



UK National Contact Point for the OECD
Department for Business and Trade
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BY EMAIL ONLY: UKNCP.Secretariat@businessandtrade.gov.uk

31 January 2025

Dear UK NCP Secretariat,

Re: (1) FOI disclosure relevant to the review of the NCP's final statement; (2) an FT article on Drax Power Limited and biomass sourcing, and (3) Response to the NCP's comments on the Complainants' Request for a Review of the Final Statement

We refer to:

- (1) The joint Complaint by the Lifescape Project, the Partnership for Policy Integrity, the Royal Society for the Protection of Birds, Biofuelwatch, Save Estonia's Forests, and Conservation North (the "**Complainants**") to the UK National Contact Point for the OECD Guidelines for Multinational Enterprises for Responsible Business Conduct ("**UK NCP**") against Drax Group Plc ("**Drax**") dated 21 October 2021 (the "**Complaint**");
- (2) The Final Statement of the UK National Contact Point dated 17 May 2024 (the "**Decision**"); and
- (3) The Complainants' request to the UK NCP for a review of the UK NCP Decision dated 19 June 2024 (the "**Review Request**").

We write regarding the following matters that we submit are material to the review committee's consideration of the Complainant's Review Request:

- (1) Documents disclosed to the Complainants by the Department for Business and Trade (the "**DBT**") by e-mail on 7 October and 25 November 2024 in response to an Environmental Information Regulations 2004 ("**EIR**") request dated 16 July 2024 (the "**EIR disclosure**");
- (2) Matters related to Drax's biomass sourcing revealed by a recent Financial Times investigation;
- (3) Submissions on the NCP's comments on the Review Request.

1. The EIR disclosure

Background

- 1.1 In view of the apparent bias towards Drax in the Decision, the Complainants decided to make an EIR request to the DBT in the following terms:

"We write to request information from the UK NCP pursuant to regulation 5(1) of the EIR. Specifically, we request all information and documentation held by the UK NCP in relation to the Complaint, including (but not limited to) paper or electronic documents, emails and other electronic communications, correspondence and attendance notes of meetings (the Request)."

- 1.2 In its response to the EIR request (the "**Response**"), the DBT states as follows:

- It holds "*some information*" relevant to the Request, and considers that this information falls under both the Freedom of Information Act 2000 and the EIR;
- It has identified a total of 766 potentially relevant documents in response to the Request;
- The cost of reviewing all of those documents would exceed the £600 cost limit per FOI request;
- In addition, some documents have been withheld under the following disclosure exemptions:
 - Regulation 12(4)(d) EIR (Material in the course of completion, unfinished documents, and incomplete data)

- Regulation 12(4)(e) EIR (Internal Communications)
- Regulation 12(5)(e) EIR (Confidentiality of Commercial Information)
- Regulation 12(5)(b) EIR (Adversely affect the course of justice).

- 1.3 Notwithstanding the limited (and unknown) scope of the document review, the DBT provided the Complainants with three zip files of documents on 7 October 2024. Two of the files were duplicates and contained material already received in the course of the Complaint (a poor use of taxpayers' money that would have been better spent on disclosing new documents). Upon contacting the DBT about the duplicate files, the DBT confirmed that it had in fact omitted one file from the disclosure, which the DBT provided to the Complainants on 25 November 2024. One of the files provided contained e-mail correspondence (the "**EIR disclosure**") between the NCP and various Government officials as well as staff in other public bodies. The other files were once again documents that were already shared as part of the complaint process.
- 1.4 The Complainants' requested an internal review of the EIR decision on 18 November 2024. The DBT initially stated that it would aim to respond by 17 December 2024. However, by further correspondence, it requested until 13 January 2025 to do so due to the "*complexity*" of the case. The Complainants thought that this two-month response timeframe meant there may be further material to be disclosed. However, by letter dated 13 January 2025, the DBT informed the Complainants that the conclusion of the internal review was that the exemptions invoked for withholding most of the relevant documents were being maintained and that no further disclosure would be made.
- 1.5 Despite a large number of potentially relevant documents being withheld by the DBT, a review of the limited EIR disclosure provided has revealed a number of elements that go to the Complainants' grounds of review. Specifically, the EIR disclosure indicates a lack of NCP impartiality due to a) what would appear as inappropriate influence from Government and b) improper breach of the confidentiality of the process with conflicted government officials. The EIR disclosure also evidences a) a lack of NCP competence in its handling of the Complaint, and b) additional failures by the NCP to adhere to its published procedures, resulting in unfairness to the Complainants.
- 1.6 Fairness to the Complainants must be done, and be seen to be done, in order for the UK NCP and the complaint process under the OECD Guidelines to have integrity and credibility. Fairness in this case requires these submissions on the EIR disclosure to be given due consideration by the review committee before any decision on the Request is made.

