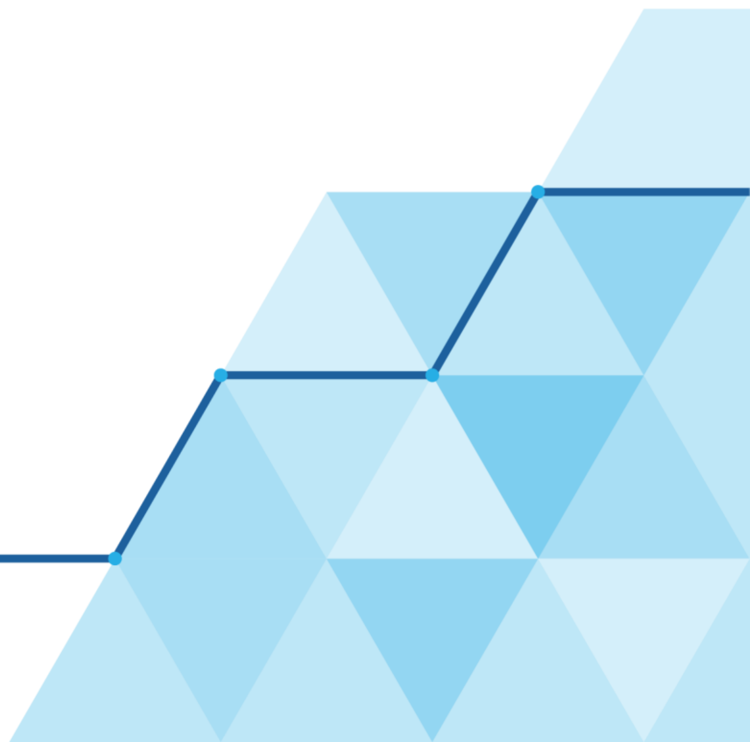
Ministry of Justice

Access to Justice in relation to the Aarhus Convention

A Call for Evidence

This consultation begins on 30 September 2024

This consultation ends on 9 December 2024



Ministry of Justice

Access to Justice in relation to the Aarhus Convention

A Call for Evidence

A call for evidence produced by the Ministry of Justice

About this consultation

To:	This call for evidence is seeking views from those with an interest in the provisions for legal challenges in relation to environmental matters. This may include, but is not limited to, members of the judiciary, legal professionals, developers, insurers, and environmental groups.
Duration:	From 30/09/24 to 09/12/24
Enquiries (including requests for the paper in an alternative format) to:	Civil Justice Policy Ministry of Justice 102 Petty France London SW1H 9AJ Email: AarhusCfE@justice.gov.uk
How to respond:	Please send your response by 9 December to: Civil Justice Policy Ministry of Justice Post Point 5.25 102 Petty France London SW1H 9AJ Email: AarhusCfE@justice.gov.uk
Response paper:	A response to this call for evidence will be published as soon as practicable following the consultation period.

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Executive summary

The UK is one of 47 Parties to the Aarhus Convention ('the Convention'), an international treaty under the auspices of the United Nations Economic Commission for Europe (UNECE). The Convention sets out obligations on Parties to make provisions for the public to access environmental information, to participate in environmental decision-making and to access justice when challenging environmental decisions. One of the Convention's core aims is to ensure access to justice in environmental matters. The Convention's monitoring body, the Aarhus Convention's Compliance Committee (ACCC), has found the UK to be non-compliant with the Convention and has made several recommendations about matters on which the UK must take action to bring its policies into compliance with the Convention.

In particular, as a Party to the Convention, the UK is required to ensure that certain environmental claims, namely judicial reviews and statutory reviews, are fair, equitable, timely and not 'prohibitively expensive'. In seeking to comply with the 'not prohibitively expensive' requirement, successive governments have taken steps to control the costs that a losing claimant may be ordered to pay a winning defendant.

In April 2013 an Environmental Costs Protection Regime, or 'ECPR', was introduced by amendment to the Civil Procedure Rules (CPR), which capped the amount of legal costs that an unsuccessful party would have to pay the successful party in eligible environmental judicial reviews ('Aarhus Convention claims'). However, the ACCC has made several recommendations with regards to the ECPR and is of the view that it should be reformed.

The ACCC also found that the UK's rules regarding the time limit for bringing an application for judicial review of any planning related decisions in scope of the Convention are overly restrictive. The ACCC recommends that the rules should be changed so that this time limit begins when the contested decision is made known to the public instead of when the decision is taken, as is currently the case.

In addition, the ACCC has recommended that the UK take measures, such as establishing appropriate assistance mechanisms, to ensure procedures to challenge acts and omissions by public authorities that contravene provisions of its law on litter are fair, equitable and not prohibitively expensive.

The Government recognises there has been a long impasse since the ACCC made these recommendations. The UK has been found to be non-compliant and recognises that it has obligations to address a breach of the Convention. The Government is committed to ensuring that the UK upholds its international law obligations under the Aarhus Convention. In publishing this call for evidence, the Government aims to gather views on the ACCC's recommendations regarding access to justice to determine the best way to

reach compliance. Respondents are asked to indicate whether the recommendations should be implemented in England and Wales in light of the potential implications, or whether there are suitable alternatives which could better deliver the desired effect of bringing the UK into compliance.

This call for evidence focuses on the compliance issues for England and Wales identified by the ACCC only. The Scottish Government and the Northern Ireland Executive are responsible for how the relevant compliance issues are addressed in Scotland and Northern Ireland. We will work closely with the devolved governments to ensure the UK meets its international law obligations under the Aarhus Convention.

Next Steps

The UK Government is committed to ensuring that our policies comply with the requirements of the UK's obligations under the Aarhus Convention. We will carefully consider the responses received to the questions raised in this call for evidence and will aim to publish a response within three months of the closing date. This will set out the Government's decision with regards to each of the ACCC's recommendations in light of the responses received.

Introduction

1. The Aarhus Convention, officially known as "the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters", was adopted under the auspices of the United Nations Economic Commission for Europe (UNECE) in 1998. The UK ratified the Aarhus Convention in 2005 and is currently one of the Convention's 47 Parties. As a Party to the Aarhus Convention, the UK is committed to guaranteeing the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

2. The Aarhus Convention's Compliance Committee (ACCC) was set up by the Convention's decision-making body, the Meeting of the Parties (MoP), to monitor compliance with the Convention. The ACCC reviews alleged instances of a Party's non-compliance, which are normally raised by members of the public or environmental NGOs and determines whether there has been non-compliance. In cases of non-compliance, the ACCC makes recommendations to the MoP about how the Party concerned can remedy the issue.

3. Decision VII/8s[1], adopted by the MoP in October 2021, includes a number of recommendations on ways in which the UK can bring itself into compliance with the Convention with regard to the access to justice provision under Article 9 of the Convention. Several of these are about the Environmental Costs Protection Regime (ECPR). There is also a recommendation about the UK's rules on the time limit for bringing a judicial review of a planning-related decision within the scope of the Convention and, separately, on litter abatement orders.

