

Treasury Solicitor's Department  
One Kemble Street, London, WC2B 4TS

Administrative Court  
Royal Courts of Justice  
Strand  
London  
WC2A 2LL

DX 123242 Kingsway 6  
Switchboard: 0207 210 3000  
Direct Line: 0207 210 3018  
Direct Fax: 0207 210 3001  
louise.marriott@tsol.gsi.gov.uk

Please Quote: Z1421321/LJM/B5  
Your Reference: CO/3955/2014

**By email**

9 September 2014

Dear Sirs

**Irene Keogh v Secretary of State for Communities & Local Government CO 3955/2014**

I act for the Secretary of State for Communities and Local Government in this matter.

I refer to the Claimant's letter to the Administrative Court dated 8 September 2014, in which it is stated that, whilst we have filed an Acknowledgement of Service indicating that we will contest the claim, there has been no objection to the grant of a PCO or to the directions proposed by the directions.

As we stated in our letter to the Administrative Court when filing our Acknowledgement of Service (dated 3 September 2014), we are considering the Claimant's application for a Protective Costs Order. We stated that we would confirm shortly if we wished to make any representations to the court.

I confirm that we are likely to want to make detailed representations to the court, once the Claimant has provided further information. In the meantime, we would make the following observations on the application for a Protective Costs Order (PCO):

1. We do not accept that a PCO applies to these s 288 TCPA 1990 proceedings: the Court of Appeal considered PCOs and the Aarhus Convention in *Austin v Miller Argent* [2014] EWCA Civ 1012 in a judgment given on 21 July 2014. The Court of Appeal confirmed in that case that CPR r45.41 ff applies only to judicial review cases (para 6). This is not a judicial review claim. Our primary position, therefore, is that the Claimant is not entitled to a PCO in these proceedings.
2. Without prejudice to the point made at (1) above:
  - a. the Claimant has provided no details of her financial position other than to say (paragraph 26 of the Grounds of Claim) that she was eligible for legal aid

Lee John-Charles – Head of Division  
Neera Gajjar – Deputy Director, Team Leader  
Litigation B5

when proceedings were pursued 3 years ago. It is not clear whether this was with or without a financial contribution, and no details at all have been given as to the Claimant's up-to-date financial position.

- b. Paragraph 25 of the Grounds of Claim refers to the Claimant having paid an application fee in these proceedings of £480. This indicates that she is not eligible for fee remission, and therefore does have means at her disposal. In addition, the photocopying and travel expenses referred to at paragraph 26 would not ordinarily be part of the costs of a case, and it is difficult to see how these would amount to £1000 in any event.
- c. The Grounds of Claim provide no detail of the Claimant's financial position, only generalised assertions, unsupported by evidence. In circumstances where the Claimant is seeking a PCO in which her liability is limited to £1000 (i.e. well below the maximum provided for by CPR 45) and without prejudice to whether this is an Aarhus claim at all, our submission is that the Claimant should be required to provide evidence of her means for consideration.
- d. It is highly likely that, if a PCO were made, my client would want to ask the court to impose a reciprocal cap.

#### Directions

In relation to the directions proposed by the Claimant at paragraph 30 of the Grounds of Claim, we would strongly resist any direction being made for Summary Grounds of Resistance to be filed within 21 days of service of detailed grounds of claim/the claim bundle. This will simply increase costs unnecessarily when it is clear from the Decision Letter what the basis of the Inspector's decision is, and where skeleton arguments will be exchanged in due course in the usual way. To be required to file Summary Grounds of Resistance would simply duplicate work and increase costs.

Yours faithfully



**Louise Marriott**  
**For the Treasury Solicitor**

Cc (by email)

Richard Buxton Solicitors (Paul Stookes) - Claimant  
Herefordshire Council (Kate Stevenson) – 2<sup>nd</sup> Defendant  
Burgess Salmon (Stephen Humphreys) - 3<sup>rd</sup> Defendant