1.7 Our submissions on the EIR disclosure are set out below.

Failure to follow due process and NCP procedural guidance: re-opening of the examination process after provision of the draft final statement

1.8 The NCP provided the parties with the draft final statement on 29 February 2024. The parties were given ten working days to provide comments on the draft final statement but only in relation to factual corrections, which the NCP would incorporate at its discretion. Therefore, at this stage the NCP's substantive examination of the Complaint should have been, and was understood by the Complainants to have been, completed. The Complainants' understanding is reflected in paragraph 5.2 of the NCP's Procedural Guidelines:

*“5.2. Once the NCP has drafted its Final Statement it will be sent to the parties **for factual checking**, with a deadline of 10 working days for comments. **The NCP will, at its discretion, then incorporate any necessary factual changes before sending the finalised statement to the parties**, together with information of how they can seek a review if they consider that the process set out in this note has not been properly followed.”* (Emphasis added)

1.9 Documents contained in the EIR disclosure demonstrate that instead, the NCP resumed its substantive consideration of the Complaint after the draft final statement has been provide to the parties, and after parties provided their factual comments. This is evidenced as follows:

1.9.1 The deadline for the parties to provide their factual comments on the draft final statement was 14 March 2024. The Complainants complied with this deadline;

1.9.2 The NCP was then meant to incorporate the factual commentary into the final statement in April 2024 and publish the final statement in May 2024. This is shown in the revised timetable included at the end of the draft final statement [**Annex A**]. Nothing else is stated to occur in April 2024;

1.9.3 Instead, the e-mail at the end of the chain at [**Annex B**, page 9-10] shows that the UK NCP wrote to DESNZ on 16 April 2024 requesting information about DESNZ's consultation on an extension to existing biomass subsidies which closed at the end of February 2024. This took place one month after the factual commentary has been provided by the parties, and is during the period when the UK NCP should have been only considering the factual corrections provided by the parties,

having completed its analysis of the Complaint prior to circulating the draft final statement on 29 February 2024.

- 1.9.4 The first e-mail on 16 April 2024 was sent by *the “Senior Policy Advisor for the UK NCP”* to an unidentified person in DESNZ (all names have been redacted). Relevant parts of the e-mail chain (from the UK NCP to DESNZ) are reproduced below:

“I am currently reviewing the consultation on a transitional support mechanism for large-scale biomass generators paper in relation to a complaint the UK NCP is handling in relation to alleged misleading claims that biomass is effectively carbon neutral. I wondered if you could kindly point me in the direction of someone who may be able to provide some further insight on the paper and the UK policy position on biomass and BECCS.” (Emphasis added)

