

Claim No: AC-2024-LON-XXXXXX

**IN THE HIGH COURT OF JUSTICE****KING'S BENCH DIVISION****ADMINISTRATIVE COURT****IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW:****THE KING****-on the application of-****WILD JUSTICE****Claimant****-and-****DARTMOOR COMMONERS' COUNCIL****Defendant**

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# Judicial Review

## Claim form

**For Court use only**

Name of court

Reference number

Date

Day	Month	Year
<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>	<input style="width: 100%;" type="text"/>

Help with fees reference number

<b>H W F</b>	-		-	
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The rules relating to applications for Judicial Review are contained in CPR Part 54, and Practice Directions 54A – D. Search for the CPR on [www.justice.gov.uk](http://www.justice.gov.uk).



Additional information about judicial review proceedings can be found in the Administrative Court Judicial Review Guide. Search for the Guide on [www.gov.uk](http://www.gov.uk).

### Time Limit for filing a claim

A claim form must be filed promptly, and in any event **not later than 3 months** after the grounds to make the claim first arose: see CPR54.5(1).

## Section 1 – Details of the claimant and defendant

### 1. Claimant name and address(es)

First name(s)

Wild Justice

Last name

#### Address

Building and street

9 Lawson Street

Second line of address

Raunds

Town or city

Wellingborough

County (optional)

Postcode

N N 9 6 N G

Phone number

Email (if you have one)

**Note:** If there is more than one claimant, set out the details required by questions 1, 1.1 and 1.2 on a separate sheet, marking that sheet so that it is clear it relates to this part of the claim form.

**1.1** Claimant or claimant's legal representative's address to which documents should be sent.

Name of claimant or claimant's legal representative's

Ricardo Gama

Name of firm (if applicable)

Leigh Day

**Address for service**

Building and street

Panagram

Second line of address

27 Goswell Road

Town or city

London

County (optional)

Postcode

E | C | 1 | M | 7 | A | J

Phone number

020 7650 1200

Email

RGama@leighday.co.uk; CDay@leighday.co.uk;  
MAkhtar@leighday.co.uk

Reference number (if applicable)

1199569/1

**Note 1.1:** CPR 6.23 requires each party to proceedings to provide an address for service which must be an address in the United Kingdom. Communication concerning the claim is sent to this address. If a solicitor or legal representative acts for you, give that address (if in the United Kingdom). If not, provide an address to which communication concerning this claim should be sent.

**1.2** Claimant's Counsel's details

First name(s)

Last name

**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

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Phone number

Email

**1.3** 1st Defendant's name

Dartmoor Commoners' Council

**1.4** Defendant or (where known) Defendant's legal representative's address to which documents should be sent.**Address**

Building and street

c/o Foot Anstey LLP

Second line of address

2 Glass Wharf

Town or city

Bristol

County (optional)

Postcode

B S 2 0 E L

Phone number

+44 117 915 4626

Email

ds6@footanstey.com

Reference number (if known)

ds6/aj5/5003842/1



**1.5** 2nd Defendant's name**1.6** Defendant's or (where known) Defendant's legal representative's address to which documents should be sent.**Address**

Building and street

Second line of address

Town or city

County (optional)

Postcode

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Phone number

Email

Reference number (if applicable)

## Section 2 – Interested parties

### 2.1 Interested party

Name

Organisation (if applicable)

#### Address

Building and street

Second line of address

Town or city

County (optional)

Postcode

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Phone number

Email

Reference number (if applicable)

**Note 2:** An Interested Party is someone other than a defendant who is directly affected by the claim.

Where the claim for judicial review relates to proceedings in a court or tribunal, any other parties to those proceedings must be named in the claim form as interested parties. Full details of interested parties must be included in the claim form. For example, if you were a defendant in a criminal case in the Magistrates or Crown Court and are making a claim for judicial review of a decision in that case, the prosecution must be named as an interested party. In a claim which does not relate to a decision of a court or tribunal, you should give details of any persons directly affected by the decision you wish to challenge.

If you consider there is more than one interested party, set out their details on a separate sheet, marking that sheet so that it is clear it relates to this part of the claim form.

## Section 3 – Details of the decision to be judicially reviewed

**Note 3.1:** Use a separate sheet if you need more space for your answers, marking clearly which section the information refers to.

### 3.1 Give details of the decision you seek to have judicially reviewed.

For the purposes of CPR part 54.1(2)(ii) (which allows for a judicial review challenge to a decision, action or failure to act in relation to the exercise of a public function) the claimant challenges the Dartmoor Commoners' Council's ongoing failure to act lawfully in relation to its duties under: (i) Sections 4(1) and 5(1) of the Dartmoor Commons Act 1985; (ii) Section 28G of the Wildlife and Countryside Act 1981; and (iii) Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017; and furthermore its ultra vires and/or for an improper purpose conduct in acting as if to represent commoners rather than in accordance with its statutory duties under the Dartmoor Commons Act 1985.

### 3.2 Date of decision

Day

2 4

Month

0 6

Year

2 0 2 4

### 3.3 Name and address of the court, tribunal, person or body who made the decision to be reviewed.

Name

Dartmoor Commoners' Council

**Address**

Building and street

Dartmoor Commoners' Council

Second line of address

1 Canal Road

Town or city

Tavistock

County (optional)

Postcode

P L 1 9 8 A R

## Section 4 – Permission to proceed with a claim for judicial review

**This section must be completed. You must answer all the questions and give further details where required.**

**4.1** I am seeking permission to proceed with my claim for Judicial Review.

Is this application being made under the terms of paragraph 17 Practice Direction 54A (Challenging removal)?

Yes

No

**4.2** Does your claim, or any interlocutory application, for example for interim relief or expedition, need to be decided urgently – i.e. within 7 days?

Yes. Complete form **N463** and file this with your application.

No

**4.3** Are you making any non-urgent interlocutory applications?

Yes. Complete Section 9.

No

**4.4** Does any part of the claim allege a breach of Convention rights protected under the Human Rights Act?

Yes. Identify the Convention rights you contend have been breached in the box below

No

**4.5** Have you complied with the pre-action protocol?

Yes

No. Give reasons for non-compliance in the box below.

**Note 4.5:** See Practice Direction 54C.

**4.6** Have you filed this claim in the region with which the claim is most closely connected?

Yes. Give any additional reasons for wanting it to be dealt with in this region in the box below

No. Give reasons in the box below

**4.7** Is the claimant in receipt of a Civil Legal Aid Certificate?

Yes

No

## Section 5 – Statement of facts relied on

- set out below
- attached

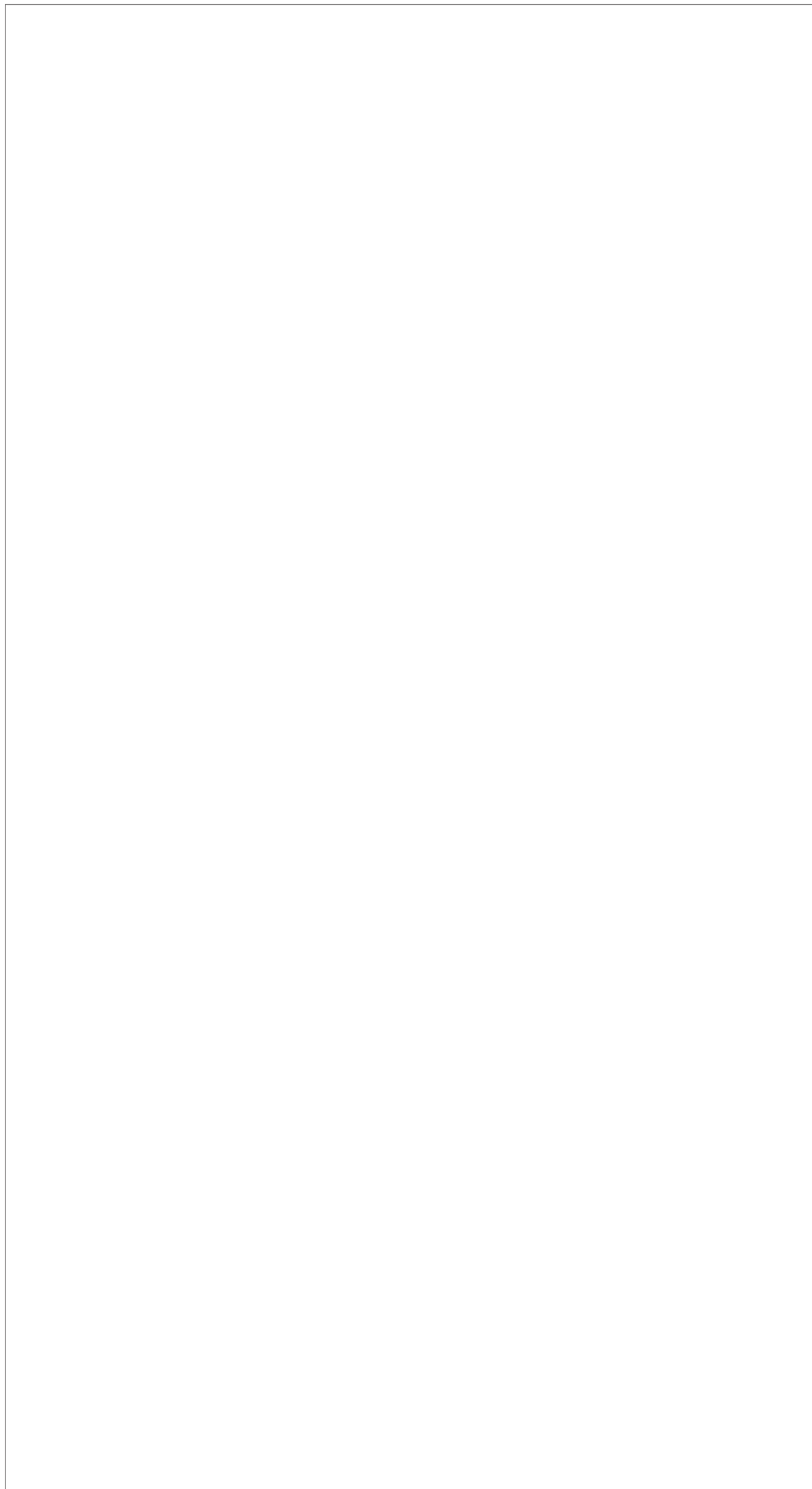
**Note 5:** Set out the facts on which your claim is based: see Practice Direction 54A, paragraph 4.2. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the claim form.

## Section 6 – Detailed statement of grounds

6.1 The detailed statement of grounds are:

set out below

attached



**Note 6:** Set out each ground of challenge: see Practice Direction 54A at paragraph 4.2. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the claim form.

## Section 7 – Aarhus Convention claim

7.1 Is this claim an Aarhus Convention claim

Yes. Give reasons why in the box below.

This constitutes an Aarhus Convention claim for the purposes of CPR 46.24 and 46.26. The Defendant confirms its acceptance of that at paragraph 15 of its pre-action response.

No

7.2 Do you wish the court to vary or remove the limits on costs recoverable from a party?

Yes. Give reasons why in the box below.

No

**Note 7:** For the definition of an Aarhus claim, see CPR 45.41. The cost limit provisions are at CPR 45.43 – 44.



## Section 8 – Details of remedy (including any interim remedy) being sought

Please see attached Statement of Facts and Grounds.

**Note 8:** State precisely the terms of the order you ask the court to make. The available remedies are at CPR 54.2 – 3. The court may make any/all of the following orders:

- (a) a mandatory order;
- (b) a prohibiting order;
- (c) a quashing order; or
- (d) an injunction restraining a person from acting in any office in which he is not entitled to act.

A claim for damages may be included but only if you are seeking one of the orders set out above.

## Section 9 – Other applications (non-urgent)

**9.1** I wish to make the following applications for directions and/or interlocutory orders:

**Note 9:** If you wish to make any interlocutory application now, set out the application and the reasons and/or evidence relied on in support of it in this Section. Use separate sheets if you need more space; mark the sheets so that it is clear they relate to this section of the claim form.

If, after this claim form has been filed, you wish to make an interlocutory application, use form N244.

## Section 10 – Supporting documents

The Claim Form must include or be accompanied by certain documents: see Practice Direction 54A, paragraph 4.4(1) – (2).

Please complete the checklist below

- 10.1  Statement of Facts
- 10.2  Statement of Grounds
- 10.3  Any written evidence relied on in support of the claim.
- 10.4  Any written evidence in support of any other application contained in the claim form
- 10.5  If the claim seeks to have any order quashed, a copy of the order.
- 10.6  If the claim for judicial review is directed to a decision of a public authority, a copy of the decision challenged.
- 10.7  If the claim for judicial review is directed to the decision of a court or tribunal, an approved copy of the reasons for the decision.
- 10.8  Copies of any documents relied on.
- 10.9  A copy of any statutory material relevant to the claim.
- 10.10  A list of essential documents for advance reading by the court.
- 10.11  If paragraph 17 of Practice Direction 54A applies to the claim, copies of the documents specified at paragraph 17.2(1) (a) – (d).

If it has not been possible to file any of the above documents, state the reason why the document is not available.

Reasons why you have not supplied a document and date when you expect it to be available:-

- 10.12**  If you contend the claim is an Aarhus Convention claim, the financial information required by CPR 45.42.
- 10.13**  A copy of the legal aid or Civil Legal Aid certificate (if applicable)

## Statement of truth

I understand that proceedings for contempt of court may be brought against a person who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

**I believe** that the facts stated in this form are true.

**The claimant** believes that the facts stated in this form are true. **I am authorised** by the claimant to sign this statement.

### Signature



Claimant

Litigation friend

Claimant's legal representative (as defined by CPR 2.3(1))

### Date

Day

2 7

Month

0 8

Year

2 0 2 4

Full name

Ricardo Gama

If claimant's legal representative, state name and firm

Leigh Day

If signing on behalf of firm or company give position or office held

Senior Associate

## The Court and venue

CPR part 54 – claims for Judicial Review are dealt with by the Administrative Court.

The general expectation is that proceedings will be administered and determined in the region with which the claim has closest connection; see Practice Direction 54C paragraph 2.5.

- Where the claim is proceeding in the Administrative Court in **London**, documents must be filed in the Administrative Court Office, Room C315, Royal Courts of Justice, Strand, London, WC2A 2LL.
- Where the claim is proceeding in the Administrative Court in **Birmingham**, documents must be filed in the Administrative Court Office, Birmingham Civil Justice Centre, Priory Courts, 33 BullStreet, Birmingham B4 6DS.
- Where the claim is proceeding in the Administrative Court in **Wales**, documents must be filed in the Administrative Court Office, Cardiff Civil Justice Centre, 2 Park Street, Cardiff, CF10 1ET.
- Where the claim is proceeding in the Administrative Court in **Leeds**, documents must be filed in the Administrative Court Office, Leeds Combined Court Centre, 1 Oxford Row, Leeds, LS1 3BG.
- Where the claim is proceeding in the Administrative Court in **Manchester**, documents must be filed in the Administrative Court Office, Manchester Civil Justice Centre, 1 Bridge Street West, Manchester, M3 3FX.

IN THE HIGH COURT OF JUSTICE  
 KING'S BENCH DIVISION  
 ADMINISTRATIVE COURT  
 IN AN APPLICATION FOR JUDICIAL REVIEW  
 BETWEEN

Claim No:

THE KING  
 (on the application of WILD JUSTICE)

Claimant

-and-

DARTMOOR COMMONERS' COUNCIL

Defendant

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**STATEMENT OF FACTS AND GROUNDS**

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*References are in the form [CB/x] and [SB/x] where 'CB' is the Core Bundle, 'SB' is the Supplementary Bundle, and 'x' is the page number.*

**Essential reading other than pleadings (1 hour):**

- Claimant's pre-action protocol letter dated 12 July 2024;
- Defendant's pre-action protocol response dated 9 August 2024;
- Witness statement of Mark Avery, dated 22 August 2024 (paragraphs 16-74 only).

**INTRODUCTION**

1. This claim concerns the failure by the Dartmoor Commoners' Council ("**DCC**") lawfully to regulate livestock numbers on Dartmoor's common lands. It is the view of Natural England (which also has a role here) that overgrazing of livestock on Dartmoor is causing considerable ecological harm to one of the country's most unique and cherished places.
2. As explained further below, DCC was established in 1985 by an act of Parliament, the Dartmoor Commons Act 1985 ("**DCA 1985**"), which

entrusted DCC with functions (both powers and duties) to conserve Dartmoor's common lands and prevent overstocking. Despite this, on DCC's own account it has not taken any action in relation to overstocking since 2003. The Claimant therefore brings this challenge against DCC's ongoing failure to comply with its statutory duties under the DCA 1985, the Wildlife and Countryside Act 1981 ("**WCA 1981**") and the Conservation of Habitats and Species Regulations 2017 ("**Habitats Regulations**").

3. As explained in Mark Avery's witness statement dated 22 August at paragraph 13 [**CB/50**], the Claimant is a not-for-profit company set up to advocate on behalf of wildlife to further nature conservation in the United Kingdom, encourage public participation in nature conservation issues, and to ensure that UK laws, policies and practices protect wildlife. Since its establishment in 2018, the Claimant has brought judicial review challenges on a selected range of issues, including badger culling and the annual introduction of some 60 million non-native gamebirds into the countryside.

### **DARTMOOR NATIONAL PARK, THE COMMONS, AND NATURE DESIGNATIONS**

4. Dartmoor National Park covers an area of 95,000ha, 36,000ha of which is registered common land. There are 92 separate registered commons on Dartmoor (collectively, "the **commons**"). Maps and further information can be located in the witness statement of Mark Avery, dated 22 August 2024, paragraphs 28-34 [**CB/54-58**].
5. The commons are areas of open unenclosed moorland which are privately owned but over which the public has a right of access. The commons are also subject to the rights of around 850 'commoners', who comprise the owners of specific properties located on the commons to which 'rights of common' are attached. Commoners' rights of common include grazing rights permitting the commoners to keep sheep, cattle

and ponies on the commons [CB/99-102]. It is estimated that fewer than 20% of registered commoners are active graziers [CB/152].

6. A large proportion of the commons are located within the Dartmoor Special Area of Conservation (“**SAC**”)<sup>1</sup>, a c.25,452ha area designated on the basis of the following habitat types:
  - a. Northern Atlantic wet heaths with *Erica tetralix* (Cross-Leaved Heath);
  - b. European dry heaths;
  - c. Blanket bogs; and
  - d. Old sessile oak woods with *Ilex* (Holly) and *Blechnum* (Hard Fern) in the British Isles.
  
7. Dartmoor contains many Sites of Special Scientific Interest (“**SSSIs**”), six of which overlap with the Dartmoor SAC: Dendles Wood SSSI, East Dartmoor SSSI, North Dartmoor SSSI, South Dartmoor SSSI, Tor Royal Bog SSSI and Wistman’s Wood SSSI, which together encompass c.23,000ha (together referred to as “**the Dartmoor SSSIs**”).<sup>2</sup> Each of these SSSIs exhibits all or some of the habitat types identified in the Dartmoor SAC designation. Further information on these SSSIs can be found in the witness statement of Mark Avery dated 22 August 2024, paragraphs 55-74 [CB/63-70].
  
8. There is significant crossover between the commons, the Dartmoor SSSIs and the Dartmoor SAC. As explained in the 2023 ‘Independent review of protected site management on Dartmoor’ (commissioned by the

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<sup>1</sup> Dartmoor National Park also contains two other SACs, South Hams SAC (127ha) and South Dartmoor Woodland SAC (2159ha). The South Hams SAC does not overlap with any common land. The South Dartmoor Woodland SAC does overlap to an extent with the commons, however this claim focuses primarily on the Dartmoor SAC as by far the largest SAC in Dartmoor and that with the greatest overlap with the common land within the jurisdiction of DCC [CB/57].

<sup>2</sup> Dendles Wood, Tor Royal Bog and Wistman’s Wood SSSIs do not overlap with the Dartmoor commons and therefore do not fall within DCC’s jurisdiction. They are included in these grounds, however, to provide the court with context as to the cross-Dartmoor problems associated with overgrazing, which also apply to the parts of the Dartmoor commons which are not SSSIs.



Secretary of State for Environment, Food and Rural Affairs, and commonly referred to (and hereafter) as “the **Fursdon Review**”):

“62% of all common land in Dartmoor is SSSI. Many commons are only part designated, but the absence of any physical barriers between SSSI and non-SSSI areas means that there is significant potential for sites to be damaged by stock straying from adjacent areas. This is considered explicitly by Natural England when carrying out a Habitats Regulations Assessment under the SAC. For this reason, the influence of the protected site designations extends significantly beyond the area of the sites themselves.” [CB/160]

### **THE CONDITION OF THE COMMONS, DARTMOOR SAC AND SSSIS**

9. It is now widely acknowledged that Dartmoor is in a very poor ecological condition. As was bluntly concluded in the Fursdon Review, “Dartmoor is not in a good state” [CB/164].
10. As is detailed in the witness statement of Mark Avery dated 22 August 2024 at paragraph 61 [CB/66], in its most recent assessments of the six abovementioned SSSIs, Natural England found c.92% to be in an “Unfavourable” condition.
11. According to the Claimant’s analysis of published data from site checks and condition assessments carried out by Natural England, grazing pressure (as recorded, for example, in failure on browsing levels in Common Standards Monitoring assessments), is a key reason for the Unfavourable condition of 16 SSSI units covering 9,273ha, or 40%, of the Dartmoor SAC. The second cited reason for the Unfavourable condition of SSSIs underpinning the SAC is the dominance of *Molinia caerulea* (Purple Moor-Grass), accounting for 14 SSSI units covering 8,929ha or 39% of the Dartmoor SAC. The remaining areas of the SAC are either in Favourable condition, or (in the case of four units) in an Unfavourable condition for an unclear reason [CB/66].