4. The following chapters set out in turn the ACCC's recommendations with regards to the ECPR, the time limit for planning-related decisions within scope of the Convention and litter abatement orders, alongside the background to each of these policies. Whilst the MoJ is the department responsible for recommendations related to the ECPR and time limit, Defra is the lead department responsible for recommendations on litter abatement orders. Respondents are asked to consider the ACCC's recommendations in light of any likely benefits and potential risks and to indicate whether each recommendation should be implemented or whether there are suitable alternatives which could deliver the desired outcome of bringing these areas into compliance.

[1] ECE/MP.PP/2021/42 (unece.org)

5. This call for evidence is set out as follows:

   Chapter 1 summarises the history of the ECPR and sets out the compliance issues for England and Wales identified by the ACCC;

   Chapter 2 sets out the ACCC's recommendations and the current policy in England and Wales on the judicial review time limit;

   Chapter 3 sets out the ACCC's recommendation and the current policy in England and Wales on litter abatement; and

   Chapter 4 lists all the questions respondents are being asked to consider.

6. This call for evidence focuses on the compliance issues for England and Wales identified by the ACCC only. The Scottish Government and the Northern Ireland Executive are responsible for how the relevant compliance issues are addressed in Scotland and Northern Ireland. We will continue to work closely with the devolved governments to ensure the UK meets its international law obligations under the Aarhus Convention.

Chapter 1: Environmental Cost Protection Regime (ECPR)

History of the ECPR

7. As a Party to the Aarhus Convention,[2] the UK is required, amongst other things, to make sure that there is a clear, transparent, and consistent framework for members of the public to access environmental justice, and that the costs of bringing environmental challenges are not 'prohibitively expensive'. The UK ratified the Aarhus Convention in February 2005. Elements of the Aarhus Convention have been implemented via EU Directives, which means that some non-compliance issues were subject to the EU's legal and infraction procedures when the UK was a Member State.

8. In 2013, the ECPR for England and Wales was introduced in the Civil Procedure Rules (CPR), which are the rules governing procedure in the civil courts. The ECPR, as introduced, fixed the maximum costs that a court can order an unsuccessful claimant to pay to other parties for judicial reviews, which fall within the scope of the Aarhus Convention.[3] The costs caps were set at the outset at £5,000 for individual claimants and £10,000 for claimant organisations; defendants' liability for claimants' costs was similarly capped at £35,000.

9. The European Court of Justice (CJEU) gave its judgment[4] in a 2014 case that the costs regime that had existed in 2010 (before the ECPR was in place) was insufficient to comply with EU law. In light of that ruling and other judgments by the CJEU and the United Kingdom Supreme Court[5], the then Government proposed amendments to the ECPR in England and Wales in a 2015 consultation: *Costs Protection in Environmental Claims: Proposals to revise the costs capping scheme for eligible environmental challenges*[6]. Those proposals aimed to provide greater flexibility, clarity of scope, and certainty within the ECPR.[7]

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[2] The text of the Aarhus Convention is available through the following link: https://unece.org/fileadmin/DAM/env/pp/documents/cep43e.pdf

[3] Originally, 'Aarhus claims' were just judicial reviews, but this has since been expanded statutory reviews.

[4] C-530/11 Commission v UK [2014] QB 988

[5] C260/11 Edwards v Environment Agency [2013] 1 WLR 2014 and R (Edwards) v. Environment Agency (No.2) [2014] 1 W.L.R. 55.

[6] 'Costs Protection in Environmental Claims: Proposals to revise the costs capping scheme for eligible environmental challenges' (2015), http://data.parliament.uk/DepositedPapers/Files/DEP2015-0756/6_372_MoJ_Cost_Protection_in_Environmental_Claims_Consultation.pdf.

[7] Ibid.

10. Following the outcome of the 2015 consultation, some amendments to the ECPR were introduced, which came into effect on 28 February 2017. These amendments introduced several new provisions, which included:

(i) Extending the scope of the ECPR to cover a wider range of cases - including environmental reviews under statute engaging EU law, as well as judicial reviews;
(ii) Giving courts the power to vary the level of the costs cap from their default levels;
(iii) A provision that when considering an application to vary the cap, the court must consider the amount of court fees payable by the claimant in determining whether the variation (or a failure to make it) would render the proceedings 'prohibitively expensive' for the claimant; and
(iv) A requirement for the Court of Appeal to grant costs protection in appropriate cases.

11. Following the introduction of those changes, a group of environmental non-governmental organisations (NGOs) challenged the revised costs protection regime. In a judgment given on 15 September 2017,[8] the High Court concluded that the current regime was compliant with the EU law that then applied (aspects of the Aarhus Convention were also part of EU law) in that claimants are not expected to pay above their means to bring claims. The Government won on two out of three grounds of challenge[9], but the court also concluded that the rules would benefit from clarification in some respects to reflect the agreed understanding of how they are intended to work, and to make them more clearly compliant with EU law.

12. In accepting the High Court's recommendation, the Government made some further amendments to the ECPR, which came into force on 6 April 2018. These amendments provided further clarity to claimants on the specific financial information they had to provide in proceedings. The amendments also provided scope for the courts to vary costs caps upon the application of a party, at the outset of proceedings, and thereby determine the costs at the earliest opportunity. Applications to vary at a later stage may only be made if there has been a significant change in circumstances.

13. The Civil Procedure Rule Committee (CPRC) completed its open justice review following a consultation on proposed changes to CPR Part 39.2 ('General rule – hearing to be in public').[10] Amendments to the CPR came into force on 6 April 2019. The amended Part 39.2 affirms the fundamental principle of open justice, central to which is that hearings are to be in public, unless the court is satisfied that the criteria

[8] *RSPB, Friends of the Earth & Client Earth v. Secretary of State for Justice* [2017] EWHC 2309 (Admin).

[9] The challenge succeeded on the ground that the Civil Procedure Rules did not, at that time, make sufficient provision for hearings regarding disputes over variation of the default costs caps to be held in private.

[10] The 2018 CPRC open justice review: Part 39 Civil Procedure Rules: proposed changes, Open justice - consultation paper. The review proposed changes to Part 39 of the CPR 'Miscellaneous provisions for hearings'.

for a hearing in private are fulfilled, in which case, the hearing in question (or the relevant part of it) must be held in private.

14. The scope of the ECPR was further extended to statutory reviews such as planning challenges brought under section 288 of the Town and County Planning Act 1990.[11] This extension came into force on 1 October 2019.

15. As it has been some time since the cost caps came into force and were subsequently amended, the Government believes now is the right time to review these in detail, including how they operate in practice.

ECPR and Volume of Claims

Question 1: How effective is the ECPR in ensuring that environmental claims are not prohibitively expensive to bring?

Question 2: Please provide data on the number of Aarhus claims that you have been involved in since January 2020 and their outcomes.

