that an interim licensing regime is a "*preferred option*" and that Edward Barker's third witness statement "*does not bind the [Secretary of State] to any specific course of action if following consultation he is satisfied that some other course of action would meet the requirements of Article 6(2)*": see Defra's letters of 22 October 2020 and 28 October 2020, and an email from your counsel dated 29 October 2020, each of which we attach.
5. It is also inconsistent with Defra's response dated 18 November 2020 to our request under the EIR Regulations (also attached).



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6. As you know, to date there has been no public consultation whatsoever on the principle of the

Secretary of State's proposal to introduce a new interim consenting regime for gamebird release; nor on his choice to impose that regime on a geographic area extending 500m from every European protected site as well as within them nor his decision to use s. 16 of the 1981 act as the mechanism to do these things.

7. This is unacceptable given the significant ramifications that such a step will have on our clients' members, including the removal of their possessions without compensation in contradiction with Article 1 of the First Protocol ECHR, and is in breach of their legitimate expectation from past changes to the statutory regime that such a consultation would be forthcoming.
8. Further, no public reasons have been provided at all as to why the Secretary of State prefers to control gamebird releases in this geographic area through a licensing regime under s.16 of the 1981 Act rather than by other mechanisms such as, for example, extending the scope of the current SSSI consent regime under s.28, and which, unlike s. 16, provides for rights of appeal and compensation.
9. If the Secretary of State has taken such decisions then we consider that they would be unlawful.
10. Our clients therefore seek urgent confirmation as to what decisions the Secretary of State has taken, and what decisions remain to be taken following consultation.
11. In particular:
- (a) Has the Secretary of State decided to impose interim controls on gamebird releases for next season?
  - (b) Has the Secretary of State decided that the scope of those controls should extend to European sites and a 500m 'buffer' zone?
  - (c) Has the Secretary of State decided that such controls should be introduced by way of amendment to Schedule 9 of the 1981 Act such that licences under s.16 are required?

12. In relation to any decisions which the Secretary of State has taken, as per the above, please:
- (a) Confirm that such matters are outwith the forthcoming consultation;
  - (b) Indicate the date on which the decision was taken; and
  - (c) Provide us with:
    - (i) The document or documents which set out the Secretary of State's reasons for doing so; and
    - (ii) Any advice which the Secretary of State relied on in reaching his decision(s).
13. We remind you of Defra's duty of candour as it relates to pre-action correspondence: see the Treasury Solicitor's guidance of January 2010. The reasons given for refusing our EIR requests are disputed but in any event are not applicable in this context.

14. In light of the urgency of this matter we ask you to respond within seven days of this letter.

Yours faithfully



**Fieldfisher LLP**

*Enclosed:*

- (i) *Letter from Government Legal Department to Leigh Day dated 22 October 2020;*
- (ii) *Letter from Government Legal Department to Leigh Day dated 28 October 2020;*

- (iii) *Email from Stephen Tromans QC to James Maurici QC (and others) dated 29 October 2020; and*
- (iv) *EIR response from Department for Environment, Food and Rural Affairs to Olivia Rogers, Fieldfisher, dated 18 November 2020*

Copy: Edward Barker, Director, Defra: [REDACTED]

Item 5



**Government  
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By email only

Your ref: TGY/TWS/00191552/3

Our ref: Z1911900/MBJ/JD3 22 October 2020

Dear Sirs

**Wild Justice v Secretary of State for Environment, Food and Rural Affairs CO 731  
2020**

We refer to your letter of 21 October 2020, and your subsequent email of the same date regarding the proposed timetable for the future case management of this claim through to the hearing listed for 3-4 November 2020.

Dealing with each of the substantive questions raised in your letter, following the same numbering, we say as follows by way of response:

- 1. Please precisely explain and provide the evidential basis and legal rationale for the proposal that a protective buffer zone of just 500m around European sites is appropriate (with reference to, for example, the Madden and Sage Report and/or other peer-reviewed scientific studies).**

The legal rationale for the proposal is that pending the further work on gathering information and related measures referred to in Mr Barker's third witness statement, some step needs to be taken to ensure that releases in the interim do not cause deterioration or significant disturbance contrary to Article 6(2). The proposed interim licensing scheme, together with the other measures mentioned (gathering further evidence, the existing regulatory regime in place and additional monitoring by Natural England), are regarded as appropriate steps under that provision. The evidential basis is addressed in Mr Barker's third witness statement and the advice from Natural England exhibited thereto. Mr Barker explains that Natural England has provided advice to the Secretary of State on the implications of the Madden and Sage report. Natural England's advice, exhibited to that statement, was that that negative effects tend to be localised and that studies indicate minimal or no effects beyond 500m from the point of release. In particular, Natural England has concluded that effects beyond 500m are likely to be minimal because studies show that dispersal of birds tends to be less than 500m from the release sites and the negative effects in consideration are linked to the presence of birds.

