ACCC/C/2015/131

IN THE MATTER OF A COMMUNICATION TO THE AARHUS CONVENTION COMPLIANCE COMMITTEE

BETWEEN:

TRACEY BREAKELL

Communicant

-and-

UNITED KINGDOM

Party Concerned

COMMENTS ON DRAFT FINDINGS ON BEHALF OF THE UNITED KINGDOM

I. INTRODUCTION

1. The Party Concerned received the Aarhus Convention Compliance Committee's (the "**Committee**") draft findings on 14 June 2021. The purpose of this document is to provide comments on the draft findings, as requested by the Committee in its letter, dated 14 June 2021.

2. Regrettably, the Party Concerned has significant concerns about the draft findings, which in large part appear to misunderstand the law and procedure of England and Wales as well as upset fundamental, carefully considered and long-standing legal principles. Moreover, the Party Concerned is troubled that several of the Committee's findings and recommendations, although formally directed at the Party Concerned, are in reality aimed at perceived shortcomings of the local planning authority, which the Party Concerned could have done nothing to avoid.

II. COMMENTS ON FINDINGS AND RECOMMENDATIONS

3. The Party Concerned's comments on each of the draft findings of non-compliance and recommendations are set out below.

FINDING (a) By failing to promptly make accessible through its online planning register the documents related to a planning application that the Council was required by law to possess, the Party concerned failed to comply with article 5(3)(d) of the Convention

FINDING (b) By failing to make the screening opinion and planning permission easily accessible on the Council's online planning register in a timeframe that would facilitate the application of national law implementing article 9(2) of the Convention, the Party concerned failed to comply with article 5(3)(d) of the Convention

FINDING (c) By maintaining an electronic database that the Council holds out to be a "one-stop shop" to access all documents related to planning applications, when it in fact is not, the Party concerned fails to comply with the requirement in article 5(3) of the Convention to ensure that the environmental information within the scope of article 5(3)(d) of the Convention is "easily accessible"

4. First, the Committee analyses these complaints pursuant to Article 5(3) of the Convention. It then undertakes a detailed textual analysis of that provision before coming to its findings. This is notwithstanding the fact that the Communicant has never alleged a breach of Article 5(3) and, therefore, the Party Concerned has never had a chance to address the Committee on the correct construction, and application, of Article 5(3). Certainly, it will not have the chance to address these issues at a hearing. In those circumstances, it is inappropriate and prejudicial for the Party Concerned first to find out about this issue on receiving the draft findings.

5. It is not sufficient for the Committee simply to say, "*121. Since the communicant's allegations relate to the availability of environmental information through electronic means, the Committee examines them against the requirements of article 5(3) rather than article 5(2)*." The case was never argued on that basis and the provisions are substantively different. The close textual analysis undertaken by the Committee in order to demonstrate the specific meaning of Article 5(3) and how it applies to the present case demonstrates this – see §§123-128, 132, 139 and 142. Consequently, the Committee made an error in considering and making findings on Article 5(3).

6. Secondly, the pleaded complaint is against Article 5(2), which requires State Parties to "*ensure that within the framework of national legislation, the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible*" (emphasis added). This is clearly a systemic and framework obligation. Such a framework of national legislation exists in the United Kingdom. Article 36 of the Town and Country Planning (Development Management Procedure) Order 2010[1] required local planning authorities to keep a register of all planning applications in its area as well as specific information and documents on that register. Regulation 23 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011[2] required any screening opinion or direction, scoping opinion or direction or environmental statement also to be placed on that register. A failure to comply with these requirements was unlawful and could be challenged by judicial review. Indeed, the draft findings recognise that the Committee "*has no information before it to indicate that the noncompliance found [above] is of a wide or systemic nature in the Party concerned*": §142.

7. In those circumstances, there can be no breach of Article 5(2); the failure of a local planning authority to upload certain documents to the online planning register *on the facts of a single case*, could not undermine the Party Concerned's establishment of a framework of national legislation making environmental information transparent and effectively accessible.

8. Thirdly, without prejudice to the point made above that the Committee should not make findings on Article 5(3), that provision does not introduce a duty that can be breached depending on the facts of each individual case. Properly construed, it informs the framework duty in Article 5(2). In other words, the duty to put in place a framework of national legislation that makes environmental information effectively accessible must be informed by the increasing capabilities and accessibility of electronic databases. The Party Concerned has done that by ensuring that the planning register is available online.