Question 3: Please provide data on the impact, if any, of the Covid-19 pandemic on the number of Aarhus claims that you have been involved in.

ECPR Compliance Issues

Overview: Compliance Issues

16. This chapter sets out compliance issues for England and Wales identified by the ACCC. In each instance we have summarised the ACCC's concerns, with some commentary on issues for further consideration. We would be grateful for respondents' views on the issues raised and any supporting evidence.

17. Decision VII/8s, adopted at the MoP to the Aarhus Convention in October 2021, concerns several different UK Aarhus compliance issues.[12] This section of the call for evidence considers the compliance issues raised in that decision insofar as they relate to the ECPR or similar costs provisions, and associated procedural issues.

18. Specifically, Decision VII/8s:

[11] See the Town and Country Planning Act 1990: <https://www.legislation.gov.uk/ukpga/1990/8/contents>.

[12] See Decision VII/8s, at pp. 71-75: Decisions adopted by the Meeting of the Parties, advance edited copy (ECE/MP.PP/2021/2/Add.1) | UNECE.

a) Endorsed and reaffirmed the earlier **Decision VI/8k**, noting progress towards compliance made since that decision, but requested further steps to:

- Ensure that the allocation of costs in all court procedures subject to Article 9 of the Aarhus Convention, including private nuisance claims, is fair and equitable and not prohibitively expensive;
- Further consider the establishment of appropriate assistance mechanisms to remove or reduce financial barriers to access to justice; and
- Establish a clear, transparent, and consistent framework to implement Article 9(4) of the Convention.

b) Endorsed the findings of the ACCC regarding communications:

- **ACCC/C/2015/131** concerning a planning challenge, making recommendations that the courts should consider the stage of proceedings when awarding costs, and that 'litigants in person' rates for costs recovery should be fair and equitable by comparison to the rates of recovery for represented parties, and that the time limit to apply for judicial review should be calculated from when the decision became known to the public rather than the date when the decision was taken.
- **ACCC/C2016/142**[13] concerning the procedures for costs awards in litter abatement proceedings, recommending action be taken to ensure procedures for such legal actions are fair, equitable and not prohibitively expensive.

19. For each part of Decision VII/8s identified below, this section of the call for evidence sets out:

(i) what the compliance issue is ('the issue');

(ii) a summary of what the ACCC said on the issue regarding the UK's compliance ('ACCC comments'); and

(iii) some commentary on the issues for further consideration.

Decision VI/8k, reaffirmed in Decision VII/8s

20. Decision VI/8k was made on 14 September 2017, following which the UK reported on progress towards compliance in annual reports submitted to the ACCC in 2018, 2019 and 2020.[14] The ACCC issued a final report in July 2021 providing detailed

[13] C142 is primarily for the Department for Environment, Food and Rural Affairs (Defra)

[14] The UK's first progress report (in October 2018) on the implementation of Decision VI/8k is available here: frPartyVI8.k_01.10.2018_first_progress_report.pdf (unece.org). The UK's second progress report (in September 2019) on the implementation of Decision VI/8k is available here: frPartyVI.8k_30.09.2019_2nd_progress_report.pdf (unece.org). The UK's third and final progress report

consideration of the issues around the ECPR and indicating where some concerns remain. This report was submitted to the MoP in October 2021 and underpins the new Decision VII/8s.[15] Accordingly, for the purpose of this review and consideration of the ECPR in detail, we refer to the specific issues addressed by the ACCC in Part I of this report on Decision VI/8k as listed below (those in *italics – (b), (g) and (k)* - indicating that the ACCC have no ongoing concerns).

(a) Type of claims covered;

(b) Eligibility for costs protection;

(c) Default levels of costs caps;

(d) Variation of costs caps;

(e) Schedule of claimant's financial resources and hearings on applications to vary costs caps;

(f) Costs for procedures with multiple claimants;

(g) Costs protection prior to the grant of permission;

(h) Costs relating to the determination of an Aarhus claim;

(i) Costs protection on appeal;

(j) Cross-undertakings for damages;

(k) Costs orders concerning funders of litigation;

(l) Costs orders against or in favour of interveners.

21. Following this, as set out above, this section of the call for evidence also considers findings of the ACCC regarding:

(m) issues relating to ACCC Communication 131 (concerning a planning challenge); and

(n) issues relating to ACCC Communication 142 (litter abatement orders).

(a) Types of claims covered: private nuisance claims

22. **The issue:** In their final report on Decision VI/8k, the ACCC suggest that the scope of the ECPR should be extended to cover private nuisance claims.

(in September 2020) on the implementation of Decision VI/8k is available here: frPartyVI8.k_30.09.2020_final_progress_report.pdf (unece.org).

[15] See the ACCC's final report to the Meeting of the Parties on Decision VI/8k (Part I): ECE/MP.PP/2021/59 (unece.org); and Part 2: ECE_MP.PP_2021_60_E.pdf (unece.org). Part I reviews the progress made by the UK in implementing paragraphs 2, 4 and 6 of Decision VI/8k; Part II review the UK's progress in implementing paragraph 8 of Decision VI/8k.

23. **ACCC comments:** In particular, the ACCC states in their final report on Decision VI/8k that it 'appreciates the extension of the cost protection regime to section 288 claims'. However, since other types of claims, including private law claims such as private nuisance, are still not covered by the ECPR, the ACCC finds that the Party concerned has not yet fulfilled paragraphs 2 (a), (b) and (d) and 4 of Decision VI/8k regarding the types of claims covered by cost protection in England and Wales**.**

24. **Commentary:** The Government notes the ACCC position that a lack of costs protection for private nuisance claims is presenting a barrier to justice in environmental matters in practice. Further evidence is welcomed through this call for evidence. The Government is aware of 2 cases in which costs protection orders for private nuisance claims were sought and refused since the UK acceded to the Aarhus Convention: *Austin v Miller Argent*[16] and *Morgan v Hinton Organics (Wessex) Ltd*[17]. Both parties in each case then raised a communication with the ACCC in the form of ACCC/C/2013/85 and ACCC/C/2013/86. The communicants argued that the removal of recovery of After the Event (ATE) insurance through the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO) Act have contributed to environmental proceedings being unfair, inequitable, and prohibitively expensive.

25. By way of background, before the LASPO reforms, the success fee and ATE premium were recoverable from (i.e., payable by) the losing party, in addition to the base costs. This caused significant additional costs for losing parties in Conditional Fee Agreement (CFA) claims who were liable for the usual base costs, the CFA success fee (up to 100% of base costs), and the ATE premium. This amounted to a losing party having to pay the winning party up to three times the costs they would otherwise have to pay. It is the Government's view that the introduction of LASPO, and thereby the abolition of the recovery of success fees and ATE insurance addresses the previous concerns surrounding high legal costs generally in civil litigation.

26. The Government notes that parties can alternatively choose to resolve private nuisance claims outside of the courts in England and Wales. This can be achieved through other dispute resolution mechanisms, such as mediation which is already available for these disputes. Mediation helps parties avoid the time, cost, and stress of an adversarial court battle.