- 1.9.5 At this point, it is sufficient to observe that at a time when the NCP’s final statement is meant to be substantially complete, and after a 2.5-year process, it is astonishing, and clearly a breach of the procedural guidance, for the NCP to be asking government for *“further insight on ... the UK policy position on biomass”*.
- 1.9.6 It should also be noted that the relevance of UK policy on biomass and BECCS is of at most limited relevance to the UK NCP’s consideration of the Complaint under the Environment provisions of the Guidelines and is of no relevance at all in relation to compliance with the Consumer Interests provisions.
- 1.9.7 Several emails are exchanged with different officials in DESNZ before the UK NCP Senior Advisor is put in touch with someone working on biomass policy. The UK NCP Senior Advisor then asks for substantive information relating to one of the statements challenged in the Complaint:

*“We are **near the end of our further investigation** on the issues, but I just came across the consultation paper on biomass generators and am keen to under[sic] more.*

The allegations in the complaint include misleading statements regarding the carbon neutrality of woody biomass and emissions counted for in Drax’s supply chain. If possible, it would be great to set up a call with someone who may be able to offer me more of an insight into woody biomass as potentially carbon

neutral and the recent consultation paper on biomass generators and BECCS.” (Emphasis added)

1.9.8 The investigation process was meant to be complete at the point at which the UK NCP sent the draft final statement to the parties on 29 February 2024. It is clearly a breach of the procedural rules for the NCP to be continuing its investigation six weeks later, particularly without the parties having been informed.

1.9.9 The person in DESNZ replies that their team is responsible for biomass sustainability and that it is a different team that is dealing with the subsidies extension consultation. The UK NCP Senior Advisor writes:

“The complaint is in final stages (which means I shouldn’t take up too much of your time) and I aim to conclude the complaint by the end of April. It would be great if you had any availability this week or beginning of next for a 15-20 min chat.”

1.9.10 A meeting then takes place between the UK NCP Senior Advisor and DESNZ officials on Wednesday 24 April [Annex B, page 6], following which the DESNZ official sends some slides on “*biomass sustainability*” to the NCP Senior Advisor. Once again, this is significantly after the Complainants’ understood the examination phase to have concluded.

Lack of NCP independence / Improper influence from government

1.10 Notwithstanding that the NCP is housed within, and staffed by officials from, a government department, both the NCP and the complaint process under the OECD Guidelines which the NCP administers are meant to be entirely independent of government.

1.11 Documents contained in the EIR disclosure indicate this independence to have been compromised in the NCP’s handling of the Complaint. There are three such striking examples:

1.11.1 On 17 August 2022, a government official at what is now DESNZ writes to the UK NCP to enquire about the Complaint [Annex C, p. 8]:

*“[w]e are aware of the UK NCP complaint made about Drax and was wondering what the process was, **what the implications might be** - and **if the process would involve engagement with policy officials at all?**”* (Emphasis added)

1.11.2 It is clear that this communication was seeking not only information but an opportunity to influence the Complaint process through “*engagement*” between policy officials working on biomass policy and the NCP. These same officials are in regular meetings with Drax and advise ministers on matters related to the future of Drax and its ability to access public funds. The word “*implications*” is indicative of a view within Government that the Complaint, by relating to Drax as the UK’s primary supplier of so-called “renewable” energy, carried with it significant stakes and risks.

1.11.3 Subsequent communications indicate the point further. The same day, 17 August 2022, an NCP official replies to the e-mail above as follows:

*“Thanks for getting in touch – good timing, as **we are looking for HMG colleagues working on the relationship with Drax, to raise awareness of this case.** Happy to discuss – I’ve sent a meeting proposal to you.”* (Emphasis added)

1.11.4 This e-mail confirms what the Complainants have suspected in view of the apparent bias in the final statement; there is an established relationship, and communication channel, between Drax and Government officials, including those working for the NCP. The consideration of the Complaint should have been entirely independent of the Government’s position on Drax more broadly and as such there should have been no need to “*raise awareness of this case*” as part of “*the relationship with Drax*”.

1.11.5 Supporting this view, in Claire Coutinho MP’s recent opinion piece in The Times [**Annex D**], she revealed that she was under pressure from the same officials at DESNZ to support Drax, even if it did not make sense, just to deliver the carbon budget 6 commitments.

