



e-law

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EDITORIAL

The annual conference has been and gone. The theme of Sustainable Development in an Age of Austerity couldn't have been more topical and we have a conference report from Vicki Elcoate in this month's journal. Thanks to all our speakers and to the organising team without which these events could not take place.

Thanks also to everyone who took part in the sponsored bike ride to the conference organised by Stephen Sykes. You can still support them! There is a report on their adventures later in the journal. Looking ahead to Autumn we have masses of events coming up and I hope to see some of you at one of them.

Also do look out for our consultation on our report reviewing Environmental Law. This will be coming to you over the summer and we need as many of you as possible to respond to our survey.

Catherine Davey, editor e-law



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Delegates gather in the cloisters of Norwich Cathedral

REPORT ON THE ANNUAL CONFERENCE 2011

The UKELA annual conference touched a highly topical nerve – the age of austerity and what it might mean for sustainable development. How do we protect the environment effectively whilst trying to improve people’s well being and tighten our belts? 183 delegates gathered at Norwich University to discuss how to reconcile the potential conflicts and work towards a sunnier future, whilst the clouds are gathering on the horizon.

Prof Tim O’Riordan, of the University of East Anglia and a former Sustainable Development Commissioner, set a theme which was to run through other talks. “For the first time the human hand is bigger than the hand of nature. The principles of Sustainable Development say that you can’t do anything if you break the bounds of nature and in a time of austerity it isn’t easy to say that we need to put resources into environmental protection”.

As a self confessed glass half full person, Prof O’Riordan described a vision of a “whole new world of social investment” which would create a more resilient society, better able to deal with environmental and economic challenges. The Norfolk Citizenship Initiative had encouraged mostly young people to get involved in projects aimed at improving their local community.

This was a theme echoed by gala dinner speaker, Tom Burke, and Prof Robert Lee of Cardiff University, who discussed the effects of localism and budget cuts on the regulatory environment. Reducing budgets could provide new opportunities as it had in Australia, where Terry A’Hearn had worked for many years for the Environment Agency in Victoria.

This was providing any efforts could avoid the attentions of the “trolls”, as Ed Matthews of Transform UK, called them – lurking in government and trying to stifle new initiatives. He described trying to establish the Green Investment Bank, whilst overcoming bureaucracy, with a great deal of feeling.



Conference speakers and chairs left to right: Tim Clare (UKELA Vice-Chair); Ed Mitchell; James Maurici; Andrew Wiseman; Eloise Scotford; Prof Robert Lee; Kate Cook; Terry A’Hearn; Begonia Filgueira (UKELA Council)

Street); Stephen Hockman QC (6 Pump Court); Ned Westaway (Francis Taylor Buildings) and Garrett Byrne (4-5 Gray’s Inn Square).

Some of the other highlights were provided by the extra curricular activities, which are becoming an increasingly important part of the conference weekend. First, six cyclists arrived a bit out of breath for their photocall at the Sainsbury Centre. Organised by Stephen Sykes, the sponsored bike ride was a great fundraiser for the Lord Nathan Fund (you can read more about it below). Second extra feature was Stephen Tromans’ quiz, which everyone agreed was more fun for being a bit less legal this year. Many thanks to Stephen and the 39 Essex Street team for raising another £750 for the Lord Nathan Fund. And finally the raffle – an opportunity for a flutter and a chance to win some great prizes. Another £650 or so raised for the Fund – with thanks to Origin Events for all their help in securing most of the prizes.



Delegates enjoy pre-dinner drinks at Norwich Cathedral

There were presentations also from Andrew Wiseman of Stephenson Harwood (contaminated land), James Maurici of Landmark Chambers (Aarhus) and Kate Cook of Matrix (biodiversity) before delegates were swept off, via the working party sessions, to their field visits.

Dinner was in the stunning surroundings of Norwich Cathedral and local produce played a large part in everyone’s enjoyment and UKELA’s green housekeeping efforts.

Sunday morning was more of a slow pace with more working party sessions and then a trot round the hot cases from a stable of four barristers: John Pugh-Smith (39 Essex

to 39 Essex Street, Landmark Information Group, LexisNexis (who also sponsored student places) and WSP Environment and Energy.

