



Case No: AC-2025-LON-001230

Neutral Citation Number: [2025] EWHC 2251 (Admin)

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02 September 2025

Before :

KAREN RIDGE SITTING AS A DEPUTY HIGH COURT JUDGE

Between :

GREEN LANE ASSOCIATION LIMITED

Claimant

- and -

CENTRAL BEDFORDSHIRE COUNCIL

Defendant

Brendan Brett (instructed by **Richard Buxton Solicitors**) for the **Claimant**
Joel Semakula (instructed by **Pathfinders Legal Services Limited**) for the **Defendant**

Hearing date: 31 July 2025

APPROVED JUDGMENT

Deputy High Court Judge Karen Ridge:

1. This is my determination of the Defendant's application for a declaration that the claim is not an Aarhus Convention claim, or in the alternative, that the standard costs cap be increased to £35,000. The application is opposed by the Claimants who claim the benefit of costs protection under the Aarhus cap and further contend that the Defendant's objection to the Aarhus costs cap is too late given that it should have been made within the Acknowledgment of Service.

The Factual Background

2. By way of an Order published on 20 March 2025 the Defendant made an experimental traffic regulation order, The Central Bedfordshire Council (Prohibition of Motor Vehicles)(BOAT NO.33, Sandy Lane, Apsley Heath) Experimental Order 2025 ("the Order"). The Order came into effect on 27 March 2025 and it introduced a blanket prohibition on the use by all motorised vehicles of a byway open to all traffic known as Sandy Lane, Apsley Heath. The Claimant has challenged the making of that Order within this claim brought under Paragraph 35 of Part VI of Schedule 9 to the Road Traffic Regulation Act 1984 (RTRA 1984).
3. The Order has also been challenged within other proceedings before this Court¹ brought by the Trail Riders Fellowship. Both Claimants are organisations concerned with the promotion of access to the countryside by various means including through the use of motorised vehicles. Each Claimant asserted that their respective claims were Aarhus Convention claims within the meaning of CPR 46.24 in their claim forms.
4. Following applications by the Defendant in both claims, by Order dated 24 June 2025, Dan Kolinsky KC sitting as a Deputy High Court Judge gave case management directions for the hearing of the two claims and the Aarhus dispute together. The Defendant's application for a declaration as to the Aarhus Convention status of the two claims was listed before me on 31 July 2025. On the morning of the hearing I was informed that agreement had been reached by the parties in the other claim in relation to this aspect and that a consent order had been filed. On hearing from counsel for the Trail Riders Fellowship I approved the Order in those proceedings by which that claim was agreed to be an Aarhus Convention claim and the default costs cap was varied. The issue of the status of the claim in these proceedings remained unresolved and I proceeded to hear argument from Counsel.

The application for relief from sanctions

5. The Defendant applies for an extension of time under CPR 3.9 in relation to its application to file a challenge to the nature of the claim as an Aarhus Convention claim and secondly, in relation to its application to vary the default costs cap under CPR 46.27.
6. Mr Semakula, on behalf of the Defendant, accepted that it was necessary to apply for an extension of time in relation to both the Aarhus challenge and in relation to the application to vary the cap. Mr Semakula contends that the Defendant's pre-action protocol response of 15 April 2025 clearly foreshadowed that the Defendant did not

¹ Case reference Ac-2025-LON-001208

accept that the claim was an Aarhus claim. The acknowledgment of service (AoS) was filed on the 1 May 2025 and did not indicate a challenge to the Aarhus claim. However, Mr Semakula says that the application challenging on Aarhus grounds was made on 22 May 2025, with the Summary Grounds of Defence being filed later on the 27 May 2025.