27. As it currently stands, Aarhus claims are expressly linked with challenging the legality of a decision, act or omission made by a public body. There may be a concern that extending the ECPR to include private nuisance claims runs the risk of increasing

[16] Original private nuisance case *Austin v Miller Argent* [2011] EWCA Civ 928, the costs of those proceedings were later appealed in *Austin v Miller Argent* [2014] EWCA Civ 1012

[17] Original private nuisance case from Queen's Bench Division A2/2008/0038, and then later appealed in *Morgan v Hinton Organics (Wessex) Ltd* [2009] EWCA Civ 107

legal challenges between private persons which have only a tenuous link to the environment or to wider public environmental benefit.

28. If the ECPR is to be extended to private nuisance claims, one option could be to make such protection available only at the court's discretion, where the court considers a particular dispute to be sufficiently closely connected to an environmental matter. Additionally, provision could be made for the court to consider any wider public interest raised by the case. This approach was explored in the case *Austin v Miller Argent,* where the Court of Appeal considered that to benefit from costs protection under the regime applicable at that time, the claim must, if successful, be capable of conferring significant environmental benefits to the public at large.

29. Qualified One-way Costs Shifting (QOCS) could be considered as a suitable alternative way to address the costs of private nuisance claims. QOCS was put forward by Sir Rupert Jackson as a new form of costs protection in personal injury claims where there is typically a financial imbalance between the parties: an individual brings a claim against a well-resourced defendant such as an insurance company or the NHS. However, it is not well suited as a model in other situations where there is not such inequality of arms, or where the losing party should be expected to pay at least some costs, albeit at a capped level.

(a) <u>Types of claims covered: private nuisance</u>

Question 4: Please provide any data or information you hold on the costs involved in pursuing a private nuisance claim with an environmental component.

Question 5: Please provide your views on the courts using judicial discretion to determine whether a private nuisance claim should benefit from the ECPR. What are the likely benefits and potential risks of doing so?

Question 6: What particular private nuisance claims should benefit from costs protection under the Aarhus convention?

Question 7: Please provide your views on mediation or other forms of dispute resolution as a means to resolve private nuisance disputes.

(c) Default levels of costs caps: unincorporated associations

30. **The issue:** In their final report on Decision VI/8k, the ACCC suggest that the level of the default costs caps (i.e., £5,000 or £10,000) is unclear for unincorporated associations. Unincorporated associations are groups of individuals that come together for, or act in support of a purpose, but without having a separate legal personality.

31. **ACCC comments:** In particular, the ACCC consider that 'the issue is not whether unincorporated associations are eligible for costs protection, but at what level their exposure to costs is capped'. The complaint is that 'there is uncertainty' as to whether an unincorporated association bringing an Aarhus claim should count as a group or an individual, and that this should be clarified.

32. **Commentary:** The Government acknowledges the concerns raised by the ACCC and welcomes evidence on whether the CPR ought to be amended to provide further clarity as to the application of the ECPR in cases involving unincorporated associations. Currently, in cases involving unincorporated associations there will be large differences between the membership size and level of organisation, and consequently the scale of their finances and funding support. In circumstances where an unincorporated association has its own separate finances, the court will set the cap accordingly as it relates to the finances of all those members. As a result, the level of a default cap may need to be adjusted accordingly as between the two levels provided.

33. If a default cap were set specifically for unincorporated associations, the appropriate level may be £10,000. This would be in line with the default cap for non-individual claimants, given there is a process for requesting a variation where appropriate based on the actual finances of a claimant. An additional issue to consider is the enforcement of any costs order against an unincorporated association, and how this could be addressed for the purposes of the ECPR, specifically where there are limited or no separate finances of the unincorporated association.

(c) <u>Default levels of costs caps: unincorporated associations</u>

Question 8: Are you aware of any cases where the ECPR has been applied to claims involving unincorporated associations? If so, what decision was made on the costs cap and were there any significant problems?

Question 9: Are you aware of any cases where a lack of clarity as to the application of the ECPR to unincorporated associations has had an adverse effect on participation?

Question 10: What are the potential benefits and risks of amending the CPR to provide further clarity as to the application of the ECPR in cases involving unincorporated associations?

(d) Variation of costs caps

34. **The issue:** The ACCC are concerned with an alleged lack of consistency in the variation of the costs caps set out in the ECPR. They point to the lack of evidence on

downwards variation of the costs caps and ask for up-to-date data. The ACCC also consider that the possibility for defendants to apply to vary costs caps during proceedings, and even after judgment, fails to guarantee sufficient certainty for claimants.

35. **ACCC comments:** In their final compliance report on Decision VI/8k, the ACCC '[note] the lack of examples before it of cases in which the costs caps have been varied downwards', raising a particular concern that CPR Part 46.27 'is being used more often to increase, rather than decrease, the caps'. In addition, they comment on the provisions of the ECPR on the timing of applications to vary costs caps, summarising that 'the Party concerned has not demonstrated that the rules and practice for variation of the costs caps provide a clear and consistent framework that guarantees that costs will be fair, equitable and not prohibitively expensive'.

36. **Commentary:** As previously set out in its final progress report on Decision VI/8k (see paragraph 8), the ECPR allows for downwards variation. The Government notes that the default caps are set at a relatively low level specifically to ensure that the proceedings are not prohibitively expensive for claimants, so it may not be surprising that the caps are not varied downwards more frequently.

37. Currently, there is a requirement that applications for variation of the default costs caps are made in the claim form or acknowledgement of service and 'determined by the court at the earliest opportunity' (see CPR Part 46.27(5)(c)). However, the ECPR makes provision for a later application to vary to be made 'if there has been a significant change in circumstances', which is set out in CPR Part 46.27(6). However, in the spirit of fairness, a claimant who has submitted an incorrect financial statement should not be safe from a variation of application if the true position only comes to light later.

(d) Variation of costs caps

Question 11: Please provide data on the number of Aarhus cases you have been involved in where an application was made by a defendant or claimant to vary the costs cap. Of those applications, how many cases successfully varied the costs cap downwards?

Question 12: Please provide data on the number of Aarhus claims you have been involved in where defendants have applied to vary a costs cap during proceedings (that is, not at the first opportunity). Of those applications, how many were successful? Please provide detail of the case and circumstances.

Question 13: Please provide your views on the court's ability to vary the costs cap. Do you think the possibility of varying the costs cap is potentially dissuading claimants from bringing forward an Aarhus claim?

Question 14: Should the rules allowing for defendants to challenge a costs cap be revised and, if so, how?

Question 15: What are the likely benefits and risks of varying the costs cap?

(e) Schedule of claimant's financial resources and hearings on applications to vary costs caps

38. **The issue:** In their final report on Decision VI/8k, the ACCC suggest that there is a risk that meritorious Aarhus claimants will be dissuaded from bringing a Judicial Review, on the basis that their financial circumstances (as required under CPR 46.25) will be provided to the defendant and may be discussed in open court.