On the basis of Natural England's advice, which in turn was based on the Madden and Sage Report, the Secretary of State has concluded that that the 500m buffer zone, in the context of the existing regulatory regime in place and additional measures proposed, will be sufficient to avoid deterioration or significant disturbance on European sites from release and associated activity in respect of the 2021 shooting

Gilad Segal - Head of Division

Gary Howard - Deputy Director, Team Leader Planning, Infrastructure & Environment



season. As explained further below, the Secretary of State is in the process of designing the interim licensing scheme. Mr Barker's third witness statement explains (at paragraph 29) that any general licence to be introduced as part of that scheme is likely to have conditions relating to the number of birds, density of release and location of key infrastructure. This is because the evidence is that effects are significantly reduced where birds are released in smaller numbers and at lower densities. However, the precise details of any conditions are subject to further consideration and public consultation.

- 2. With regard to the process for adopting the conditions attached to the contemplated general licence, please confirm the intended legal principles underpinning the design of the scheme.**

As explained in Mr Barker's third witness statement the design of the licence scheme is currently in process. Mr Barker's statement explains (at paragraph 29) that for the 2021 season, the currently preferred option is that a general licence will be used, which will be subject to appropriate assessment. Consequently, the Secretary of State needs to be satisfied that compliance with conditions of the general licence is sufficient to rule out adverse effects on the integrity of relevant European protected sites from release and associated activity in respect of the 2021 shooting season.

Mr Barker's witness statement explains (at paragraph 29) that in addition to the general licence, the intention is that shoots will have the option to apply to Natural England for an individual licence. This process will require an appropriate assessment in accordance with regulation 63 of the Conservation of Habitats and Species Regulations 2017 and article 6(3) of the Habitats Directive.

- 3. In particular, please confirm that the proposed conditions will be framed to ensure that, for all European sites which they cover (including the most vulnerable), compliance with them will make it possible to rule out the possibility of adverse effects on site integrity of the site (including by reference to issues such as the number and density of birds that may be released, the timing of such releases etc.). That of course would not preclude specific licence applications on the basis of proper evidence and assessment which allow for a less restrictive approach to be taken in particular instances.**

As above, any general license scheme should be designed so that compliance with conditions of general licence is sufficient to rule out adverse effects on the integrity of all relevant European protected sites from release and associated activity. The interim licensing scheme is in the process of development and will be consulted on. Mr Barker's third witness statement contains the information which is currently available, but the factors you mention are likely to be considered as the basis for conditions, given that these are factors identified as relevant in the review. It is correct to say that such a scheme would not preclude applications for individual licences, supported by evidence and assessment of impact on the specific site: Mr Barker says this at paragraph 29 of his third witness statement.

- 4. Please explain the legal basis for restricting consultation on the interim regime to industry (paragraphs 26 and 29) and/or confirm that our client and the general public will be consulted on this important public interest matter.**

If you refer to paragraph 30 of Mr Barker's third witness statement you will see that he says categorically that the details of the proposed interim licensing regime will be finalised following public consultation. There is no such restriction as you suggest.

Your letter made reference to the possibility of you filing a supplementary skeleton to address the matters which your previous skeleton has failed to take account of, which is due, as you state, to an oversight on your part.

Given our compliance with your stated deadline for a response (by 4pm today), we now have a revised timetable agreed as follows:

- Claimant to file a supplementary skeleton argument by 4pm on Friday 23 October 2020;

- 2 -

- Defendant and the IPs to file a skeleton argument by Wednesday 28 October 2020 (together with the authorities bundle).

We are sending a copy of this letter to the solicitors acting for Interested Parties.

Yours sincerely

[REDACTED]

**For the Treasury Solicitor**

D [REDACTED] F [REDACTED]  
E [REDACTED] @governmentlegal.gov.uk

- 3 -



T 020 7210  
3000

Item 6



Government  
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**By email only**

**Your ref: TGY/TWS/00191552/3**

**Our ref: Z1911900/MBJ/JD3**

28 October 2020

Dear Sirs

**Wild Justice v Secretary of State for Environment, Food and Rural Affairs CO**

**731 2020** We refer to your letter dated 23 October 2020 and draft consent order it attached.

The proposed terms of the consent order cannot be agreed in the terms drafted for the reasons we explain below. However there is in our view scope for reaching agreement and we suggest alternative wording.