1.11.6 On 26 January 2023, the NCP resumes its communications with DESNZ officials:

“Picking up our conversation on the complaint to the UK NCP against Drax by a group of NGOs. Getting in touch with updates on our process and suggesting that we reconvene to discuss.”

1.12 Whilst the Complainants accept that there is nothing improper about the NCP having some discussions with Government regarding a complaint under the OECD Guidelines, in this case, the nature and extent of those discussions with Government between 2022 and 2024, as shown in the FOI disclosure, gives the impression of the Government’s perspective on the Complaint being the dominant force behind the reasoning in the Decision. Indeed, this is reflected in

reading the Decision itself as the NCP's reasoning and conclusions on each of the four statements are based overwhelmingly on government policy and the framework for renewable energy subsidies.

- 1.13 Whilst the NCP's procedural rules provide for the NCP to consult external bodies, including Government departments, it is clear that in order for the independence of the Complaint process to be maintained, Government should not be otherwise involved in the NCP's handling or determination of a Complaint. Nonetheless, in this case, following the e-mail exchanges and meeting referred to above, the NCP Senior Advisor wrote to DESNZ on 7 May 2024 inviting them to "comment" on the final statement prior to its sending to the parties. This is both a breach of procedural fairness and evidence of a lack of NCP independence in determining the Complaint:

*"I wanted to give you the opportunity to provide any comments on the Final Statement for the complaint against Drax before we send the final copy to the parties and publish the complaint (please see attached). Please can you kindly provide any comments by **COB Friday 10 May.**"*

- 1.14 Two days' later, on 9 May 2024, the NCP Senior Advisor sends a follow-up e-mail to clarify the above request, as follows:

*"Just for clarity, if you would like to provide comments, **please only provide comments in relation to biomass policy and the NCP's understanding of the policy** to ensure the NCP's decision on the complaint remains impartial." (Emphasis added)*

Whilst the stated intention in the quote above is for the NCP's decision to remain "impartial", that impartiality is evidently compromised when Government officials are being asked to comment on "*the NCP's understanding of the [biomass] policy*". Only the NCP itself should be determining its understanding of government policy.

- 1.15 The second striking example of a lack of independence comes from the same e-mail chain where, on 24 April 2024, DESNZ informs the UK NCP Senior Advisor of the following:

*"As discussed, could you let your lawyers know **there is an ongoing JR brought by Lifescape against the Biomass Strategy, I think GLD may also be in touch.**" (Emphasis added)*

- 1.16 "JR" is short for "judicial review". "GLD" is short for the Government Legal Department. The above quote reveals that DESNZ chose to inform the UK NCP that The Lifescape Project has a live judicial review claim against the

Government's Biomass Strategy. The sharing of this information is an extremely serious matter for the following two reasons: (1) due process and independent decision-making mean that Lifescape's judicial review claim is wholly irrelevant to the instant Complaint against Drax under the OECD Guidelines; and (2) this information obviously has the potential to influence the NCP's handling of the Complaint. Indeed, the only reason why DESNZ can have shared this information is in order to exert precisely such influence. There is potentially an improper collateral use of information between GLD and the NCP to assist with the JR. It would be naïve to assume that GLD would welcome any fundings against Drax in this Complaint as it would have the potential to undermine the ongoing JR process. We reserve our rights to alert the High Court to our concerns about this potential improper collateral use.

- 1.17 The subsequent communications between the UK NCP Senior Advisor and DESNZ continue this wholly inappropriate discussion of Lifescape's judicial review in relation to the OECD Complaint. On 25 April 2024, DESNZ writes to the UK NCP Senior Advisor to ask the following:

"I wondered if you could share any details about expected timelines to publish your response? Given the ongoing legal proceedings it would be helpful to have an idea of when we can expect to see something externally, if possible."

- 1.18 The UK NCP Senior Advisor responds the same day with the following response:

"Of course, we expect to have the complaint published in May. I will let you know of a more accurate timeline next week."