39. **ACCC comments:** In particular, the ACCC take issue with a decision taken by the CPRC, following their open justice review, 'to provide that hearings are to be public unless certain criteria are met. These criteria include that a hearing involves confidential information (including information relating to personal financial matters) and publicity would damage that confidentiality'. The ACCC '[consider] that this creates a further barrier to access to justice under Article 9 of the [Aarhus] convention and is thus potentially unfair'. The ACCC also commented that requiring claimants to submit financial information in all Aarhus cases 'creates an unnecessary burden and is thus potentially unfair' since instances of upwards costs cap variation remain low.

40. **Commentary:** The fundamental principle of open justice at the heart of CPR Part 39.2 is expressly balanced with an obligation on the court to hear a case in private where appropriate to protect the privacy of an individual. The Government welcomes evidence from stakeholders to better understand whether the financial schedule is

creating a barrier to justice. The CPRC – an independent and expert body chaired by the Master of the Rolls – have been fully aware of the tensions between these two principles in their 2018 open justice review.

(e) Schedule of claimant's financial resources and hearings on applications to vary costs caps

Question 16: The ECPR rules provide that any claimant who wishes to take the benefit of the default costs cap is required to file a financial schedule to evidence their financial position. This information may then be discussed in an open court. Should this provision be revised in a way which protects the financial circumstances of all parties, and if so, how? What are the benefits and risks of this approach?

(f) Costs for procedures with multiple claimants

41. **The issue:** The ACCC see no basis for the rule requiring separate costs caps for each claimant, in particular where the claimants make the same legal arguments on the same factual basis.

42. **ACCC comments:** In their final compliance report on Decision VI/8k, the ACCC comment: 'the ACCC does not agree that it is undesirable for claimants to be able to share the costs burden for challenges within the scope of the Convention'.

43. **Commentary:** The CPR stipulates that the costs caps in the ECPR apply only to individual claimants and/or defendants, and 'may not be exceeded, irrespective of the number of receiving parties.' (CPR 46.26(4)). It is acknowledged that additional claimants may clearly lead to increased costs of proceedings. The viability of a separate 'shared claimant' default costs cap could be considered in this review (including, for example, if a second claimant is only raising the same legal argument). As an example, caps could be set at one and a half times the default individual claimant cap (e.g., £7,500, if there are two claimants who are individuals and £15,000 for two claimants otherwise), but crucially still retain the potential for variability. This would allow claimants to share the costs burden, if they wished to do so, but also reflect the fact that multiple claimants can increase the administration and complexity of legal arguments. This could be considered be a positive development, without undermining the principles of the current ECPR.

(f) Costs for procedures with multiple claimants

Question 17: Would you support a default shared claimant costs cap, and if so, what form should that take and should any conditions apply (for example, only where a second claimant is raising the same legal arguments)?

Question 18: What are the likely potential benefits and risk of a default shared claimant costs cap?

(h) Costs relating to the determination of an Aarhus claim

44. **The issue:** The ACCC are concerned that, prior to February 2017, defendants who unsuccessfully challenged that a claim was an Aarhus claim (and so fell within the ECPR) were required to pay "indemnity costs" regarding that challenge. However, since February 2017, defendants have been required to pay the claimants' costs on the standard basis, which is lower (see CPR 46.28(3)(b)).

45. **ACCC comments:** In their final report on Decision VI/8k, the ACCC '[note] that, whether or not the amended rule has led to an increase in challenges in practice, it is indeed unfair that claimants do not recover their full costs in the case of an unsuccessful challenge'.

46. **Commentary:** Costs on an indemnity basis cover all reasonable costs with any doubt resolved in favour of the receiving party, without the need for proportionality. In contrast, costs on a standard basis require costs to be both reasonable and proportionate, with any doubt resolved in favour of the paying party. The lack of evidence and data on this issue is noted and we would therefore welcome further evidence from stakeholders as part of this review.

(h) Costs relating to the determination of an Aarhus claim

Question 19: Please provide any data on the number of Aarhus claims you have been involved in where claimants' costs have not been recovered when defendants have unsuccessfully challenged the Aarhus status of a claim.

Question 20: In your view, are indemnity costs dissuading claimants from bringing forward Aarhus claims? Please provide evidence.

(i) Costs protection on appeal

47. **The issue:** In their final compliance report on Decision VI/8k, the ACCC note their previous recommendation that 'the lack of any costs caps in CPR Part 52.19A fails to

ensure sufficient clarity or costs protection for claimants in appeals regarding Aarhus claims'. As such, the ACCC do not consider the CPR ensures consistency of costs on appeal.

48. **ACCC comments:** The ACCC further emphasise that 'the costs to be ordered on appeal, including any possible costs caps that may be introduced into CPR Part 52.19A, must recognise that the requirement not to be prohibitively expensive applies to the procedure *as a whole*, encompassing all stages of the procedure'. Further to this, they add that 'the requirement in Article 9 (4) for the procedure not to be prohibitively expensive also applies to proceedings before the Supreme Court'.

49. **Commentary:** The concerns raised by the ACCC are noted and this compliance issue should be explored further. There may be inconsistent application of CPR Part 52.19A and specifically its reference back to the ECPR. An amendment to the CPR (e.g., at 52.19A), for example, may increase clarity and consistency on the costs of appeals – so that, absent any reason for a substantive change, the costs cap applied under the ECPR covers the whole case (including any appeal to the Court of Appeal). Significant change in the parties' financial position, including that financial information was false or misleading, should enable an application to vary the original costs cap at the appeal stage.

(i) <u>Costs protection on appeal</u>

Question 21: Should CPR Part 51.19A be clarified to ensure greater consistency around the costs cap applied to appeals and, if so, how? What are the likely benefits and risks of doing so?

(j) Cross-undertakings for damages

50. **The issue:** The ACCC are of the view that the 2017 CPR amendments did not give further clarity to applications seeking interim injunctions as to whether a cross-undertaking for damages will be required, and if so, at what level. It is the ACCC's view that this fails to meet the requirement, set out in Article 3 (1) of the Aarhus Convention, for a clear, transparent, and consistent framework to implement the Convention's provisions.

51. **ACCC comments:** Further to the above, in their final report on Decision VI/8k, the ACCC seek further data on this matter: 'the ACCC thus invites [the UK]… to provide up-to-date data on: (a) the number of Aarhus claims in which an interim injunction was sought; (b) whether a cross-undertaking was required; and (c) if so, the amount required'.

52. **Commentary:** Further evidence is welcomed as part of this review.

(j) <u>Cross-undertakings for damages</u>

Question 22: Please provide any data on the number of Aarhus claims you have been involved in where an interim injunction was sought and whether the issue of a cross-undertaking in damages arose, in particular:

a) the number of Aarhus claims in which an interim injunction was sought

(b) whether a cross-undertaking was required; and

(c) if so, the amount required

(l) Costs orders against or in favour of interveners

53. **The issue:** The ACCC consider that members of the public who join proceedings as interveners *in support of the* claimant should also be entitled to benefit from the Convention's requirement that proceedings must not be prohibitively expensive.