12. As said above, the SAC is designated for four habitat types: Northern Atlantic wet heaths with *Erica tetralix*, European dry heaths, Blanket bogs and Oak woods. The two heathland types cover 10,280ha. Grazing pressure is cited by Natural England as a key reason for the Unfavourable condition of approximately 90% of this designated feature.
13. For each of the Dartmoor SSSIs, Natural England has produced a document entitled 'Operations likely to damage the special interest'. For each of the SSSIs the second item listed is "Grazing or changes in the grazing regime (including type of stock or intensity or seasonal pattern of grazing and cessation of grazing)" [CB/235-240].
14. Given its concerns, Natural England has long sought to reduce livestock numbers on the commons as a means of improving the condition of the Dartmoor SAC, Dartmoor SSSIs and Dartmoor more broadly. Upon the introduction in 2005 of the Environmental Stewardship Regulations (made under the Environment Act 1995), for example, Natural England entered into Higher Level Stewardship ("HLS") agreements with various Dartmoor commoners' associations predicated on (in the words of the Fursdon Review) "significant stocking reductions" [CB/154].
15. This effort has continued until the present day, as was apparent from Natural England's approach in 2023 to the renewal of 23 HLS agreements entered into with Dartmoor commoners' associations which were due to expire that year. As summarised in the Fursdon Review [CB/149]:

"To ensure value for money and comply with statutory obligations, extensions can only be offered where Natural England (NE) has confirmed that the agreements concerned are achieving their own objectives. On Dartmoor, NE concluded that the very low proportion of SSSI units in favourable condition meant it could not give those assurances and discharge its statutory responsibilities without the commons concerned agreeing to make further

significant management changes and reductions in stocking rates.”<sup>3</sup>

16. It is the clear and long-held view of Natural England, the government’s statutory adviser for nature conservation in England, that overgrazing is a central issue afflicting Dartmoor’s delicate natural environment. DCC is plainly aware of this. But Natural England’s obligations and actions, whatever they may be, do not displace DCC’s statutory duties, to which we now turn.

### **DCC AND THE DCA 1985**

17. DCC was established by section 3(1) DCA 1985, which states (with emphasis added):

“On the appointed day there shall be constituted a Council to be called “the Dartmoor Commoners’ Council” for the purpose of exercising the functions assigned to them by this Act.” [CB/257]

18. Those “functions” are contained in section 4 DCA 1985, which states as is relevant (with emphasis added):

“(1) Subject to this Act, it shall be the duty of the Commoners' Council to take such steps as appear to them to be necessary and reasonably practicable for the maintenance of the commons and the promotion of proper standards of livestock husbandry thereon (including the assessment of the number of animals which can properly be depastured on the commons from time to time); and in discharging that duty the Commoners' Council shall have regard to the conservation and enhancement of the natural beauty of the commons and its use as a place of resort and recreation for enjoyment by the public.

(2) Subject to subsection (3) below, the Commoners' Council may—

(a) protect the commons and render assistance to any commoner in the maintenance of his rights of common;

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<sup>3</sup> The resulting protests of commoners reliant on HLS agreements resulted in the commissioning of the Fursdon Review, and an agreement by Natural England to extend the HLS agreements for a year without requiring reductions in stocking rates in order that the conclusions of the Fursdon Review could be considered before final decisions were reached.

(b) burn heather, gorse, grass and bracken on the commons to such extent as in their opinion is desirable for purposes of livestock husbandry;

(c) plant clumps of trees (not exceeding one acre as respects any clump) for the protection of animals depastured on the commons, and fence and enclose trees following any such planting for as long as may be necessary to afford protection from animals:

Provided that any tree so planted shall be of a broad-leaved species naturally growing on Dartmoor and any clump so planted shall be not less than one mile from any other clump of trees;

(d) enter into agreements with any owner of any of the land within any of the areas edged pink on the plan referred to in section 2 of this Act for the management by the Commoners' Council of grazing thereon;

and, subject to the provisions of this Act, the Commoners' Council shall have power to do any thing (whether or not involving the expenditure, setting aside, borrowing, investment or lending of money, or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions." [CB/258]

19. In order to fulfil its functions, section 5(1) DCA 1985 requires DCC to make regulations as follows (as is relevant, with emphasis added):

"(1) For the purpose of fulfilling their functions under section 4 of this Act, the Council

(a) shall make regulations for the following purposes:—

(i) to ensure the good husbandry and maintenance of the health of all animals depastured on the commons;

(ii) to ensure that the commons are not overstocked and, for that purpose, may fix or provide for the fixing of the number of animals or animals of any description which from time to time may be depastured on the commons by virtue of a right of common or of any other right or privilege;

...

(b) may make such other regulations, in relation to the whole or any part of the commons, as they think fit and without

prejudice to the generality of the foregoing, regulations may be made for all or any of the following purposes:—

(i) to exclude from grazing on the commons, for such periods as appear reasonably necessary, all animals or animals of a particular description where the Commoners' Council are satisfied that those exclusions are necessary for the maintenance of the commons or for the promotion of proper standards of livestock husbandry;

(ii) generally to regulate the exercise of rights of common of all kinds and rights or privileges having a similar subject matter as rights of common (including rights of grazing deriving otherwise than from rights of common) over the commons and to prohibit the use of the commons for similar purposes by persons purporting to exercise rights in excess of their entitlement or by persons not entitled to such rights either as commoners or otherwise.” **[CB/260]**

20. As considered further below, the section 5(1)(a)(ii) obligation is thus to make regulations for the purpose (among other things) of ensuring that the commons are not overstocked. That is a duty. Section 5(1)(a)(ii) allows for that duty to be discharged by fixing numbers. Thus, there is a discretion as to means but not as to what must be achieved: preventing overstocking.

21. Section 5(2) DCA 1985 places certain restrictions on what regulations made under section 5(1) may do, as follows:

“(a) Any regulation under subsection (1) (a) (ii) above, so far as it varies the number of animals which by virtue of a right of common or of any other right or privilege may be depastured under that right or privilege, shall so far as is reasonably practicable impose on all holders of the like rights or privileges held in respect of the same unit of the commons a proportionately similar variation.

(b) Subject as otherwise provided in section 4 of this Act and this section, regulations under this section shall not—

(i) alter the area over which any right of pasturage may otherwise be exercised;

(ii) so reduce the entitlement of a commoner to depasture animals on the commons as in any circumstances to preclude his depasturing less than two animals;

(iii) impose restrictions or obligations respecting the exercise of any such rights or other rights or privileges, so as to discriminate between rights of the same class or character; nor

(iv) increase the number of animals which a commoner may depasture on the commons to a number exceeding that recorded in the register maintained under the Act of 1965<sup>4</sup> as the entitlement in respect of the right which he exercises.”  
[CB/261]

22. DCC is required to maintain a register by section 7 DCA 1985, which states as is relevant:

“(1) As from the appointed day the Commoners' Council shall maintain a register in accordance with this section.

...

(3) There shall be recorded in the register the following particulars:—

(a) the name and address of each person who, by virtue of a right to do so, normally grazes or depastures an animal or animals on the commons from time to time during the year;

(b) the name and address of every other person who is a commoner and who applies to have his name entered in the register;

(c) as respects each person within the description of paragraph (a) above, the number of animals which for the time being he grazes on the commons and the mark by which the ownership of those animals may be identified; and

(d) such other particulars as to the Commoners' Council seems fit.

...

(8) The register shall at all reasonable times be open to inspection and transcription without payment by any interested person.” [CB/263]

15. Overall:

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<sup>4</sup> This refers to the Commons Registration Act 1965.

- (1) The DCA 1985 thus places an absolute duty on DCC to take “such steps as appear to them to be necessary and reasonably practicable for the maintenance of the commons”, which includes a requirement to assess “the number of animals which can properly be depastured on the commons from time to time”.
- (2) The DCA 1985 then requires DCC to make regulations for the purpose of controlling animal numbers on the commons when necessary.
- (3) It is therefore apparent that the DCA 1985 envisages that DCC will undertake a process of assessment as part of its process for determining whether it is necessary to take steps to control animal numbers pursuant to regulations made under section 5 DCA 1985.
- (4) In discharging its functions DCC is required to have regard to the conservation and enhancement of the natural beauty of the commons.

23. At least since 2013, DCC has met around every two months to discuss various matters related to the commons.<sup>5</sup> From the meeting minutes provided to the Claimant (following EIR requests - see further below), it appears that the issue of overgrazing on Dartmoor has almost never been discussed at DCC’s meetings. Indeed, despite DCC’s statement in its pre-action response (at paragraph 13.4) that it “has over the years actively considered whether stocking levels on the commons need to be altered”, the only instances it has identified of action taken to control stocking levels on the commons took place between 1991 and 2003.

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<sup>5</sup> To date, DCC has only provided the Claimant with meeting minutes since 2013, save for minutes for meetings held on 25 September 1991, 8 June 1993, 6 April 1994, 5 November 1997 and 16 April 2003 which were provided by DCC in its pre-action response [SB/3-27]. There are a large number of these minutes, and therefore the Claimant has opted to provide only those specifically referred to in these grounds, in DCC’s PAP Response. These, along with copies of minutes of DCC’s four most recent meetings, are provided in the Supplementary Bundle. The entirety of DCC’s meeting minutes since 2013 can however be provided should the Court wish.

## **REGULATIONS MADE UNDER SECTION 5 OF THE DCA 1985**

24. On 10 January 1990, DCC's Council authorised regulations prepared under s.5 of the Act ("**the DCC Regulations**") [CB/265-268]. These were confirmed by the Secretary of State for the Environment on 3 August 1990 and remain in force (as confirmed by DCC in the EIR Response).

25. Regulation 9 of the DCC Regulations states (with emphasis added):

"No person shall depasture on any unit of the commons animals in excess of the number contained in a limitation Notice under Section 5(2)(a) of the Act. Whenever the Council shall consider it expedient to prescribe the maximum number of any description of animal that any person may from time to time depasture on any unit of the commons (whether by reason of the quality of the pasturage or otherwise) the Secretary of the Council shall send a Limitation Notice in accordance with Section 5(2)(a) of the Act to the owner or tenant of that land and to each person registered in accordance with Section 7 of the Act as having rights to depasture on that unit of the commons specifying the common land so restricted, the period of the limitation and the maximum number and description of animals that an owner, tenant or other person may depasture on that unit of the commons for that duration and shall send a copy of each such notice to the Secretary of the Commoners' Association to whose area the restriction applies." [CB/266]

26. Regulation 15 of the DCC Regulations states that (with emphasis added):

"The Council may require the removal of stock from the commons or from a particular part of the commons where stock are being grazed or fed in contravention of any Code of Guidance approved by the Council or in order to prevent or limit damage to the commons." [CB/267]

27. Finally, it is of note that Regulation 21 of the DCC Regulations makes it a criminal offence to contravene any of the DCC Regulations. [CB/268]

28. DCC has thus put in place regulations which allow for the making of limitation notices among other things. That was a lawful exercise of the



discretion as to the selection of the means of preventing overstocking within section 5 DCA 1985. But that is merely the first step on the way to discharging that section 5 obligation.

### **THESE PROCEEDINGS**

29. On 17 May 2024, Tony Whitehead and Guy Shrubsole wrote to DCC to make a request for information pursuant to the Environmental Information Regulations 2004. A response was received on 24 June 2024 (“**the EIR Response**”) [CB/251-252], in which DCC confirmed that it had not issued any limitation notices to control livestock numbers on the Dartmoor commons during the past ten years, despite it having an express statutory right to do so (see below). DCC also indicated that, notwithstanding the statutory duties placed upon it, it did not consider the prevention of overstocking to be its responsibility: “The controlling of stocking levels... where required, has hitherto generally been undertaken Defra (and previously MAFF<sup>6</sup>)”. [CB/252]
30. In light of the EIR Response, on 12 July 2024 the Claimant’s legal representatives sent DCC a judicial review pre-action protocol letter, which detailed a series of legal errors and omissions on the part of DCC and requested that DCC issue limitation notices to control overstocking in any SSSIs in which the level and/or period of grazing is adversely affecting their features of special interest [CB/77-85].
31. DCC did not send a substantive response to the Claimant’s pre-action letter until 9 August 2024 (“**the PAP Response**”) [CB/86-93]. The Court is invited to read the PAP Response (and the Claimant’s pre-action letter) in full, but in the Claimant’s submission matters of particular note are:
- a. DCC’s attempt to downplay its own statutory responsibilities in respect of stocking levels by contending that “the primary regulator

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<sup>6</sup> This is understood to refer to the Ministry of Agriculture, Fisheries and Food, a now defunct government department.

of stocking levels on Dartmoor is Natural England” (paragraph 13.1) [CB/88];

- b. DCC has apparently not taken any action to control livestock numbers on the Dartmoor commons since 2003 (paragraph 13.4) [CB/89];
- c. DCC has asserted that Dartmoor’s natural environment has deteriorated in part due to under-grazing, but has apparently conducted no investigation or assessment of its own as to the causes of damage to Dartmoor’s natural environment and therefore what an appropriate level of grazing would be (paragraph 13.5) [CB/89];
- d. DCC cannot locate any written documentation demonstrating that it has discharged the statutory duties placed upon it by WCA 1981 and the Habitats Regulations (paragraph 14.6) [CB/92], from which the court is invited, as below, to infer that no such action has been taken.

## **GROUNDINGS OF CHALLENGE**

### **Ground 1: Breach of section 5 (alone and in conjunction with section 4) DCA 1985**

- 32. As above, section 5(1)(a)(ii) DCA 1985 places a statutory duty on DCC to make regulations “to ensure that the commons are not overstocked”. This is expressly stated as being “for the purpose of fulfilling” DCC’s duty under section 4(1) DCA 1985, which includes taking such steps as appear to DCC to be necessary and reasonably practicable for the maintenance of the commons.
- 33. DCC has opted to progress its duty under section 5(1) DCA 1985 by making the DCC Regulations, which includes a power for DCC to issue limitation notices under regulation 9 as a means of control stock numbers. As confirmed by the EIR Response and the PAP Response, however,

DCC has not issued any limitation notices in at least the last ten years. That constitutes a breach of DCC's statutory duties, in circumstances where section 5(1) DCA 1985 expressly requires that the regulations made by DCC "ensure that the commons are not overstocked". Given that requirement, the mere *making* of the DCC Regulations (and inclusion of regulation 9 therein) was not sufficient for DCC to discharge its duty under section 5(1) of the DCA 1985. By contrast, and as is necessarily implied by section 5(1), DCC had to then actually *issue* limitation notices in order to secure the statutorily specified outcome of preventing overstocking on the commons. It has failed to do so.

34. Alternatively, DCC has acted in breach of its statutory duties in section 4(1) and 5(1) of the DCA 1985 by failing to even *consider* issuing limitation notices. Although DCC asserts in its PAP Response that it "has over the years actively considered whether stocking levels on the commons need to be altered" (paragraph 13.4), it has been unable to point to any action taken since 2003 and the post-2013 meeting minutes it has provided contain no discussion of whether limitation notices should be issued under regulation 9 of the DCC Regulations, let alone any properly informed discussion. By failing to even consider whether to exercise that power, DCC has breached:

- a. its duty under section 5(1) of the DCA 1985 to make regulations "to ensure that the commons are not overstocked", because those regulations are effectively defunct if consideration is never given to their exercise; and / or
- b. its duty under section 4(1) of the DCA 1985 to "take such steps as appear to them to be necessary and reasonably practicable for the maintenance of the commons", because DCC appears never to have even considered whether the issuance of limitation notices under regulation 9 of the DCC Regulations would be a necessary

and reasonably practicable step for the maintenance of the commons.

35. Furthermore, DCC has exercised its statutory powers in a manner which runs counter to the purposes of the DCA 1985 in the same fashion as was found unlawful by the House of Lords in *Padfield v Minister for Agriculture, Fisheries and Food* [1968] AC 997 (per Lord Reid at 1030B-D). Section 4(1) DCA 1985 makes apparent that among the purposes of the DCA 1985 are “the maintenance of the commons” and “the conservation and enhancement of the natural beauty of the commons”. The major mechanism provided by the DCA 1985 for achievement of these purposes is the power to make regulations under section 5(1) DCA 1985, which should “ensure that the commons are not overstocked”. By failing to even consider whether to issue limitation notices under the DCC Regulations, DCC has plainly acted in a manner which runs counter to the policy and objects of the DCA 1985 because it has in effect deprived the DCA 1985 of one of its principal mechanisms for achieving certain of its primary purposes.

36. Finally, from its meeting minutes DCC appears in the last ten years neither to have exercised nor even considered exercising its power under regulation 15 of the DCC Regulations to “require the removal of stock from the commons or from a particular part of the commons where stock are being grazed... in order to prevent or limit damage to the commons”. For the same reasons as explained in paragraphs 33-35 above, this constitutes a breach by DCC of its statutory obligations under section 4(1) and/or section 5(1) of the DCA 1985.

**Ground 2: Failure to assess appropriate stocking levels in breach of section 4(1) DCA 1985 and/or frustration of the DCA 1985’s statutory purpose**

37. Section 4(1) of the DCA 1985 states that, as part of its consideration of what steps are “necessary and reasonably practicable for the

maintenance of the commons”, DCC should carry out an “assessment of the number of animals which can properly be depastured on the commons from time to time” [CB/258].

38. So far as the Claimant can ascertain from the DCC meeting minutes disclosed to it, DCC has not carried out any assessment of this nature for at least the last ten years. DCC has therefore acted in breach of section 4(1) of the DCA 1985.
39. The statutory requirement for DCC to carry out its own assessment of the appropriate number of animals to be depastured on the commons is particularly important in circumstances where Natural England has repeatedly raised concerns about the impact of overgrazing on Dartmoor’s SSSIs (which, as explained above at paragraphs 6-8, overlap considerably with the commons). It is plainly insufficient for DCC to rely, as it has attempted to in the PAP Response, on sweeping statements “based on the lived experiences of its own members and other commoners” that the Dartmoor commons are in fact under-grazed (paragraph 13.5 of the PAP Response) [CB/89]. The statutory requirement placed on DCC is to carry out a lawful assessment of the number of animals which can be accommodated on the commons without damaging their integrity, such assessment being of considerable urgency in light of the serious concerns raised by the government’s statutory adviser on the natural environment.
40. Moreover, the assessment required by section 4(1) DCA 1985 underpins the operation of the entire statutory scheme. The assessment of livestock numbers is plainly envisaged by the statute as an essential means by which DCC can gather the information required to inform its assessment of what “steps” are “necessary” for “the maintenance of the commons”, including whether to exercise the powers in the DCC Regulations. As such, DCC’s failure to carry out any assessment of the appropriate level of livestock depasturing on the commons has had the effect of frustrating

the operation of the statutory scheme, with the result being that no action has been taken, or even considered, to control overstocking on the commons for at least the past ten years.

41. When exercising or considering whether to exercise its powers, a public authority must act rationally and in good faith, must not fetter its discretion, and must “promote the policy and objects of [the statute]” (*Secretary of State for Communities and Local Government v West Berkshire District Council* [2016] EWCA Civ 441 at [22]). In failing to carry out the assessment required by section 4(1) DCA 1985, DCC has frustrated and therefore failed to promote the policy and objects of the statute.
42. Finally, the Claimant notes: (1) DCC’s scepticism in the PAP Response that overstocking is a factor in the deterioration of Dartmoor’s natural environment; and (2) its suggestion that it is for the Claimant “to obtain robust, independent expert evidence” to prove that overstocking is an issue (paragraph 13.6) [CB/89]. Given the statutory duty placed on DCC by section 4(1) DCA 1985, it is evidently incorrect that the Claimant is required to discharge an evidential burden in this respect. Rather, it is for DCC to conduct a robust assessment of the appropriate livestock numbers for grazing on the Dartmoor commons, which would necessarily consider the question of whether the commons (or indeed different parts of the commons) are under-grazed or over-grazed. Only once such an assessment is completed will DCC be in a position to properly conclude whether overgrazing is in fact contributing to the deterioration of Dartmoor’s natural environment. DCC has entirely failed to carry out any assessment of this kind in the last ten years, however. In undertaking that assessment, DCC will plainly need to take into account and give considerable weight to the views of Natural England on the subject, and – if minded to disagree with those views – will need to give cogent reasons and identify the evidence on which it relies.

43. To be clear: as explained by Mark Avery, the Claimant is of course not asking the court to resolve any disagreement which has or might yet arise between DCC and Natural England on appropriate livestock numbers. His evidence, and Natural England's conclusions, are relied on here only to show that DCC has failed even lawfully to assess and consider the point, and has thus failed to discharge its statutory duties.

