

Agenda Item 4 - Tools to promote effective access to justice, Access to Justice Task Force meeting, April 27-28, 2022

Statement by Pauline McHenry, Oakleaf Solutions

My name is Pauline McHenry and I am speaking from Northern Ireland which is no longer in the European Union. So, we are relying on the protections of the Aarhus Convention.

I want to address the effects of SLAPP cases on public participation in the Planning Appeals Commission (PAC) in NI. We have an increasing risk of physical and psychological harassment of environmentally concerned citizens in the course of public engagement.

All such engagement with the PAC must be covered by “absolute privilege”. Currently, we are not covered by any form of “privilege”. No training or warning of the potential risk is provided to the public who may have no experience of engagement in a forum of this kind.

A rapid response mechanism to a SLAPP incident will not resolve this issue for us. We would continue to be exposed to “risk” and could not participate. It will silence us. Such would be the gravity of the threat from potential litigation.

SLAPP cases have absolutely no place whatsoever in this type of venue which should continue to provide our communities with the opportunity to write and speak in our own words, in defence of our air, water and soil.

The PAC is a quasi-judicial body set up under the NI Planning Act 2011 and it is the forum at which there is substantive examination of the technicalities of many planning applications. There are an increasing number of regionally significant and major planning applications, posing serious environmental threats in the pipeline.

Hearings are conducted by at least one Commissioner. This is a point where the public can participate in the decision-making process and the PAC Commissioners must make a report on a planning application at the conclusion of a hearing.

Section 204 (9) of the 2011 Act states “...the appeals commission MUST make a report on the hearing... to the relevant department and that department MUST consider the report”. The department is where the ministerial decision is made.

The PAC needs further development and resources, etc., which I cannot address in this presentation, but suffice to say, it is not a level playing field for communities.

To conclude, the public must be protected and enabled to engage with the work of the PAC, which must be undertaken in a fair and effective manner. It must be conducted in a “safe space”. The commissioners can be empowered to ensure that there is respectful dialogue at all times and deal with potential disruptive or defamatory engagement by way of rules designed to implement this function.

It can be done. It simply needs to be addressed. I am directed to ask that the UK focal point engage with us immediately and the Irish focal point to take note of this very important issue. Also, we look forward to positive engagement with the Special Rapporteur.