54. **ACCC comments:** The ACCC's position is that costs protection should be afforded to interveners during proceedings. The ACCC considers that 'members of the public who join proceedings as interveners in support of the claimant are also entitled to benefit from the Convention's requirement that proceedings must not be prohibitively expensive'. They find that the UK has not yet achieved compliance on this point.

55. **Commentary:** Further views on this are welcomed.

(l) <u>Costs orders against or in favour of interveners</u>

Question 23: Please provide any data on the number of Aarhus claims you have been involved in where it has been appropriate for interveners to intervene to support claimants, and whether there has been uncertainty as to costs liability. Did this uncertainty dissuade an intervener from taking part in the claim?

Question 24: The ACCC's position is that costs protection should be afforded to interveners during proceedings. Should interveners in support of an Aarhus claim have any additional protection from costs beyond the current position? What are the likely benefits and risks of doing so?

ACCC/C/2015/131 (b): Calculating the sum of costs to be awarded against an unsuccessful claimant.

56. **The issue:** The ACCC are concerned with whether there was a rule or direction in place in March 2015 that required the judge, when deciding the appropriate sum of costs to be awarded against an unsuccessful claimant in an Aarhus Convention claim, to take into account the procedural stage(s) covered by that particular costs award.

57. **ACCC comments:** In the findings and recommendations with regard to communication ACCC/C/2015/131, the ACCC recommend that '[when] calculating the sum of costs to be awarded against an unsuccessful claimant in a procedure subject to Article 9 of the Convention, the courts, inter alia, take into account the stage of the judicial procedure to which the costs relate' (see paragraph 175(b) of C131). In addition to this recommendation, the ACCC also raised specific concerns of instances where the full amount of the £5,000 costs cap applied in the permission stage of proceedings, resulting in a 'frontloaded' scenario (see paragraph 140 of C131).

58. **Commentary:** As set out in a previous response to the ACCC[18], the Government would 'particularly highlight CPR Part 44.3(5)(c) and 44.4(2)(b) (the need for costs to be proportionate to the complexity of the litigation), and Part 44.4(3)(f) (the need to have regard to the time spent on the case when assessing the proportionality of the costs incurred). By virtue of these rules, a judge refusing permission to apply for judicial review is necessarily required, when assessing costs, to have regard to the fact that the permission stage is intended to be a summary process which does not require the defendant to spend time setting out a detailed defence.[19]

ACCC/C/2015/131 (b): <u>Calculating the sum of costs to be awarded against an unsuccessful claimant.</u>

Question 25: In your view, what further clarification in the CPR, if any, is required to achieve this effect?

ACCC/C2015/131 (c): 'Litigant in person' hourly rate

59. **The issue:** The ACCC finds that, by setting a significantly lower hourly rate (i.e., less than one-tenth of the sum of a legally-represented party) at which successful 'litigants in person' are entitled to recover their costs in procedures subject to Article 9 of the Convention, the Party concerned fails to ensure that such procedures are fair and equitable (as required by Article 9(4) of the Convention). The ACCC considers that, even considering the variable costs caps for Aarhus Convention claims, such unequal

[18] See the UK's response to further questions from the ACCC in December 2020: frPartyC131_23.12.2020_reply to ACCC's questions.pdf (unece.org).

[19] *Ibid*

costs exposure may have a chilling effect and add uncertainty for a 'litigant in person' during the course of proceedings.

60. **ACCC comments:** In their findings of ACCC/C/2015/131, the ACCC recommended that '[in] judicial procedures within the scope of Article 9 of the Convention, successful 'litigants in person' are entitled to recover a fair and equitable hourly rate' (see paragraph 31 of C131).

61. **Commentary:** The Government would welcome views on this issue.

ACCC/C2015/131 (c): 'Litigant in person' hourly rate'

Question 26: In your view, what should the optimal hourly rate for a litigant in person pursuing an Aarhus Convention claim be? Please provide justification.

ACCC/C/2015/131(d): Proceedings within the scope of Article 9 of the Convention in which the applicant follows the Party's concerned pre-action protocol

62. **The issue:** The ACCC considered the requirement in Article 3 (2) for parties to endeavour to ensure that its public authorities assist the public to seek access to justice. The ACCC noted that it was not enough for a Party to merely put in place a legal framework, but there was also an obligation on them to take efforts to ensure that the responsible public authorities follow the relevant rules (see paragraph 165 of C131).

63. **ACCC comments:** In ACCC/C/2015/131, the ACCC recommend that '[in] proceedings within the scope of Article 9 of the Convention in which the applicant follows the Party concerned pre-action protocol, the public authority concerned is required to comply with that protocol' (see paragraph 175 (d) of C131).

64. **Commentary:** The Government has issued guidance on pre-action protocols.[20] The pre-action protocol makes clear the court will take into account non-compliance when giving directions for the management of proceedings (see CPR Part 3.1(4) to (6)) and when making orders for costs (see CPR Part 44.2(5)(a)).

65. The Government is interested in exploring whether any additional words, included at the start of the ECPR provisions in the CPR, could make clear that these general rules on costs also apply.

[20] PRACTICE DIRECTION – PRE-ACTION CONDUCT AND PROTOCOLS – Civil Procedure Rules (justice.gov.uk)

ACCC/C/2015/131(d): Proceedings within the scope of Article 9 of the Convention in which the applicant follows the Party's concerned pre-action protocol.

Question 27: Please provide any data or evidence to support the view that public authorities do not comply with the pre-action protocol? What procedural steps or otherwise should be included in the CPR or elsewhere to ensure compliance?

Chapter 2: Judicial Review Time Limit

The ACCC's recommendation

66. Paragraph 2(c) of Decision VII/8s "requests (the UK) to, as a matter of urgency, take the necessary legislative, regulatory, administrative, and practical measures to:

    "(c) Further review its rules regarding the time-frame for the bringing of applications for judicial review in Northern Ireland to ensure that the legislative measures involved are fair and equitable and amount to a clear and transparent framework"

67. Paragraph 5(d) endorses the findings of communication ACCC/C/2015/131 that:

    "(d) By maintaining a legal framework in which the time limit to bring judicial review is calculated from the date when the contested decision was taken, rather than from when the decision became known to the public, the Party concerned fails to comply with the requirement that review procedures in article 9(2) be fair in accordance with article 9(4) of the Convention".

68. Paragraph 6(a) "recommends that (the UK) take the necessary legislative, regulatory, administrative, and practical measures to ensure that:

    "(a) The time-frame for bringing an application for judicial review of any planning related decision within the scope of article 9 of the Convention is calculated from the date the decision became known to the public and not from the date that the contested decision was taken"

69. Although the wording of Article 2(c) refers specifically to Northern Ireland, the finding and associated recommendation apply equally to England and Wales and to Scotland where similar rules are in place.