I've copied in [name redacted] from DBT legal who supports the UK NCP. Would it be possible for you to please share the contact details of the lawyers supporting on the legal proceedings so that [name redacted] can touch base with them?" (Emphasis added)

- 1.19 For the lawyers dealing with Lifescape's judicial review to be speaking to the lawyer advising the NCP prior to the sending of the final statement to the parties creates the very real possibility of improper government influence having been exerted over the NCP's handling of the Complaint.

Failure to follow due process and NCP procedural guidance: consultations with external bodies that were not notified to the Complainants

- 1.20 The NCP's Procedural Guidelines at paragraph 4.6.4 relates to the examination process and explains that, as part of this, the NCP *"may also seek advice from other relevant government departments..."* and *"if appropriate, it will seek*

informed expert opinion". Paragraph 2.5.1 states that the NCP will share information with all parties, and this applies *"to information provided by the parties or any other person or organisation, and applies whether information is provided in writing or in the course of a meeting with the NCP"*. Furthermore, the UK NCP emphasised this point in responding to Drax's voluntary (and unbeknown to the Complainants) suggestion of *"experts"* that it would be happy for the UK NCP to consult. In an email to Drax on 9 January 2023 [Annex F, p. 34], the UK NCP states:

"Also confirming receipt of your input regarding external experts and organisations – thank you for this. As discussed in our November meeting, will [sic] inform the parties of meetings with external experts after these have taken place."

- 1.21 The draft final statement provided by the NCP on 29 February 2024 stated that it had consulted *"experts in energy and environment"*. However, this reference was removed from the final statement and replaced with a reference to the NCP having *"sought insights"* from DESNZ, Ofgem and the CMA. The EIR disclosure [Annex C, p. 2-6] reveals that not only were *"insights"* sought from DESNZ on multiple occasions, and information shared (none of which was communicated to the Complainants), but the NCP also consulted with the Advertising Standards Authority ("ASA") and the Low Carbon Contracts Company ("LCCC"). No mention of these meetings has ever been shared with the Complainants, nor indeed any information as to what was discussed, and both organisations are missing from the list of consultees in the Decision. This is a further example of a persistent and acute lack of transparency in this complaint process. We therefore formally request that a copy of any minutes or other written record of these meetings be shared with the Complainants immediately.

2. The Financial Times article on Drax's sourcing of unsustainable biomass

- 2.1 The Complainants' also wish to bring to the review committee's attention an article published in the Financial Times on 15 October 2024 [Annex E], which reported that Drax was *"highly likely"* to have burned wood sourced from ecologically significant old and/or protected forest areas. The article cites internal company emails showing that rather than addressing the sustainability of its wood sourcing, Drax executives were focused on ensuring compliance with the land criteria and reporting requirements for primary forest material. This emphasis on technical compliance appears to have been used to obscure the fact that the wood in question was not sustainable—a point underscored by the authorities of Lynemouth station, the recipient of these pellets, which explicitly reported them as *"not sustainable"* under UK rules, according to the emails. This highlights a key flaw in equating reporting compliance with actual sustainability, reinforcing the Complainants' argument about the potential for

Drax's statements to breach the Environment principles of the Guidelines and to be misleading to consumers. We invite the review committee to take account of this article in considering the review. Specifically, we consider that it is relevant to recommendations that the review committee could make to the NCP in regard to the complaint.

3. Response to the NCP's comments on the Complainants' Request for a Review of the Final Statement

General observations

- 3.1 The NCP has chosen to refer to the Complainants as the "*Submitter*" in their comments on the review request. For consistency with the terms used in the OECD Complaint process to date, we continue to use the term "the Complainants" here.