9. It is inevitable, although regrettable, that on occasion local planning authorities will fail to comply with these legal obligations to place this information on the online planning

[1] Now contained in Article 40 of the Town and Country Planning (Development Management Procedure) Order 2015.
[2] Now contained in Regulation 28 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

register. But this is also unlawful and can be challenged in the courts. It cannot, however, be a breach of Article 5(2) (for the reasons already mentioned) or Article 5(3). The draft findings provide no, let alone detailed, reasoning as to why Article 5(3) applies at all – and, therefore, a State Party's international obligations are engaged - when a specific document is not placed on the online planning register as opposed to a more framework or systemic issue.

FINDING (d) By maintaining a legal framework in which the time limit to bring judicial review is calculated from the date when the contested decision was taken, rather than from when the claimant knew or ought to have known of that decision, the Party concerned fails to comply with the requirement that review procedures in article 9(2) be fair in accordance with article 9(4) of the Convention

RECOMMENDATION (a) The time-frame for bringing an application for judicial review of any planning-related decision within the scope of article 9 of the Convention is calculated from the date the claimant knew or ought to have known of the decision and not from the date that the contested decision was taken

10. It is important to put the position in England and Wales into context. As in many other jurisdictions, across different areas of law time starts running from when the cause of action first arises. That applies as much in contract law as it does in judicial review. In the judicial review context, it is a fundamental, carefully considered and long-standing principle of the law of England and Wales that the cause of action first arises at the date of the decision: *R v Department of Transport, ex p. Presvac Engineering Ltd* (1992) 4 Admin LR 1221 (Court of Appeal), 133. This established legal position has existed for many decades after careful and deliberate consideration in a number of cases by a number of courts, including the highest courts in the jurisdiction.

11. But they have also decided that a decision only has legal effect until communicated to the person who is subject to it: *R (Anufrijeva) v Secretary of State for the Home Department* [2004] 1 AC 604 (House of Lords) ("***Anufrijeva***"). In *Anufrijeva*, a majority of the House of Lords found that:

> "26…Notice of a decision is required before it can have the character of a determination with legal effect because the individual concerned must be in a position to challenge the decision in the courts if he or she wishes to do so. This is not a technical rule. It is simply an application of the right of access to justice. That

> is a fundamental and constitutional principle of our legal system: *Raymond v Honey* [1983] 1 AC 1, 10g, per Lord Wilberforce ; *R v Secretary of State for the Home Department, Ex p Leech* [1994] QB 198 , 209d; *R v Secretary of State for the Home Department, Ex p Simms* [2000] 2 AC 115.
>
> …
>
> 29. In European law the approach is possibly a little more formalistic but the thrust is the same. It has been held to be a "fundamental principle in the Community legal order ... that a measure adopted by the public authorities shall not be applicable to those concerned before they have the opportunity to make themselves acquainted with it": *Firma A Racke v Hauptzollamt Mainz (Case 98/78) [1979] ECR 69* , para 15; *Opel Austria GmbH v Council of European Union (Case T-115/94) [1997] ECR II-39* , para 124; Schwarze, European Administrative Law (1992) , pp 1416-1420; Council of Europe Publishing, The Administration and You, A Handbook (1997) chapter 3 , para 49.

12. In other words, in general a decision will have to be notified in some way before it is to take legal effect and only then does time start to run. That prevents the possibility of public authorities concealing decisions and then arguing that any legal challenge is out of time.

13. By contrast, the Committee's reasoning for this finding and recommendation is found in two sentences in the following paragraph:

> "149. However, the Committee considers that a rule that the timeframe for the public to challenge a decision is calculated from the date the decision was taken, and not the date when the decision became known to the public, is manifestly unfair. Moreover, it creates an incentive for public authorities not to make decisions under article 6 of the Convention promptly available, knowing that there will then be less opportunity for those decisions to be challenged."

14. In that context, the following points are made.

15. First, the Committee's finding and recommendation undermine the principle of legal certainty and upset the careful balance achieved by the UK domestic system in rationalising legal certainty and finality with fairness.

