

**COMMUNICATION TO THE AARHUS CONVENTION'S
COMPLIANCE COMMITTEE – (ACCC/C/2010/60)**

LEGAL UPDATES FOR APPLICATION (ACCC/C/2010/60)

ACCESS TO ENVIRONMENTAL JUSTICE UNDER ARTICLE 9.2, 9.3 AND 9.4

COSTS NOT “PROHIBITIVELY EXPENSIVE” UNDER ARTICLE 9.4

1. I enclose for the Committee's information the full text of the Advocate-General Kokott's decision in R. (Edwards) v. Environment Agency and ors. Case C 260/11.
2. As can be seen, the Court of Justice of the European Union has found for Mr. Edwards on all counts relating to costs being “prohibitively expensive” under article 9.4.
3. The decision speaks for itself and I make no submissions in respect of it. The decision is subject to ratification by the court and it is anticipated that the court's final judgment will follow that of the Advocate-General.
4. The url reference for the Advocate-General's judgment is found at:

<http://www.newlawjournal.co.uk/nlj/content/environmental-justice-costs-decision>
5. I also enclose copies of two articles concerning this decision. There is discussion regarding it in New Law Journal at:

[http://www.newLawjournal.co.uk/nlj/content/environmental-justice-costs-decision](http://www.newlawjournal.co.uk/nlj/content/environmental-justice-costs-decision)
6. There is further discussion regarding it in Legal Voice at:

<http://legalvoice.org.uk/topstories/turning-tide-the-aarhus-convention-and-environmental-justice/>

TIME LIMIT FOR BRINGING JUDICIAL REVIEW

1. There have been a number of recent relevant rulings regarding the requirement for an application for permission for Judicial Review to be made “promptly” as currently required by CPR Part 54.5(1)(a)(b).
2. The Court of Justice of the European Union considered of the requirement for “promptness in Uniplex (UK) Ltd. v. NHS Business Services Authority [2010] PTSR 1377.
3. The Court of Justice of the European Union also further considered of the requirement for “promptness in Commission of the European Communities v. Ireland [2010] PTSR 1403.
4. The domestic courts have sought to follow this ruling in R. (Buglife—the Invertebrate Conservation Trust) v. Medway Council [2011] Env. L.R. 27; R. (U & Partners (East Anglia) Ltd) v. Broads Authority [2012] Env. L.R. 5 and in the Court of Appeal in SITA U.K. Ltd. v. Greater Manchester Waste Disposal Authority [2012] PTSR 645.
5. However, the Court of Appeal appears to have deviated from Uniplex (UK) Ltd. v. NHS Business Services Authority [2010] PTSR 1377 in the latest Court of Appeal judgment in R. (Berky) v. Newport City Council [2013] PTSR D1.

6. The consideration of the issue therefore by the domestic courts would appear to be somewhat confused and unsatisfactory.
7. Copies of the relevant authorities are enclosed for the Committee's information.

Signed

Mr. Terence Ewing

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