The NCP's comments on Ground 1

- 3.2 The NCP argues that Drax's compliance with UK reporting requirements demonstrates that it provides "*adequate, measurable and verifiable and timely information*" under Chapter VI paragraph 2(a) and Chapter VIII paragraph 2. Furthermore, the NCP contends that the alignment of reporting requirements with the UK's position on decarbonisation fully addresses the Complainants' concerns under Chapter VI paragraph 6c and Chapter VIII paragraphs 4 and 5. This approach undermines the purpose and the very existence of the OECD Guidelines, as it starkly contrasts with their express aim of encouraging businesses to act responsibly beyond the requirements of the law. While it is true that adherence to the Guidelines should not mean that businesses are placed in a position of having to comply with conflicting requirements, the NCP fails to acknowledge that the Guidelines also recommend enterprises to "*seek ways to honour such principles and standards **to the fullest extent** which does not place them in violation of domestic law*". (Emphasis added)
- 3.3 Drax's fulfilment of its reporting obligations do not, and cannot fairly be taken to, equate to an honouring "*to the fullest extent*" of the principles and standards in the Environment and Consumer Interests sections. The Guidelines explicitly require multinational enterprises to act beyond baseline compliance with the law, and Drax could have done so by avoiding misleading representations of carbon neutrality and emissions reductions, which are set out by the Complainant in the request for review. Importantly, this could have been achieved without contravening domestic laws or regulations, contrary to the NCP's flawed assumption.
- 3.4 Finally, the NCP's reference to the "*existence of conflicting academic information regarding the sustainability of biomass*" is immaterial to the issue at

hand. First, whilst the Complainants would have been pleased had it done so, the NCP was not obliged to take a view on the sustainability of woody biomass. In determining the Complaint relative to the Consumer Interest provisions, the NCP was required, however, to consider whether or not Drax's public portrayal of its biomass could be misleading to consumers. The NCP has misunderstood what was required of it and has fell into the error of believing that the question of whether or not a statement is misleading can be determined by reference to compliance with domestic law and policy, or conversely, that Drax could only be found to have made misleading statements to consumers if it was acting outside the framework of domestic law and policy. This does not follow, not least because laws and policies relating to biomass are in no way designed with consumer understanding in mind.

- 3.5 The inherent complexity of the topic does not justify a departure from the requirement of the Guidelines for businesses to conform to the fullest extent possible with the principles of consumer protection. Domestic law and policy is not a "constraint" nor a ceiling on the NCP's ability to determine compliance, or a lack thereof, with the Guidelines. Indeed, it is perfectly possible for an NCP to make recommendations to Government for amendments to policy in order to align more fully with the Guidelines on a particular subject matter.

The NCP's comments on Ground 2

- 3.6 The UK NCP seems to have entirely misunderstood the Complainants' ground of review relating to the 2023 Guidelines and has not addressed the actual point. Where the statement (or conduct) challenged in a complaint is ongoing and post-dates the entry into force of the 2023 Guidelines, those Guidelines should also be applied to the determination of the complaint. In the instant case, the UK NCP completely failed to consider the relevance of the 2023 Guidelines and did not consult the parties on whether any of the statements are ongoing (which, the Complainants submit they are). The UK NCP has provided no answer to this in its comments.

The NCP's comments on Ground 3

- 3.7 The NCP claims in its comments that it has not failed to take adequate account of international agreements, principles, objectives and standards, even though the only international organisation that it refers to is the Intergovernmental Panel on Climate Change (IPCC). The NCP goes on to assert that "[t]he UK NCP has cited the IPCC throughout the Final Statement". In fact, the Final Statement contains only five references to the IPCC, all of which relate solely to its accounting protocol. References to the IPCC's actual views on bioenergy, as expressed in its 5th and 6th assessment reports to which the Complainants referred (Annex 7 to the Complainants' Review Request), are entirely absent.

This is proof that the NCP has taken a very partial and one-sided approach to the extensive IPCC-related evidence placed before the NCP.