16. There are countless domestic cases that emphasise the importance of time limits in judicial review for legal certainty, including:

    a. *Trim v North Dorset District Council* [2011] 1 WLR 1901, at §23, where Carnwath LJ in the Court of Appeal stated that "*it is in the public interest that the legality of the formal acts of a public authority should be established without delay*";

b. *O'Reilly v Mackman* [1983] 2 AC 237, at 280-281, where Lord Diplock in the House of Lords stated that, "*The public interest in good administration requires that public authorities and third parties should not be kept in suspense as to the legal validity of a decision the authority has reached in purported exercise of decision-making powers for any longer period than is absolutely necessary in fairness to the person affected by the decision*";

c. *R v Monopolies & Mergers Commission ex p Argyll Group Plc* [1986] 1 WLR 763, 774-775, where Sir John Donaldson MR in the Court of Appeal stated, "*good public administration requires decisiveness and finality, unless there are compelling reasons to the contrary*."

17. These comments apply to the rule about when time starts to run. That is because if time started to run on a subjective basis – i.e. when an individual happened to find out about a decision - any individual at any time could assert that they only just became aware of a decision. That would mean every decision would be perpetually vulnerable to challenge with no finality. The essential public interest in good administration would be defeated and no public authority or third party could ever proceed on the basis that decisions affecting them were safe from legal challenge.

18. In light of those competing considerations – the interests of legal certainty and finality versus fairness to individuals seeking to challenge decisions – the Party Concerned has struck the balance it considers appropriate. That involves: (a) an objective point at which time starts to run – i.e. the decision being made – as long as that decision satisfies the requirements in *Anufrijeva*; (b) a 6-week time limit in planning cases from that objective point; but, (c) the ability of individuals to apply to the court for an extension of time depending on the facts of each case. It is the Party Concerned's firm view that this is the proper way to resolve the tensions between the various interests at stake.

19. By contrast, the Committee's finding that the current rule is "*manifestly unfair*" is unexplained and upsets this carefully calibrated balance. There is no evidence that the Committee has considered, far less grappled with, the various complex factors in play. Its analysis is, at best, partial and, at worst, misconceived.

20. Secondly, it is unjustified for an international body to seek to undo this well-established and carefully considered domestic authority on the basis of a provision in the Convention – Article 9(4) – that merely requires procedures in States to be "*fair [and]*

timely". The lack of elaboration in the Convention on what this means requires the Committee to grant the Party Concerned a significant margin of appreciation in determining the fairness of its domestic procedures. It certainly does not permit the Committee to sweep away decades of authority with next to no reasoning.

21. Thirdly, the Committee accepts that "*In the present case, the communicant submitted her application for permission to bring judicial review in February 2015, seven months after she became aware of the screening opinion*": §148. In other words, the fundamental change in English law that the Committee seeks to bring about is not even relevant to the facts of the case before it; even using the date of knowledge as the relevant starting point, the Communicant would have been significantly out of time. The Committee's approach is especially surprising given that, in relation to the Communicant's complaint about the six-week time limit, the Committee effectively decided not to make findings on the matter because it did not apply on the Communicant's facts: §153.

22. It is difficult to see how the Committee could come to the conclusion that the English rule is "*manifestly unfair*" in circumstances where there is no complainant before it who has actually been affected by the rule.

23. Fourthly, there is no evidence before the Committee of public authorities deliberately holding back decisions in order to insulate them from challenge: c.f. §149. It is no more than speculation. More importantly, there is no complainant before the Committee putting forward that argument and suggesting that, as a result of the concealment, they were unable to bring a judicial review. Such complainants are unlikely to exist because a court would inevitably extend time in circumstances where a public authority acted in that way.

24. Fifthly, it is possible that the Committee is operating under a misapprehension as to how the relevant rules work. In both its finding and recommendation, it suggests that time should start to run from when "*the claimant knew or ought to have known of the decision and not from the date that the contested decision was taken*" (emphasis added).

25. It is unclear what the Committee means by "*ought to have known*". It is the Concerned Party's position that the date of the decision (assuming it is published or notified as appropriate as per *Anufrijeva*) and the date a claimant ought to have known about it are one and the same thing. That is why the English rule operates in the way that it does.

Otherwise, there is *no* yardstick (whether objective or subjective) by which one could easily assess the start of the 6-week deadline.

26. For example, the Party Concerned is unclear as to when the Committee considers that time should start running in a straightforward case where a local planning authority lawfully places all relevant material onto the online planning register and subsequently determines a planning application. The Party Concerned's position is that time starts to run from the date of the decision. It is unclear when time would start to run if this occurred only when the claimant *ought to have known of the decision* if this was not the date of the decision itself. It is the Party Concerned's submission that this proviso is a recognition by the Committee that relying exclusively on the date a claimant found out about the decision would unduly undermine legal certainty. Unfortunately, determining when a claimant ought to have known of the decision is itself unworkable.