## Terms of schedule

Mr Barker's third statement sets out what the Secretary of State proposes to do in response to the Gamebird Review. Mr Barker makes clear that this is an ongoing process and is subject to a number of further steps. These steps include (a) consultation with industry, other stakeholders and the public and (b) if the currently preferred option of amendment to the Wildlife and Countryside Act 1981 is taken forward, laying secondary legislation before Parliament which would be subject to the negative resolution procedure.

A number of steps are beyond the Secretary of State's control, not least the outcome of consultation – which the Secretary of State must approach with an open mind – and the enactment of legislation which requires Parliamentary approval.

The proposed draft consent order has the effect of binding the Secretary of State to the end result of a process which includes steps beyond his control. It would be entirely inappropriate for the Court to make such an order.

Gilad Segal - Head of Division

Gary Howard - Deputy Director, Team Leader Planning, Infrastructure & Environment



We attach to this letter the terms of a draft consent order which are acceptable to the Secretary of State. The effect of this order is to clarify that if the steps outlined in Mr Barker's third statement are taken, the Secretary of State will have satisfied his obligation under Article 6(2).

This accords with Wild Justice's claimed intention in these proceedings: to clarify the legal position ahead of the 2021 shooting season and to ensure that the Gamebird Review proceeds on the basis of a correct legal footing.

## Costs

It is not agreed that your client is entitled to its costs of these proceedings. The claim as initially pleaded relied exclusively on Article 6(3) of the Habitats Directive. Your client applied to amend its case in response to the Defendant's Summary Grounds of Resistance, which pointed out that Article 6(3) only applies where a competent authority grants authorisation for a plan or project giving rise to likely significant effects. Notwithstanding that, your client continued to pursue the argument that Article 6(3) requires an appropriate assessment even where there is no authorisation process. The

Defendant's position has been, and continues to be, that your client's reliance on Article 6(3) of the Directive is wrong as a matter of law. It does not require an appropriate assessment to be carried out in the absence of an authorisation procedure. Nor does it oblige the Defendant to put in place a consenting mechanism where none exists.

Your client's alternative case, that the absence of a consenting mechanism is a breach of Article 6(2), is also not accepted by the Defendant. The Defendant's position has always been that the Article 6(2) affords Member States a broad discretion as to what steps are appropriate to avoid deterioration or significant disturbance. It does not compel the adoption of a consenting mechanism. This is an important point of principle, going beyond the facts of this case.

As for the present case, the Defendant's position has been, and remains, that he has at all times taken appropriate steps within the meaning of Article 6(2) as information has emerged. He has established the Gamebird Review to assess what impacts (both positive and negative) gamebird release and associated management activities may have on European protected sites and to review the adequacy of the regulatory regime currently in place. On the basis of the review, he has decided on a series of further steps to gather further evidence about the impact of gamebird release and associated activity on European protected sites as well as the impact of regulation on the industry. He has decided to introduce a new interim licensing regime for the release of gamebirds which, subject to further consideration, is likely to apply in relation to European protected sites and a 500m buffer zone around them. The Defendant's position is that by these steps, taken together with the existing regulatory regime in place, he has, for the time being, discharged his ongoing obligation under Article 6(2). For these reasons, it is not accepted that your client has succeeded on either of the legal issues in dispute in this matter.

It is acknowledged that the Gamebird Review was initiated following receipt of your client's pre-action letter in July 2019 last year. But the current position – which you seek to have recorded in a consent order – is the outcome of that review process. It has always been the Secretary of State's case that the review must be allowed to run its course and that this judicial review is premature. That you now seek to settle the claim on the basis of a consent order which records the outcome of that review simply confirms that to be the case. In these circumstances, the Defendant's position is that the appropriate order is one of no order as to costs.

If your client does not agree that position on costs we would suggest the appropriate course would be to agree to leave costs to be determined by the Court on the basis of short written submissions (we would suggest no more than 3 pages) by each party. For the avoidance of doubt we would reserve the right to seek payment of all or part of the Defendant's costs.

We are sending a copy of this letter to the Interested Parties/their lawyers and will inform the Court that we have done so.