7. Mr Semakula submits that a retrospective application can be made to challenge the Aarhus claim by analogy to the circumstances in *Wesson v Cambridgeshire CC* [2024] EWHC 1068 (Admin) where Aarhus protection was sought at the time of the claim but a schedule of resources had not been filed. In that case the Claimant was permitted to file a statement of financial resources late in circumstances where CPR 46.25(b) is clear that the statement should be filed and served with the claim. Mr Semakula says that rule is akin to CPR 46.28(1)(a)(i) which indicates that the defendant should challenge Aarhus status within the AoS from to enable the court to determine the dispute early. Applying CPR rule 3.1 Mr Semakula notes that the Court can consider the Defendant's late application.
8. On behalf of the Defendant, Mr Semakula fairly acknowledged that there was no reason advanced for the late challenge to the Aarhus claim. However, he says that when one considers the timing of the filing of various documents it is clear that there has been little to no impact on the principle of reasonable predictability, no impact on the procedural timetable and the dispute is being determined at an early stage.
9. For the Claimant, Mr Brett opposes the application for relief from sanctions pointing out that the rules provide that if the Claimant has complied with the requirements on filing a financial resources schedule that the default costs cap will automatically apply unless the Defendant, in the AoS form, has contested that the claim is an Aarhus claim. Similarly, Mr Brett points out that an application to vary the costs cap must be made in the AoS and can only be made later in circumstances where there has been a significant change in circumstances (CPR 46.27(6)).
10. The automatic capping of costs has been confirmed by judgments in *R (on the application of the Royal Society for the Protection of Birds) v Secretary of State for Justice* [2017] EWHC 2309 Admin and *HM Treasury v Global Feedback Ltd* [2025] EWCA Civ 624. The costs cap effectively applies at the point at which it is claimed in accordance with the rules. It only ceases to apply when the Court determines otherwise, either following a direct challenge to the claim being an Aarhus claim or following an application to vary the cap.
11. Finally, Mr Brett contends that, as well as applying CPR 3.9, the Court must also have regard to the 3-part test in *Denton v TH White Ltd* [2014] EWCA Civ 906. He says that the breach was serious and significant, that no good reason has been offered and that it is not just in all the circumstances to allow an extension of time.

Analysis

12. Public interest in the protection of the environment is firmly established. Article 9(3) of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters ('the Aarhus Convention') requires that party states ensure that members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities "which contravene provisions of its national law relating to the environment".

13. To that end the Aarhus costs regime is designed to ensure that environmental claims are not rendered prohibitively expensive which would act as a disincentive to claimants bringing meritorious claims. The principle of a claimant having some peace of mind in relation to their potential exposure to adverse costs orders is recognised in the concept of reasonable predictability. The Aarhus costs regime and rules seek to provide reasonable predictability at the earliest opportunity and to resolve any disputes about whether or not a claim has the benefit of Aarhus costs protection early on in proceedings.
14. The rules place clear demands on both parties. Claimants must claim the Aarhus costs protection benefit at the very beginning of a claim and must supply the relevant financial information at the inception of a claim. Defendants must notify any disagreement or desire to vary the costs cap at their earliest opportunity, namely the filing of the AoS form. It is then incumbent on the Court to make an early decision on the dispute before more significant costs are incurred. The rules are strict so as to ensure reasonable predictability at an early stage.
15. In this case the Claimant has complied with the rules, the Defendant was on notice in the claim form that the Claimant sought the benefit of costs protection under the Aarhus regime. The Defendant did not dispute that matter in its AoS form and the costs caps continued to automatically apply. The Defendant accepts that it does not advance a good reason for not disputing matters in the AoS. Mr Semakula, in his oral reply, drew the Court's attention to the fact that, in the intervening period, the Court of Appeal had down its judgment in the *Global Feedback* case, which the Defendant then considered and relied upon. It was, however, incumbent on the Defendant to dispute the Aarhus convention claim at the AoS stage, it could have done so and reserved its position.
16. The fact that the Defendant had previously raised questions about the claim falling under Aarhus protection provisions in its pre-action protocol response does not assist the Defendant. The Claimants would have been entitled to rely on, and no doubt relieved to receive, the AoS form in which the Defendant did not indicate that it wished to dispute costs protection. The Claimant had automatically benefitted from costs protection on filing of the claim and at the AoS had reassurance that that protection was not in dispute.
17. Given the nature of the strict rules and the rationale for the rules I have concluded that the breach was a serious one. The application disputing the Aarhus claim was made some 21 days after the filing of the AoS form, during which time the Claimant remained unaware that the Aarhus claim was in dispute. In the context of the procedural rigour required in judicial review claims, when the AoS must be filed within 21 days of receipt of the claim, the failure to notify the Claimants as to the dispute was a serious and significant breach in my view.
18. I accept that the application was filed at an early stage. There is no permission stage in this procedure which means that it is likely that material costs were incurred by both parties in prosecuting and defending their respective cases in preparation for a substantive hearing. Mr Brett's submission that there is general prejudice to public administration and the overall need to ensure procedural rigour given the circumstances of this case has some force.