FINDING (e) By not ensuring that courts take into account the stage of the proceedings when calculating the sum of costs to be awarded against an unsuccessful claimant in a procedure subject to article 9 of the Convention, the Party concerned fails to comply with the requirement in article 9(4) for such procedures to be fair, equitable and not prohibitively expensive

RECOMMENDATION (b) When calculating the sum of costs to be awarded against an unsuccessful claimant in a procedure subject to article 9 of the Convention, the courts, inter alia, take into account the stage of the judicial procedure to which the costs relate

27. In making this finding and recommendation, the Party Concerned is concerned that the Committee has misunderstood the judicial review process and the way in which costs orders are made.

28. First, a related issue was recently considered by the Court of Appeal in *CPRE (Kent) v Secretary of State for Housing, Communities and Local Government* [2020] 1 WLR 352. In that case, the claimant argued that because the claim had failed at the permission stage, the costs should be subject to a lower cap than the £10,000 overall Aarhus cap (for organisations) set out in the Civil Procedural Rules. In rejecting this argument, Coulson LJ stated the following:

> "49. I reject Mr Westaway's basic submission that, because the claim has failed at the permission stage, rather than failing subsequently after a substantial hearing, the costs should be subject to some sort of lower cap than the £10,000 stated in the CPR.

…

52. Secondly, many of Mr Westaway's submissions were based on the false premise that the £10,000 was in some way referable to the total costs of an environmental claim, assuming it failed only after a substantial hearing. That is patently not so. The £10,000 is an arbitrary cap designed to bring claimants in environmental claims the benefits noted above. It has nothing to do with the average costs of civil litigation, much less the costs incurred in the making of an environmental claim, which can be notoriously high. It is therefore wrong in principle to assume that the £10,000 Aarhus cap must be referable to the costs of a claim that went all the way through to trial.

53. Thirdly, Mr Westaway's submission that, if this is the correct analysis, it will have a chilling effect, is incorrect. The principle is that the costs of these claims should "not be prohibitively expensive", not that they involve no costs risk at all. The Aarhus cap offers a major advantage to claimants which is not available to any other group of civil litigants. It allows them costs certainty from the outset, and the ability to pursue litigation in the knowledge that, if they lose, their liability will not be a penny more than the cap. Inevitably this has a knock-on effect for the defendants and interested parties in an environmental claim. They will know that, if permission is granted, they face the prospect of expensive litigation with very little costs protection, so that it is no good keeping any particular points up their sleeve for a later date. They need to deploy all their arguments, at the outset, in the hope of avoiding permission being granted. It is therefore unsurprising that defendants and interested parties may incur relatively high costs at the outset. That is a logical consequence of the importance to the permission process of the AoS and the summary grounds of dispute, and thus an inevitable result of the Aarhus cap.

…

57. I should add that I do accept the underlying submission that Mr Westaway made in respect of costs generally, to the effect that courts must be astute not to "nod through" claims for costs in environmental cases simply because the total figure can be kept below the Aarhus cap. It is incumbent on a judge to assess the costs in these cases by reference to both reasonableness and proportionality. It is wrong in principle simply to accept the costs claimed without proper consideration of both elements. However, I consider that Judge Evans-Gordon carefully considered the detailed submissions on costs, and reached conclusions which cannot now sensibly be challenged."

29. Borrowing from this reasoning, the error made by the Committee is that: (a) it assumes that the £5,000 cap in relation to individuals must relate, in some way, to the overall costs of the claim. It does not; (b) the nature of the judicial review process, in addition to the fact that defendants and interested parties would continue to be subject to that cap if the proceedings were granted permission, leads to front-loading of costs. This is an "*inevitable*" result which the Committee fails to appreciate; (c) the result is not inequitable or prohibitively expensive in circumstances where "*it is incumbent on a judge to assess the costs in these cases by reference to both reasonableness and proportionality*". The

stage of the proceedings will, by definition, be considered by the court in determining whether the costs incurred are reasonable.