The other sponsors – bags and pens (GroundSure), memory sticks (Environ) and drinks (Landmark Chambers and 6 Pump Court) – also did a fantastic job of support.

The conference papers are currently being prepared (thanks to Rachel Caldin of Lawtext Publishing) and will be sent to all UKELA members in a special edition of Environmental Law and Management in November.

This is what some of our delegates said:

“The weekend in Norwich was interesting, informative - and fun! The organization was fantastic, and the surroundings for the reception in the Sainsbury Centre and the Gala Dinner at the Cathedral, superb. I very much appreciate the great opportunity I was given in attending this event as a student, and would ask that you pass on my grateful thanks to those who made my attendance possible”.

“Superb”

“Just to say how thrilled I was with the whole weekend”

“The conference was, as always, a fantastic opportunity to hear everything from ‘blue sky thinking’ to ‘black letter law’ and to meet almost ‘everybody who’s anybody’ in the field of environmental law. It is a tremendous event and always very well-organised. I value it very highly despite the very long hours of travel required”

Diary date for next year – July 6th-8th at Solent University in Southampton.

CYCLING TO NORWICH – THE STORY

James Burton

One damp, cold, Wednesday morning, four cyclists set out from Colchester railway station. They headed north-east, towards gathering clouds. As they went, they picked up speed. Later, they picked up numbers. Four became six. Three days, 120 miles, two punctures, numerous pints and a fair amount of sponsorship for the Lord Nathan Memorial Fund for the Environment later, they arrived in Norwich, met by Alison and a welcoming party that could have graced the Tour de France.

And so, the UKELA cycling club, TheRecyclists to give it its proper name, was born.

The group comprised Stephen Sykes, whose brainchild it was, Mark Fermor, Ben Stansfield, Zack Simons, Richard Wald and James Burton.

We had a lot of fun along the way, including some minor disasters that just added to the entertainment. From Stephen’s left crank falling off halfway up a hill on day 1, to Mark’s rear wheel puncturing within sight of Norwich cathedral spire on day 3, to Ben finding time to show off his iPad whilst waiting for the rest of us to catch up, to Zack’s bike’s unusual attractiveness to all



Hot topics barrister session left to right: Garrett Byrne; Stephen Hockman QC; Mark Brumwell (UKELA Chair); John Pugh-Smith; Ned Westaway



Setting off from Colchester

professing an interest in two-wheeled self-propulsion, to James knocking on doors in the hamlet of Little Beeling in search of a

closed head spanner, to Richard causing a minor public nuisance/scaring the livestock with his over-abundance of technical gear. There really was never a dull moment.

We also took in some fine sights; Orford and Southwold on the Suffolk coast, Beccles on the Norfolk Broads, the pleasant meander into Norwich itself, plus the odd ruined abbey. Not to mention the Best Western in Ufford, the apogee of mid '80s motor service station chic. And we, of course, took in some excellent local beers; a special mention to The White Lion in Ufford.

Above all, we had a great laugh together.

And we raised almost £2,000 for the website.

The plan is to make TheRecyclists a UKELA institution, open to all UKELA members, built around an annual cycle ride to the conference and, hopefully, the odd dinner and extra ride the rest of the year.

In 2012 the conference will be in Southampton, and we plan to begin the cycle at Oxford. Route and number of days to be decided - doubtless shortly before we set off. It would be great to have more people take part. Then we could really take over the pubs along the route.

Only last night there was talk of Stephen Tromans accepting the position of president. He stakes his claim on the basis of a wobbly cycle home from the conference at Cambridge in 1992, fondly recalling leaving Queen's College bar in the early hours of Saturday morning, climbing over the gate to get to his bike and somehow, inexplicably, ending up in a hedge just shy of home...

We like to think that he will prove a reliable provider of cycling wisdom and restorative shortbread.

Join us! You have nothing to fear but the odd bit of dodgy lycra (and we may write it into the club rules that such is to be covered under oversHORTS at all times).

