



AARHUS CONVENTION COMPLIANCE COMMITTEE RESPONSE – ENGLAND AND WALES (MAY 2017)

The Government's policy has been as follows. It will be for the new Government to determine whether it wishes to alter its predecessor's approach to implementing the Aarhus Convention. I have addressed each of the questions raised in paragraph three of the further statement by Friends of the Earth, Royal Society for the Protection of Birds (Observers) and ClientEarth (Communicant) of 7 March 2017..

- 1. In order to access costs protection claimants must serve "a schedule of the claimant's financial resources which takes into account any financial support which any person has provided or is likely to provide to the claimant". It is unclear what this specifically requires. What guidance, if any, will be provided to potential claimants on the level of detail to be included in the schedule of financial resources so that they can understand what is required?*

England and Wales Response: The Government's policy in relation to financial disclosure was set out in its response paper published on 17 November 2016. The Government stated that it would adopt a similar approach to that implemented for the recent Judicial Review Cost Capping Order reform. Unless the court ordered otherwise, the claimant would provide information on significant assets, income, liabilities and expenditure. This information would take into account of any third-party funding which the claimant had received.

- 2. Does the UK consider that this rule on financial disclosure could lead to satellite litigation on what should be included in the schedule of financial resources, and consequently impact on the eligibility of claimants for costs protection in Aarhus Convention claims after they have initiated proceedings?*

England and Wales Response: The Government acknowledged in its accompanying impact assessment, which was published alongside the Government response paper, that some claimants may be dissuaded from bringing a claim if they find it intrusive to disclose their financial information. However, there is no evidence to suggest that the rule on financial disclosure itself will encourage satellite litigation.

- 3. How will the hybrid caps scheme (whereby costs protection can be varied multiple times during the proceedings) provide claimants with certainty that their costs' liability will not be prohibitively expensive?*

England and Wales Response: It is important to note the changes to the Environmental Costs Protection Regime (ECPR), which came into force on 28 February 2017, apply to those who are privately funded. Legal aid remains available for these cases for those who qualify; legally aided claimants will be unaffected by the new regime. In relation to varying the costs caps, it is not unreasonable for the cap for wealthy claimants to be higher than for poorer claimants, always provided, as the new rules explicitly require (and accordingly

render certain), that in any case the costs of the proceedings should not be 'prohibitively expensive' for the claimant.

4. *Does the UK have evidence that the hybrid costs scheme will deter unmeritorious cases, and not deter meritorious cases, and will it share that evidence to justify its changes?*

England and Wales Response: The Government's policy and justification for introducing a variable costs cap regime is set out in the Government consultation and response paper, including the accompanying impact assessment.

5. *What monitoring system has the UK set up to assess and report on the impact of the rule changes over the next 12 to 24 months? If it is not yet set up, when will it start?*

England and Wales Response: The Ministry of Justice is in discussions with the Administrative Court Office about monitoring the impact of the ECPR.

Best wishes,

Ahmed Azam