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Case Summary posted by the Task Force on Access to Justice

R (Buglife) v Thurrock Thames Gateway Development Corporation [2008] EWCA Civ 1209

1. Key issue	Costs – The Court of Appeal established guidelines for the level of “reciprocal costs caps” for claimants in relation to the granting of Protective Cost Order (PCO). The Court rejected the notion that generally the defendant’s liability for costs should be capped in the same amount as the claimant, holding that it would depend on the circumstances.
2. Country/Region	UK
3. Court/body	Court of Appeal
4. Date of judgment /decision	4 th November 2008
5. Internal reference	[2008] EWCA Civ 1209
6. Articles of the Aarhus Convention	Article 9(4)
7. Key words	Prohibitive costs, Protective Costs Orders (PCOs), reciprocal costs capping

8. Case summary

In this case, the charity Buglife applied for judicial review of the decision of a local planning authority (Thurrock Thames Gateway Development Corporation) to grant planning permission for the development of a site hosting endangered invertebrate species. Buglife applied for a Protective Costs Order (PCO) capping its liability for costs recoverable by the local planning authority in the event that it lost the case. Sullivan, J. granted a PCO with an upper limit of £10,000 on the total amount of costs recoverable from Buglife, but also set a reciprocal costs cap at the same limit (i.e. in the event that Buglife won the case, it could only recover costs of £10,000 from the local planning authority. Such an arrangement is commonly termed a “reciprocal costs cap”). Buglife appealed against the failure to give reasons for limiting the amount payable if it won.

The Court of Appeal held, following *Corner House* and *Compton*, that the beneficiary of a PCO should generally have the recoverability of its costs limited to a reasonably modest amount and should also expect the costs to be capped, but the Court rejected the notion that generally the defendant’s liability for costs should be capped in the same amount as the claimant. It would depend on the circumstances. The Court of Appeal also affirmed that the fact that a claimant’s lawyers were acting on a Conditional Fee Arrangement (CFA) with the possibility of a success fee was relevant to the setting of any caps on liability and that the uplift would thus have to be disclosed. The Court indicated that not all the uplift might be allowed to be recovered if a PCO were sought.

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