19. I have concluded that the breach was serious and significant. The Defendant does not advance a good reason for the delay in raising the dispute in the face of a serious breach of a clear rule. The argument that the Claimant has not suffered material prejudice is not a good reason. The Court then has to move on to consider stage 3 of the Denton test with an examination of all of the circumstances of the case to determine whether discretion ought to be exercised.
20. Mr Brett urged that, in considering all of the circumstances of the application, I should also have regard to the meritoriousness of the Defendant's position given that it has conceded the Aarhus Convention status of the claim brought by Trail Riders Association against the same Order. Putting that matter aside, I am satisfied that given all of the other factors above, given the nature of the breach and the lack of good reason, as well as the timing of the application that, in the circumstances of this application, relief should not be granted and the application to extend time for both applications should be refused.
21. Notwithstanding my decision on the application to extend time I shall go on to consider whether the claim falls within the Aarhus provisions in any event.

The Aarhus Challenge- Legislation

22. Local traffic authorities are required to discharge all their statutory functions conferred by the Road Traffic Regulation Act 1984 (RTA) in accordance with the duty in section 122 RTA, namely

“so as (so far as practicable having regard to the matters specified in subsection (2) below) to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of suitable and adequate parking facilities on and off the highway...”.

23. The matters in s.122(2) include:

“a. The desirability of securing and maintaining reasonable access to premises;

b. The effect on the amenities of any locality affected and (without prejudice to the generality of this paragraph) the importance of regulating and restricting the use of roads by heavy commercial vehicles, so as to preserve or improve the amenities of the areas through which the roads run;

c. The strategy prepared under Section 80 of the Environment Act 1995 (national air quality strategy);

d. The importance of facilitating the passage of public service vehicles and of securing the safety and convenience of persons using or desiring to use such vehicles; and

e. Any other matters appearing to ...the local authority.... to be relevant.”

24. Under the RTRA Part I, a local authority has the power to make traffic regulation orders (sections 1, 2 and 3), experimental traffic orders (sections 9 – 10), orders which temporarily restrict or prohibit use of a road (sections 14 – 15), and orders which impose restrictions or prohibitions on the use of a road in connection with sporting events, social events or entertainments (sections 16A – 16B).
25. By section 9(1)(a) RTRA, an experimental traffic order may contain “any such provision ... as may be made by a traffic regulation order”. Thus, an experimental traffic order must be made for the purpose of one or more of the objectives specified in section 1(1) RTRA, and must provide for one or more of the prohibitions, restrictions or regulations referred to in section 2 RTRA.
26. Section 1(1) RTRA provides as follows:

“1.— Traffic regulation orders outside Greater London.

(1) [The traffic authority for a road outside Greater London may make an order under this section (referred to in this Act as a “traffic regulation order”) in respect of the road] where it appears to the authority making the order that it is expedient to make it—

(a) for avoiding danger to persons or other traffic using the road or any other road or for preventing the likelihood of any such danger arising, or

(b) for preventing damage to the road or to any building on or near the road, or

(c) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), or

(d) for preventing the use of the road by vehicular traffic of a kind which, or its use by vehicular traffic in a manner which, is unsuitable having regard to the existing character of the road or adjoining property, or

(e) (without prejudice to the generality of paragraph (d) above) for preserving the character of the road in a case where it is specially suitable for use by persons on horseback or on foot, or

(f) for preserving or improving the amenities of the area through which the road runs”

The Order and the Basis of Claim

27. The Order was published following consultation and the presentation of an Officer’s Report (OR) to the Defendant’s Traffic Management Meeting. That report dated 26 November 2024 gives reasons for the recommendation to approve the making of the Order. The OR set out the background as follows:

“2. The BOAT is within the Wavendon and Aspley Woods County Wildlife site, a valuable semi-natural woodland. The BOAT is host to some specimen Oak, Beech Trees as well Scots Pine trees whose roots have been exposed by erosion of the sandy surface.

3. A consequence of the sandy soil within the woodland is that the BOAT is very susceptible to erosion by both vehicles and surface water runoff. Ruts caused by vehicles has exacerbated water erosion to lower parts of the BOAT by over 2 metres in places, as shown in the photos below.

4. The damaged surface represents a safety hazard to all users of the route, including walkers, horse riders and motorised vehicles.

5. In addition to the issues above, there have been reported inappropriate use of the BOAT, including anti-social behaviour, fly tipping, racing and use of the byway by inappropriate vehicles.

6. The introduction of an Experimental Traffic Regulation Order would provide the opportunity to repair the worst eroded sections of Sandy Lane, protect it from further damage by motor vehicles, and would allow the Council to monitor the level of erosion without the impact of motorised vehicles. For the period, the BOAT would operate as a traffic-free amenity route for walkers, cyclists, and horse-riders.”

28. In the OR section headed ‘Reasons for decision’ the following remarks are made:

“22. The proposed Order will help protect and preserve the surface of the BOAT and promote it amenity value for walkers and equestrians. It will also assist in the Council’s efforts to reduce antisocial behaviour, including fly tipping.”

