

Aarhus Convention secretariat
United Nations Economic Commission for Europe
Palais des Nations
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By email only

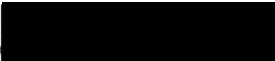
20 March 2019

Dear Sir/Madam,

ClientEarth's written submission on the UK's compliance with decision VI/8k

1. We would like to thank the Compliance Committee for inviting ClientEarth to make a statement at the hearing on the 15th March 2019 and to submit this written statement. Our comments are by way of response to the statement made by the Party at the hearing.
2. We welcome and support the findings of the Compliance Committee in its first progress report.
3. We wish to comment on the Party's oral statement as follows:
 - (a) we note that the 2017 Civil Procedure Rules changes were introduced to bring the UK into compliance with the findings in the *Edwards* cases¹. It would therefore seem that the Party's actions were not wholly directed at bringing it into compliance with article 9(3) and article 9(4) of the Convention;
 - (b) that the Party has failed to explain what steps, if any, it has taken to bring **all** the UK's legislative, regulatory and administrative processes into compliance with the Convention to ensure that costs in all court procedures are fair, equitable and not prohibitively expensive; and
 - (c) that under the Civil Procedure (Amendment) Rules 2019 the presumption is that a hearing will be in public unless the court is satisfied that the criteria for holding a hearing in private are met. As a result, the decision to hold a private hearing in which

¹ Judgment of the Court of Justice of the European Union (CJEU) in case C-260/11 *Edwards v. Environment Agency* [2013] 1 W.L.R. 2914; subsequent judgment of the Supreme Court in the same case: *R (Edwards) v. Environment Agency (No.2)* [2014] 1 W.L.R. 55; and judgment of the CJEU in case C-530/11 *European Commission v. UK* [2014] 3 WLR 853



a claimant's financial affairs are discussed is at the discretion of the judge determining permission. In practice, such decision will either be taken on the papers (without the claimant necessarily having the opportunity to be heard on the matter), or at an open hearing (without the confidentiality safeguards sought through the request for a private hearing). Each of these procedures is likely to deter claimants from bringing meritorious claims.

4. We also confirm that we endorse the submission made by RSPB and Friends of the Earth.
5. Please let me know if you require any further information.

Yours faithfully,



Gillian Lobo
Senior Lawyer, UK Litigation Specialist