Contact me, james.burton@39essex.com, or anyone amongst the group you happen to know. Details of further events to follow nearer the time.



Crossing the finishing line left to right: Zack Simons, Richard Wald, Stephen Sykes, Mark Fermor, James Burton

UKELA AND THE AMERICAN BAR ASSOCIATION SPONSOR INTERNATIONAL ENVIRONMENTAL LAW CONFERENCE AT THE LONDON SCHOOL OF ECONOMICS

Peter Hsiao of the ABA

The first joint environmental law conference co-sponsored by UKELA, the American Bar Association ("ABA") and the London School of Economics ("LSE") took place on May 23-24, 2011. Reflecting the international nature of the topic, "Navigating the New Green Economy: The Challenges of Climate Change and the Opportunities for Clean Energy," the conference was attended by a widely diverse group of stakeholders from 16 countries and four continents.

The Keynote Speakers at the conference provided their unique insights regarding the global efforts at controlling the impacts and sources of climate change. For the U.K., Lord Anthony Giddens, the author of 34 books including The Politics of Climate

Change, and former Director of the LSE, engaged in a conversation with UKELA's Stephen Hockman about the inexorable consequences of failing to act on climate change now, while the opportunity is still available.

For the U.S., Professor Lisa Heinzerling from Georgetown University School of Law and former Assistant Administrator for Policy, Economics and Innovation at the U.S. Environmental Protection Agency spoke. As one of the key players in US climate change policy, Professor Heinzerling spoke about the inside strategy and thinking behind the litigation that established greenhouse gases as a pollutant requiring regulation under the Clean Air Act.

In all, 32 speakers from the leading organizations in the field presented at the conference, including the House of Commons, the U.S. Senate, the UK Department of Energy and Climate Change ("DECC"), the United Nations Environment Programme, the American Council for an Energy Efficient Economy, the International Emissions Trading Association, the International Centre for Trade and Sustainable Development, the Center for International Environmental Law, and Global Witness. They were joined by presenters from the LSE, the University of Birmingham, Cambridge University, University of British Columbia, University of Colorado, University of Oregon, Georgetown Law, and Cardiff University in Wales, and some of the world's leading law firms and private financial institutions, including Morrison & Foerster, Latham & Watkins, Skadden Arps and SNR Denton.

For example, Simeon Thornton, Chief Economist for the UK DECC, provided an analysis of UK climate change policy and the intersection how financial and cost-benefit analysis factored into the analysis of alternative policy choices. Derek Dorn, Senior Finance Counsel to the U.S. Senate, discussed tax policy and incentives as a tool in incentivizing alternative energy and implementing complex environmental protection policies. Paul Watchman, Senior United Nations Advisor and visiting fellow at the LSE, discussed the intricacies of financing a sustainable carbon future. And Peter Pearson, a Director at the Low Carbon Research Institute, traced the historical evolution of energy usage and the development of new technologies, and projected those finding to predict the future outcomes of the currently planned energy efficiency measures.

After the conference, the UKELA Board met with the representatives of the ABA. Tim Clare described UKELA's many varied activities, and the Board members and ABA members exchanged their views about some of the latest issues in the UK and US environmental law practices.

The conference had its greatest success in providing a high level forum for the exchange of the latest, cutting edge ideas on the intersection of climate change, energy efficiency and alternative energy solutions, and global finance. Those interested in the availability of program materials can contact Elissa Lichtenstein at the ABA (elichtenstein@americanbar.org). Following up on this effort, the ABA will propose the participation of UKELA in its annual Spring Conference for 2012 in Salt Lake City, Utah. Both UKELA and the ABA are excited about this new partnership in the future of global environmental issues, and welcome additional participation of its members in planning additional joint conferences and the exchange of resources and new ideas in environmental law and policy.

UKELA: THE NEXT GENERATION – SOCIAL NETWORKING

Rebecca Breen of Nabarro's – YouTube volunteer and member of UKELA's social media group

UKELA is embracing the technological revolution and increasing its web presence with a focus on social media. Over the course of the last 12 months, a core group of social networking "enthusiasts" have developed a wide-ranging platform across YouTube, Facebook, LinkedIn and Twitter. Our aim is to highlight the work of UKELA, to enable our members and the public to get involved with the Association and to allow those interested to connect with each other in a way which will fit into their busy lives.

