



**In the High Court of Justice
Queen's Bench Division
Planning Court**

CO/4498/2019

In the matter of an application for Judicial Review

THE QUEEN

on the application of

CLIENTEARTH

Claimant

versus

**SECRETARY OF STATE FOR BUSINESS,
ENERGY AND INDUSTRIAL STRATEGY**

Defendant

DRAX POWER LIMITED

Interested Party

NOTIFICATION of the Judge's decision (CPR Part 54.11, 54.12)

Following consideration of the documents lodged by the Claimant and the Acknowledgements of service filed by the Defendant and the Interested Party;

Order by the Honourable Mrs Justice Lang DBE

1. Permission is granted.
2. This is an Aarhus Convention claim within the meaning of CPR 45.41.
 - a. The Claimant's liability for the costs incurred by the Defendant is limited to £25,000, and the Defendant's liability for the costs incurred by the Claimant is limited to £35,000, in accordance with CPR 45.43 & PD 45.5.
 - b. This order is made on the assumption that there will be no order for costs either for or against the Interested Party. If such an application for costs is made, the parties may apply for a further order under CPR 45.41.
3. Costs reserved

Observations:

In my view, the Claimant has raised arguable grounds which merit full consideration.

The claim has been designated as significant by Holgate J. in accordance with paragraph 3 of Practice Direction 54E.

The parties agree that this is an Aarhus Convention claim, but they have applied to vary the financial limits.

I accept the Defendant's submissions that the default limit of £10,000 for a Claimant's costs liability should be increased in the light of the very substantial funds available to the Claimant for unrestricted purposes, including litigation. Mindful of the Claimant's concern to maintain confidentiality, I will not disclose any details here. I have considered and applied CPR r.45.44(2)-(4). Taking into account the Claimant's submissions about the unpredictability of future funding and the other calls on its resources, I am satisfied that a costs limit of £25,000 (rather than the £35,000 sought by the Defendant) would not make the costs of the proceedings prohibitively expensive for the Claimant.

I do not accept the Claimant's submission that the Defendant's costs limit should be increased beyond the default figure of £35,000. I do not consider that the default costs limit would make the costs of the proceedings prohibitively expensive for the

Claimant. In reaching this conclusion, I have considered and applied CPR r.45.44(2)-(4). Having made representations to the Inquiry, the Claimant is familiar with the evidence and the issues. The grounds of challenge rely on established principles of judicial review in a planning context, and are not complex for practitioners in this field. In any event, the Claimant will be in a position to meet any shortfall in costs funding.

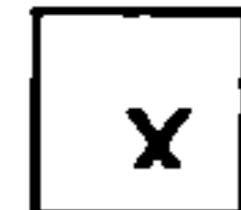
Case management directions

4. The Defendant and any other person served with the claim form who wishes to contest the claim or support it on additional grounds must file and serve detailed grounds for contesting the claim or supporting it on additional grounds and any written evidence, within 35 days of service of this order.
5. The Claimant must file and serve any reply and/or further evidence within 21 days of the service of the detailed grounds for contesting the claim and the written evidence, referred to in paragraph 4 above.
6. The Claimant must file and serve a trial bundle not less than 4 weeks before the date of the hearing of the judicial review.
7. The Claimant must file and serve a skeleton argument not less than 21 days before the date of the hearing of the judicial review.
8. The Defendant, and any Interested Party participating in the proceedings, must file and serve a skeleton argument not less than 14 days before the date of the hearing of the judicial review.
9. The Claimant must file an agreed bundle of authorities, not less than 5 days before the date of the hearing of the judicial review.

Listing Directions

The hearing is to be listed for 3 days; the parties to provide a written time estimate within 7 days of service of this order if they disagree with this direction.

Case NOT suitable for hearing by a Deputy High Court Judge



Directions as to venue, if applicable: London

Signed  24.1.20

The date of service of this order is calculated from the date in the section below

For completion by the Planning Court

Sent / Handed to the Claimant, Defendant and any Interested Party / the Claimant's, Defendant's, and any Interested Party's solicitors on (date):

27 JAN 2020

Solicitors:
Ref No.

Notes for the Claimant

- To continue the proceedings a further fee, or a certified Application for Fee Remission if appropriate, must be lodged within 7 days of the service on you of this order. ***For details of the current fee see the Court website.*** Failure to pay the fee or lodge a certificate within that period may result in the claim being struck out.
- You are reminded of your obligation to reconsider the merits of your claim on receipt of the defendant's evidence.