**Ground 3: Breach of section 4(1) of the DCA 1985 through failure to have regard to the conservation and enhancement of the natural beauty of the commons**

44. Regardless of the breaches explained above, in the exercise of its duties under section 4(1) DCA 1985, DCC is also required "to have regard to the conservation and enhancement of the natural beauty of the commons". In circumstances where DCC has failed in the last ten years to even consider whether to issue limitation notices, it has plainly failed to discharge this obligation. As above, this is especially the case in circumstances where Natural England has concerted been raising concerns regarding the impacts of overgrazing on Dartmoor's natural environment.

45. DCC's failure in this regard is seen by the absence of any mention in DCC meeting minutes of its duty to have regard to the conservation and enhancement of the natural beauty of the commons (or even anything which might be seen as discharge of that duty in substance without specifically mentioning it).

46. Indeed, as stated in the PAP Response, "[DCC] accepts that it has not identified any documentation from within the last 10 years which explicitly records when and how it has considered this specific statutory duty" (paragraph 14.4(a)) [CB/90].

47. The Claimant acknowledges that an absence of explicit consideration of a 'have regard' duty does not preclude that duty being substantively discharged. In circumstances where DCC has apparently done nothing to even consider the issue of overstocking, however, it is plainly insufficient

to contend generically and without evidence that the duty has been discharged because “[DCC] members are acutely aware that the need to conserve and enhance the natural beauty – and more generally the natural environment – of Dartmoor underpins the sustainability of the commons and commoners’ businesses and way of life” (paragraph 14.4(a) of the PAP Response) [CB/90]. While the documentation demonstrates DCC members to have considered various aspects of Dartmoor life, it does not demonstrate that there has ever been specific focus afforded to the “conservation and enhancement of the natural beauty of the commons”. DCC has therefore acted unlawfully.

#### **Ground 4: Breach of section 28G WCA 1981**

48. Section 28G of the WCA 1981 states:

“(1) An authority to which this section applies (referred to in this section and in sections 28H and 28I as “a section 28G authority”) shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.

(2) The duty is to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.

(3) The following are section 28G authorities—

...

(f) any other public body of any description”. [CB/253]

49. Section 28G WCA 1981 places a duty on DCC to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features of the parts of the commons which overlap with the Dartmoor SSSIs. Notwithstanding this, DCC has confirmed in its PAP Response that it has not been able to identify any documentation from within the last 10 years to evidence that it has even considered this



statutory duty, let alone demonstrate that it has taken any steps to comply with it.

50. By failing to even consider the issuance of limitation notices under regulation 9 of the DCC Regulations – which could of course be limited to just those areas of the commons which fall within one of the Dartmoor SSSIs – DCC has plainly failed to take the reasonable (or seemingly any) steps required by section 28G WCA 1981.

51. As above, the Claimant again acknowledges that an absence of express reference to section 28G WCA 1981 in DCC’s meeting minutes does not necessarily mean it has not been complied with in substance. Examination of the meeting minutes, reveals, however, that DCC has seldom even discussed that large parts of the Dartmoor commons overlap with the Dartmoor SSSIs, nor recognised that DCC needed to be particularly conscious to ensure that it was contributing to the conservation and enhancement of these areas.<sup>7</sup> In these circumstances, it is plainly insufficient for DCC to assert as it has in its PAP Response (and without evidence) that “[DCC] members do discharge these duties generally when taking decisions as the need to protect, conserve and enhance the natural environment of Dartmoor is accepted as being vital to the sustainability of the commons and commoners’ businesses and way of life” (paragraph 14.6). The documentary evidence disclosed simply does not bear this out, and therefore DCC has breached its statutory duty under section 28G WCA 1981.

### **Ground 5: Breach of regulation 9(3) of the Habitats Regulations**

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<sup>7</sup> The Claimant acknowledges that the Dartmoor SSSIs are discussed in the document entitled “The State of the Commons on Dartmoor: a Common Perspective”, disclosed with the PAP Response [CB/203-234]. However, as stated in the PAP Response, “the State of the Commons is not a document that has been produced by [DCC]: it is a document produced by Mrs Ann Willcocks, one of our client’s members, acting in her personal capacity” (paragraph 7) [CB/87].

52. Under regulation 9(3) of the Habitats Regulations, DCC is under a duty to have regard to the requirements of the EU Birds and Habitats Directives when exercising any of its functions:

“Without prejudice to the preceding provisions, a competent authority, in exercising any of its functions, must have regard to the requirements of the Directives<sup>8</sup> so far as they may be affected by the exercise of those functions.” [CB/271]

53. “Competent authority” is defined in regulation 7(1) of the Habitats Regulations and includes “public bod[ies] of any description” [CB/269]. The courts have confirmed that this has a “broad meaning” (*R (Harris) v Environment Agency* [2022] EWHC 2264 at [84]).

54. Article 6(2) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“**the Habitats Directive**”) requires that:

“Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.” [CB/274]

55. As a “competent authority” for the purposes of regulation 9(3) of the Habitats Regulations, in exercising its functions DCC is required to “have regard” to the requirements of the Habitats Directive so far as those requirements may be affected by the exercise of those functions. In relation to the Dartmoor SAC, the requirements of the Habitats Directive include a requirement to take appropriate steps to avoid the deterioration of natural habitats and the habitats of species as well as disturbance of species for which the area has been designated (Article 6(2)).

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<sup>8</sup> “The Directives” is defined in regulation 3 of the Habitats Regulations as “the Habitats Directive and the new Wild Birds Directive”. These are Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora and Directive 2009/147/EC of the European Parliament and of the Council on the conservation of wild birds. Per regulation 3A of the Habitats Regulations, those directives are to be read for the purposes of the Habitats Regulations as if they encompassed the United Kingdom, notwithstanding the UK’s exit from the European Union.

56. As discussed above at paragraphs 6-8, there is large overlap between the commons and the Dartmoor SAC. There is however no evidence that DCC has had regard to the requirement in the Habitats Directive to take appropriate steps in order to avoid the deterioration of natural habitats and the habitats of species for those areas of the Dartmoor SAC falling within its jurisdiction. In fact, by failing to even consider whether to issue limitation notices to control overstocking under regulation 9 of the DCC Regulations, DCC has in effect actively *avoided* taking any such steps.

57. Notwithstanding the accepted absence of any reference to the requirements of the Habitats Regulations in DCC's meeting minutes, DCC again in its PAP Response contends that it has complied with its duty in substance (paragraph 14.6) [CB/92]. This is not borne out by the disclosed documentary evidence, which contains no discussion of the need to take specific steps in order to avoid the deterioration of the natural habitats which formed the basis for designation of the Dartmoor SAC. DCC has therefore failed to have regard to, or even turn its mind to, the requirements of the Habitats Regulations and the Habitats Directive. It has therefore acted unlawfully.

**Ground 6: DCC has acted *ultra vires* the DCA 1985 and/or has acted with an improper purpose**

58. A striking feature of the meeting minutes (particularly those since 2013) provided is that they contain almost no consideration of the statutory duties placed upon DCC by the DCA 1985. This is despite DCC acknowledging itself to be, as put in the minutes of a meeting held on 7 September 2022, "the Statutory Body responsible for the maintenance of the commons". Instead, the minutes indicate DCC to be acting predominantly as a representative body largely preoccupied with the concerns of the commoners in various respects. The Claimant notes, for example, that DCC's website homepage states that DCC was

“established to represent the commoners” [CB/242]. That language appears nowhere in the DCA 1985.

59. One (but by no means the only<sup>9</sup>) example of this can be found in DCC’s meeting minutes dated 1 October 2020 [SB/28-33], in which the following was stated in relation to Okehampton Common (which forms part of the North Dartmoor SSSI) [SB/35]:

“Allegedly, Natural England (NE) has requested that all sheep to [sic] be removed from Okehampton Common from September until spring next year. As yet, Council has not received an official request from Okehampton Commoners’ Association to become involved. However, the Chairman has written to Eamon Crowe, NE expressing his concerns over the purported stories & press reports. He has requested a meeting with NE to try & establish exactly what NE’s future policy is & the implications this may have across Dartmoor.”

Rather than considering the requirements of its own statutory obligations, DCC opted instead (and without invitation) to adopt an advocacy role on behalf of Okehampton Commoners’ Association. DCC has therefore taken it upon itself to advocate on behalf of the people it was specifically established by statute to regulate. There is nothing in the DCA 1985 to indicate that Parliament intended DCC to perform this function.

60. Stepping back, the overwhelming impression given by both DCC’s meeting minutes and its PAP Response is of an organisation which has misunderstood and departed from its statutory purpose. DCC appears to see itself as primarily a representative body for commoners, and as providing a forum in which the concerns of commoners can be discussed. That overlooks the fact that DCC is a public body established by statute and with hard-edged statutory duties that it must comply with. The misunderstanding is particularly apparent from paragraph 13.4 of the PAP Response, where it is stated that “[DCC] sees its role as being to build

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<sup>9</sup> See, for example, the minutes for DCC meetings dated 14 October 2015, 17 February 2021, 7 February 2022, 1 March 2023 [SB/28-33, 44-61].

relationships and work with other stakeholders on Dartmoor in order to conserve and improve the commons and to protect commoners' livelihoods, rather than to seek to exercise its legal powers to unilaterally impose its views on stocking levels" [CB/89]. While a collaborative approach by a public body is welcome, this cannot be at the expense of that public body's statutory responsibilities, which in the case of the DCA 1985, form the very basis for its existence (as per section 3(1) DCA 1985). DCC has apparently overlooked this fundamental point.

61. It is plainly not unlawful for the DCC to take the interests of the commoners into account as a material consideration when discharging its statutory duties. What is unlawful and *ultra vires* the DCA 1985 scheme, however, is for DCC to make the interests of the commoners its primary purpose, in circumstances where it is not discharging – nor apparently even attempting to discharge – the statutory duties in sections 4 and 5 DCA 1985. As such, alongside more specific breaches of its statutory duties, the approach of DCC when taken as a whole reveals an organisation which, in fashioning itself as a representative body for commoners' interests, has stepped beyond its statutory remit and therefore acted *ultra vires*. Alternatively, DCC has acted for an improper purpose not being a purpose of the powers which were conferred on it by the DCA 1985.

### **RELIEF SOUGHT**

62. The Claimant seeks permission for judicial review.

63. At the substantive hearing the Claimant will seek the following relief:

- a. Declarations that DCC has unlawfully failed to discharge its statutory duties under:
  - i. section 4(1) DCA 1985;
  - ii. section 5(1) DCA 1985;

- iii. section 28G WCA 1981; and
  - iv. regulation 9(3) of the Habitats Regulations;
- b. A mandatory order requiring DCC to carry out an assessment of the number of animals which can properly be depastured on the commons pursuant to its duty under section 4(1) of the DCA 1985, and in light of that assessment to issue limitation notices in respect of any area of the Dartmoor commons where the number of animals being depastured exceeds the level that can properly be depastured without damage being caused to the natural environment;
- c. A mandatory order requiring DCC to comply with its statutory duties under section 28G WCA 1981 and regulation 9(3) of the Habitats Directive;

64. The Claimant also seeks its costs of bringing this application.

### **TIMING**

65. DCC has stated in its PAP Response that this judicial review must be “constrained to any alleged failure by [DCC] to comply with its duties within the three month period prior to the date or issue of your client’s claim”. In circumstances where DCC’s unlawful actions are ongoing this is not an issue, because DCC has continued to act unlawfully within the three month period prior to the issuing of this claim. In any event, the Claimant has brought this claim within three months of receiving the EIR Response, which first brought to light most of the issues forming the basis of this claim. As such there is no arguable basis for contending that this claim has been brought out of time, but the Claimant will respond as necessary in its reply to any points made by DCC.

### **DISCLOSURE**

66. The Claimant has been unable to locate a copy of the register required to be maintained by DCC pursuant to section 7 of the DCA 1985. It is requested that this be disclosed alongside DCC's summary grounds of defence.

67. DCC is also requested to disclose any further relevant documentation which it holds as well as provide an explanation in its summary grounds of defence of what steps it has taken to identify and locate material relevant to this claim. DCC will no doubt be mindful of the duty of candour placed upon it.

### **CONCLUSION**

68. The matters raised by this claim are plainly arguable and the Court is therefore requested to grant permission in order that this claim can be heard as soon as the court's timetabling allows. In due course, the court is invited to grant the relief sought at paragraph 63 above.

**Dated** 27 August 2024

**DAVID WOLFE KC**  
Matrix

**JAKE THOROLD**  
39 Essex Chambers

For the Claimant  
 Dr. M Avery  
 First Statement  
 Exhibits: MIA1/1  
 Date: 27 August 2024

**IN THE HIGH COURT**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

**Claim No:**

**BETWEEN:**

**THE KING (on the application of Wild Justice)**

**Claimant**

- and -

**Dartmoor Commoners' Council**

**Defendant**

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**FIRST WITNESS STATEMENT OF DR MARK AVERY**

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I, Mark Avery, of 9 Lawson Street, Raunds, Wellingborough NN9 6NG, WILL SAY AS FOLLOWS:

**Introduction**

1. I am a Director of Wild Justice and I provide this statement in support of our application for judicial review of Dartmoor Commoners' Council ("DCC") failure to comply with its duties under the Dartmoor Commons Act 1985, the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017. The purpose of this statement is twofold, namely: first, to provide information about the Claimant; and, second, to set out some of the factual background to the issues being considered in these proceedings.
2. I have prepared this statement with the assistance of my solicitors, Leigh Day, with whom I have had various email exchanges.
3. I refer to certain documents in this statement using the references: "[CB/x]" and "[SB/x]" where "CB" stands for Core Bundle, "SB" stands for Supplementary Bundle, and "x" is the page number of the bundle.



## My background

4. I was born in Bristol, UK, on 29 March 1958. I am a scientist by training and worked for the Royal Society for the Protection of Birds (“**RSPB**”) for 25 years from 1986 to 2011.
5. I graduated from Cambridge University in 1979 with an upper second class degree in Natural Sciences having studied Applied Biology for my final year. I worked as a research assistant to Dr John Krebs (now Professor Lord Krebs FRS) in the Zoology Department of Oxford University during 1979-80. I then did a PhD based at the Zoology Department of Aberdeen University, supervised by Prof Paul Racey, on the Winter Activity of Pipistrelle Bats (*Pipistrellus pipistrellus*) which I was awarded in 1983. In 1984 and 1985 I held a Natural Environment Research Council Research Fellowship at The Zoology Department at Oxford studying the social behaviour of European Bee-eaters.
6. In 1986 I joined the RSPB's Research Department as a Biologist studying the science behind a range of bird conservation issues such as upland forestry, the conservation throughout the European Union of the Roseate Tern and the impacts of sandeel fisheries on seabird populations. I was promoted to Senior Research Biologist and in 1992 to Head of Science at RSPB.
7. From July 1998 to April 2011, I was the RSPB's Conservation Director with responsibility for strategic direction of RSPB's UK and International conservation work. This involved advocacy of RSPB views and policies to politicians, civil servants etc as well as leading the acquisition by RSPB of land for nature reserves, working with statutory agencies and other interest groups and continuing to have responsibility for the RSPB's science. In this role I was responsible for the RSPB's internal policies and practice on land management on the RSPB's 200 nature reserves across the UK as well as public advocacy to UK governments on policies which affect wildlife including site protection, climate change adaptation and mitigation, land management and water quality, all of which are relevant to this legal challenge.
8. I have published numerous scientific papers and articles in a wide range of journals including Nature, Journal of Animal Ecology, Journal of Applied Ecology etc. My scientific expertise is generally in ecology and behaviour.

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9. Since leaving the RSPB in 2011 I have written and published books, all with themes of birds and nature conservation: *Blogging for Nature* (self-published 2011), *Fighting for Birds* (Pelagic Publishing, 2012), *Behind the Binoculars* (with Keith Betton, Pelagic Publishing, 2013), *A Message from Martha* (Bloomsbury 2014), *Inglorious; conflict in the uplands* (Bloomsbury, 2015, second edition 2016), *Remarkable Birds* (Thames and Hudson 2016), *Behind More Binoculars* (with Keith Betton, Pelagic Publishing, 2017) and *Reflections: what wildlife needs and how to provide it* (Pelagic Publishing, 2023).
10. I have also written for wildlife magazines including a monthly column, *The Political Birder*, for *Birdwatch* magazine since 2011, a regular column for *British Wildlife* magazine, and less regularly or more distantly for *BBC Wildlife* magazine, *The Field*, *Hillwalking UK*, *Wild Travel* magazine, *British Birds* and occasionally for national newspapers *The Guardian*, *The Independent*, *New European*. For a decade after I left the RSPB I authored a blog called *Standing Up for Nature* which discussed current conservation issues and news. I now co-author the *Wild Justice* blog and regular newsletters.
11. I have also worked for a variety of environmental non-governmental organisations as a consultant during the past 10-15 years.
12. In summary, I am a scientist with a love of nature and a long track record of involvement in nature conservation over 40+ years with a particular interest in and some expertise on issues surrounding the management of upland areas.

### **Wild Justice**

13. *Wild Justice* is a not-for-profit company incorporated on 26 October 2018 (Company number 11645788) that advocates on behalf of wildlife. *Wild Justice* was established in order to further nature conservation in the United Kingdom, encourage public participation in nature conservation issues and ensure that UK laws, policies and practices protect wildlife and to use the UK legal system to further nature conservation objectives. Along with myself, the directors of *Wild Justice* are Dr Ruth Tingay (a researcher and wildlife conservationist) and Chris Packham (broadcaster, photographer, author, campaigner and naturalist who was awarded a CBE for his services to nature conservation in 2019).
14. *Wild Justice* undertakes a variety of activities in pursuit of its objectives, including the taking and support of selective legal actions of strategic importance. Since its

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establishment in 2018, Wild Justice has taken legal action on the operation of the General Licences in England, Wales and Northern Ireland, Badger culling in England and Northern Ireland, the passage of the Heather and Grass etc Burning (England) Regulations 2021 and the annual introduction and licensing of some 60 million non-native gamebirds into the countryside.

15. In what follows, to help the court, I set out the background to the issues in this case and then move on to explain our involvement in the events leading up to this application for judicial review.

### **This legal challenge**

16. As the court will recognise from the above, I am a scientist by training and Wild Justice is an organisation which campaigns for environmental outcomes; we are not lawyers. However, we fully understand that the courts are not the place for Claimants and Defendants to argue detailed matters of science. And so the key issues which we would ask the court to consider are legal ones which relate to the legality of DCC's failure, we say, even to address its mind to the subject of regulating grazing pressure on the Dartmoor commons.
17. In what follows I set out my understanding of some of this history of the management of Dartmoor. I do that to provide the court with some understanding of the context for the matters which I understand the court needs to decide (relating to the Defendant's current approach to its legal obligations), not because I think the court needs to make determination in relation to any matters I raise other than the legal issues raised by the claim.
18. I also set out my understanding of some of the causes of the deterioration of nature on Dartmoor, including (but not limited to) overgrazing. In doing so I am agreeing with conclusions reached by Natural England, one of the bodies (along with the Defendant) with responsibilities for grazing levels on Dartmoor. I understand from the Defendant's response to our pre-action correspondence that the Defendant does not entirely agree with those conclusions (including expressing doubt about what Natural England has said).

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19. I am well aware of the way in which judicial review works and so well aware that it is not the court's role to adjudicate on any such disagreements. To be clear: we are not asking the court to adjudicate on any disagreement about the impact of current grazing levels (or related matters). The point (and a key point in our claim in the light of the pre-action response) is that the Defendant also has (so we are advised) statutory obligations in relation to grazing levels and their impact on nature; part of its explanation for its (lack of) activity on those things is its disagreement with Natural England about grazing impacts; and yet it has not investigated those things let alone reached its own, evidenced and sustainable conclusions. Accordingly, I present the material to show that, on the Defendant's own explanation, there are things which it needs to investigate, and yet – unlawfully, so we are advised – it is failing to do so.
20. We are concerned here with Dartmoor, an upland area of southwest England whose importance for nature conservation is made manifest by the high coverage of designations of nature conservation importance, most notably Sites of Scientific Interest (SSSIs) which came into existence following the National Parks and Access to the Countryside Act 1949 and Special Areas of Conservation (SACs) which were designated by the UK government following the adoption of the European Union Habitats Directive (more formally known as Council Directive 92/43/EEC on the Conservation of natural habitats and of wild fauna and flora).
21. In April 2024, Wild Justice had a meeting with Guy Shrubsole (author and environmental campaigner) and his colleague Tony Whitehead to discuss the parlous state of the SSSIs making up the Dartmoor SAC. We were aware of concerns about the decline in condition of the SSSIs and that Natural England's ("NE"), the statutory nature conservation body for England) attempts to address overgrazing had been met with considerable resistance from farmers and MPs.
22. Following our meeting, Guy and Tony submitted a request for Information to DCC under the Environmental Information Regulations 2004 on 17 May 2024 [CB/248-250]. The letter requested that DCC confirm first that Regulations to regulate stocking prepared under Section 5 of the Dartmoor Commons Act 1985 ("the 1985 Act") remain in force and also whether DCC had made any other regulations or rules under the Act relating to stocking levels on Dartmoor. In particular, DCC was asked if it had made any limitation notices in relation to stocking levels. The request also sought copies of any documents showing how

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DCC had taken into account any of the following when it comes to controlling stocking levels (including its consideration of regulation 9 and in the making of limitation notices: (i) the conservation and enhancement of the natural beauty of the area (as worded in the Act); (ii) section 28G of the WCA 1981; and (iii) regulation 9(3) of the Habitats Regulations.