The current policy in England and Wales

70. Judicial review is a constitutionally important mechanism which allows an individual or organisation affected by a decision taken by a public body to challenge that decision in court. The time limits for bringing a claim are intended to strike a balance between the need for legal certainty and the right of access to justice. As stated by Lord Diplock in *O'Reilly v Mackman*[21]: "the public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal

[21] O'Reilly v Mackman [1983] 2 AC 237

validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period that is absolutely necessary in fairness to the person affected by the decision".

71. CPR rule 54.5 (1) provides that "the claim form must be filed promptly and within three months after the grounds to make the claim first arose". This default does not apply to judicial reviews related to a decision made by the Secretary of State or local planning authority under the planning acts,[22] where the deadline is six weeks after the grounds to make the claim first arose.

72. As to when "the grounds to make the claim first arose", this is usually the date on which the decision under challenge was taken, not when the claimant knew (or ought to have known) enough information to make an application for judicial review. However, the latter is material to the question of whether the application was brought promptly or whether an extension of time for bringing the claim should be granted. Where time limits are imposed on statutory review challenges such as under s.288 of the Town and Country Planning Act 1990, they are in general treated as absolute, and the court has no discretion to extend those time limits. There is no derogation from the rules on time limit for Aarhus Convention claims.

Questions

73. Potential reforms to the rules on the time limit for making a judicial review claim in England and Wales were considered by the 2021 Independent Review of Administrative Law led by Lord Faulks KC[23] and the government consultation on judicial review reform published later that year[24]. This included proposals to remove the requirement to bring an application 'promptly' and to extend the current time limit, neither of which was taken forward following consultation. However, changing the rules so that the time limit is calculated from the date the decision became known to the public and not from the date that the contested decision was taken, as recommended by the ACCC, was not considered. Therefore, the Government would welcome views on the likely benefits and potential risks associated with the implementation of this recommendation as a means of ensuring that the judicial review regime in England and Wales meets the UK's obligations under the Aarhus Convention.

74. The Government understands that the aim of the ACCC's recommendation is to ensure that an individual or organisation seeking to make an Aarhus Convention

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[22] For these purposes, 'the planning acts' has the same meaning as in section 336 of the Town and Country Planning Act 1990.

[23] The Independent Review of Administrative Law (publishing.service.gov.uk)

[24] Judicial Review Reform - GOV.UK (www.gov.uk)

claim can take full advantage of the time limit. To implement the ACCC's recommended change in the commencement of the time limit, primary legislation would be needed to amend the relevant Acts providing for statutory review rights. Amendments to the CPR would also be required and would be a matter for the independent Civil Procedure Rule Committee. Respondents are asked to indicate whether they consider that this change should be made across England and Wales in order to ensure compliance, or whether there is an alternative that might be more effective in enabling us to meet our obligations under the Convention.

75. The Government has identified two options to implement the ACCC's recommendation. Both would involve changing the rules so that the time limit starts from when a decision is made public rather than when it was taken. The first option would be to define 'when a decision is made public' as the date when that decision was published, in the CPR and/or the relevant legislation. The second would be to leave this open to the Court to establish the test as to when a decision is considered to have been made public or when a claimant knew or ought to have known about that decision. While the first would provide for greater certainty as to when an eligible judicial review claim may be made, the latter could provide judges greater flexibility to consider the specific circumstances of each case when determining whether a claim was made in time.

76. The Government would welcome views from the judiciary, legal practitioners and other stakeholders on how the ACCC's recommendation ought to be implemented, with particular regard to how it might impact the operation of the courts.

Question 28: What are the likely benefits of changing the rules on the commencement of the time limit for bringing an Aarhus Convention claim as suggested by the ACCC?

The Government would welcome views from the judiciary, legal practitioners and other stakeholders on how the ACCC's recommendation ought to be implemented, with particular regard to how it might impact the operation of the courts.**Question 28: What are the likely benefits of changing the rules on the commencement of the time limit for bringing an Aarhus Convention claim as suggested by the ACCC?**
Question 29: What are the potential risks of changing the rules on the commencement of the time limit for bringing an Aarhus Convention claim as suggested by the ACCC?

Question 30: If the rules in England and Wales were to be changed so that the time limit starts when a decision is made public, should 'when a decision is made public' be defined as the date when that decision is published, or should this be left open for the courts to determine?

Question 31: Are there other approaches which could better address the non-compliance finding regarding the rules on judicial review time limits in England and Wales?

Chapter 3: Litter abatement orders

The ACCC's recommendation

77. Paragraph 8 of Decision VII/8s "Recommends that the [UK] promptly take the necessary legislative, regulatory, administrative or other measures, such as establishing appropriate assistance mechanisms, to ensure that procedures to challenge acts and omissions by public authorities that contravene provisions of its law on litter are fair, equitable and not prohibitively expensive.

The current policy in England and Wales

78. Section 89 of the Environmental Protection Act 1990 places a duty on local authorities, and other specified bodies to ensure that relevant land is, so far as is practicable, kept clear of litter and refuse, and certain roads and highways are kept clean.

79. Section 91 provides for proceedings to be initiated in a magistrates' court by a person who believes a litter authority has failed to meet these statutory duties. The court can make a litter abatement order requiring the authority to clear the litter or refuse away or clean the highway.

80. Where a magistrates' court is satisfied that, when the complaint was made, the land in question was defaced by litter or refuse or, as the case may be, was wanting in cleanliness, and that there were reasonable grounds for bringing the complaint, the court shall order the defendant to pay to the complainant's reasonable costs in bringing the proceedings before the court.

81. Costs incurred in the making of a litter abatement order are not subject to the limits on costs recoverable from a party in an Aarhus Convention claim under the CPR.

Questions

82. One option of restoring compliance is to change the provisions on costs in section 91 to introduce a cap so that a claimant would pay no more than a certain amount regardless of the outcome of the court case, similar to the provisions for Aarhus Convention claims under the CPR. This has not yet been formally considered. The Government would welcome views on the likely benefits and potential risks of doing so.

83. Respondents are also asked to indicate whether they consider there to be alternative means of meeting our obligations under the Aarhus Convention, including outside of the courts.

Question 32: Should the provisions on costs in relation to a litter abatement order under section 91 be revised, and, if so, how?

Question 33: Do you consider there to be other means of meeting our obligations under the Aarhus Convention, particularly outside of the courts, and, if so, how?

Chapter 4: Summary of Questions

We welcome responses to the following questions, which refer to the specific issues raised in the chapters above. You do not need to answer every question. Please give reasons for your responses, including examples and data from cases.

ECPR and Volume of Claims

Question 1: How effective is the ECPR in ensuring that environmental claims are not prohibitively expensive to bring?

Question 2: Please provide data on the number of Aarhus claims that you have been involved in since January 2020 and their outcomes.

Question 3: Please provide data on the impact, if any, of the Covid-19 pandemic on the number of Aarhus claims that you have been involved in.