Yours sincerely

[REDACTED]

**For the Treasury Solicitor**

**D** [REDACTED] **F** [REDACTED]

**E** [REDACTED]@governmentlegal.gov.uk

Item 7



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[REDACTED]

Our ref: EIR2020/28250

By email: [REDACTED]@fieldfisher.com

18 November 2020

Dear [REDACTED],

## **REQUEST FOR INFORMATION: Interim licensing regime for 2021 releases of common pheasant and red legged partridges**

Thank you for your request for information of 21 October 2020 about interim licensing regime for 2021 releases of common pheasant and red legged partridges. We have handled your request under the Environmental Information Regulations 2004 (EIRs).

The EIRs apply to requests for environmental information, which is a broad category of information defined in regulation 2 of the EIRs. Public authorities are required to handle requests for environmental information under the EIRs. They give similar access rights to the Freedom of Information Act 2000 (FOIA).

Your information request and our response are set out below.

## Subject of the Request

*We should be grateful if you would provide copies of documents relevant to the Secretary of State's decision to put in place an interim licensing regime for 2021 releases of common pheasant and red legged partridges within European protected sites and within a 500m buffer zone around the sites ("**the Decision**").*

*We are also interested in receiving documents in relation to the anticipated additional measures ("**additional measures**") that it is intended will accompany this new regime, which shall include: (i) improving the Animal Plant and Health Agency (APHA) poultry register which includes game birds; (ii) Natural England prioritising the review of gamebird related consents; (iii) measures to enhance monitoring of protected sites by Natural England.*

*We understand that the Decision has been taken on the basis of the Ecological*

*Consequences of Gamebird Releasing and Management on Lowland Shoots in England*

*(NEER016) A Rapid Review of Evidence Assessment for Natural England and the British Association of Shooting and Conservation ("**the Gamebird Review**") and advice received from Natural England.*

## Documents Requested

- 1. Any documentation internal to DEFRA relating to the consideration given within DEFRA by officials and Ministers to the Gamebird Review and earlier iterations of the same document, the additional measures, as well as to Natural England's advice;*
- 2. In relation to 1, we specifically seek copies of: (i) internal communications on these matters; and (ii) any Submission to Ministers in relation to these matters and any response from the Minister;*



3. *Any communications with other Government Departments/Ministers in relation to these matters;*
4. *Any communications between DEFRA and Natural England in relation to these matters.*

The information requested under the 'subject of request' - The Decision and Gamebird Review - are publicly available as follows:

- i. The Natural England/BASC Rapid Evidence Assessment - "Ecological Consequences of Gamebird Releasing and Management on Lowland Shoots England"  
<http://publications.naturalengland.org.uk/publication/5078605686374400>
- ii. Natural England Advice - "NE Summary of Findings and Conclusions on the Rapid Evidence Assessment (REA) Ecological Consequences of Gamebird Releasing and Management on Lowland Shoots in England" – Defra Witness Statement Exhibit 3, pages 2-20  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/931396/defra-witness-statement-gamebird-release-exhibit3.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/931396/defra-witness-statement-gamebird-release-exhibit3.pdf)
- iii. Defra's Witness Statement  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/931392/defra-witness-statement-gamebird-release.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/931392/defra-witness-statement-gamebird-release.pdf)

As the information you have requested is already publicly available and easily accessible to you in another form or format, regulation 6(1)(b) of the EIRs exempts Defra from providing a copy of the information with this response to your request

The remaining information that is held relating to the consideration given within Defra by officials and Ministers to the Gamebird Review and earlier iterations of the same document, as well as Natural England's (NE) advice has been withheld under regulations 12(4)(d) of the EIRs, which relates to material still in the course of completion, to

unfinished documents or to incomplete data, and regulation 12(4)(e) of the EIRs, which relates to internal communications.

## **Regulation 12(4)(d)**

The exception in regulation 12(4)(d) of the EIRs is engaged because the information relates to material that is still in the course of completion. These are matters of ongoing policy formulation between Defra and NE. While a particular document may itself be finished, it is part of material which is still in the course of completion, which in this case is formulating and developing policy.

In applying this exception, we have had to balance the public interest in withholding the information against the public interest in disclosure.

We recognise that there is a public interest in the disclosure of information concerning the licensing regime for 2021 releases of common pheasant and red legged partridges as this will aid transparency and openness within Defra. We also acknowledge there is general a public interest in the decision making process within in government so departments can be held accountable for any decisions being made.