23. DCC responded on 24 June 2024. It questioned whether it was a public body for the purpose of responding to the EIRs, but nevertheless provided the information requested. The response confirmed that the Regulations prepared under Section 5 of the 1985 Act remain in force, but that DCC has not issued any limitation notices in relation to stocking levels during the past 10 years. In relation to the request for documentation showing how it had taken account of duties under the 1985 Act, the WCA 1981 and the Habitats Regulations, DCC confirmed that it held no such documentation.

#### **The Dartmoor Commons Act 1985**

24. DCC was established by the Dartmoor Commons Act 1985 following widespread concerns about excessive over stocking and poor animal care on the commons. As I understand it, DCC is financed by a fee levied on both active graziers and non-active right holders listed on their register. The fee used to be 72p per animal for active graziers and 12p per head for non-active graziers, but this may have increased since then.

25. The Act also established public access for Dartmoor which meant that the Dartmoor National Park was largely unaffected by the right to roam provisions of the Countryside and Rights of Way Act 2000.

26. I have read the 1985 Act carefully and although the language is somewhat unfamiliar to me, my strong impression is that the DCC was set up in order to maintain and promote 'proper standards of livestock husbandry' amongst other things and it is clear to me that the drafters of the legislation, and therefore Parliament, had in mind ensuring that over-grazing did not occur. Part III of the Act, entitled 'Regulation of the Commons', states 'Subject to this Act it will be the duty of the Commoners' Council to take such steps as appear to them to be necessary and reasonably practicable for the maintenance of the commons and the promotion of proper livestock husbandry thereon (including the assessment of the number of animals which can properly be depastured on the commons from time to time) and in discharging that **duty** the Commoners' Council shall **have regard**

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**to the conservation and enhancement of the natural beauty of the commons'** (my emphasis in bold). Later in Section III (section 5.1.a.ii) the Act states that 'The Commoners' Council **shall make regulations** to ensure that the commons are not overstocked and, for that purpose, may fix or provide for the fixing of the number of animals or animals of any description which from time to time may be depastured on the commons by way of right of commons or of any other right or privilege' (my emphasis in bold). There are also other references to overstocking and what DCC should do to prevent overstocking.

27. Parliament would have been well aware of the concept of the 'tragedy of the commons' where if people have unlimited access to a finite common resource (for example fish stocks) then the likelihood is that they will overexploit the resource to the detriment of all. The solution to such unwelcome outcomes is either voluntary restraint (which suffers from the free-loader problem (where it is always in the selfish short-term interest of an individual to exploit the restraint of others by continuing to overexploit the resource)) or wise regulation. It appears to me that the 1985 Act envisaged DCC as a source of wise regulation. However, the composition of DCC is largely, as the name suggests, commoners, and they arguably are the vested interest with most to gain in the short term from the absence of wise regulation.

#### **Dartmoor and its nature conservation importance**

28. Dartmoor is the largest upland in Southern England; a beautiful landscape, much loved by millions of visitors who come to immerse themselves in nature. The area commonly referred to as Dartmoor is well-reflected by the boundary of the Dartmoor National Park, bounded by the A38 to the north, the A36 to the south and east and the A386 to the west.

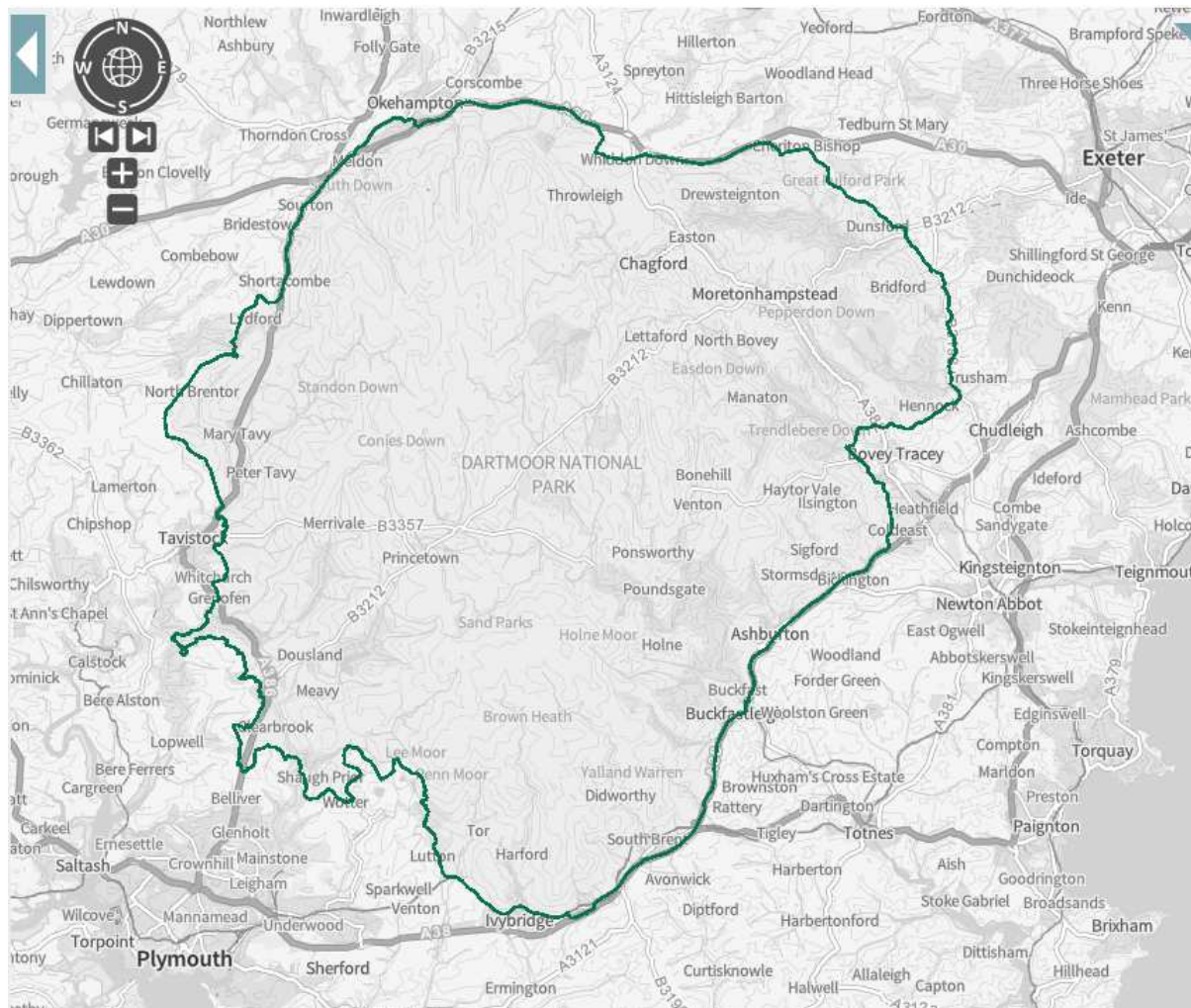


Figure 1: The boundary of the Dartmoor National Park (source: DEFRA Magic Maps website).

29. Dartmoor National Park covers an area of 95,000 hectares (roughly two-thirds the size of greater London). This includes 46,000ha of moorland framed by steep intimate wooded valleys and a pastoral moorland fringe and within that moorland area 36,000ha (c78%) is registered common land.

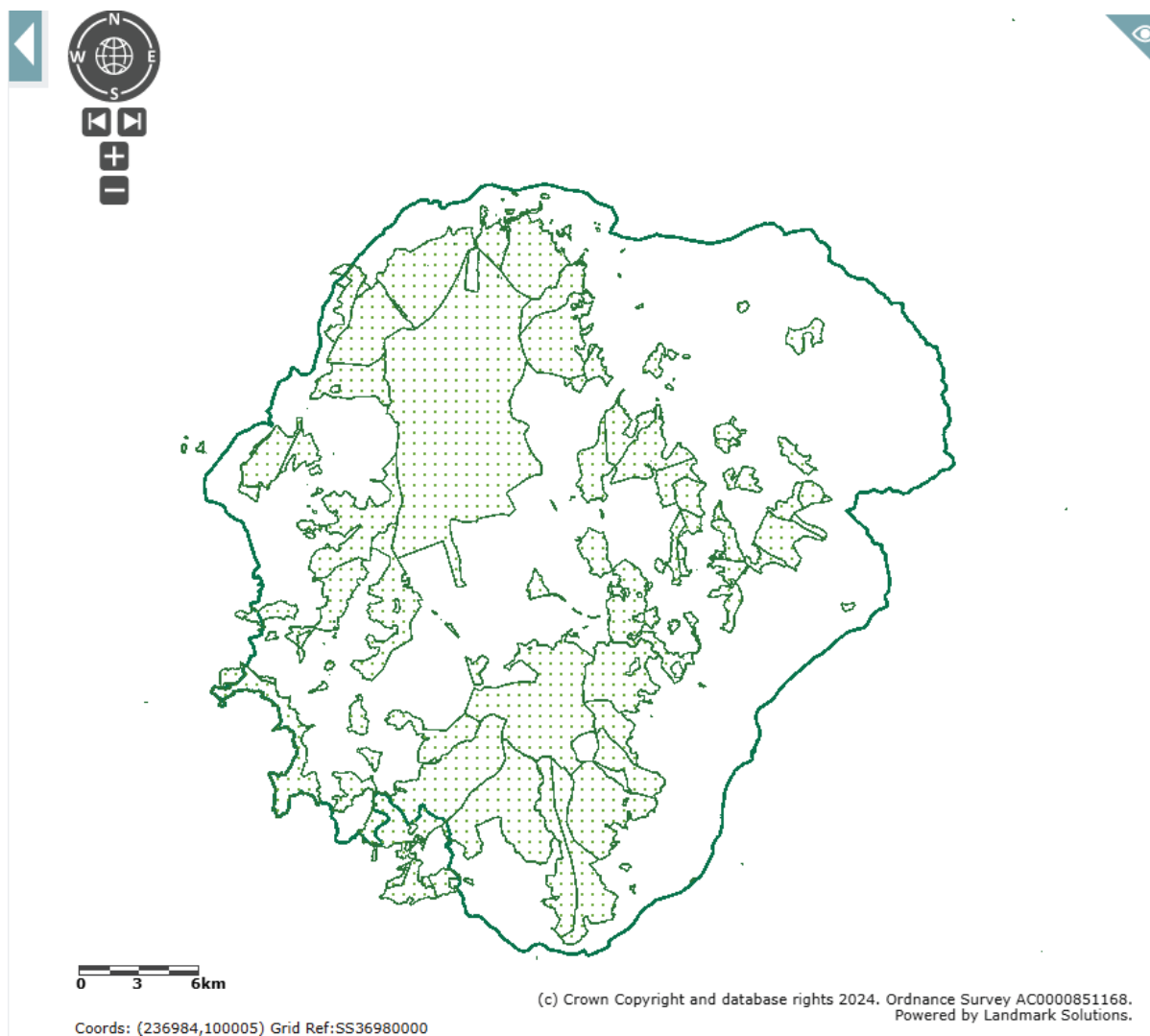


Figure 2: the extent of registered common land within the Dartmoor National Park (source: DEFRA Magic Maps website)

30. Parts of this common land comprise areas of nationally and internationally important habitats such as blanket bog, wet and dry heath, and Atlantic oak woodland. Its ecological importance was recognised by the notification of many SSSIs in the 1950s, their renotification in the 1980s, and later the designation of much of the common land area as sites of European importance for nature (Special Areas of Conservation, SAC).



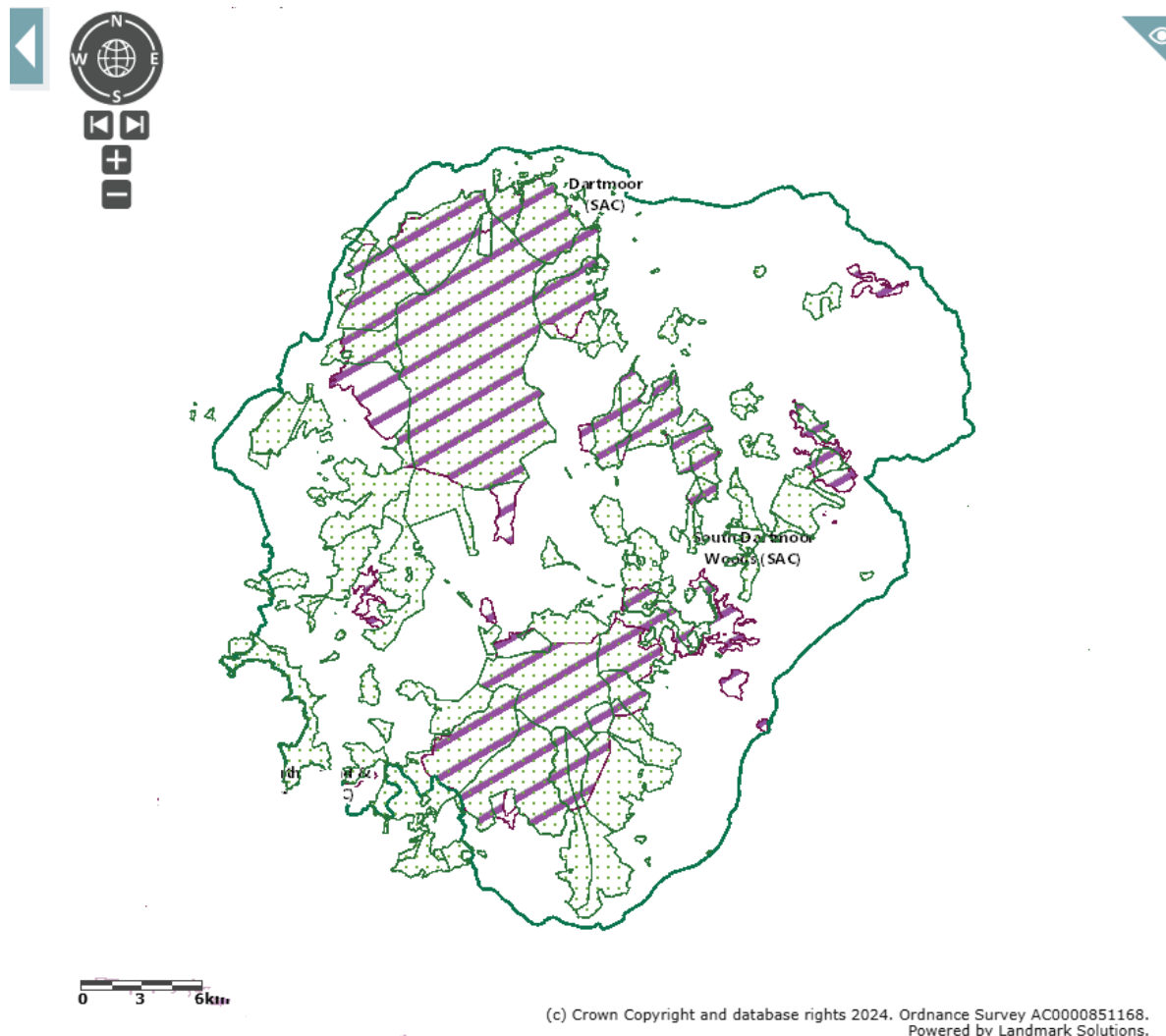


Figure 3: the overlap of common land (green stippling) and Special Areas of Conservation (purple hatching) within the boundary of the Dartmoor National Park (green boundary line). There are three SACs within the boundary of the Dartmoor National Park: the small (127ha) South Hams SAC which does not overlap any common land, the South Dartmoor Woodland SAC (2159ha) – which is not wholly in the south of Dartmoor and far from wholly woodland – which does overlap to some extent with common land, but primarily the large Dartmoor SAC (23,159ha) which overlaps very significantly with the large upland block of common land in the north of the National Park and also with the large upland block of common land in the south of the National Park (source: DEFRA Magic Maps Website).

31. SACs are the top of the tree of nature conservation designations in the UK. Such designation is given to the most important sites and carries with it higher legal protection than is given to, for example, SSSIs, National Parks, NNRs, Local Wildlife Sites etc. The

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very wide extent of SAC designation across wide swathes of upland Dartmoor indicates the high importance of these areas not just in an England or UK context but in an international context. It would be hoped that this would lead to all bodies with a role to play in the conservation of Dartmoor's wildlife ensuring that nature is indeed thriving in these areas.

32. The striking thing from this map is that the areas selected as being of highest nature conservation importance on Dartmoor, and designated as SACs by government, are mostly registered common land. This demonstrates their nature conservation importance and potential at the time of designation back in the 1990s.
33. All of the area designated as SAC is also notified as SSSI but additional areas of common land are SSSI but not SAC. I will spare the court a complicated map which shows the overlap of common land, SAC and SSSI but I will come back to the condition of the SSSIs.
34. The take home message from this section is that the areas of land identified by government and its agencies many years ago for their high nature conservation importance overlap to a very significant extent with the existing area of common land. Thus, to maintain the nature conservation importance of these areas the management of those common grazings must be compliant with nature conservation objectives.

### **Agriculture on the Dartmoor Commons**

35. Much of what follows in the first part of this section on agriculture is a shortened and edited version of the account set out in the 2023 Fursdon Review, which looked at the relationship between protected areas (such as SSSIs and SACs) and land management (mostly upland grazing and burning) on Dartmoor [CB/144-179]. Much of this history should be common ground between ourselves and the Defendant given that they attached the Fursdon Review to their PAP response. I add details of my own where I feel they may help the court. I then go on to discuss the setting up of the Fursdon Review, its recommendations and the previous government's response to the report in order to bring the story up to date.
36. There are 92 separate registered commons on Dartmoor, mostly bordering the central high ground of the Forest of Dartmoor, which is the largest common on the moor at 11,200ha.

Most of the commons have no physical boundaries so, without shepherding, animals can stray freely between them.

37. Commoners' rights go back to medieval times where the lord of a manor could grant rights to occupiers of land on his (and it would have been his) manor to other areas of his manor. Such rights might be grazing, collecting firewood, fishing etc and those rights might be given to a number of different nearby occupiers to exercise on the same area of land. Rights come with property, and since 1965 are formally registered with the county council (and argued over). Each rights holder has a maximum number of cattle, sheep, and ponies he/she can depasture on the commons. Many more people have rights than exercise them. Rights are often exercised on more than one common, especially between the "home" commons and the large central Forest of Dartmoor Common, owned by the Duchy of Cornwall.
38. There are 54 commons owners on Dartmoor (these are the equivalents of the ancient lords of the manors). The largest of these is the Duchy of Cornwall, which has owned the Forest of Dartmoor and some adjacent commons since 1332. Other owners include private individuals and families, the Dartmoor National Park Authority ("DNPA"), the Ministry of Defence, NE, the National Trust, other non-governmental organisations, and water and mining companies. There are about 850 registered commoners, of whom it is estimated less than 20% are active graziers.
39. Traditionally, Dartmoor was managed through pastoralism and summer-grazing transhumance (the seasonal movement of livestock between fixed summer and winter pastures). Animals, particularly cattle, were taken on to Dartmoor to graze in summer and then returned to their home holdings to over-winter. The number of animals that a grazier could turn out on a common was determined by the capacity of their home holding to manage that stock through the winter (known as 'levancy and couchancy').
40. From the late nineteenth century, increasing international competition caused this pattern of management to break down. The summer grazing of stock from other parts of Devon gradually ceased and Dartmoor farmers started experimenting with the introduction of hardy varieties of sheep (such as Scottish Black-Faced sheep and Herdwicks or Swaledales) and cattle breeds able to stay out on the moor all year. By the mid-twentieth

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century, the practice of leaving animals to graze on the moor over winter had become well established.

41. The passage of the Commons Registration Act 1965 was an attempt to codify the legal basis of commons grazing in England and Wales. This process was only partially successful on Dartmoor, the result of which was the creation of more grazing rights than could reasonably be accommodated on Dartmoor's commons, removing a potential constraint on stocking numbers. The UK's accession to the then European Economic Community and the operation of the Common Agricultural Policy became a further significant de-stabilising factor. The introduction of headage payments for sheep and cattle encouraged increased stocking on Dartmoor's commons still further.
42. As graziers increasingly responded to the economic incentives on offer, the impact on the commons was negative, with increased swaling (burning of vegetation to stimulate the growth of palatable grass) and high year-round stocking rates being maintained through environmentally damaging practices. The result (recognised by both farmers and environmentalists) was significant environmental and ecological damage to the SSSIs.
43. The Government introduced various agri-environment schemes in the 1980s to counter intensification but in the case of Dartmoor, I think uniquely, also brought in the 1985 Act (see above) which also established DCC. The Agriculture Act 1986 provided for the designation of Environmentally Sensitive Areas ("**ESAs**") and the first tranche of sites were established in 1987. Dartmoor was one of the last ESAs to be set up, only in 1994, and most Dartmoor commons entered into ESA agreements, agreeing significant stocking reductions and the removal of over-wintered stock. It is reported by the Fursdon Review that cattle and sheep numbers dropped by 50% across all commons [**CB/156**]. For most commoners, ESA agreements were their first experience of entering into a formal collective agreement for the management of their commons.
44. In 2005, the Environmental Stewardship Regulations made under the Environment Act 1995 replaced ESAs with a new generation of EU-funded Environmental Stewardship agreements. Commons were directed towards Higher Level Stewardship ("**HLS**") schemes, with the aim of delivering a range of environmental outcomes including the delivery of SSSI Favourable condition (i.e. the special interest features for which the SSSI was designated are in a healthy state). For some agreements, grazing was adjusted to reduce the impact on heathland vegetation and help control Purple Moor-grass expansion,

explore how shepherding could be used to even out grazing pressure and address the continuing effect of historic peatland drainage.

