

Press release
For Immediate release
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Jackson Report offers no remedy for environmental cases costs risks

ClientEarth response to publication of the Jackson

Sandy Luk, senior lawyer at ClientEarth, said: "We very much welcome Lord Justice Jackson's recommendations in favour of one-way costs shifting¹ as a way for the UK to comply with the Aarhus Convention, as well as his recognition that costs rules in the past have not been effective in this regard. This implicitly recognises the failure of the UK to comply with the Aarhus Convention so far and that fundamental change is necessary.

"However, we are disappointed that Lord Justice Jackson has not followed up on the more ambitious scope of his preliminary report last year. He now recommends that 'qualified' costs shifting rules should be introduced that would impose 'reasonable' costs on claimants, depending on their financial circumstances. Lord Justice Jackson's report is primarily aimed at cases such as personal injury or clinical negligence claims, and qualified costs shifting may well be appropriate for those. But in relation to environmental cases brought in the public interest, such a rule would not change the current problems which keep potential claimants from taking action. The uncertainty of unknown and potentially unlimited costs in the event of losing a case (tens or even hundreds of thousands of pounds have been imposed by courts and therefore presumably seen as reasonable) would carry on.

"If the government adopts these proposals, the looming costs shadow on public-spirited individuals and environmental organisations would persist. In our view, the UK would continue to be in breach of the Aarhus Convention."

¹ One-way costs shifting: making defendants pay the claimant's costs if the claimant wins, but exempting the claimant from having to pay the defendant's costs if the claimant loses

Notes for Editors

(page references relate to the Jackson Review):

1. The Jackson Review accepts that there should not be different costs rules in respect of environmental judicial review and other judicial review cases (see para 4.1(ii), p. 310) and in fact that the same cost shifting rule should be applied to judicial review as is used in personal injury and clinical negligence cases (see para 4.4, p. 311). This equates cases brought in the public interest to protect the environment with cases which involve a personal (financial) interest to a claimant.
2. Because the review treats all these cases the same, it imposes 'qualified' cost shifting, which makes the application of one way cost shifting dependent on the financial circumstances (and the conduct) of the claimant. To do this, the same cost 'shielding' rule is to be applied as in legal aid cases (Section 11(1) of the Access to Justice Act 1999) (see para 4.4ff, p. 189 and para 4.3ff, p. 311).
3. The relevant legal aid and costs protection rules referred to (in para 4.4, p. 189) provide that only reasonable costs can be ordered against a person having regard to the parties' financial circumstances and their conduct. In assessing a person's assets the current legal aid rules taken as a basis for Lord Justice Jackson's recommendations are that the courts would only disregard the first £100,000 equity in the person's home, and in most cases items such as clothes, furniture tools of trade. If the same rules as currently exist are applied claimants could not be forced to sell their house under, but they could be forced to take out additional debt (mortgage against the value of the house).
4. ClientEarth brings a radically different approach to the green movement in Europe. We are activist lawyers committed to protecting the living planet for all who dwell on it. We fuse law, science and policy to create strategic solutions to key environmental challenges.
5. ClientEarth's lawyers operate in a number of fields including climate change, marine policy and access to justice.
6. For more information on ClientEarth's activities, please visit <http://www.clientearth.org>