- 3.8 The NCP goes on to state that *“the UK NCP considers that if the statements are in line with their reporting, then they are not misleading and do not breach these guidance and standards. Therefore, the UK NCP has focused on reporting requirements and UK policy to determine whether the statements are in line with them”*. As set out in the comments on Ground 1 above, meeting reporting requirements has nothing to do with whether a statement is misleading to consumers. The NCP has completely failed to understand what the Guidelines require it to do in assessing compliance with the Consumer Interests provisions. This failure is less surprising given the NCP’s omission in the EIR disclosure that this Complaint was the first time it was being asked to make a determination under those Consumer Interests provisions [Annex F, p. 55]. However, it is clearly unfair for the Complainants to pay the price for the NCP’s lack of competence in this regard; it is incumbent upon the NCP to ensure it has sufficient understanding of and the skills to deal with complaints made under this part of the Guidelines. Indeed, the Complainants understand from OECD Watch that the UK NCP could have reached out to the OECD Secretariat in the Responsible Business Conduct Unit to seek advice on the correct approach to determining a complaint under a chapter of the Guidelines with which the NCP is unfamiliar. The Complainants consider that this could be a worthwhile recommendation for the UK NCP in this case.

The NCP’s comments on Ground 4

- 3.9 The NCP’s claim that it could not reference all of the Complainants’ evidence, given that it extended to three bundles, once again fails to provide a valid response to this ground of review. In their grounds of review, the Complainants did not convey an expectation that the Final Statement should refer to all or even to most of its evidence. The point is that by making only one or two superficial references to the totality of the Complainants’ evidence, and by failing to engage substantively with the arguments made and the documentary material provided in the support, the Final Statement exemplifies a wholesale failure by the NCP to fully and fairly consider all the evidence and to give the Complainants a fair hearing.

The NCP’s comments on Ground 5

- 3.10 A primary concern relating to the lack of a fair hearing arises from the EIR disclosure referred to above. That disclosure provides clear evidence of the UK NCP seeking and obtaining further information from DESNZ for the purposes of its decision after sending the draft final statement to the parties. This is a patent and potent breach of the procedural guidance and the rules of natural justice. On any view, the further examination process should have ceased with

the sending of the draft final statement. The only conceivable exception is if, for some very special and unforeseen reason, the UK NCP had needed to make further enquiries, in which case the parties should have been informed and the further examination process reopened.

- 3.11 The UK NCP gives several rationales for its failure to provide transparency about its discussions with Government and other public bodies. In terms of its meetings with the ASA, the UK NCP states that they were “sensitive” because they went into the detailed rationale for its decision in the *Haven Power* complaint. It is hard to see how the rationale for a decision that has been made and published can be sensitive, but even allowing for it to be so, there is nothing sensitive about sharing with the parties basic information such as a) the fact of there being meetings with the ASA, and b) broadly the nature, purpose and subject matter of those meetings. The UK NCP in its comments accepts point a) but does not concede point b).
- 3.12 The UK NCP further justifies keeping details of its meetings with the ASA, Ofgem and CMA confidential because a previous case handler had marked them as “*for internal use only*”. Similarly, in terms of the meetings with DESNZ, the UK NCP avers that DESNZ requested that details thereof be kept confidential. Given that the complaint proceedings themselves are confidential, this rationale is confusing. It seems that the UK NCP is suggesting that the only content it could share from meetings with consultees is material already in the public domain, or which is intended to enter therein.
- 3.13 For the avoidance of doubt, the Complainants make no objection to the UK NCP conducting its own analysis and desk-based research into the issues raised. What is troubling is that the Decision is extremely light on analysis (far more so than other comparable final statements) and very little material is referenced. Indeed, in its comments on ground 1, the UK NCP states that it took into consideration a “*breadth of academic information*” in making “*an informed decision*”. Yet there are no references to any academic studies in the Decision. It is therefore entirely unclear what, if any, academic information the UK NCP “*took into consideration*”. It appears from the references and analysis in the Decision that the only material the UK NCP actually considered came from Drax, DESNZ and the other public bodies mentioned above. This is why the Complainants feel very strongly that they have been deprived of a fair hearing; from an early stage, this Complaint seems to have been handled in deference to UK Government positioning on biomass, which itself was (at the time) determined by Drax’s requirements in order to keep the lights on in UK homes.