45. NE Advisers provided individual support for the drawing up of 10-year HLS agreements with the various Commoners' Associations around Dartmoor. These were introduced on Dartmoor with the negotiation of further reductions in stocking rates.

46. By the early 2020s, Environmental Land Management Schemes (“**ELMs**”) were being introduced across England. As ELM was being introduced, Defra ministers decided to offer existing English HLS scheme members the opportunity to extend their agreements for up to 5 years. To ensure value for money and comply with statutory obligations, extensions can only be offered where NE confirmed the agreements are achieving their objectives. On Dartmoor, NE concluded that the very low proportion of SSSI units in Favourable condition meant it could not give those assurances and discharge its statutory responsibilities without the commons concerned agreeing to make further significant management changes and reductions in stocking rates. I understand that the major issue related to NE's feeling that there needed to be a considerable reduction of winter grazing by sheep.

47. The commoners responded angrily, with pre-existing tensions spilling over and their future participation in Agri-Environment Schemes being thrown into question. This culminated in 2023 with the MP for Torridge and Tavistock, Sir Geoffrey Cox MP, sponsoring a Westminster Hall debate on the issue. A group of Senior Conservative MPs led by Sir Geoffrey Cox also suggested NE should be stripped of their powers, with the former Secretary of State for the Environment, George Eustice MP, proposing ministers should take decisions about SSSIs, having taken advice from NE and others, in order to “*restore accountability*” [CB/128].

48. In the wake of the controversy, Defra ministers commissioned a review of protected site management on Dartmoor. To give the review time to report, the 5-year extension period was split into two separate periods of 1 year and 4 years (1 plus 4). For most agreements, limited or no change would be required in the first year of the extension. The recommendations from the review would inform the changes requested for the remaining 4 years. Once this was known, commoners would then decide whether to continue in agreement without affecting the payments received for the first year.

### The Fursdon Review

49. The Defra review was led by David Fursdon, a former chair of the Country Land and Business Association. Together with a panel of eight advisers, the review consulted local farmers, statutory bodies and stakeholders to attempt to provide an independent perspective on the management of the protected sites on the moor. In particular, see para 1.3: *'Ministers have asked us to look closely at the negotiations going on over the extension of current Higher-Level Stewardship (HLS) agreements and to recommend how the current impasse between Natural England and Dartmoor commoners can be resolved.'* [CB/148].
50. This independent group was given a seemingly impossible task given the strength of feeling and animosity over land management on Dartmoor. The group met first in August 2023 and published its report in an extremely short timescale on 18 December 2023.
51. The Defendant in this case is hardly mentioned in the Fursdon Review although it is mentioned (para 10.7) [CB/162] that DCC has powers to make regulations to prevent overstocking but this almost appears as an afterthought. Compared with the long discussion of the failure of commoners and NE to agree a way forward (and a brief, almost passing, mention of the power of DCC to impose grazing restrictions), the Fursdon Review makes it seem as though the DCC is not really a player in this conflict.
52. The Fursdon Review recommended the delivery of a Dartmoor-wide, landscape level, vision, supported by a clear delivery strategy. The Review recognised that the already existing Dartmoor National Park Authority's Partnership Plan provides such a vision, but that it should be reinforced by the creation of a Land-Use Management Group ("LUMG") sitting outside the governance structure of the DNPA. The LUMG would facilitate the development of a plan to improve SSSI condition and deliver government targets on Dartmoor. It would be independently chaired and include both key stakeholder organisations and commoners' representatives in membership. Relevant government agencies and arm's length bodies (including NE) should also be represented and *"be fully committed to the success of the group"* [CB/172]. This appears to us to be an ambitious idea of getting the same people round a different table where discussions around previous tables have not been fruitful, in circumstances where the power to regulate for required

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outcomes already exists. The solution to the poor state of wildlife on Dartmoor is not another talking shop, but rather requires all regulators, which have been given powers by Parliament, to enforce measures that will bring Dartmoor's wildlife into the state that existing legislation and government targets require.

53. The Government published its response to the Fursdon Review on 10 April 2024 [CB/180-202]. The Response agreed the DNPA Partnership plan provides the strategic vision needed to make progress on Dartmoor, but that the plan alone was not sufficient. It agreed therefore that Dartmoor's governance could therefore be 'reinforced' through the creation of a LUMG tasked with developing a multi-functional land use framework and a land-use plan for Dartmoor. In particular, the response recognised a role for Defra in facilitating the implementation of a LUMG. Defra would appoint an independent chair supported by a secretariat, provided by the DNPA (and funded by Defra) in the day-to-day running of the group. The group was tasked to run for two years, starting in autumn 2024 to help inform the next steps for future agri-environment agreements in 2025.

54. This seems an inadequate response to one of the few uncontested views set out in the Fursdon Review (para 12.1): 'Dartmoor is not in a good state' [CB/164].

### **The condition of Dartmoor**

55. In this section, I set out in more detail the current condition of the SSSIs making up the Dartmoor SAC and explain how overstocking and grazing at inappropriate times of the year adversely impacts the features for which the SSSIs and the SAC are notified.

56. NE assesses the condition of SSSIs sites, or more specifically units within them, with the target of carrying out such assessments at least every 6 years (many assessments are however much older than 6 years, as shown in the Wild Justice report A Site for Sore SSSIs [CB/130-138]. Condition is assessed by NE against the following categories:

- a. **Favourable** - habitats and features are in a healthy state and are being conserved by appropriate management;
- b. **Unfavourable (recovering condition)** - if current management measures are sustained the site will recover over time. This has been used as a default status for SSSIs when a management plan or agreement about their management has been agreed, whether or not there has yet been real progress on the ground;

- c. **Unfavourable (no change) or Unfavourable (declining condition)** - special features are not being conserved or are being lost, so without appropriate management the site will never reach a Favourable or recovering condition; or
- d. **Part destroyed or Destroyed** - there has been fundamental damage, where special features have been permanently lost and Favourable condition cannot be achieved. This is a rare condition and does not apply as far as I can see to any of the Dartmoor SSSIs.

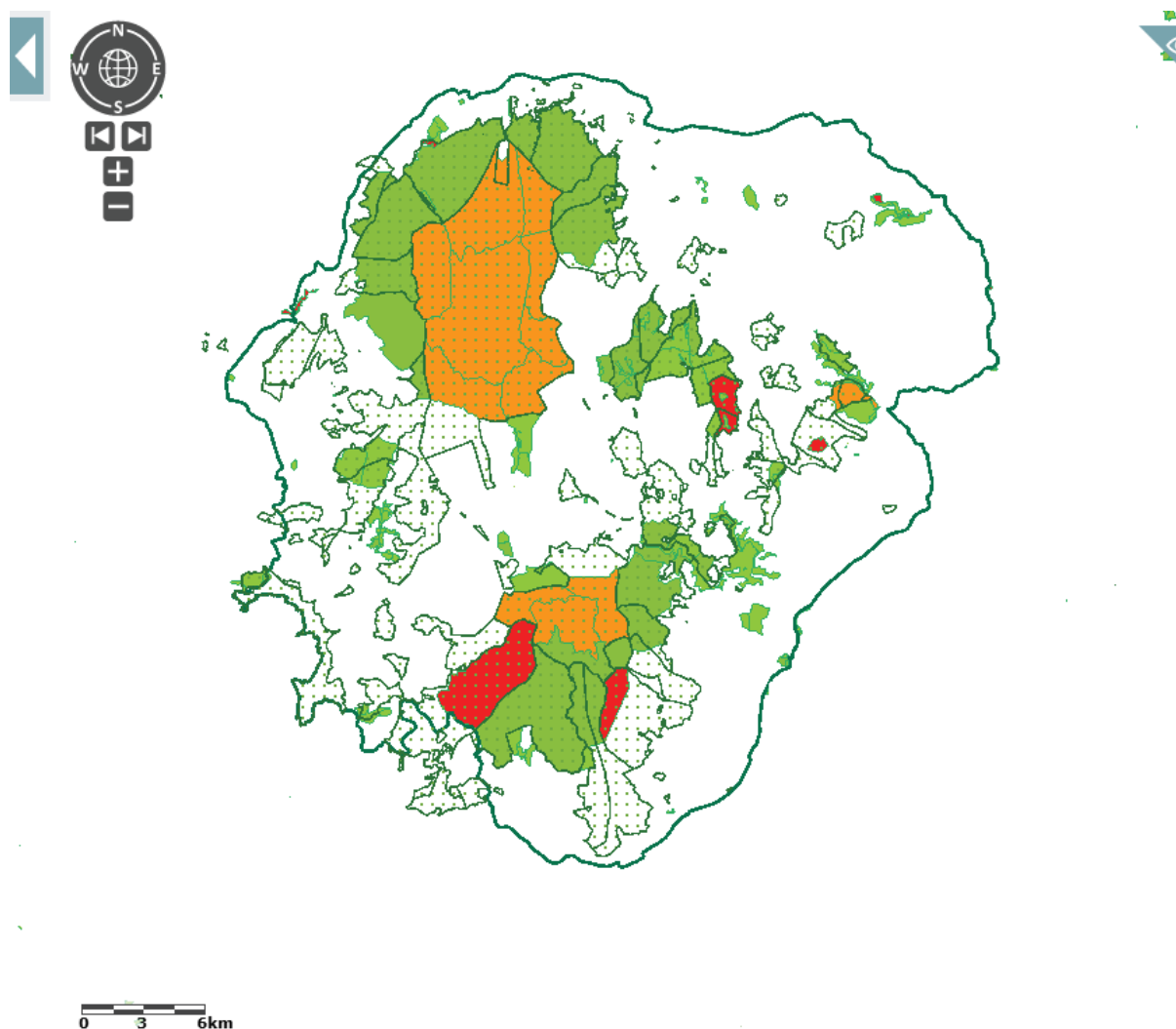


Figure 4: the overlap of common land (green stippling) and SSSI units (light green, dark green, orange and red shading) within the boundary of the Dartmoor National Park (green boundary line). The colours indicate NE's assessment of the condition of the SSSI units: red: Unfavourable declining; orange: Unfavourable, no change; dark green: Unfavourable recovering; light green: Favourable (source: DEFRA Magic Maps)



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57. Not all of the commons are also SSSI – these are the stippled areas identified in Figure 4 which are not shaded in any colour. The stippled areas (commons) also shaded light green are in Favourable condition. It can be seen that these are in a small minority (and indeed, many of the light green areas are not also commons). The vast majority of the commons are in Unfavourable condition, either allegedly recovering or not recovering or getting worse. This is indeed a parlous state of affairs for sites which have been designated for their nature conservation importance for decades and are in a National Park and in theory have a number of statutory bodies, including the Defendant in this case, with a duty to look after their nature conservation interest. Above, I wrote ‘allegedly’ for the classification of ‘Unfavourable recovering’ because one way to be classed as ‘recovering’ is for there to be a management agreement covering the land in question regardless of whether that agreement is being honoured and implemented and regardless of whether the implementation is effective. Indeed, as the Fursdon Review has commented (para 8.9) [CB/158], ‘We have found this to have been the default status for SSSIs at the point when they were brought under agreement’, which is another way of saying that the ‘recovering’ status is not based on biological evidence of recovery, merely on the presence of a plan. Elsewhere (para 12.10) [CB/165], the Fursdon Review states that ‘NE local advisers have explained to us that, when the first round of HLS agreements was negotiated on Dartmoor, they would have liked to set lower stocking rates to conform with NE guidance on HLS moorland grazing rates. However, they were constrained from doing so by the need to secure take-up of agreements’, which means that the plans agreed were not adequate to secure recovery and compromises were made on biological outcomes in order to be able to show that large numbers of agreements had been secured.

58. The 2023 Defra Environment Improvement Plan set the target to bring 75% of English protected sites into Favourable condition by 2042, with interim targets for 2028 [CB/232-233]. It seems highly unlikely that Dartmoor will contribute much to this legally binding government target unless things change.

59. Table 1 (below) shows the current (as of late autumn 2023) condition assessment of Dartmoor’s SSSIs whether or not they be commons or not. It is taken from the Fursdon Review [CB/156]. The Fursdon Review does not consider all of the SSSIs within the Dartmoor National Park but rather focuses on a sensible subset of the main upland blocks of SSSI (and those which underpin the Dartmoor SAC). Since the condition assessments

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are ongoing (but slow) the details may be slightly different now compared with late 2023 but from my inspection of the database they are not very different.

SSSI	Total area (ha)	Favourable area (ha)	Unfavourable area – recovering (ha)	Unfavourable area – no change (ha)	Unfavourable area – declining (ha)
North Dartmoor	13,559.36	29.89	6,275.02	7,254.45	0
South Dartmoor	7,113.77	318.74	3,679.30	1,589.61	1,526.13
East Dartmoor	2,111.36	845.17	992.31	0	273.88
Dendles Wood	49.88	48.25	1.64	0	0
Tor Royal Bog	59.18	24.48	34.69	0	0
Wistman's Wood	267.9	267.9	0	0	0
<b>Total area</b>	<b>23,161.45</b>	<b>1,534.43</b>	<b>10,982.96</b>	<b>8,844.06</b>	<b>1,800.01</b>
<b>Percentage of total area</b>	<b>100%</b>	<b>6.62%</b>	<b>47.42%</b>	<b>38.18%</b>	<b>7.77%</b>

60. These data are publicly available and can be reviewed on Natural England's Designated Sites Database [CB/103-121].

61. Table 2 [CB/159-160] shows, for the six SSSIs selected by the Fursdon Review, the breakdown of SSSI condition category according to whether the land is a registered common or not. The data on condition are publicly available and can be found by inspection of the NE Designated Sites Database and the overlap with registered common land can be ascertained by inspection of the map layer of Registered Common Land in the DEFRA Magic Maps Website which was used to produce Figures 1-3 (above) and Figure 4 below.

	Total	Favourable	Unfavourable – recovering)	Unfavourable – no change	Unfavourable – declining
<b>Area (ha)</b>	23,161.45	1,534.43	10,982.96	8,844.06	1,800.01
<b>% Area which is common land</b>	92%	56%	90%	100%	100%

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<b>% Area which is not common land</b>	8%	44%	10%	0%	0%
----------------------------------------	----	-----	-----	----	----

62. What leaps from this breakdown of the publicly available figures is that 92% of the area of the six main Dartmoor SSSIs is common. Therefore, whatever the state of those SSSIs it would be wise to see commons management or mismanagement as an important factor and the Defendant clearly has a duty and some powers to play a role in that.

63. Second, and to emphasise the importance of common land in SSSI condition, the distributions of SSSI condition categories across common and not-common land are very different. Despite making up 92% of the area of these SSSIs, only 56% of the land in Favourable condition is on common land whereas the non-common land covers only 8% of the SSSI area and yet contains 44% of the land in Favourable condition. Likewise, of more than 10,000 ha of land in Unfavourable Declining or Unfavourable No Change condition, all of it is on common land and none of it is on non-common land.

### **The role of grazing in SSSI condition**

64. Many biological, physical and human factors can affect the condition of SSSIs. For the Dartmoor SSSIs these will certainly include climate change, invasive non-native species, grazing by domestic and/or wild animals, fires (whether caused naturally by lightning, accidentally (or deliberately) by tourists, in order to influence the sward for grazing animals), and physical disturbance by people and traffic. For each of the six SSSIs underpinning the Dartmoor SAC there is a NE document known as the 'Operations Likely to Damage' list which indicates the operations which an owner or occupier might wish to carry out but which must be consented by NE. It is notable that all six documents have grazing as number 2 in the list [CB/103-121].

65. The condition of the Dartmoor SSSIs and the factors affecting it have been clearly set out in two blogs by NE staff; the first by Area Manager Wes Smyth in March 2023, Nature on Dartmoor [CB/122-127] and the second by NE Regional Director, Dave Slater in July 2023 Dartmoor: achieving a future with thriving agriculture and nature [CB/139-143]. These are

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both easily understood articles which seem to me to capture much of the issues around management on Dartmoor in an accessible manner.

66. High levels of grazing, levels so high as to damage the vegetation that the SSSI designation seeks to protect and enhance, have long been an issue on Dartmoor. The 1985 Act to which I referred earlier in this witness statement (paragraphs 24-27) was clear about the powers it was giving to the Defendant to limit overgrazing and conserve the natural beauty of Dartmoor. Moreover, the HLS agreements sought by NE (see earlier (paragraph 44)) were designed importantly and in large part to reduce grazing pressure (although it is clear that NE has failed to achieve the reductions in grazing that it feels are necessary to carry out its duties).
67. The NE Sites register has commentary, albeit often highly technical commentary, on the role of overgrazing on SSSI conditions. For example, the entries for two SSSI Units (Upper Plymouth Estate (1253ha) and South Brent Common (272ha), both of which are located on common land) within the South Dartmoor SSSI, both carry the label Agricultural Overgrazing (in capitals) as the reason for poor condition [CB/119-120]. Noticeably, the Plymouth Estate assessment comes from very recent 2023 data [CB/120]. The detailed assessment criteria for SSSI units contains multiple mentions of high browsing pressure, lack of indicator species and low coverage of vegetation, all signs of overgrazing. In SSSI units which are truly recovering there is often mention of reductions in grazing having contributed to biological recovery.
68. The NE Sites register contains information on the condition (Favourable, Unfavourable Recovering, Unfavourable No Change and Unfavourable Declining) of 64 individual SSSI Units which make up the six SSSIs which largely comprise the Dartmoor SAC. Of these, 23 are judged by NE to be in Favourable Condition. Of the remaining 41 units, one was damaged by Heather Beetles, one was damaged by Bracken (often itself a sign of past overgrazing), two were deemed to be truly recovering, for three Units there was no information and for four units the information given I deemed to be unclear as to the main reason for the classification. That left 30 Units where I judged that the information published by NE allowed me (or someone with similar or greater understanding of the issues) to judge the main reason for the Unfavourable assessment. Of these 30 Units I judged, on the basis of the information given by NE, that for 14 SSSI units covering 8,929ha or 39% of the Dartmoor SAC, the presence of *Molinia* was the main reason for

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Unfavourable condition and for a slightly larger number, 16 SSSI units, and for a slightly larger area covering 9,273ha, or 40%, of the Dartmoor SAC, grazing pressure was the main reason for Unfavourable condition.

69. I based this assessment on factors such as the fact that measures of the percentage of dwarf shrub heath being browsed of up to 33% are normally used by NE to indicate acceptable browsing pressure. Many of the Units on these Dartmoor SSSIs had % dwarf shrub browsing of over 50% and some much higher levels.
70. So that my assessment is completely transparent to the court, the 16 SSSI Units I judged, on the basis of NE's assessments, to be suffering from overgrazing are: East Dartmoor, Units 22 and 24 [CB/107]; North Dartmoor, Units 74, 75, 76, 77, 78 and 79 [CB/112-113]; South Dartmoor, Units 8, 9, 57, 61, 62, 63, 65 and 67 [CB/118-121].
71. For completeness, the 14 Units which I judged, on the basis of NE's assessments, to have *Molinia caerulea* (Purple Moor-grass) as the main reason for their Unfavourable condition were: East Dartmoor, Units 7 and 24 [CB/104, 107]; North Dartmoor, Units 83, 84, 85, 86, 87, 88, 89 and 90 [CB/113-116]; South Dartmoor, Units 58, 59 and 60 [CB/119-120]; and Tor Royal Bog, Unit 2 [CB/110].
72. David Slater's blog contains the following succinct summary of the widespread problem across Dartmoor "*During the winter when grass availability is reduced sheep will browse the new growth of heather and bilberry. This grazing pressure will, over time, lead to a sharp decline in heather cover. [short passage omitted here to which I will return below] ... In some areas our monitoring data suggests that heather cover has reduced from 25% to 1% over recent years. This data does, however, show that small heather shoots are present across much of the site – albeit in a fragile state and restoration would be possible with the right grazing management in place.*"[CB/140-141]. That is a crucial factor leading to Unfavourable condition of Dartmoor protected areas. It is important to recall that in previous grazing regimes (see above) Dartmoor was primarily used for summer grazing, not winter grazing.
73. There is a phrase often used about grazing on Dartmoor, and I note that it was used in the Fursdon Review and by the Defendant in their PAP response, along the lines of '*The problem with vegetation management on Dartmoor is as much one of under-grazing as*

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*much as over-grazing*' (Fursdon review para 12.16) [CB/166]. This is true to an extent but can be misleading. The intensive management of many areas of Dartmoor in the past (the 1980s and 1990s), was aimed at creating grazing for high densities of sheep. This involved burning (to encourage growth of more palatable and young vegetation) and high sheep numbers. These measures harmed the existing vegetation and provided the conditions for one particular grass, *Molinia*, to flourish.

