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Case Summary posted by the Task Force on Access to Justice

R (on the application of Derek England) v Tower Hamlets London Borough Council & Team Ltd & ORS [2006] EWCA Civ 1742

1. Key issue	Costs – The Court of Appeal held that the need for the claimant to have no “private interest in the outcome of case” (one of the “criteria” established in the Corner House case), is not decisive when the “interest” is not a private law interest, but one the claimant shares with the other members of his group in the protection of the environment. Also noting that the provisions of the Aarhus Convention may be relevant.
2. Country/Region	UK
3. Court/body	Court of Appeal
4. Date of judgment /decision	20 th December 2006
5. Internal reference	EWCA Civ 1742, para 15
6. Articles of the Aarhus Convention	Article 9(4)
7. Key words	Prohibitive costs, Protective Costs Order (PCO)
8. Case summary	<p>This planning case followed the landmark judgment of the Court of Appeal in <i>R (Corner House Research) v Secretary of State for Trade and Industry</i> ([2005] EWCA Civ 192), in which the Court of Appeal identified “criteria” concerning the grant of Protective Costs Orders (PCOs) (an order of the court which specifies or constrains at an early stage of the proceedings what the costs outcome of the case will be).</p> <p>Post <i>Corner House</i>, the most controversial and problematic criterion had proven to be the apparent requirement for “no private interest” in the outcome of the proceedings. In the planning field, it was clear that most potential claimants would have some private interest in the matter they sought to review. As such, the <i>Corner House</i> criteria precluded those claimants from securing a PCO in advance of the proceedings.</p> <p>In <i>England</i>, the Court of Appeal in a permission judgment endorsed the view that the private interest test was not decisive. Carnwath LJ said that different considerations may apply to a case where “interest” is not a private law interest, but one he shares with the other members of his group in the protection of the environment. It was noted that in this context, the provisions of the Aarhus Convention on assess to justice in environmental matters (referred to in <i>R (Burkett) v Hammersmith LBC</i> [2004] EWCA Civ 1342 para 74) may also be relevant.</p>

The Court of Appeal also expressed its hope that the Civil Procedure Rules Committee (CPRC) would take the opportunity in the near future to review these questions in the light of the findings and recommendations of the Report of a Working Party chaired by Sir Maurice Kay ("Litigating in the Public Interest" – referred to widely as the "Kay Report").

9. <i>Link address</i>	http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/UNITED_KINGDOM/Derek_England/DerekEnglandJudgment.pdf
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