

**INDEPENDENT COMPLAINTS ASSESSOR**

c/o Department for Transport

(During the period of Covid-19 lockdown, it is regretted that postal communication is not possible, and all contact should be made by email to: [ica.stephenshaw@dft.gov.uk](mailto:ica.stephenshaw@dft.gov.uk) or by text and voicemail to: 07585 997505.)

8 July 2020

My reference: 053 (20/21)

**Mr Don Staniford**  
**Director, Scottish Salmon Watch**

By email to: [salmonfarmingkills@gmail.com](mailto:salmonfarmingkills@gmail.com)

**Dear Mr Staniford**

**YOUR COMPLAINT AGAINST THE MARITIME AND COASTGUARD AGENCY (MCA)**

I write further to your request for your complaint against the MCA to be reviewed by an Independent Complaints Assessor (ICA). I am one of the two ICAs contracted by the Department for Transport, and the matter was referred for my attention.

Having reviewed the referral documents, I have seen how passionately you feel about Mowi Scotland and other parts of the salmon fishing industry. However, I do not believe that your complaint against the MCA is one I can take forward.

Your complaint is essentially about the decision of the MCA that it has insufficient evidence to support any prosecution for a breach of the Merchant Shipping Act in respect of the Collision Regulations. You have also said that the MCA failed to fully investigate what you have termed "Mowi's unsafe and reckless behaviour at Ardintoul salmon farm in Loch Alsh" on 2 November last year.

However, it seems to me that this complaint falls outside my jurisdiction as an Independent Complaints Assessor.

**Jurisdiction**

The Introduction to the ICA terms of reference reads as follows:

"The overall aims of the independent complaints assessor (ICA) process are to put right any injustice or unfairness suffered by customers, to improve services delivered through the DfT, and/or to provide assurance

that proper procedures have been followed and that maladministration has not occurred.”

Paragraphs 11 and 12 read:

“11. The ICA will decide whether and how much of a complaint is in scope. They will do this after considering the information and documents the delivery body gives them and any other information they judge relevant. The ICA needs to keep in mind the public interest while doing this. Factors relevant here include:

For a detailed review

- the complainant has, or might have, suffered significant injustice, loss or hardship
- the delivery body’s handling of the complaint has been poor. For example, it has failed to conduct a proportionate and reasonable investigation, and/or has failed to apply an appropriate remedy
- the delivery body has asked the ICA to review the case
- an ICA review may assist in a wider process of organisational learning from the complaint and/or of promoting consistency and fairness.

Against a detailed review

- the delivery body has investigated the complaint properly and has found no administrative failure or mistake
- the complainant objects to the delivery body’s policy or legislation
- a full review would be disproportionate.

“12. Having taken into account the factors set out in paragraph 11, the ICA may decide that subjecting the complaint to a detailed review would not meet the overall aims of the ICA review process set out in the introduction.”

The protocol to the terms of reference says that the ICA can’t look at:

- disputes where the principal focus is upon Government, DfT, or DfT Body policy
- complaints arising from contractual and commercial disputes
- complaints about the law
- matters considered by Parliament
- matters where only a court, tribunal or other body can decide the outcome
- decisions taken by independent boards or panels, for example: applications under the HS2 ‘Need to Sell’ scheme
- decisions taken by, or for, the Secretary of State
- legal cases that have already started and will decide the outcome
- an ongoing investigation or enquiry
- how we handle requests for information made under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004

- how we handle subject access requests made under the Data Protection Act
- personnel and disciplinary decisions or actions
- any professional judgment by a specialist, including, for example, the clinical decisions of doctors.

## **Consideration**

It seems to me that your complaint engages with several of the exemptions that I have listed above: in particular, complaints about the law, matters where only a court etc can determine the outcome, legal cases, and the professional judgment of a specialist (in this case, the decision of the Lead Maritime Investigator that “there is insufficient evidence to support any breach of the Merchant Shipping Act in respect to the Collision Regulations”). (I do not think that the exemption for ongoing investigations applies, however, as the MCA has completed its investigation of the incident involving you and Mowi.)

I am also content that that in its stage 2 response to your complaint, the MCA has provided a full explanation for its decision that a case for prosecution has not been made out.

Two other considerations have been in my mind. First, the six-month time limit for proceedings has now passed, meaning that no prosecution could lawfully be brought in respect of the events of last November. And second, that while my terms of reference do not cover every possible eventuality, I cannot believe for one moment that it was ever intended that an ICA review could act as an appeal against a decision not to bring legal proceedings. I previously served as the Independent Assessor of Complaints for the Crown Prosecution Service where all legal decision-making was expressly excluded.

## **Conclusions**

For the reasons I have given, I do not believe I have any authority to take your complaint further. Formally, I will record your complaint as having been withdrawn as being out of jurisdiction.

However, I do agree that the handling of your correspondence has not been optimal. There was some confusion over whether in respect of the incident on 2 November you were actually making a complaint, or whether the matter should be handled as a question of enforcement. It is also not clear to me that your separate letter of 12 September 2019 to the MCA’s chief executive ever received a reply at all.

Having said that, I sympathise with the MCA as it is always difficult to manage correspondence that is shared with a variety of public bodies.

It is of course not for me to offer you any advice about your campaign(s), but experience teaches me that a more focussed approach involving public agencies individually is more likely to bear fruit.

This letter now concludes my involvement in your case, and it also concludes all stages of the Department for Transport's complaints process. However, should you so choose, you could ask an MP to refer your complaint to the Parliamentary and Health Service Ombudsman. The Ombudsman would decide if there were any grounds for further investigation, bearing in mind in part the findings of this ICA review.

I will also send a copy of this letter to the MCA.

Yours sincerely

**Stephen Shaw**  
**Independent Complaints Assessor**