74. Sheep do not readily graze *Molinia* but cattle will in the spring and early summer, and so a common remedy for overgrazing of the previous vegetation by sheep is to instigate (often reintroduce) summer grazing of such areas by cattle. This gives rise to the remark about undergrazing being an issue – in other words, it usually applies to cattle grazing *Molinia* and rarely applies to sheep grazing moorland. That is why the short passage I omitted from David Slater's blog (above, to aid clarity of his main point) reads; '*The impact of sheep on heathland vegetation is further compounded by the over dominance of purple moor-grass (Molinia) from a lack of summer grazing by cattle and historic drainage. As purple moor-grass is unpalatable during the winter this results in the sheep grazing being concentrated on the drier heathland habitats further compounding the damaging impact of winter sheep grazing.*' [CB/140]

### **Statement of financial resources**

75. Wild Justice's company accounts for the year ending 31 October 2023 are available at Companies House [CB/75-76] and showed assets of £101,309 with creditors falling due within 12 months of £14,258, leading to net current assets at that time of £87,051. As a not-for-profit organization, the money we raise is spent quickly on day-to-day running costs, campaigning expenses and the significant legal challenges, such as this one, which form the largest part of our expenditure.

#### **Income**

76. Since its public launch, on 13 February 2019, Wild Justice has raised funds to cover its operating costs through public donations and through crowdfunding for specific legal challenges. Donations are Wild Justice's only source of income, and by their very nature, are somewhat unpredictable.

#### **Expenditure**

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77. Wild Justice's activities fall into four main categories of expense; educational work, campaigning, running costs and legal challenges (such as this one). Our educational work includes providing free books on conservation topics to schools and public libraries and contributing to an annual event known as 'Hen Harrier Day'. Our campaigning work involves setting up and promoting our own petitions, acting with others to promote petitions, collaborative work with other Wildlife and Countryside Link members on issues such as the adoption and meeting of legally binding government targets for wildlife recovery and encouraging our supporters to make their views known to public bodies, parliamentarians etc.
78. Our year-on-year running costs include maintaining and developing our website, travel to meetings, hiring meeting rooms, bank charges, accountant fees, printing, postage, public liability insurance, subscriptions to collaborative bodies, hosting of our free newsletter, hiring of freelance administrative and technical services and two part-time staff members amounting to c£33,000.
79. Our legal expenditure is mostly in the form of research for, and then the taking of, our own legal challenges such as this one. We have also supported legal challenges by others (e.g. a successful judicial review of licensing of Beaver culling in Scotland and a successful judicial review of scallop dredging, also in Scotland) and established a fund to facilitate quicker and better forensic investigation of wildlife crime incidents by the police.
80. Roughly speaking, across the nearly six years of our existence as an entity, the breakdown of our expenditure is 75% legal challenges, 15% set-up and running costs, and 10% shared between educational and campaigning work. This breakdown is possible because much of the time invested is by the three founders and directors of Wild Justice who are unpaid volunteers.
81. As the organisation develops and takes on more projects, expenditure increases, and has done year on year over our 5+ years of existence. We envisage significant expenditure on website development and advertising on social media in the next 6 months and have built up financial reserves in order to make that strategic investment.

### **Liabilities**

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82. Wild Justice has no significant immediate current liabilities but the period August-October inclusive is the last quarter of our financial year and always sees a significant diminution in our bank balance, often of many tens of thousands of pounds.

### **Assets**

83. Wild Justice holds no tangible assets such as property or equipment.

### **This legal challenge**

84. Our lawyers have estimated the cost of this legal challenge as potentially totalling £68,500 (inclusive of VAT, which as a non-charity, Wild Justice cannot reclaim) if we are given permission for judicial review and if we were to lose the case. The costs are as follows: legal fees £57,500 inclusive of VAT); court fees (£1,000); and adverse costs (£10,000). The importance of the case, in our view, merits such a potential investment, but we will also fundraise to meet these, or part of these, costs on the crowdfunding platform CrowdJustice if we are successful in being granted permission for judicial review.

### **Conclusion**

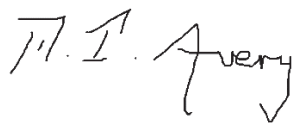
85. This is an Aarhus Convention Claim and as such Wild Justice's adverse costs liability should be capped at the default amount of £10,000. Wild Justice cannot afford to put itself at risk of an open-ended costs liability. If the court does not limit the Claimant's cost liability to £10,000 including VAT, it is likely that the costs of these proceedings will become prohibitively expensive, having regard to both the information set out above, and the objective tests for prohibitive expense under the CPR. In particular, the Claimant is clearly bringing this public interest litigation based on the importance of what is at stake for the environment (CPR 46.27(3)(iii) and (iv)). Although Wild Justice feels very strongly about the importance of bringing this challenge, Wild Justice would reluctantly have to withdraw from proceedings without such a costs cap in place.

### **Statement of Truth**

86. I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



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A handwritten signature in black ink, appearing to read "M. I. Avery". The signature is written in a cursive style with a large initial "M" and a distinct "I".

Signed:

Dr Mark Avery

Dated: 27 August 2024

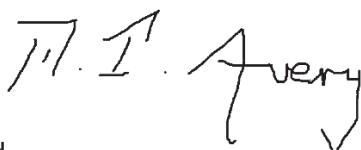
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**EXHIBIT MIA1/1**

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I exhibit the following documents referred to in this statement, namely a schedule of Wild Justice's financial resources pursuant to CPR 46.25(1)(b) in the form of their Micro Entity Accounts as at 31 October 2023.

A handwritten signature in black ink that reads "M. I. Avery". The signature is written in a cursive style with a large, stylized 'A'.

Signed

Dr Mark Avery

Dated: 27 August 2024

**Wild Justice****Registered number: 11645788****Balance Sheet****as at 31 October 2023**

	<b>2023</b>	<b>2022</b>
	<b>£</b>	<b>£</b>
Called up share capital not paid	-	-
Fixed assets	-	-
Current assets	101,309	148,799
Prepayments and accrued income	-	-
	<u>101,309</u>	<u>148,799</u>
Creditors: amounts falling due within one year	(14,258)	(56,529)
Net current assets	87,051	92,270
Total assets less current liabilities	<u>87,051</u>	<u>92,270</u>
Creditors: amounts falling due after more than one year	-	-
Provisions for liabilities	-	-
Accruals and deferred income	-	-
<b>Net assets</b>	<u>87,051</u>	<u>92,270</u>
<b>Capital and reserves</b>	<u>87,051</u>	<u>92,270</u>
	<b>Number</b>	<b>Number</b>
Average number of employees	<u>-</u>	<u>-</u>

[Loans to directors, guarantees made by the company on behalf of directors]

[Capital commitments, pension commitments, other financial commitments and contingent liabilities]

The company is a private company limited by guarantee and incorporated in England. Its registered office is 9 Lawson Street, Raunds, Wellingborough, Northants, NN9 6NG.

The directors are satisfied that the company is entitled to exemption from the requirement to obtain an audit under section 477 of the Companies Act 2006.

The members have not required the company to obtain an audit in accordance with section 476 of the Act.

The directors acknowledge their responsibilities for complying with the requirements of the Companies Act 2006 with respect to accounting records and the preparation of accounts.

The accounts have been prepared in accordance with the micro entity provisions of the Companies Act 2006 and FRS 105, The Financial Reporting Standard applicable to the Micro-entities Regime. The accounts have been delivered in accordance with the provisions applicable to companies subject to the small companies regime. The profit and loss account has not been delivered to the Registrar of Companies.

Dr M I Avery  
Director

Approved by the board on 15 July 2024

This document was delivered using electronic communications and authenticated in accordance with the registrar's rules relating to electronic form, authentication and manner of delivery under section 1072 of the Companies Act 2006.

# LEIGH DAY

**By email only**

Dartmoor Commoners' Council  
1 Canal Road, Tavistock  
PL19 8AR

Attn:

[office@dartmoorcommoners.org.uk](mailto:office@dartmoorcommoners.org.uk)

**EMAIL:** [rgama@leighday.co.uk](mailto:rgama@leighday.co.uk);  
[cday@leighday.co.uk](mailto:cday@leighday.co.uk)

**TELEPHONE:** 020 7650 1232

**YOUR REF:**

**OUR REF:** RGA/CDA/01199569/1

**DATED:** 12 July 2024

## Pre-Action Protocol Letter – requires your urgent attention

Dear Dartmoor Commoners' Council

### Failure to comply with ongoing duties under the Dartmoor Commons Act 1985, the Wildlife and Countryside Act 1981 and the Conservation of Habitats and Species Regulations 2017

#### This letter

1. We write this letter on behalf of our client in order to comply with the pre-action protocol for judicial review under the Civil Procedure Rules. If we do not receive a satisfactory response to this letter, we propose to advise our clients to make an application for judicial review without further reference to you.
2. We are aware that judicial review is a remedy of last resort and write in the hope that this matter can be resolved without recourse to legal proceedings. We therefore outline at the end of this letter the steps which we ask you to take in order to avoid recourse to the court.

#### The illegality under challenge

3. The claimant challenges the Dartmoor Commoners' Council unlawful action in relation to:
  - (i) Section 4(1) Dartmoor Commons Act 1985 ("**the Act**") to have regard to the conservation and enhancement of the natural beauty of the commons in maintaining the commons and promoting the proper standards of livestock husbandry (including the assessment of the number of animals which can properly be depastured on the Commons from time to time);
  - (ii) Section 5(1) of the Act, which requires the making of regulations for the purpose or preventing overstocking;

- (iii) Section 28G of the Wildlife and Countryside Act 1981 to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest; and
- (iv) Regulation 9(3) of the Conservation of Habitats and Species Regulations 2017 to have regard to the requirements of the Habitats and Birds Directives when exercising its functions (so far as they may be affected by the exercise of those functions).

### **Party details**

4. The proposed defendant is the Dartmoor Commoners' Council ("**DCC**"), a statutory public body established under s.3(1) of the Act for the purpose of exercising the functions assigned to it by the Act.
5. The proposed claimant is Wild Justice. Wild Justice is a not-for-profit company limited by guarantee set up to advocate on behalf of wildlife to further nature conservation in the United Kingdom, to encourage public participation in nature conservation issues, and to ensure that UK laws, policies and practices protect wildlife.

### **The details of the claimants' legal advisers dealing with this claim**

6. Leigh Day, Panagram, 27 Goswell Road, London, EC1M 7AJ; [rgama@leighday.co.uk](mailto:rgama@leighday.co.uk), [cday@leighday.co.uk](mailto:cday@leighday.co.uk).

### **The issues**

#### **Factual and legislative background**

7. The factual background to this letter is largely derived from a response dated 24 June 2024 by DCC to a request for information by Tony Whitehead and Guy Shrubsole under the Environmental Information Regulations 2004, which was shared with Wild Justice (the "**EIR Response**").

#### *Dartmoor Commoners' Council*

8. DCC was established under s.3(1) of the Act for the purpose of exercising the functions assigned to it by the Act.
9. Those functions are set out in Part III of the Act under s.4(1):

*"PART III  
REGULATION OF THE COMMONS  
A. Regulation of common rights by Commoners' Council*

*4. (1) Subject to this Act, it shall be the duty of the Commoners' Council to take such steps as appear to them to be necessary and reasonably practicable for the maintenance of the commons and the promotion of proper standards of livestock husbandry thereon (including the assessment of the number of animals which can properly be depastured on the commons from time to time); and in discharging that duty the Commoners' Council shall have regard to the*

*conservation and enhancement of the natural beauty of the commons and its use as a place of resort and recreation for enjoyment by the public.” (own emphasis added)*

10. In order to discharge their functions, and subject to subsection (3) of the Act, DCC may, amongst other things:

*“(b) burn heather, gorse, grass and bracken on the commons to such extent as in their opinion is desirable for purposes of livestock husbandry;*

...

*(d) enter into agreements with any owner of any of the land within any of the areas edged pink on the plan referred to in section 2 of this Act for the management by the Commoners' Council of grazing thereon;*

*and, subject to the provisions of this Act, the Commoners' Council shall have power to do anything (whether or not involving the expenditure, setting aside, borrowing, investment or lending of money, or the acquisition or disposal of any property or rights) which is calculated to facilitate, or is conducive or incidental to, the discharge of any of their functions”.*

11. By section 5(1) of the Act:

*For the purpose of fulfilling their functions under section 4 of this Act, [DCC]:*

*(a) shall make regulations for the following purposes under s.5(1) of the Act:*

*... (ii) to ensure that the commons are not overstocked and, for that purpose, may fix or provide for the fixing of the number of animals or animals of any description which from time to time may be depastured on the commons by virtue of a right of common or of any other right or privilege;*

...

*(vii) to regulate or prohibit the burning of heather, gorse, grass and bracken on the commons ...”. (own emphasis added)*

*Regulations made under section 5 Dartmoor Commons Act 1985*

12. On 10 January 1990, DCC’s Council authorised Regulations prepared under s.5 of the Act (“**the Regulations**”) for the maintenance of the lands falling within the definition of the commons contained in s.2 of the Act and for the promotion of proper standards of livestock husbandry thereon made by DCC pursuant to s.5 of the Act.
13. The Regulations were confirmed by the Secretary of State for the Environment on 3 August 1990 (see [here](#)). In the EIRs response, DCC confirmed that the Regulations, as prepared under s.5 of the Act, remain in force.
14. Regulation 9 of the Regulations states:

*“9. No person shall depasture on any unit of the commons animals in excess of the number contained in a limitation Notice under Section 5(2)(a) of the Act.*

*Whenever the Council shall consider it expedient to prescribe the maximum number of any description of animal that any person may from time to time depasture on any unit of the commons (whether by reason of the quality of the pasturage or otherwise) the Secretary of the Council shall send a Limitation Notice in accordance with Section 5(2)(a) of the Act to the owner or tenant of that land and to each person registered in accordance with Section 7 of the Act as having rights to depasture on that unit of the commons specifying the common land so restricted, the period of the limitation and the maximum number and description of animals that an owner, tenant or other person may depasture on that unit of the commons for that duration and shall send a copy of each such notice to the Secretary of the Commoners' Association to whose area the restriction applies." (own emphasis added)*

15. In the EIR Response, DCC confirmed that it has not issued any limitation notices in relation to stocking levels during the past 10 years. It stated that it may have done so before and that details may be found in the Minutes of meetings held. An inspection of the Minutes reveals no reference to the issue of any limitation notices.
16. DCC also confirmed that it had produced a number of Codes of Guidance in pursuance of Regulations under the Act and that it had, from time to time, issued guidance to Commoners on a case-by-case basis. Reference was made to the enclosed Minutes of DCC meetings held between 2013 and 2024.
17. Neither the Codes of Guidance nor the Minutes offer any assistance to the discharge of the duty under s.4(1) of the Act.
18. Mr Whitehead and Shrubsole's request for information also asked DCC to provide copies of any documents showing how it had taken into account "*the conservation and enhancement of the natural beauty of the area*" (as worded in the 1985 Act) when it comes to controlling stocking levels, including its consideration of regulation 9 and in the making of any limitation notices. If it has not done so, please explain why not".
19. The EIR Response confirmed that no such documentation is held.

#### *Dartmoor Special Area of Conservation*

20. The Dartmoor Special Area of Conservation ("**SAC**") is designated under the Conservation of Habitats and Species Regulations 2017 (as amended) ("**the Habitats Regulations 2017**"). The Habitats Regulations 2017 are assimilated law following the UK's departure from the EU.
21. The Dartmoor SAC was selected on the basis of four habitat types:
  - Northern Atlantic wet heaths with *Erica tetralix* (Cross-Leaved Heath);
  - European dry heaths;
  - Blanket bogs; and
  - Old sessile oak woods with *Ilex* (Holly) and *Blechnum* (Hard Fern) in the British Isles.
22. The Dartmoor SAC comprises six Sites of Special Scientific Interest ("**SSSI**"): Dendles Wood SSSI, East Dartmoor SSSI, North Dartmoor SSSI, South Dartmoor SSSI, Tor Royal



Bog SSSI and Wistman's Wood SSSI, all of which exhibit these (and in some instances other) habitat types.

23. Natural England's Designated Sites Database confirms the conservation status of the units in the SSSIs for the SAC habitats concerned, where (F) indicates the unit is in favourable condition, (UR) indicates the unit is unfavourable-recovering condition and (UD) indicates the unit is unfavourable-declining condition (source [here](#)):

	<b>Dendles Wood</b>	<b>East Dartmoor</b>	<b>North Dartmoor</b>	<b>South Dartmoor</b>	<b>Tor Royal Bog</b>	<b>Wistman's Wood</b>
Northern Atlantic wet heaths with <i>Erica tetralix</i>		1 x F 1 x UR	10 x UR	2 x UR		
European dry heaths		6 x F 6 x UR 2 x UD	8 x UR	4 x UR		
Blanket bog		1 x UR	8 x UR	3 x F 6 x UR 1 x UD	1 x F 1 x UR	
Old sessile oak woods with <i>Ilex</i> and <i>Blechnum</i>	1 x F 1 x UR		1 x F			1 x F

24. According to analysis of published data from site checks and condition assessments carried out by Natural England, grazing pressure (as recorded, for example, in failure on browsing levels in CSM assessments), is a key reason for the unfavourable condition of 16 SSSI units covering 9,273ha, or 40%, of the Dartmoor SAC. The second cited reason for the unfavourable condition of SSSIs underpinning the SAC is the dominance of *Molinia caerulea* (Purple Moor-Grass), accounting for 14 SSSI units covering 8,929ha or 39% of the Dartmoor SAC. The remaining areas of the SAC are either in favourable condition, or (in the case of four units) in an unfavourable condition for an unclear reason.

25. The SAC is designated for four habitat types: Northern Atlantic wet heaths with *Erica tetralix*, European dry heaths, Blanket bogs and Oak woods. The two heathland types cover 10,280ha. Grazing pressure is cited by Natural England as a key reason for the unfavourable condition of approximately 90% of this designated feature.

26. By contrast the unfavourable condition of Blanket bogs is driven almost entirely by *Molinia* dominance (itself a result of degraded peat and atmospheric nitrogen deposition). The Oak woods are largely in favourable condition, along with some of the mires.

*Wildlife and Countryside Act 1981*

27. Section 28G of the Wildlife and Countryside Act (“**WCA 1981**”) places a duty on public bodies to take reasonable steps, consistent with the proper exercise of their functions, to further the conservation and enhancement of the features for which an SSSI has been notified:

*“28G Statutory undertakers, etc.: general duty.*

*(1) An authority to which this section applies (referred to in this section and in sections 28H and 28I as “a section 28G authority”) shall have the duty set out in subsection (2) in exercising its functions so far as their exercise is likely to affect the flora, fauna or geological or physiographical features by reason of which a site of special scientific interest is of special interest.*

*(2) The duty is to take reasonable steps, consistent with the proper exercise of the authority’s functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest.*

*(3) The following are section 28G authorities—*

*...*

*(f) any other public body of any description”.*

28. As a statutory public body, DCC is under a duty to take reasonable steps, consistent with the proper exercise of its functions, to further the conservation and enhancement of the above features of the six SSSIs comprising the SAC.

29. Mr Whitehead and Shrubsole’s request for information asked DCC to provide copies of any documents showing how it had given effect to section 28G of the Wildlife and Countryside Act 1981 when it comes to controlling stocking levels (including its consideration of regulation 9 and in the making of any limitation notices) and if it had not done so, to explain why not.

30. The EIR Response confirmed that there is no such documentation held.

#### *Conservation of Habitats and Species Regulations 2017*

31. Under Regulation 9(3) of the Habitats Regulations 2017, DCC is under a duty to have regard to the requirements of the EU Birds and Habitats Directive (“**the Directives**”) when exercising any of its functions:

*“(3) Without prejudice to the preceding provisions, a competent authority, in exercising any of its functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.”*

32. Mr Whitehead and Shrubsole’s request for information asked DCC to provide copies of any documents showing how it had given effect to regulation 9(3) of the Habitats Regulations 2017 when it comes to controlling stocking levels (including its consideration of regulation 9 in the making of any limitation notices) and if it has not done so, to explain why not.

33. The EIR Response confirmed that no such documentation is held.

#### **Grounds of challenge**

**Ground 1: unlawful failure to make regulations to ensure that the commons are not overstocked**

34. As above, section 5 of the Act requires DCC to make (“shall make”) regulations for the purpose of ensuring the commons are not overstocked. That obligation is not discharged simply by the making of regulations. It necessarily requires those regulations to be operated to further the purpose of preventing overstocking.
35. Section 5 allows the regulations to operate by fixing the number of animals that may be depastured (“may fix”).
36. In that context DCC has, as above, made regulations which have opted to proceed by fixing limits through what are described as “limitation notices”. That is all entirely lawful.
37. The problem though is that, in breach of what is necessarily implied by section 5, DCC has then unlawfully failed to issue any such limitation notices. To be clear, DCC had a choice as to the means deployed in regulations to secure the statutory purpose of preventing overstocking. But, having chosen the route of limitation notices, it then had to deploy those notices to secure the statutory purpose. It has failed to do so.
38. DCC is thus in ongoing breach of its ongoing section 5 obligations.