30. Secondly, even at the permission stage, claims for judicial review vary considerably in their factual and legal complexity. As the United Kingdom submitted at the hearing before the Committee, there was a detailed planning and administrative history in this case which gave rise to issues under the law on environmental impact assessment, which is not straightforward. These facts needed to be investigated and reviewed by the Council before being set out, alongside the relevant law, in an acknowledgment of service for the benefit of the court. The United Kingdom submits that it can be understood how combined costs of at least £5k could reasonably be incurred by two lawyers (a barrister and a solicitor) working on a case of this nature at the permission stage. The costs order made by the court in this case was not unreasonable and complied with the costs cap set by the CPR for an Aarhus Convention claim.

FINDING (f) Since the communicant was ordered to pay a costs order calculated on the basis of an hourly rate that was considerably higher than the actual contracted rate, the Party concerned failed to comply with the requirement that cost orders in procedures within the scope of article 9(2) of the Convention are fair and equitable in accordance with article 9(4) of the Convention

31. Successful parties can only recover those legal costs they actually incurred in the course of litigation. They are not permitted to inflate their legal costs. That is the system put in place by the Party Concerned which complies with Article 9(4) of the Convention. To the extent that the local planning authority did seek greater costs than it actually incurred in this case, it goes without saying that it was not permitted to do so. The Party Concerned cannot, however, be said to be in breach of Article 9(4) of the Convention where an individual planning authority, on a single occasion, seeks to recover costs on the basis of an incorrect hourly rate. A finding of non-compliance in such a scenario is inappropriate because the Party Concerned could have done nothing to prevent it.

(g) By setting a significantly lower hourly rate (i.e. less than one-tenth of the sum of a legally-represented party) at which successful "litigants in person" are entitled to recover their costs in procedures subject to article 9 of the Convention, the Party concerned fails to ensure that such procedures are fair and equitable as required by article 9(4) of the Convention

RECOMMENDATION (c) In judicial procedures within the scope of article 9 of the Convention, successful "litigants in person" are entitled to recover a fair and equitable hourly rate

32. The Party Concerned believes that the Committee has misunderstood the position in English law and that litigants in person currently do recover "*a fair and equitable hourly rate*".

33. First, the point of the costs jurisdiction is to seek to award the winning party the costs it has incurred. There is no other purpose. The costs of an instructed lawyer are clear as they will be charged to the client. The costs of a litigant person are not clear. The Party Concerned, taking into account various complex factors, has attempted to calculate the approximate cost of litigants in person carrying out this work. The figure it has arrived at is £19 per hour. That applies across the board of civil litigation.

34. It is unjustified for an international body such as the Committee to second-guess this judgement and find that the figure of £19 per hour for litigants in person, and implemented as part of secondary legislation, is unfair or inequitable. The Committee has little connection with domestic circumstances by which it can assess the fairness of that figure. Instead, inflating these costs would be arbitrary and undermine the fundamental objective of the costs jurisdiction.

35. To the extent that the Committee's finding and recommendation is based purely on a comparison with the hourly rate, that approach is flawed for the reasons set out below.

36. Secondly, it is unclear why the Committee takes objection to the default hourly rate of £19 per hour. In particular:

    a. It is above the average hourly rate in the UK of approximately £15 per hour;

    b. It is usually being undertaken by someone with no relevant qualifications in law;

    c. There is no analogy with the hourly rate of fully qualified solicitors. Those solicitors have taken years and spent significant sums of money to be able to practise law. Moreover, built into their hourly rates are the overhead costs of a law firm including, amongst other things, the costs of leasing commercial premises, compliance costs, the costs of trainees, etc. These are costs that a litigant in person will simply not have to bear.

37. Thirdly, to the extent, however, that a litigant in person can show that the time spent working on a case has caused them to forsake other financial gain, the hourly rate can be increased. For example, in *Spencer v Paul Jones Financial Services Ltd* [2017] 1 WLUK 29, at §100, the High Court increased the hourly rate the first claimant could recover to £150 per hour.

(h) By failing to ensure that the Council was aware that it was required to place screening opinions on the planning register within 14 days, by failing to ensure that the Council abided by the Party concerned's own pre-action protocol, and by the Council's incorrect and misleading reply to the communicant's access to information request, the Party concerned has failed to meet the requirement in article 3(2) to endeavour to ensure that public authorities assist the public to seek access to justice in environmental matters

RECOMMENDATION (d) In proceedings within the scope of article 9 of the Convention in which the applicant follows the Party concerned's pre-action protocol, the public authority concerned is required to comply with that protocol

38. Article 3(2) of the Convention states that:

> "Each Party shall endeavour to ensure that officials and authorities assist and provide guidance to the public in seeking access to information, in facilitating participation in decision-making and in seeking access to justice in environmental matters."