However there is a stronger public interest argument in favour of withholding the information because disclosure would significantly compromise the integrity and effectiveness of the policy developing process. The previous iterations of the published Rapid Evidence Assessment, previous drafts of NE's advice on the review and any documents relating to additional measures are matters of ongoing policy formulation. These documents were provided by NE in the preliminary and ongoing stages of policy formulation, have been subsequently refined or amended, are subject to further iterations or are yet to be obtained from NE and thus not finalised. It is important that public authorities have a safe space in which officials can operate and discuss policy options in private. Release of the information requested would risk inhibiting Defra officials from having full, frank and open discussions as part of the process of formulating policy, particularly if they felt that speculative information relating to live policy issues would be released before final decisions were made on those issues. It is vital that government officials are able to consider and develop live policy before them to be able to reach objective, fully-informed decisions free from distraction that such information will be made public.

Furthermore, the final versions of the rapid evidence assessment and NE's advice are already in the public domain.

We have, therefore, concluded that in all the circumstances of the case, the information should be withheld. **Regulations 12(4)(e)**



The exception in regulation 12(4)(e) of the EIRs relates to internal communications. Some of the information requested is internal communications within Defra, including briefing documents that were only shared between officials and/or Ministers of Defra.

In applying this exception, we have had to balance the public interest in withholding the information against the public interest in disclosure.

We acknowledge there is a general public interest in understanding how decisions are made within Defra. We recognise that disclosing information is all part of an open, transparent and accountable government, and aids public debate. Regulation 12(2) of the EIRs also gives a presumption in favour of disclosure.

However there is a stronger public interest because parts of the information concerns policy areas that are still being worked on and it is important that Defra has a safe space in which officials and ministers can operate. It is vital that Defra can maintain the right to the confidentiality of communications between officials, and Ministers, to inform good decision making to live policy. This ensures that high quality advice can be given and that all options can be discussed openly, even ones which are decided against. Release of this information would inhibit free and frank discussions in the future, and that loss of frankness and candour would damage the quality of future advice, decision making and ultimately policy.

We have, therefore, concluded that in all the circumstances of the case, the information should be withheld.

We attach Annex giving contact details should you be unhappy with the service you have received.

If you have any queries about this letter please contact me.

Yours sincerely

[REDACTED] **Information Rights Team**

[InformationRequests@defra.gov.uk](mailto:InformationRequests@defra.gov.uk)

## Annex

### Complaints

If you are unhappy with the service you have received in relation to your request you may make a complaint or appeal against our decision under section 17(7) of the FOIA or under regulation 11 of the EIRs, as applicable, within 40 working days of the date of this letter. Please write to Andrew Mobsby, Head of Information Rights via email at [InformationRequests@defra.gov.uk](mailto:InformationRequests@defra.gov.uk) and he will arrange for an internal review of your case. Details of Defra's complaints procedure are on our website.

If you are not content with the outcome of the internal review, section 50 of the FOIA and regulation 18 of the EIRs gives you the right to apply directly to the Information Commissioner's Office (ICO) for a decision. Please note that generally the ICO cannot make a decision unless you have first exhausted Defra's own complaints procedure.

The ICO's offices are currently closed so please visit their website on how to contact them during this period, here:

<https://ico.org.uk>

Additionally if you wish to make a complaint to the ICO please use the following link:

<https://ico.org.uk/make-a-complaint/official-information-concerns-report/official-information-concern/concern/>

Item 8

**From:** [REDACTED]@39essex.com

**Sent:** 29 October 2020 10:29

**To:** [REDACTED]@landmarkchambers.co.uk; [REDACTED]@landmarkchambers.co.uk

**Cc:** [REDACTED]@39essex.com; [REDACTED]@39essex.com

**Subject:** Wild Justice

Dear [REDACTED]/ [REDACTED]

I hope this finds you both well. Thank you for your Skeleton received yesterday. I also now have the letter from Fieldfisher to the Court, sent last night. Could I seek clarification on a couple of points from you, if you are able to help.

1. Your client's concerns about the proposed consent order are noted. The Defendant's position is that it represents an uncontroversial summary of the legal principles as to the relationship of Articles 6(2) and 6(3) but does not bind the Defendant to any specific course of action if following consultation he is satisfied that some other course of action would meet the requirements of Article 6(2). It would assist to understand (a) what part of the declaration the IPs say is incorrect in law and (b) what they would propose as an appropriate form of words.
2. Para. 9(c) of the letter says that it has not been possible to share what is proposed, as set out in EB3, with members. I had understood from e-mail correspondence between our respective solicitors that it was agreed that the witness statement could be shared with the relevant Board members and technical staff of the IPs in order to obtain instructions on whether to agree or not to the proposed terms of any settlement. Plainly that has been done, and instructions given. I am therefore not clear what the purpose of sharing the statement with an indeterminate group of "members" at this stage of the litigation would be. Are you able to help on this?

1

Kind regards

[REDACTED]

[REDACTED]



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