**Ground 2: unlawful failure to discharge statutory duty to conserve and enhance the natural beauty of the area**

39. In failing to issue (or even failing to consider whether to issue, let alone on a lawful basis) any limitation notices to control overstocking under Regulation 9 of the Regulations, or to take any measures having equivalent effect, DCC has also unlawfully failed to discharge its statutory duty to take into account “*the conservation and enhancement of the natural beauty of the area*” under s.4(1) of the Act. Indeed, we have seen no evidence in any of the documentation provided to us which evidences any discharge of that s.4(1) obligation, let alone taking into account that mandatory statutory consideration.
40. When exercising or considering whether to exercise its powers, a public authority must act rationally and in good faith, must not fetter its discretion, and must “*promote the policy and objects of [the statute]*” (*Secretary of State for Communities and Local Government v West Berkshire District Council* [2016] EWCA Civ 441 at [22]).
41. Section 4(1) of Act makes clear that the statutory purpose of DCC is the “*maintenance of the commons and the promotion of proper standards of livestock husbandry thereon (including the assessment of the number of animals which can properly be depastured on the commons from time to time)*” having regard to “*the conservation and enhancement of the natural beauty of the commons and its use as a place of resort and recreation for enjoyment by the public*”. The condition of the Dartmoor SAC and the SSSIs which comprise it is declining as a result of overstocking, i.e. as a result of a practice which is in the complete control of DCC to mitigate. In that context, the complete failure by DCC to issue any limitation notices, or exercise any of its other statutory powers, to mitigate overstocking is an unlawful failure properly to exercise its statutory powers.
42. This is a continuing breach that DCC would appear to have taken no steps to remedy, notwithstanding that it has no direct impact on DCC’s resources. The deteriorating quality of the SAC is a matter of interest not only to the Claimant, whose principal aim is to further

nature conservation in the UK, but to the people of Dartmoor more generally and the wide public interest in protecting and enhancing internationally important sites. It is a situation in which the Claimant would, if necessary be requesting both a declaratory and mandatory order as relief (*Croydon LBC v Imam (Crisis intervening)* [2023] UKSC 45).

### **Ground 3: failure to give effect to section 28G Wildlife and Countryside Act 1981**

43. Similarly, in failing to issue any limitation notices to control overstocking under Regulation 9 of the Regulations, or to take any measures of equivalent effect, DCC has failed to discharge its duty under s.28G WCA 1981.

44. The duty under s.28G WCA 1981 is to take reasonable steps, consistent with the proper exercise of the authority's functions, to further the conservation and enhancement of the flora, fauna or geological or physiographical features by reason of which the site is of special scientific interest. In confirming that no documentation is held in relation to this duty, DCC has failed to take any reasonable steps, or even to apply its mind, to the exercise of that duty. DCC's members have been given "no opportunity to comply with their obligations under section 28G" (*Western Power Distribution Investments Ltd v Cardiff City Council* [2013] EWHC 1407 (Admin) at [34]).

### **Ground 4: failure to give effect to regulation 9(3) of the Habitats Regulations 2017**

45. In failing to issue any limitation notices to control overstocking under Regulation 9 of the Regulations, or to take any measures having equivalent effect, DCC has failed to discharge its duty under Regulation 9(3) of the Habitats Regulations 2017.

46. Regulation 9(3) of the Habitats Regulations obliges DCC to have regard to the requirements of the Habitats Directive. Regulation 9(3) is concerned with a "competent authority", which has a broad meaning (including every public body) (*Harris v Environment Agency* [2022] EWHC 2264 (Admin) at [84]). In confirming that no documentation is held in relation to this duty, DCC has unlawfully failed to have regard to, or even turn its mind to, the requirements of the Habitats Directive.

### **The details of the action that the Defendant is expected to take**

47. In light of the above failures, DCC is requested to issue limitation notices to control overstocking in any SSSIs in which the level and/or period of grazing is adversely affecting their features of special interest.

### **ADR proposals**

48. Given the nature of the issues, the Claimants do not consider that the claim is readily amenable to ADR.

### **The details of any information sought**

49. The minutes of the DCC meeting of June 2021 refer to a document entitled "The State of the Commons on Dartmoor: A Common Perspective". The Claimants request that document.

### **The address for reply and service of court documents**

50. Please use the Leigh Day address specified above.

**Proposed reply date**

51. We request that the Defendant reply to this letter within 14 days of receipt, i.e. by 4pm on 26 July 2024.

**Aarhus Convention claim**

52. This is an Aarhus Convention claim for the purposes of CPR 46.24 and 46.26. The Claimant qualifies as a member of the public for these purposes and the claim concerns the Defendant's ongoing failure to discharge provisions of national law relating to the environment.

Yours faithfully



**Leigh Day**

Leigh Day  
Panagram  
27 Goswell Road  
London  
EC1M 7AJ

Our Ref: ds6/aj5/5003842/1  
Your Ref: RGA/CDA/01199569/1  
Date: 9 August 2024  
When calling please ask for: Danielle Spalding  
e-mail: ds6@footanstey.com  
Direct Line: +44 117 915 4626

**By Email:** [rgama@leighday.co.uk](mailto:rgama@leighday.co.uk); [cday@leighday.co.uk](mailto:cday@leighday.co.uk)

Dear Leigh Day

**Our client: Dartmoor Commoners' Council**  
**Your client: Wild Justice**

We refer to your letter of claim dated 12 July 2024, our letter to you of 25 July 2024 and subsequent email correspondence. This is a letter of response which is being sent to you in accordance with the CPR Pre-Action Protocol for Judicial Review.

### **The parties**

1. The potential claimant in this matter is your client, Wild Justice of 9 Lawson Street, Raunds, Wellingborough, Northants, NN9 6NG.
2. The potential defendant in this matter our client, Dartmoor Commoners' Council of 1 Canal Road, Tavistock, Devon, PL19 8AR.
3. For the reasons given below, our client considers that Natural England would be the appropriate defendant to any claim challenging over-grazing of Dartmoor. That is particularly the case in respect of (but not limited to) any part of Dartmoor which is not part of the commons (as defined in s2(1) of the Dartmoor Commons Act 1985) or any part which does fall within the designation of any of Dartmoor's Sites of Special Scientific Interest.

### **The details of the defendant's legal advisers dealing with this claim**

4. We, Foot Anstey LLP, act on behalf of our client, Dartmoor Commoners' Council, in relation to this matter. Please direct all further correspondence in connection with this matter to:

Post: Foot Anstey LLP, 2 Glass Wharf, Bristol, BS2 0EL  
Email: [danielle.spalding@footanstey.com](mailto:danielle.spalding@footanstey.com) and [arron.jolliffe@footanstey.com](mailto:arron.jolliffe@footanstey.com)

5. When corresponding with us by post or email, please quote the following matter reference: "ds6/aj5/5003842/1".
6. Please note that we accept service of Court documents on our client's behalf by post to the address referred to at paragraph 4 quoting the reference at paragraph 5. We do not accept service by email.

Foot Anstey LLP, 2 Glass Wharf, Bristol, BS2 0EL  
Tel: +44 (0)1179154900 Fax: 01179154999 DX: 7837 Bristol

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The term 'Partner' refers to a member of Foot Anstey LLP. A list of members is open to inspection at our registered office

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It is a licensed body (ABS) authorised and regulated by the Solicitors Regulation Authority (SRA authorisation no. 558012).  
The term 'Partner' refers to a member of Foot Anstey LLP. A list of members is open to inspection at our registered office.

## Enclosures

7. Please find enclosed with this letter a copy of the draft document titled "*The State of the Commons on Dartmoor: A Common Perspective*" (**the State of the Commons**) which was requested by you in your letter of claim. Please note that the State of the Commons is not a document that has been produced by our client: it is a document produced by Mrs Ann Willcocks, one of our client's members, acting in her personal capacity. The version enclosed with this letter is the version you have requested, which was considered by our client and referred to in the minutes for the meeting which took place on 30 June 2021.
8. Please find enclosed copies of the minutes of our client's meetings held on 25 September 1991, 8 June 1993, 6 April 1994, 5 November 1997 and 16 April 2003, which are all referred to below.
9. We also refer you to the following online resources, which we strongly encourage you and your client to read in full:
  - 9.1. The *Independent review of protected site management of Dartmoor (the Fursdon Review)* published by the Department for Environment, Food and Rural Affairs (**DEFRA**) on 12 December 2023, available here:  
<https://www.gov.uk/government/publications/independent-review-of-protected-site-management-on-dartmoor/independent-review-of-protected-site-management-on-dartmoor>
  - 9.2. Our client's response to the Fursdon Review, published on 13 March 2024, available here:  
[https://www.dartmoorcommonerscouncil.org.uk/news\\_details.php?id=120&s=0](https://www.dartmoorcommonerscouncil.org.uk/news_details.php?id=120&s=0)
  - 9.3. The lists of "*Operations likely to damage the special interest*" in respect of each of the six major Sites of Special Scientific Interest that apply to Dartmoor (being North Dartmoor, South Dartmoor, East Dartmoor, Dendles Wood, Tor Royal Bog and Wistman's Wood), available here:  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Consent/1001721.pdf>  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Consent/1002951.pdf>  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Consent/1000749.pdf>  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Consent/1003586.pdf>  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Consent/1003102.pdf>  
<https://designatedsites.naturalengland.org.uk/PDFsForWeb/Consent/1001201.pdf>

## Your client's proposed claim

10. The details of your client's proposed claims are set out in your letter of claim dated 12 July 2024 and the emails from your Ricardo Gama to our Arron Jolliffe at 11:04 on 26 July 2024 and at 18:17 on 29 July 2024. This correspondence sets out four grounds of claim by your client.
11. As stated in your email of 18:17 on 29 July 2024, all four of your client's proposed grounds of claim "*would challenge the general approach that [our] client has taken in failing ever to take steps to comply with its statutory duties*". Your reference to an alleged failure by our client to "ever" take steps to comply with its statutory duties implies that your client intends to challenge our client's historical decision-making going back in time without limitation. If that is your client's intention then we highlight again the very clear limitation rule set out in CPR Rule 54.5(1)(b), which requires your client to commence its claim within three months after the date when the grounds for the claim first arose. This necessarily means that your client's proposed grounds of claim are constrained to any alleged failure by our client to comply with its duties within the three month period prior to the date of issue of your client's claim.

### Response to your client's proposed claim

12. Our client rejects each of the grounds of your client's proposed claim for the reasons set out below.
13. Before addressing your client's grounds of claim, we consider that it would be helpful to explain how stocking levels on Dartmoor are managed generally, as it is important to put our client's role and views on this subject into its broader context:
- 13.1. Please refer to Section 3 of the Fursdon Review, which summarises how agricultural activity is currently managed on Dartmoor and by whom. This very clearly explains that the primary regulator of stocking levels on Dartmoor is Natural England (**NE**), which actively controls stocking levels via two key regulatory frameworks:
- (a) Firstly, NE has entered into numerous agri-environment agreements, such as Higher Level Stewardship (**HLS**) agreements, with commoners which set the number of livestock that may be grazed on certain commons. So far as our client is aware, all of these agreements include a minimum and maximum stocking requirement. NE has an advisory role in the management of land subject to HLS agreements, as the Rural Payments Agency, which manages payments pursuant to these agreements, obtains technical advice from NE to assess whether their terms have been complied with and whether to offer extension agreements to commoners.
  - (b) Secondly, NE oversees the management of Sites of Special Scientific Interest (**SSSIs**) which (according to the Fursdon Review) together cover 62% of all common land on Dartmoor. The six largest SSSIs are North Dartmoor, South Dartmoor, East Dartmoor, Dendles Wood, Tor Royal Bog and Wistman's Wood. For all six of these SSSIs, "*Grazing and changes in the grazing regime (including type of stock, intensity or seasonal pattern of grazing and cessation of grazing)*" is an item included in the list of "*Operations likely to damage the special interest*". Where these SSSIs apply to common land, it is consequently an offence for commoners (as the owners or occupiers of land subject to SSSI designation) to carry out, cause or permit to be carried out an operation which impacts in any way on grazing or changes to the grazing regime (which would include both increases and decreases to stocking levels) without NE's prior consent under s28E(1) of the Wildlife and Countryside Act 1981 (**the WCA 1981**). We would draw your attention to the fact that three of Dartmoor's six major SSSIs (Dendles Wood, Tor Royal Bog and Wistman's Wood) do not relate to common land and therefore our client has no jurisdiction whatsoever in respect of these SSSIs. Of the remaining three, not all of the units of land within them are common land.
- 13.2. NE is a non-departmental public body which is sponsored by DEFRA. Its national stature, scope, resources and powers to control stocking levels on Dartmoor far outweigh our client's. It would therefore plainly not be correct to frame our client's role as being the primary regulator of stocking levels on Dartmoor. Insofar as our client's role could ever have been described in that way, that has undoubtedly been superseded by NE for well over the last decade. Furthermore, our client does not obtain or hold NE's consent for the grazing of commons land which is subject to SSSI designations; instead, that is sought from NE by commoners through commoner associations.
- 13.3. Our client is a council comprised of members, the majority of whom are commoners who actively farm the commons of Dartmoor. Our client's members are acutely aware that the sustainability of their businesses and general way of life is dependent on the sustainability of Dartmoor's natural environment, and they are understandably therefore passionate about conserving and enhancing it. This is made absolutely clear by the views expressed by Mrs Willcocks and other commoners in the State of the Commons. However, as paragraph 11.5 of the Fursdon Review points out, Dartmoor's natural environment cannot and should not be described as a wilderness which exists *despite* agricultural activity: its historical environment is intrinsically linked to agriculture and, as noted in the Chairman's forward, "*commoning and pastoralism have an important part to play in solving the [environmental] problems that we face. Dartmoor needs to be grazed*".



- 13.4. Our client has over the years actively considered whether stocking levels on the commons need to be altered. Our client's approach, however, has generally been to take a collaborative approach with commoners by visiting the commons and discussing and solving the unique and varied problems that arise with commoners and commoners' associations. Our client sees its role as being to build relationships and work with other stakeholders on Dartmoor in order to conserve and improve the commons and to protect commoners' livelihoods, rather than to seek to exercise its legal powers to unilaterally impose its views on stocking levels. Nonetheless, it is worth noting that historically, and in particular prior to the implementation of HLS agreements from 2005 onwards, our client did implement measures to control stocking levels on the commons where this was considered necessary and appropriate in the circumstances: for example, our client's minutes of meetings held on 25 September 1991, 8 June 1993, 6 April 1994, 5 November 1997 and 16 April 2003 all refer in the sections highlighted green to our client taking steps to restrict the numbers of livestock or ponies grazing parts of the commons.
- 13.5. Our client's view, based on the lived experiences of its own members and other commoners, is that Dartmoor's natural environment has deteriorated in part due to under-grazing in recent years. The deleterious impact of under-grazing is twofold: firstly, under-grazing has resulted in vegetation growth, which in turn means that parts of the commons have become effectively unusable as grazing land, as these parts have become physically inaccessible to both livestock and commoners, which is in turn putting greater pressure on those areas which remain capable of being grazed; and secondly, those parts of the commons which have become inaccessible due to vegetation growth cannot be managed so that the natural environment of Dartmoor can be conserved in the manner that it has been historically, both by direct human intervention (such as controlled burning) and by grazing. Our client is not alone in considering that Dartmoor's natural environment is being negatively affected by under-grazing: please refer to paragraphs 12.4, 12.5, 12.6, 12.7, 12.12 and 12.16 of the Fursdon Review.
- 13.6. All of your client's claims are based on a fundamental underlying assumption that over-grazing by commoners is a major factor in the deterioration of Dartmoor's natural environment. The basis of this assumption is set out at paragraph 24 of your letter of claim, where you state that "*[a]ccording to analysis of published data from site checks and condition assessments carried out by Natural England, grazing pressure (as recorded, for example, in failure on browsing levels in CSM assessments), is a key reason for the unfavourable condition of 16 SSSI units covering 9,273ha, or 40%, of the Dartmoor [Special Area of Conservation]*". Your client's assumption is therefore based on evidence obtained by NE. You will note that the Fursdon Review is critical of the quantity and quality of NE's evidence in respect of Dartmoor: please refer in particular to paragraphs 4.1, 4.2, 4.3, 8.9, 16.2, 16.3, 16.5 and 19.3 of the Fursdon Review. Our client is therefore not confident that the evidence and conclusions reached by NE can be relied upon, particularly when this contradicts members' own observations of the negative impact of under-grazing on Dartmoor's natural environment. In light of this, please note that if your client were to issue proceedings against our client, it would be put to proof on its fundamental underlying assumption that over-grazing by commoners is a major factor in the deterioration of Dartmoor's natural environment, and our client would challenge any attempt by your client to simply rely on evidence obtained from NE. Our client would expect you to obtain robust, independent expert evidence which proves that this assumption is accurate.
14. Having made the preceding contextual points, we now address your client's specific grounds of claim:

#### **Ground 1 - Alleged breach of s5(1)(a)(ii) of the Dartmoor Commons Act 1985**

- 14.1. Your client is alleging that our client has breached s5(1)(a)(ii) of the Dartmoor Commons Act 1985 (**the DCA 1985**) because, whilst it has created the Dartmoor Commoners' Council Regulations 1990 (**the DCCR 1990**) and Reg 9 provides our client with the power to issue limitation notices to restrict livestock numbers depastured on the commons, "*in breach of what is necessarily implied by section 5[(1)(a)(ii)], DCC has then unlawfully failed to issue any such limitation notices*".

14.2. It is not clear whether your client's claim is being grounded on the basis of illegality or irrationality. We therefore address each possibility below:

- (a) It appears to be your client's position that our client has acted illegally on the basis that it is a necessary implication of s5(1)(a)(ii) of the DCA 1985 that DCC *must* issue limitation notices. The requirement in s5(1)(a)(ii) is discharged by the making of the DCCR 1990, and it is then a matter of discretion whether any such limitation notices are ever issued. Reg 9 of the DCCR 1990 provides that our client will issue such notices when it considers it "*expedient*" to do so, which affords it a wide discretion. Our client is entitled to decide when and how to exercise its powers to issue limitation notices, and it is inherent in that discretion that it is entitled to decide to not exercise those powers at all.
- (b) If your client is arguing that our client has acted irrationally by failing to correctly exercise its discretion under s5(1)(a)(ii) of the DCA 1985 in deciding not to issue limitation notices, then you have failed to properly particularise your client's claim by explaining how and why our client has failed to correctly exercise this discretion in breach of s5(1)(a)(ii) of the DCA 1985. Our client denies that it has breached s5(1)(a)(ii) of the DCA 1985 by not issuing limitation notices, but reserves its right to further particularise its position once your client has properly set out the case that it has to answer. We would only add at this stage that our client is entitled to exercise its discretion when considering if it would be "*expedient*" to issue limitation notices, and the expediency of the exercise of this power needs to be considered in the context of the wider regulatory framework set out above, i.e. a framework where grazing levels are carefully controlled by NE. Indeed, were such notices to be issued, the recipients would be required to change the grazing regime to comply with the notice, but without NE's prior consent and therefore potentially in breach of relevant SSSI rules or HLS agreements.

#### **Ground 2 - Alleged breach of s4(1) of the Dartmoor Commons Act 1985**

14.3. Your client is alleging that our client has breached s4(1) of the DCA 1985 for two reasons. Firstly, it claims that by failing to issue any limitation notices under Reg 9 of the DCCR 1990 or to take any measures having equivalent effect, "*DCC has also unlawfully failed to discharge its statutory duty to take into account "the conservation and enhancement of the natural beauty of the area"*". Secondly, it claims that our client has failed to even have regard to its duty to take into account the conservation and enhancement of the natural beauty of the commons as you and your client have "*seen no evidence in any of the documentation provided to us which evidences any discharge of that s4(1) obligation, let alone taking into account that mandatory statutory consideration*".