29. The challenge is brought under paragraph 35(1)(a) of Schedule 9 RTRA, namely on the basis that the making of the Order was “not within the relevant powers” with respect to such an order (paragraph 34(2)(1) of Schedule 9 RTRA). The claim is based on 5 grounds as follows:

- The Order was ultra vires because it was not made for experimental purposes;
- The Defendant failed to give reasons for making the Order and in particular, for proceeding by way of an experimental order;
- Failure to discharge the duty under s122 of the Act in that there was no balance performed;
- Failure to carry out lawful consultation; and
- Failure to comply with the Public Sector Equality Duty.

The Parties' Submissions

30. On behalf of the Defendant, Mr Semakula submits that, when determining the scope of Article 9(3) of the Aarhus Convention for the purposes of Part 46, one must examine the purpose of the national law which is said to have been contravened and whether that purpose is to protect or regulate the environment in accordance with the judgment of the Court of Appeal in the *Global Feedback* case, when Holgate LJ. said the following:
- “151. Likewise, it would be wrong for a judge simply to ask whether a claim or ground of challenge is to do with the protection of the environment or with the effect of a decision or legal provision on the environment. Instead, it is necessary to return to the language of the Convention and its purposes as established in the case law, and to have in mind the principles for the interpretation of international treaties (see e.g. [88]-[90] and [121] above). Put in a nutshell, what matters is whether the purpose of the national law that has allegedly been contravened is to protect or regulate the environment, not, whether the decision being challenged has an effect on, or some connection with, the environment.” My emphasis
31. Mr Semakula derives assistance from the decision of the Court in *SSHCLG v Venn* [2015] 1 WLR 2328 when deciding whether relevant provisions are those relating to the environment. In that case the Court held that the Convention's Implementation Guide was an aid to construction. The definition of “environmental information” found in Article 2(3) relates to:
- “(a) The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites, biological diversity and its components, including genetically modified organisms, and the interaction among these elements;
- (b) Factors, such as substances, energy, noise and radiation, and activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, affecting or likely to affect the elements of the environment within the scope of sub-paragraph (a) above, and cross-benefits and other economic analysis and assumptions used in environmental decision-making;
- (c) The state of human health and safety, conditions of human life, cultural sites and built structures, in as much as they are or may be affected by the state of the elements of the environment or through these elements, by the factors, activities or measures referred to in sub-paragraph (b) above.”
32. Mr Semakula also refers me to *R (Lewis) v Welsh Ministers* [2022] EWHC 450 (Admin) in which the Court held that the focus should be on the grounds or nature of the claim, rather than the nature of the decision challenged. The Defendant's argument is that sections 1, 9 and 122 of the RTRA are not provisions relating to the environment since they do not regulate environmental quality, set environmental standards or create

environmental obligations. Neither, Mr Semakula argues, is the subject matter of the provisions environmental because their purpose is not to regulate the environment. Even taking a broader approach, he contends that there is not a sufficiently close connection between the nature of the alleged contravention and environmental factors.

33. On behalf of the Claimants, Mr Brett quotes the *Global Feedback* and *Venn* cases with approval. He notes that the environmental information referenced in Article 2(3) includes “The state of elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural sites....Factors such as...noise...[and] The state of human health and safety, conditions of human life...”. The *Global Feedback* case confirmed that alleged breaches of public law principles do not fall within Article 9(3) of the Aarhus Convention merely because the breach has an environmental impact. That case concerned the need to take into account international obligations to reduce climate emissions when deciding to enter into free trade agreements with other nations.
34. Mr Brett contrasts the present case with that of *Global Feedback* on the basis that the purpose of the RTRA is clearly to protect or regulate the environment. He points to the purposes of section 1 of the Act which directs the authority making the order to have regard to a number of factors including (1) for avoiding danger to persons or other traffic using the road or for preventing the likelihood of any such danger arising, (2) for preventing damage to the road, (3) for facilitating the passage on the road or any other road of any class of traffic (including pedestrians), and (4) for preserving or improving the amenities of the area through which the road runs. All four of these factors relate to the environment contends Mr Brett.
35. Similarly, Mr Brett submits that the requirements to which local authorities must have regard in section 122 relate to environmental factors including the effect on the amenities of localities and the national air quality strategy. When the Defendant argues that reference to the air quality strategy is incidental and not a ‘dominant legal function’, Mr Brett counters that there is no question of looking at the dominant legal function but instead one must look at legal provisions which “concern(s), or is to do with, the environment, its protection or regulation” as set out in *Global Feedback* at paragraph 96.

