

Aarhus legal costs in environmental claims

15 March 2022

A recent [judgment](#) handed down by the Administrative Court in Wales has confirmed that cost protection under the Aarhus Convention did apply to a claim brought by an environmental activist against the Welsh Ministers.

The decision confirms that Aarhus cost protection applies where the claim is not based on environmental arguments alone.

In this case the applicant, Catherine Lewis, sought permission for [judicial review](#) of a decision by the Welsh Ministers to finance a hospital development that involved building over the biodiverse Northern Meadows in Cardiff, destroying wildlife and a local natural resource for the community.

The applicant claimed that:

- the Welsh Ministers had breached the duty to seek to maintain and enhance biodiversity and related matters under the Environment (Wales) Act 2016;
- the Welsh Ministers had breached the duty to carry out sustainable development under the Well-being of Future Generations (Wales) Act 2015; and
- it was irrational to site the new development in an isolated location away from necessary critical-care services at the University Hospital of Wales.

Having refused permission for judicial review, the judge made an order against Catherine Lewis to pay over £30,000 in legal costs to the Welsh Ministers and Velindre University NHS Trust, an Interested Party to the claim. The costs order was suspended while the court considered written arguments about whether the case was an 'Aarhus Convention' case.

The Welsh Ministers and Velindre University NHS Trust argued that because only one of the grounds related to the environment, the applicant should not benefit from Aarhus protection. Mr Justice Eyre rejected these arguments, finding that the court must look at the nature of the claim itself rather than the decision being challenged. If the claim alleges a breach of a national law relating to the environment in good faith, as in this case, then it comes within the scope of the Aarhus Convention. Further, if Aarhus protection applies to one part of the claim then it applies to the entirety of the claim and it is not open to the court to find that the limit applies to some elements of a claim and not others.

Nearly 24 years after the United Nations Economic Commission for Europe (UNECE) [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) (the Aarhus Convention) was adopted, the United Kingdom is still not compliant with the Convention according to a UN [decision](#) published in September last year. The UN decision confirms that the UK has failed to ensure that the costs of bringing an environmental court case in the UK are fair and equitable and not prohibitively expensive.

The recent judgment may reassure potential claimants, but high legal costs in the UK continue to deter the public from bringing [environmental claims](#) in the public interest.

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