14.4. We respond to each element of this claim below:

- (a) Your client is claiming that our client has acted illegally by failing to take into account its mandatory duty under s4(1) of the DCA 1985 to "*have regard to the conservation and enhancement of the natural beauty of the commons*" when deciding whether or not to issue limitation notices. Whilst our client accepts that it has not identified any documentation from within the last 10 years which explicitly records when and how it has considered this specific statutory duty, it is nonetheless the case that our client's members are acutely aware that the need to conserve and enhance the natural beauty - and more generally the natural environment - of Dartmoor underpins the sustainability of the commons and commoners' businesses and way of life. That sentiment is clearly apparent from the State of the Commons and our client's members will testify to the fact that this duty pervades their decision-making processes in the event that your client is granted permission for this ground of its claim. It is also important that the reference to "*having regard to*" the conservation and enhancement of natural beauty in s4(1) of the DCA 1985 is read in the context of that sub-section as a whole, which makes it clear that our client's statutory purpose is to maintain the commons and promote "*proper standards of livestock husbandry thereon*". Our client therefore rejects this claim in its entirety.
- (b) Whilst not clearly expressed, it appears that your client is also claiming that our client has acted irrationally by failing to issue limitation notices on the basis that a reasonable public

body in our client's position having due regard for its duty under s4(1) of the DCA 1985 to take "*such steps as appear to be necessary and reasonably practicable for the maintenance of the commons and the promotion of proper standards of livestock husbandry thereon... [having] regard to the natural beauty of the commons*" would have made a decision to issue limitation notices. That claim would require your client to prove that the issue of limitation notices is both "*necessary*" and "*reasonably practicable*" to prevent the deterioration of the commons through over-grazing. This claim is fundamentally flawed for the following reasons:

- i. Firstly, our client's views, which are supported by the conclusions of the Fursdon Review, are that Dartmoor's natural environment is deteriorating at least in part due to under-stocking and that NE's evidence which suggests otherwise is potentially flawed and therefore cannot be relied upon. NE will clearly need time to consider the implications of the Fursdon Review on its own position and evidence base. The outcomes of the Fursdon Review are still being worked on, and therefore it would be premature and inappropriate to issue limitation notices at this time. DCC hopes to take a key role in the Land Use Management Group which it expects the UK Government to establish in Autumn 2024. As noted at paragraph 13.6 above, your client's assertion that a reduction in stocking numbers is "*necessary*" rests on a fundamental underlying assumption that over-stocking is playing a major factor in the deterioration of Dartmoor's natural environment; however, in order to prove this, your client cannot simply rely on NE's evidence given our client's legitimate concerns about its reliability. In any event, insofar as any part of the commons is deteriorating as a result of over-grazing (which is not accepted), NE is likely to already be controlling stocking numbers in those areas - particularly in respect of those areas which are subject to SSSI designation. If your client has concerns about over-grazing on any part of Dartmoor which is subject to SSSI designation, your client should be taking this up with NE as the controller of grazing levels pursuant to the consenting process under s28E of the WCA 1981. At the very least, your client ought to have approached NE for its views on whether it considers there to be any justification for the further reduction of livestock numbers at this time and whether it would be appropriate for our client to do so via the mechanism of limitation notices. Our client is entitled to assume, in the exercise of its own powers and compliance with its own duties, the proper and effective exercise of NE's powers and NE's compliance with its duties.
- ii. Secondly, as noted at paragraph 13.1(b) above, it would potentially constitute an offence under s28E(1) of the WCA 1981 for commoners to modify stocking levels on land subject to SSSI designation in compliance with a limitation notice without NE's prior consent. The practical effect of this is that before issuing a limitation notice, our client would need to obtain NE's consent to the proposed change to the grazing regime; otherwise, there is a risk that a commoner would challenge the validity of that notice and/or simply ignore it on the basis that compliance would constitute a criminal offence. Given that NE has the powers, duties, resources and existing regulatory arrangements in place to control stocking levels in the way that it deems appropriate on land falling within SSSI designation, there is no obvious reason why it would consent to our client's proposed limitation notices when it can and ought to be exercising its own judgment and powers with respect to the correct stocking levels. As a result, our client considers that it would not be "*reasonably practicable*" for it to seek to impose limitation notices in relation to parts of the common which are subject to SSSI designation, and your proposed claim appears to have not taken account of this important context.
- iii. Thirdly, for those parts of the commons which do not fall within SSSI designation but which do fall within the scope of HLS agreements, compliance with any limitation notice which requires the commoner to breach the minimum livestock level could result in the commoner facing penalties for those breaches.
- iv. Fourthly, our client's duty under s4(1) of the DCA 1985 necessarily needs to be considered in conjunction with its duty under s4(2)(a) of the DCA 1985 to "*render*

*assistance to any commoner in the maintenance of his rights of common*". Both of these duties need to be given due weight, and therefore, when considering whether it is "*necessary and reasonably practicable for the maintenance of the commons*" to issue limitation notices, our client is entitled to have regard to the fact that a limitation notice would restrict and potentially prevent commoners from exercising their rights of common. Furthermore, as a practical point, this duty would require our client to identify which commoners' stock was causing any alleged over-grazing before issuing limitation notices, but it would be difficult to identify and quantify which stock should be reduced without prejudicing other commoners. Our client will therefore understandably need to see clear evidence that a limitation notice which constrains a specific commoner's rights is "*necessary and reasonably practicable*" - and for the reasons stated above, it has not seen any evidence that this is the case at present.

- 14.5. In light of the points raised at paragraphs 14.4(b)(i)-(iii) above, it is appropriate in the circumstances for your client to refer its proposal to reduce stocking levels in land falling within SSSI designation and/or HLS agreements to NE. It would also be appropriate to request NE's views on your client's specific request that our client issues "*limitation notices to control stocking in any SSSIs in which the level and/or period of grazing is adversely affecting their features of special interest*". Obviously, if NE confirms that it does not agree with your client's proposals, your client's proposed claim has no real prospect of success for the reasons set out above. Our client suggests that your client directs its correspondence to Simon Lee, who is the main contact for the Dartmoor team at NE.

#### **Grounds 3 and 4 - Alleged breaches of s28G of the Wildlife and Countryside Act 1981 and Reg 9(3) of the Conservation of Habitats and Species Regulations 2017**

- 14.6. Your client is alleging that our client has breached s28G(1) and (2) of the WCA 1981 and Reg 9(3) of the Conservation of Habitats and Species Regulations 2017 (**the CHSR 2017**) on the basis that our client has illegally failed to have regard to and discharge the duties set out therein. It is not clear what these grounds add to grounds 1 and 2 of your client's claim. Our client accepts that it has not identified documentation from within the last 10 years which explicitly records when and how it has discharged these specific statutory duties, but nonetheless, our client's members do discharge these duties generally when taking decisions as the need to protect, conserve and enhance the natural environment of Dartmoor is accepted as being vital to the sustainability of the commons and commoners' businesses and way of life. Our client's members have confirmed that they will testify to this by way of witness evidence if it proves necessary to do so in due course. This element of your client's claim is therefore rejected.
- 14.7. Your client also appears to be alleging that our client has breached s28G(1) and (2) of the WCA 1981 and Reg 9(3) of the CHSR 2017 on the basis that our client has acted irrationally as a reasonable public body in our client's position having due regard to these duties would consider it to be a "*reasonable step*" in accordance with s28G(2) of the WCA 1981 and/or an "*appropriate step*" in accordance with Reg 9(3) of the CHSR 2017 and Article 6(2) of the Habitats Directive 1992 to issue limitation notices to reduce stocking on those parts of the commons to which these duties relate. However, what amounts to a "*reasonable*" or "*appropriate*" step for our client to take would involve the same considerations as whether that step would be "*necessary and reasonably practicable*". We refer to what we have already said above about limitation notices in relation to grounds 1 and 2 of your client's claim.

#### **Aarhus Convention claim**

15. We note and accept your assertion that your client's claim would constitute an Aarhus Convention claim for the purposes of CPR Rule 46.24.

#### **ADR proposals and next steps**

16. You will note from paragraph 14.5 above that we advise you to write to NE to request its views on your client's request that our client issues "*limitation notices to control stocking in any SSSIs in which the level and/or period of grazing is adversely affecting their features of special interest*". It

would clearly be premature for your client to pursue any further action against our client before NE's position has been made clear. Once you have received NE's response, we can consider whether any form of ADR might be suitable.

17. Should your client commence proceedings against our client before NE's response to your stated position has been canvassed, those proceedings would undoubtedly be inappropriate and put your client at significant risk on costs. We therefore trust that your client will take no further action against ours pending NE's response.

Yours faithfully

Foot Anstey LLP

Foot Anstey LLP

**Madeeha Akhtar**

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**From:** Ricardo Gama  
**Sent:** 15 August 2024 08:50  
**To:** 'enquiries@naturalengland.org.uk'  
**Cc:** 'ds6@footanstey.com'; Arron JOLLIFFE; Madeeha Akhtar; Carol Day  
**Subject:** Proposed claim for judicial review against Dartmoor Commoners' Council  
**Attachments:** Letter, LD to Natural England (15.08.2024).pdf; PAP letter, LD to Dartmoor Commoners' Council (12.07.2024) (12-07-2024) (08-39).pdf; 09.08.2024 Letter of Response from FA to LD(57582385.1) (09-08-2024) (12-08).pdf

Dear Natural England

Please see attached.

Best wishes

Ricky

**Ricardo Gama (he/him)**

Senior Associate Solicitor

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**LEIGH DAY**

Follow us



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**TELEPHONE:** 020 7650 1232

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**YOUR REF:**

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**OUR REF:** RGA/MAT/01199569/1

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**DATED:** 15 August 2024

Dear Natural England

## Proposed claim for judicial review against Dartmoor Commoners' Council

We act for Wild Justice, a not-for-profit company limited by guarantee set up to advocate on behalf of wildlife to further nature conservation in the United Kingdom, to encourage public participation in nature conservation issues, and to ensure that UK laws, policies and practices protect wildlife. Our client intends to file a claim for judicial review against the approach of Dartmoor Commoners' Council ("**DCC**") in the management of grazing of the Dartmoor commons.

DCC has suggested that Natural England would be the appropriate defendant in the proposed claim for judicial review. Wild Justice disagrees and we are writing to you, at DCC's invitation, in order to ascertain whether Natural England agrees with DCC's characterisation of the legal position.

We enclose Wild Justice's pre-action protocol ("**PAP**") letter and DCC's PAP response, which set out the full background, grounds of challenge and DCC's reply. We are currently considering DCC's PAP response with Wild Justice. The grounds of challenge may evolve in light of the PAP response, but that should not prevent you from being able to respond to this letter.

As you will note from DCC's PAP response, it argues that Natural England is the appropriate defendant to the claim because Natural England is the "*primary regulator of stocking levels on Dartmoor*", as it has the ability to control stocking levels through agri-environment agreements, such as Higher Level Stewardship Agreements, and oversees the sites of special scientific interest ("**SSSIs**") which comprise around 62% of Dartmoor, and it would be a criminal offence for commoners to change grazing regimes within the SSSIs without Natural England's consent (PAP response para 13.1(a); 14.4(b)i.). DCC also argues that Natural England's resources are greater than DCC's (PAP response para 13.1(b); 14.4(b)ii.).

DCC invites Wild Justice to contact Natural England, saying that Wild Justice should take up any concerns about overgrazing on any part of Dartmoor which is subject to

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SSSI designation with Natural England. It goes to say that: *“Our client is entitled to assume, in the exercise of its own powers and compliance with its own duties, the proper and effective exercise of NE’s powers and NE’s compliance with its duties.”* (PAP response para 14.4(b)i.)

Confusingly, after suggesting that it is entitled to assume that Natural England will effectively monitor and control stocking levels on Dartmoor, DCC goes on to say that it is not confident that Natural England’s conclusions as to the impact which overstocking is having on the condition of the SSSIs in Dartmoor can be relied on (PAP response para 13.6). It explains that the unfavourable condition of the SSSIs may be as a result of *“understocking”* and that Natural England’s evidence which suggests otherwise is *“potentially flawed and therefore cannot be relied upon”* (para 14.4(b)i.).

Setting to one side the tension in DCC’s position, Wild Justice considers that its characterisation of the legal position is incorrect for the following reasons:

First, the fact that Natural England may have *concurrent* powers to address stocking levels on some parts of the Dartmoor commons does not imply that DCC is absolved of its legal duties. DCC must still comply with and give appropriate consideration to the exercise of its own statutory powers under the Dartmoor Commons Act 1985.

Second, and similarly, the fact that commoners would need to obtain consent from Natural England in order to reduce stocking levels in those parts of the commons which are designated as SSSIs does not imply that DCC can avoid giving consideration to whether it would be appropriate to issue limitation notices to commoners. Had DCC given appropriate consideration to the issue of limitation notices it might for example have consulted with Natural England to ascertain whether Natural England would give consent to the necessary changes in grazing regime, or it might have issued limitation notices which were expressed as being conditional on obtaining Natural England’s consent to such changes.

Third, there are large parts of the commons which are not designated as SSSIs (38%, if DCC is correct that 62% of the commons are so designated) over which Natural England has very little oversight. While Natural England may have some input in Higher Level Stewardship Agreements, they are administered by the Rural Payments Agency and in any event are not suggested to cover the whole of the commons.

Fourth, the fact that Natural England has greater resources than DCC is entirely irrelevant to the question of the exercise of the statutory duties falling on DCC.

We would be grateful if you could respond to this letter to indicate whether: (1) you believe that Natural England would be the appropriate defendant in Wild Justice’s proposed claim for judicial review; and (2) whether the existence of Natural England’s powers has any ramifications in relation to the statutory requirements placed on DCC by the Dartmoor Commons Act 1985.

DCC suggests that it would be inappropriate for Wild Justice to file a claim before receiving a response from this letter from Natural England. While Wild Justice agrees that it will be helpful for the parties and the court to understand Natural England’s position, it will not be feasible to wait for Natural England’s response given the need to act promptly in filing a claim for judicial review in circumstances where a claimant believes that there are grounds of challenge, as Wild Justice does here.

Finally, Wild Justice does not at present propose to name Natural England as an interested party to the judicial review. If Natural England considers that it is an interested



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# LEIGH DAY

party, please indicate this in your response. Wild Justice is likely to consent to any application for Natural England to be added as an interested party.

We look forward to your response. We suggest a response deadline of 28 days, i.e. by 12 September 2024, but would be content to consider any reasonable proposal in this regard by Natural England.

Yours faithfully



**Leigh Day**

Encs

**Madeeha Akhtar**

---

**From:** Legal Services Team <no-reply@naturalengland.ecase.co.uk>  
**Sent:** 21 August 2024 09:52  
**To:** Ricardo Gama  
**Cc:** Carol Day  
**Subject:** [EXTERNAL] Acknowledgement - Proposed claim for judicial review against Dartmoor Commoners? Council

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Your reference: RGA/MAT/01199569/1

Our reference: LP2024/08246

Dear Leigh Day,

Thank you for your email.

I can confirm your correspondence was received on 20th August. We are taking instructions.

Yours sincerely,

Fatema Lookmanjee

For and on behalf of Natural England

Paralegal | Legal Services

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[www.gov.uk/natural-england](http://www.gov.uk/natural-england)

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# Dartmoor Commons



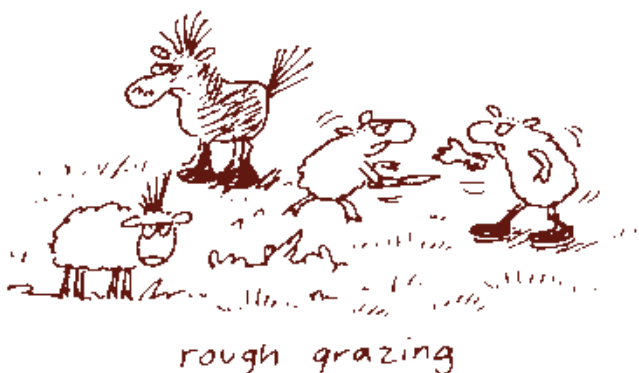
## Dartmoor Factsheet

### The Dartmoor Commons

Common land covers about 37% of the Dartmoor National Park. It comprises the Forest of Dartmoor (11,178 ha, 27,622 acres), surrounded by the Commons of Devon and a scattering of manorial commons, amounting in total to 35,882 ha (88,525 acres). It is this vast open space which was a significant factor when Dartmoor was considered a candidate for national park designation.

The vegetation of the common land is almost entirely rough grazing with a small area of woodland. Central areas of heather and grass moorland are surrounded by tracts of rough grassland, bracken, gorse and heathland. Height ranges from 152 m to 621 m (500 ft to 2,039 ft) above sea level. Until the *Dartmoor Commons Act* of 1985, public access was 'de facto' which meant that the public had no legal right to walk or ride on the commons, even though they had been traditionally doing so for centuries.

Like common land everywhere, the Dartmoor commons are all owned by someone but are subject to rights of commoners. The *Commons Registration Act* of 1965 required the registration of common land nationally, its ownership, and the extent and nature of the rights held. Today, on Dartmoor, there are 92 separate common land units coming under some 54 different owners and there are about 850 registered commoners.



### Rights of Common

The most important right of common is grazing - this right of *common of pasture* is extremely important to the hill farms holding such rights. Rights are attached to specific properties for keeping certain numbers of sheep, cattle and ponies. These rights are registered and depend on the size of the farm. On Dartmoor, rights of grazing exist for some 145,000 sheep, 33,000 cattle, 5,450 ponies and 12,330 other potential grazing units. In practice the numbers actually grazed are much smaller. Scottish Blackface sheep are the commonest breed of sheep though Dartmoors are still kept, particularly on the moorland borders. The main breed of cattle is Galloway, sometimes crossed with Hereford.



These, and other hardy breeds, can out-winter on the moor and have virtually replaced the old South Devons which in the last century were summer grazed only. All cattle, sheep and ponies on the common are owned by someone.

#### Other rights of common for the benefit of the commoner's land holding exist including:

- turbary* - the right to take turf for fuel for domestic use;
- estovers* - the right to take underwood or branches for fuel or repairs;
- pannage* - the right to allow pigs to eat acorns and beech mast;
- and the right to take *sand, gravel* or *stone* for use on the commoner's holding.

The owner of the common may enjoy mineral and shooting rights; he/she may graze the common with his/her own livestock alongside those of the commoners, and if there should be a surplus, that belongs to the owner.

## The Dartmoor Commons Act, 1985

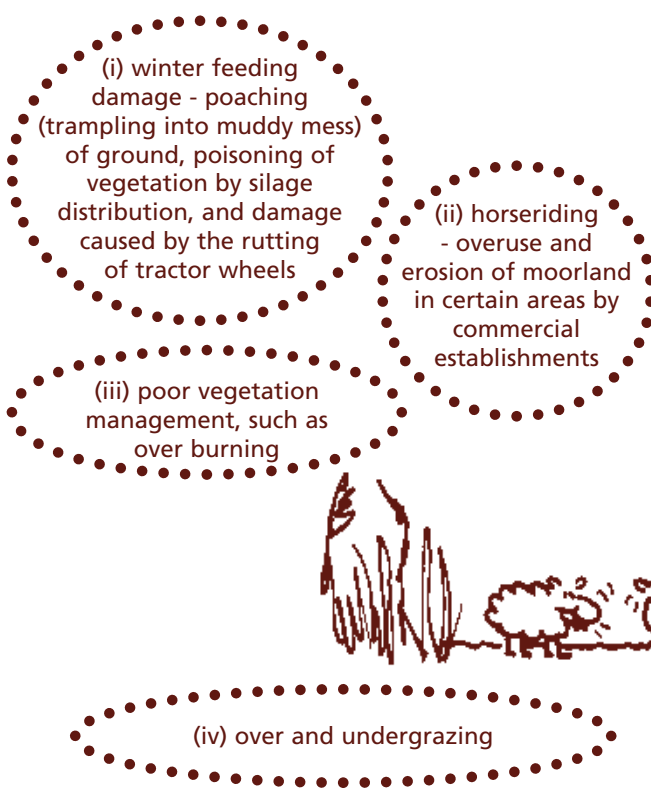
### Background

The origins of common land and rights stretch back to time immemorial. In medieval times rights were strictly regulated; land owners appointed officials known as Reeves to check abuses. Such control lapsed during the 20<sup>th</sup> century to the extent that in 1974 the Dartmoor Commoners' Association approached the Dartmoor National Park Authority expressing a wish to see discipline imposed by law. Problems of over-grazing and under-grazing, poor animal health and husbandry, the incorrect use of grazing by right holders and the abuse of rights were widespread. At the same time pressures of public access and increased recreation were rising and there was a need to legalize such access with appropriate controls.

This legislation took eleven years to pass, including parliamentary failure of a first Bill before a second revised Bill was enacted in 1985. Close ties developed between commoners and the National Park Authority during the lengthy debate. The Act represents a major step forward in common land management.

### Some problems tackled

The major problems which led to the *Dartmoor Commons Act*, the Byelaws and the Dartmoor Commoners' Council Regulations were:



## The Act

The full act can be viewed on-line at [www.dartmoor-npa.gov.uk](http://www.dartmoor-npa.gov.uk) - go to A-Z and click on *Dartmoor Commons Act, 1985*.

The Act contains two main parts dealing with the regulation of grazing rights and the control of public access.

1. The Dartmoor Commoners' Council was set up for the maintenance and promotion of proper standards of livestock husbandry on the commons in and about the Dartmoor National Park. The Council is made up of 26-28 members including 20 elected by the commoners and representing both large and small graziers from each quarter of Dartmoor, 2 appointed members from the Dartmoor National Park Authority, 1 representative of the Duchy of Cornwall, 2 representing other landowners, and 1 independent veterinary surgeon.

Under the terms of the Act, the Council has to draw up regulations to ensure the good husbandry and maintenance of health of all animals kept on the commons. The first Council was elected in 1986 following the preparation of a voting register of all commoners using the commons. The Council is financed by a fee levied on both active graziers (30 pence/livestock unit) and non-active right holders (5 pence/ livestock unit).

2. The second part of the Act established a legal right of access on foot and on horseback to the commons for the purpose of open air recreation. The National Park Authority may prohibit or regulate access for the protection of ancient monuments or areas of scientific interest as well as for restoration and for the protection of trees. It can make byelaws and appoint wardens for the control of this access. Control is also given over the activities of commercial riding stables where this is necessary to prevent damage to the commons.

The Act combines livestock grazing and recreation interests. The legislative framework maintains the values of both, and it conserves the landscape of the National Park for the future. It may be seen as a forerunner of national common land legislation and is essentially a large scale management and access agreement between the commoners and the National Park Authority.

