



Carol Day
The RSPB
The Lodge
Potton Rd
Sandy
Bedfordshire
SG19 2DL

25 February 2019

Dear Carol,

THE CIVIL PROCEDURE (AMENDMENT) RULES 2019 – OPEN JUSTICE RULES

As a courtesy, I wanted to provide an update on the outcome of the Open Justice Review undertaken by the Civil Procedure Rule Committee, which considered the principle or open justice and the provisions governing when hearings must, by way of exception to that principle, be held in private. In particular, I wanted to set out the recent history so that the changes resulting from the Review, now embodied in the Civil Procedure (Amendment) Rules 2019 (hereafter “the 2019 Amendment Rules”) can be considered in context.

I wanted to draw your attention to the 2019 Amendment Rules, laid before Parliament on 25 February 2019, which make, as usual for such instruments, various technical changes to civil practice and procedure, but include new provisions on open justice arising from the Open Justice Review. The open justice amendments reflect the agreed position following the Review in relation to the overarching principle of open justice and when hearings must as an exception to that principle be heard in private. The rules as amended apply to all proceedings, and so have a bearing in relation to Aarhus Convention claims.

You will be familiar with the judicial review proceedings concerning the amendments in relation to Aarhus Convention claims made by the Civil Procedure (Amendment) Rules 2017. The judgment of the Administrative Court in those proceedings, given in September 2017, stated that the default position should be that any hearing of an application to vary costs caps in an Aarhus Convention claim should be held in private (subject to the court directing otherwise). The April 2018 changes did not, however, include any provision in this regard, because the Civil Procedure Rule Committee (CPRC) was undertaking a comprehensive Open Justice Review, which led to a public consultation launched in July 2018.

The provision concerning open justice in the 2019 Amendment Rules reflects the outcome of the Open Justice Review. The rules as amended affirm 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 for a hearing in private are fulfilled, in which case the hearing in question (or the relevant part of it) *must* be in private. The CPRC was, of course, aware of the Administrative Court judgment referred to above (and which was explicitly referred to in the consultation document) and considered carefully the right way forward to ensure that the rules balance the principle of open justice with the protection of claimants in Aarhus Convention claims from any “chilling effect” of holding in public any hearing of an application to vary a costs cap in such a claim. The CPRC concluded that the balance would be appropriately maintained by the provision now in

the 2019 Amendment Rules, so that any hearing of an application to vary costs caps in Aarhus Convention claims will (as with any other hearing) not necessarily be held in private without regard to the criteria for holding a hearing in private, but must be held in private if the court is satisfied that those criteria are fulfilled.

As I say, I wanted to alert you to the outcome of that review and the agreed way forward, as reflected in the 2019 Amendment Rules SI. My officials will be happy to meet with you to discuss any of the issues raised in this letter.

I am also copying this letter to other environmental charities, who were a party to the judicial review hearing in July 2017.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'L. Keen', written over the typed name below.

RT HON LORD KEEN OF ELIE QC

Cc. William Rundle (Friends of the Earth) and Gillian Lobo (ClientEarth).