The NCP’s comments on Ground 6

- 3.14 The UK NCP misrepresents the Complainants' arguments on delay as a) the UK NCP taking 2 years and 4 months to complete the complaint process and b) the UK NCP being particularly quiet between March and April 2023. First, the UK NCP's claim that it took 2 years and 4 months to "complete" the NCP process is incorrect. This period reflects the time taken to reach the draft Final Statement stage, not the conclusion of the NCP process. The Final Statement was delivered to the parties approximately three months later. The UK NCP's delays clearly amount to a breach of the NCP's Procedural Guidance, which stipulates that **the entire process** should be completed within one year of receiving the Complaint.
- 3.15 Secondly, contrary to the NCP's assertion, the period of inactivity was not limited to March and April 2023. In fact, the NCP failed to provide substantive updates on the process's progress between March and **December 2023**, despite repeated update requests from the Complainants. This additional eight-month period, which the UK NCP has omitted to mention, underscores the extent of the procedural delays and unfairness suffered by the Complainants.

The NCP's comments on Ground 7

- 3.16 In its response to Ground 7, the UK NCP claims that it consulted with experts in DESNZ in April 2024 solely to *"ensure that it appropriately incorporated factual comments provided by the parties"* and so that it *"clearly understood the additional information provided by the parties and accurately reflected arguments in the Final Statement"*. This assertion gives rise to two observations.
- 3.17 First, it is wholly inappropriate for an independent complaints-handling body to seek Government advice on how to *"appropriately incorporate factual comments"* from the parties. Nor is it permissible for the NCP to need Government advice in order to *"understand"* factual comments from the parties. Both of these tasks should be fully within the capabilities of a functioning, competent and impartial NCP. This is compelling evidence that the NCP was in the pocket of Government in this specific instance rather than operating separately from it.
- 3.18 Secondly, according to the NCP, these communications were limited to clarifying and accurately reflecting the information provided by the parties in the Final Statement. However, as detailed above in the submission on the EIR disclosure, [Annex B], there is incontrovertible evidence of communications between NCP personnel and DESNZ officials which demonstrates that these exchanges went far beyond their claimed purpose. E-mails exchanged in April 2024 notably addressed substantive matters directly linked to the core issues of the Complaint. Specifically, the NCP was in contact with DESNZ regarding i)

information about DESNZ's consultation concerning an extension to existing biomass subsidies, ii) the UK policy position on biomass and BECCS, iii) insights related to woody biomass as potentially carbon-neutral, and even more strikingly, iv) the ongoing judicial review claim brought by The Lifescape Project, one of the Complainants, against the Government's Biomass Strategy. These communications clearly exceeded the scope of clarifying factual comments and instead delved into the substantive content of the Complaint. It is evident that DESNZ's involvement was not limited to assisting the NCP in accurately reflecting factual comments in the Final Statement, as the NCP claims. Instead, DESNZ provided advice on matters of substance wholly unrelated to the correction of factual inaccuracies. The NCP's conduct in, first, engaging with DESNZ on these substantive matters **after** sharing the draft Final Statement with the parties and, secondly, in falsely claiming that these communications were restricted to understanding the parties' factual comments, undoubtedly constitutes a breach of the NCP's Procedural Guidelines (paragraph 5.2) and the "appropriate fairness" requirement as outlined in the Guidance on Steering board review of NCP procedures (paragraphs 1.1, 1.6.2).

We kindly request that this letter be provided to the review committee dealing with our request. We look forward to your confirmation of the same.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'Frances Lawson', with a long horizontal flourish extending to the right.

Frances Lawson

Managing Lawyer, The Lifescape Project, for and on behalf of the Complainants