Analysis

36. The test for assessing whether or not the claim falls within an Aarhus Convention claim is met by asking are sections 1, 9 and 122 of the 1984 Act provisions of national law relating to the environment. As Holgate LJ. opined in assessing other Aarhus convention caselaw in the *Global Feedback* case:

“137. In determining the extent to which Art.9(3) may apply to any of the above scenarios, an essential question is whether the claimant is able to allege that the defendant has contravened a national legal provision for the protection or regulation of the environment. That will depend upon the wording, context and purpose of the provision under which the defendant has acted.

138. Take for example a defendant which has acted under a statute the purposes of which are not in general for the protection or regulation of the environment. The legislation may

nonetheless contain a provision which requires a particular factor to be taken into account and the language or context demonstrates that the object of that provision is to protect or regulate the environment. In that situation Art.9(3) will most likely be engaged. But another piece of non-environmental law may simply impose a general obligation to take into account all relevant considerations without more. Venn indicates that a provision of that kind does not engage Art.9(3). I agree. The purposes of such a provision is not to protect or regulate the environment.”

37. The stated purpose of the RTRA in section 122 is to secure the expeditious, convenient and safe movement of traffic and ensure suitable parking provision. When that headline purpose is considered in isolation, I accept Mr Semakula’s argument at first blush that there is no reference to the protection or regulation of the environment. However, section 122(2) must be read as a whole and it specifically directs the decision maker to take other matters into account. Those other matters include the “amenities” of any locality affected and more particularly, recognition of the importance of regulating and restricting the use of some roads by heavy commercial vehicles “so as to preserve or improve the amenities of the areas through which the roads run”. That last clause can be clearly inferred to referring to residential amenity in terms of the living conditions of residents and visual amenity in terms of the effect on the character and appearance of an area. These are patently environmental matters. It is clear that when section 122 is read as a whole it is directed at making decisions with environmental considerations at the forefront of the decision maker’s mind.
38. Similarly, section 122(2)(c) directs that when securing the expeditious and safe movement of traffic etc. regard must be had to the national air quality strategy, another environmental consideration. It is clear then that the requirement to take these particular factors into account is with the aim of protection or regulation of the environment.
39. Section 1(1) of the RTRA frames the circumstances in which it is expedient to regulate the highway network. They include the prevention of damage to the road or to any building on or near the road (s1(1)(b)), to prevent road use by vehicles which are unsuitable having regard to the existing character of the road ss1(1)(d) and (e) and for “preserving or improving the amenities of the area” (s1(1)(f)).
40. The wording of the above sections can then be compared with the definition of “environmental information” found in Article 2(3) which includes: the state of elements of the environment such as air and atmosphere, water, soil, land, landscape...as well as ‘the state of human health and safety, conditions of human life...and built structures, in as much as they are or may be affected by the state of the elements of the environment or...by the factors, activities or measures referred to in sub-paragraph (b)’. Sub-paragraph (b) I note, includes activities or measures affecting or likely to affect the elements of the environment set out above.
41. When the wording and aims of the legislation are considered I am satisfied that the national law alleged to have been contravened provides for regulation of the highway network for a number of reasons, several of which relate to environmental protection. I have set out the factors relating to amenity considerations above. There is also a

specific requirement within section 122(2)(c) which requires an order making authority to have regard to the strategy prepared under Section 80 of the Environment Act 1995 in relation to the national air quality strategy. That is not a general reference to have regard to all other relevant matters as was the case in *Global Feedback*, but rather a requirement to have regard to a specific environmental protection provision.

42. The Defendant's own reasons cited for the making of the Order were expressed to be for the protection of the BOAT, the protection and preservation of its surface, the promotion of amenity value for walkers and equestrians, and to provide assistance in combatting anti-social behaviour and fly tipping. Those reasons lend support to the Claimant's arguments that the national law in issue is a provision relating to the environment. Similarly, the Defendant's assertions that the claim would not have significant environmental benefits but would lead to further environmental harm points to the Order having an environmental purpose.
43. I conclude that each of the grounds of claim (with the possible exception of the final ground) alleges contraventions of national law which relate to the protection or regulation of the environment. As such the claim falls squarely within the Aarhus Conventions costs protection regime. I therefore refuse the Defendant's application accordingly.
44. I have already concluded that the Defendant should not be granted an extension of time for its applications. Nonetheless I have gone on to determine the Aarhus Convention dispute. I do not consider it necessary to examine the Defendant's alternative application for a variation of the costs cap since it does not arise given my earlier conclusions.
45. I would ask that Counsel draw up an appropriate Order to reflect the terms of this judgment for my approval.