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Costs ruling hits lawyers' pockets

Fears that lawyers may be forced out of publicly-funded environmental litigation and other legal aid work grew this week following a Court of Appeal ruling on the law on 'set-off' of costs.

In *Sonia Burkett v London Borough of Hammersmith and Fulham* [2004] EWCA Civ 1342, the appeal court upheld an order allowing the defendant to set off costs awarded in its favour in the High Court on the substantive issues against those awarded against it by the House of Lords on an earlier appeal on a technical point of law. This was despite a submission by the Law Society that such an approach would 'operate harshly' on the financial interests of lawyers acting for clients funded by the Legal Services Commission.

As a result of the ruling, the claimant's solicitor – Cambridge-based public and environmental law specialist Richard Buxton – and counsel face being an estimated £35,000 out of pocket.

Giving the lead judgment, Lord Justice Brooke, vice-president of the Appeal Court's civil division, said the court could not take into account such matters. But he added: 'We would be troubled if the effect of our ruling on this appeal were left uncorrected by other means, because of the importance of maintaining the viability of the few legal practices which operate in the field of publicly funded environmental litigation.'

The judge also said the Court of Appeal shared the concerns of Mr

Buxton and the Law Society on the potential economic effects of its decision on lawyers engaged in publicly funded work, 'given the way in which prescribed rates of pay have been frozen at a very low level for so many years'.

An LSC spokesman said: 'This clarification is useful and the LSC will be working closely with the Law Society to issue practical guidance on how "set off" works in practice.'

Lord Justice Brooke also warned that the case raised 'very serious questions' about the possibility of the UK living up to the ideals of the 1998 Aarhus Convention – to which it is a party – on access to justice in environmental matters.

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