

Aarhus Compliance Committee - 63rd Meeting (11-15 March 2019)

Open session on Decision VI/8k (11.00 am, Friday, 15 March 2019)

On the matter of non-compliance of Art.9, Aarhus Convention by the UK

Note of points made in oral presentation by representatives of Communicants C85 & C86

1. The Communicants to ACCC/C/2013/85 & 86 (C-85 and C-86) agree entirely with paragraphs 107-108 of the First progress review of the implementation of decision VI/8k.
2. It would appear that the Party Concerned, the United Kingdom ('UK') has done nothing to address this important issue that continues to prevent access to justice. This is despite the Committee's findings in C-85 & C-86 being formally adopted almost 4 years ago (17 June 2015).
3. The Communicants have suggested a very simple solution to bring about compliance; this is not a complex or difficult issue.
4. The Communicants have proposed the introduction of Qualified One-way Costs Shifting ('QOCS') for environmental claims that fall under the convention. This will, they say, bring the UK into compliance.
5. The Communicants have even drafted the text of the proposed amendment to the relevant rule, Civil Procedure Rule 44.13, for the UK to consider. This can be found at annex 1 to the joint note dated 13 March 2018. The UK appears to have ignored this suggestion.
6. In February 2019 the UK, through the Ministry of Justice, following consultation, published its Post-Implementation Review of Part 2 of the Legal Aid, Sentencing and Punishment of Offenders Act 2013. This is the very legislation that resulted in the finding of non-compliance. The review does not mention the findings of the Committee or Decision VI/8k

paragraphs 6 and 7. This is despite the fact that Communicant 85 responded to the consultation making reference to the decision and the proposed amendment in an email to David Smeeton of the Ministry of Justice dated 22 August 2018 a copy of which is attached (note that Mr Smeeton was in attendance for the UK at the open session).

7. The Communicants therefore invite the UK to agree to set out in detail in its next report what it has done to address the Committee's recommendation and to specifically address the proposed amendment to CPR 44.13 referred to above.
8. The Communicants concern is that there is a real danger that unless significant progress is made the UK will still be in breach come the next Meeting of the Parties.
9. Finally, the Communicants note that the UK declined to comment, respond or even acknowledge the above points made at the meeting, despite being invited to do so by the Committee Chair.

Mr Neil Stockdale, Hugh James Solicitors for Communicant C-85
Dr Paul Stookes, Richard Buxton Solicitors for Communicant C-86

Dated 15 March 2019

Neil Stockdale

From: Stephanie Eedy
Sent: 22 August 2018 17:10
To: Smeeton, David
Cc: Stephanie Eedy
Subject: LASPO Part 2 Survey
Attachments: ece.mp.pp.c.1.2016.10_advance edited version.pdf; Draft decision VI_8k (2).docx; Joint Note communicants 85 and 86 with Annex 1 (2).pdf

Dear Sirs

We refer to the proposed response of the Civil Justice Council (CJC') to the Ministry of Justice (MoJ') post-implementation review of LASPO.

We act for the Environmental Law Foundation (ELF') in relation to a complaint to the Aarhus Convention Compliance Committee ('ACCC') concerning LASPO.

On 1 December 2016 the Aarhus Convention Compliance Committee ('ACCC') upheld our client's complaint and found that, following the coming into force of LASPO, the UK was in breach of Article 9 paragraph 3 of the Aarhus Convention by failing to ensure that private nuisance proceedings were not prohibitively expensive.

In making its finding the ACCC accepted that section 46 of LASPO introduced an additional burden for members of the public seeking access to justice in environmental nuisance cases. We attach a copy of the decision and refer to the findings at paragraphs 109-114.

The Economic Commission for Europe ('ECE') has endorsed the ACCC's findings and recommended the UK undertake practical and legislative measures to overcome the problems identified. We attach a copy of the ECE decision VI/8k and refer you to paragraphs 6 and 7.

Our client has proposed an amendment to CPR 44.13 that will address non-compliance with Article 9 paragraph 3 by providing for QOCS in relation to private nuisance proceedings within the scope of the convention. The wording of the proposed amendment is set out at annex 1 to the attached note which was provided, jointly as between our client and another communicant, to the ACCC meeting held on 15 March 2018.

As far as our clients are aware the UK is yet to undertake any practical or legislative measures to address the problems identified by the ACCC. We invite the CJC to include in its response specific reference to the matters set out above and to press the MoJ to make a decision as to whether it will implement the amendment our clients are seeking to CPR 44.13.

We look forward to hearing from you.

Yours faithfully

From: Smeeton, David [mailto:David.Smeeton@justice.gov.uk]
Sent: 03 July 2018 16:14
Subject: LASPO Part 2 Survey

Email received from external source

POST-IMPLEMENTATION REVIEW OF PART 2 OF THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS (LASPO) ACT 2012 - CIVIL LITIGATION FUNDING AND COSTS

The Government published on 28 June 2018 its initial assessment of the post-implementation review (PIR) of Part 2 of the LASPO Act 2012. This initial assessment sets out the MoJ's preliminary view of the statutory reforms

(that is, non-recoverability of conditional fee agreement success fees, non-recoverability of after the event insurance premiums, the introduction of Damages-Based Agreements, section 55 changes to Part 36 offers to settle and banning referral fees in personal injury cases); giving details on the scope and process of the review and a preliminary assessment of each of the five statutory reforms covered in the PIR. This has been drafted in a relatively summarised form in the expectation that most respondents are likely to be familiar with the detail of the reforms.

We are keen to engage with interested parties who wish to contribute to the PIR. As such, we are encouraging stakeholders to complete an online survey by **24 August 2018** to provide substantiated views. This can be [accessed here](#). We recommend, where possible, you refer to this [initial assessment of the reforms](#) before submitting your response as this provides a steer on the issues we would particularly welcome comment on. This survey provides an opportunity for all those with an interest to make representations.

We are interested in receiving further data and evidence that will help to indicate impacts for the final review. In particular, we have very limited access to data on the costs of litigation as this is typically held by private firms. If you wish to provide analytical evidence or have any queries, please email me to discuss this further.



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