(a) Types of claims covered: private nuisance

Question 4: Please provide any data or information you hold on the costs involved in pursuing a private nuisance claim with an environmental component.

Question 5: Please provide your views on the courts using judicial discretion to determine whether a private nuisance claim should benefit from the ECPR. What are the likely benefits and potential risks of doing so?

Question 6: What particular private nuisance claims should benefit from costs protection under the Aarhus convention?

Question 7: Please provide your views on mediation or other forms of dispute resolution as a means to resolve private nuisance.

(c) Default levels of costs caps: unincorporated associations

Question 8: Are you aware of any cases where the ECPR has been applied to claims involving unincorporated associations? If so, what decision was made on the costs cap and were there any significant problems?

Question 9: Are you aware of any cases where a lack of clarity as to the application of the ECPR to unincorporated associations has had an adverse effect on participation?

Question 10: What are the potential benefits and risks of amending the CPR to provide further clarity as to the application of the ECPR in cases involving unincorporated associations?

(d) Variation of costs caps

Question 11: Please provide data on the number of Aarhus cases you have been involved in where an application was made by a defendant or claimant to vary the costs cap. Of those applications, how many cases successfully varied the costs cap downwards?

Question 12: Please provide data on the number of Aarhus claims you have been involved in where defendants have applied to vary a costs cap during proceedings (that is, not at the first opportunity). Of those applications, how many were successful? Please provide detail of the case and circumstances.

Question 13: Please provide your views on the court's ability to vary the costs cap. Do you think the possibility of varying the costs cap is potentially dissuading claimants from bringing forward an Aarhus claim?

Question 14: Should the rules allowing for defendants to challenge a costs cap be revised and, if so, how?

Question 15: What are the likely benefits and risks of varying the costs cap?

(e) Schedule of claimant's financial resources and hearings on applications to vary costs caps

Question 16: The ECPR rules provide that any claimant who wishes to take the benefit of the default costs cap is required to file a financial schedule to evidence their financial position. This information may then be discussed in an open court. Should this provision be revised in a way which protects the financial circumstances of all parties, and if so, how? What are the benefits and risks of this approach?

(f) Costs for procedures with multiple claimants

Question 17: Would you support a default shared claimant costs cap, and if so, what form should that take and should any conditions apply (for example, only where a second claimant is raising the same legal arguments)?

Question 18: What are the likely potential benefits and risk of a default shared claimant costs cap?

(h) Costs relating to the determination of an Aarhus claim

Question 19: Please provide any data on the number of Aarhus claims you have been involved in where claimants' costs have not been recovered when defendants have unsuccessfully challenged the Aarhus status of a claim.

Question 20: In your view, are indemnity costs dissuading claimants from bringing forward Aarhus claims? Please provide evidence.

(i) Costs protection on appeal

Question 21: Should CPR Part 51.19A be clarified to ensure greater consistency around the costs cap applied to appeals and, if so, how? What are the likely benefits and risks of doing so?

(j) Cross-undertakings for damages

Question 22: Please provide any data on the number of Aarhus claims you have been involved in where an interim injunction was sought and whether the issue of a cross-undertaking in damages arose, in particular: a) the number of Aarhus claims in which an interim injunction was sought; (b) whether a cross-undertaking was required; and (c) if so, the amount required.

(l) Costs orders against or in favour of interveners

Question 23: Please provide any data on the number of Aarhus claims you have been involved in where it has been appropriate for interveners to intervene to support claimants, and whether there has been uncertainty as to costs liability. Did this uncertainty dissuade an intervener from taking part in the claim?

Question 24: The ACCC's position is that costs protection should be afforded to interveners during proceedings. Should interveners in support of an Aarhus claim have any additional protection from costs beyond the current position? What are the likely benefits and risks of doing so?

ACCC/C/2015/131 (b): Calculating the sum of costs to be awarded against an unsuccessful claimant.

Question 25: In your view, what further clarification in the CPR, if any, is required to achieve this effect?

ACCC/C2015/131 (c): 'Litigant in person' hourly rate'**.**

Question 26: In your view, what should the optimal hourly rate for a litigant in person pursuing an Aarhus Convention claim be? Please provide justification.

ACCC/C/2015/131(d): Proceedings within the scope of Article 9 of the Convention in which the applicant follows the Party's concerned pre-action protocol.

Question 27: Please provide any data or evidence to support the view that public authorities do not comply with the pre-action protocol? What procedural steps or otherwise should be included in the CPR or elsewhere to ensure compliance?

Judicial Review Time Limit

Question 28: What are the likely benefits of changing the rules on the commencement of the time limit for bringing an Aarhus Convention claim as suggested by the ACCC?

Question 29: What are the potential risks of changing the rules on the commencement of the time limit for bringing an Aarhus Convention claim as suggested by the ACCC?

Question 30: If the rules in England and Wales were to be changed so that the time limit starts when a decision is made public, should 'when a decision is made public' be defined as the date when that decision is published, or should this be left open for the courts to determine?

Question 31: Are there other approaches which could better address the non-compliance finding regarding the rules on judicial review time limits in England and Wales?

Litter abatement orders

Question 32: Should the provisions on costs in relation to a litter abatement order under section 91 be revised, and, if so, how?

Question 33: Do you consider there to be other means of meeting our obligations under the Aarhus Convention, particularly outside of the courts, and, if so, how?

Equalities Impact Assessment

Question 34: Are there any equality impacts arising from any of the measures included in this Call for Evidence? If so, please outline what these are, with evidence, together with any mitigations you think could be considered.

The Government invites stakeholders to submit data that may be useful in our ongoing assessment of the ECPR and the compliance issues raised.

Next steps

Publication of response

84. The Government intends to publish a response as soon as practicable following the closing date of this call for evidence. It will set out the Government's decision with regards to each of the ACCC's recommendations in light of the responses received.

Impact Assessment, Equalities and Welsh Language

85. Proportionate Impact Assessment, Equality Analysis, and Welsh Language Impact Tests will be completed as required as part of the government response to the call for evidence.

About you

Please use this section to tell us about yourself:

Full name	
Job title or capacity in which you are responding to this consultation exercise (e.g. member of the public etc.)	
Date	
Company name/organisation (if applicable):	
Address	
Postcode	
If you would like us to acknowledge receipt of your response, please tick this box	☐ (please tick box)
Address to which the acknowledgement should be sent, if different from above	

If you are a representative of a group, please tell us the name of the group and give a summary of the people or organisations that you represent.

Contact details

Please send your response by 9 December 2024 to:

Civil Justice Policy
Ministry of Justice
Post Point 5.25
102 Petty France
London SW1H 9AJ

Email: AarhusCfE@justice.gov.uk

Representative groups are asked to give a summary of the people and organisations they represent when they respond.

Confidentiality

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 2018 (DPA), the General Data Protection Regulation (GDPR) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

The Ministry of Justice will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

Consultation principles

The principles that government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the Cabinet Office Consultation Principles 2018 that can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691383/Consultation_Principles__1_.pdf

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