39. First, the Committee makes the error of construing Article 3(2) of the Convention as if it contains obligations of result, contrary to communication ACCC/C/2013/92 (Germany), §88. It does not. It places obligations on the Party Concerned to "*endeavour*" to ensure that others provide assistance and guidance to the public. It is, therefore, an obligation to try.

40. That draft findings effectively ignore the term "*endeavour*" is clear from finding (h), which repeatedly states that "*by failing to ensure…*". That is not the test and involves an impermissible reading of Article 3(2).

41. Secondly, the Committee finds that the Party Concerned "*fail[ed] to ensure that the Council was aware that it was required to place screening opinions on the planning register within 14 days*". That is not the correct test for the reason set out above. The State Party put in place a well-known statutory regime which local planning authorities are under a legal

obligation to follow and, in respect of which, are subject to the jurisdiction of the courts. Article 3(2) of the Convention does not oblige the Party Concerned to do more.

42. Thirdly, the Committee criticises the Party Concerned for failing to ensure the local planning authority abided by the pre-action protocol. That, again, misreads Article 3(2) of the Convention which is no more than an obligation to try. The Party Concerned has fulfilled this obligation by putting in place a system by which a sanction can be imposed on local planning authorities if they fail to comply with the pre-action protocol. The pre-action protocol for judicial review states:

> "7…Where the use of the protocol is appropriate, the court will normally expect all parties to have complied with it in good time before proceedings are issued and will take into account compliance or non-compliance when giving directions for case management of proceedings or when making orders for costs.
> …
> 13…Where the court considers that a public body should have provided relevant documents and/or information, particularly where this failure is a breach of a statutory or common law requirement, it may impose costs sanctions."

43. This is sufficient for the Party Concerned to comply with the obligation. It is not required by Article 3(2) to obtain a certain result.

44. Fourthly, the Committee criticises the Party Concerned for failing to comply with Article 3(2) on the basis that the local planning authority provided an incorrect and misleading reply to the Communicant's access to information request. That is a remarkable finding. The Party Concerned has put in place a detailed statutory regime by which public authorities must deal with requests for information. It goes without saying that, under that regime, public authorities must not provide inaccurate or misleading information. In so doing, the Party Concerned has complied with the obligation to try, contained in Article 3(2) of the Convention. It is impossible to understand how the failure of an individual public authority in a single case to comply with its obligations under that statutory regime can lead to a finding of non-compliance against the Party Concerned. Again, a finding of non-compliance is inappropriate because there is nothing the Party Concerned could have done to prevent the local planning authority's actions.

III. TYPOGRAPHICAL AND OTHER ERRORS

45. The following typographical errors have been identified in the draft findings:

a. At §23, the relevant provision is "*paragraph 2(10(b)) of Schedule 2 of the EIA Regulations*";

b. At §30, line 3, the relevant provision is "*paragraph 2(10(b)) of Schedule 2 of the EIA Regulations*";

c. Footnote 30 – add full-stop at end;

d. At §40, line 4, delete comma after "*that*";

e. At §46, line 5, insert "*opinion*" after "*screening*";

f. Footnote 78 - add full-stop at end;

g. Footnote 98 – add full-stop at end;

h. At §114, after "*Town and Country Planning (Development Management Procedure) (England) Order*" insert "*2010*";

i. Footnote 107 – add full-stop at end;

j. At §159, the Party Concerned disagrees with the description of the permission stage as "*very early*". It is more accurate to describe it as "*…(i.e. an early)…*";

k. At §184, last line, change "*with*" to "*within*";

l. At §187, the statement starting with "*On one hand…*" is incorrect. A losing party will, by default, always face an adverse costs order. As a claimant, the sanction for failing to follow the pre-action protocol is, rather, to be subject to costs sanction *even if you succeed*;

m. At §188, line 7 refers to "*paragraph 141117*". It is unclear what paragraph this is referring to;

n. At §189, line 5, replace "*after the Council's acknowledgment of service of the communicant's application for judicial review*" with "*after the Council had filed its acknowledgement of service in response to the communicant's application for judicial review.*"

YAASER VANDERMAN

Landmark Chambers

23 July 2021