YouTube

The UKELA YouTube Channel can be found at www.youtube.com/ukelalaw. If you missed a London meeting, then many of the videos will be in place on the channel for you to watch the full recording of the event. The Annual Garner Lectures are also



featured, as are Rosie Oliver's public service tips on various aspects of environmental law. Over the coming months, we will be uploading more of these public information videos. If anyone would like to appear in these informative recordings, please let me know.

When videos are uploaded in future, this will also be highlighted across the other social media forums – so you will not miss a thing! If anyone already has a Youtube account, please add UKELA as a friend to be updated regularly and to ensure our page remains high in the rankings for “Not-for-Profit” groups.

Twitter

Any tweeters out there please visit www.twitter.com/ukela_law or search for UKELA in the Twitter search box. The feed is updated with information and links on upcoming and past events, as well as highlighting updates on environmental law in general. Of course, feel free to tweet us with your comments and suggestions, with links to interesting topics which other UKELA members may be interested in or just with random musings! We will endeavour to keep in touch!

Facebook

The Group on Facebook is open to all – just search for UKELA in the find box. Like Twitter, we will update the page with useful information about UKELA events, opportunities, views on the environmental issues at the top of the agenda and news. However, on Facebook you also have the opportunity to discuss jobs, courses, law firms, consultancies, legislation...anything you like! Facebook is there for you to use to connect with other members in your way. You can even chat in real time to other members of the group, and we will be looking into setting up some live discussions with senior members of UKELA on various hot topics. If you have any ideas for a subject for these groups, please contact Vicki Elcoate.

LinkedIn

LinkedIn has been called the social networking site for grown-ups...and this is the place to be if you want to make connections in a professional way. Again, search for UKELA in the search box and apply to be a member. Once approved, you will be able to link with other members, join in discussions, post links and keep up with the movers and shakers in the industry. There are currently 634 members of the LinkedIn Group – so this is a perfect way to widen your network!

NEW TRUSTEES

UKELA's Board of Trustees has seen a few changes recently following the recent election process. Stephen Sykes stood down and the Chair and trustees would like to record their thanks to him for his service to UKELA. In addition, a number of vacancies were filled. An election was not needed this year as the number of vacancies matched the number of applications received.

Fiona Darroch

Following her career as a professional opera singer, Fiona Darroch embarked on a career as a lawyer. She was called to the Bar of England and Wales in 1994. Her practice consists of environmental law and litigation of all kinds, with an emphasis on environmental contamination and corporate social responsibility. Internationally, her practice has included corporate corruption in Lesotho, environmental impact assessments, and procurement processes in general, together with their wider implications within developing communities, issues upon which she teaches, lectures and consults.



Anne Johnstone

A Senior Manager at ENVIRON, Anne specialises in corporate due diligence and contaminated land assessment. She is a geochemist by training and has over 10 years experience in environmental consultancy.

James Pereira

James was named 'Junior Barrister of the Year' in Planning and Environmental Law by Chambers and Partners Directory of the UK Legal Profession in 2007 and again in 2009. He specialises in planning, environmental, local government and administrative law, compulsory purchase and compensation.

He is recommended as a Leading Junior in the three categories of planning law, environmental law, and public and administrative law by The Legal 500, and by Chambers & Partners.



Kirsty Schneeberger

Young delegate to the UN climate change talks from 2008 - 2011 (Poznan - Cancun) and was a coordinator of the UK Youth Climate Coalition from 2009 - 2010. As an advocate for incorporating intergenerational equity into mainstream decision making Kirsty has run campaigns, such as the 'how old will you be in 2050?'; written papers on the topic; and worked with the DECC to establish the Youth Advisory Panel. She runs the online platform Think 2050 and consults for a range of organisations on putting long-term thinking into practice. Currently working for the Stakeholder Forum on the Rio 2012 conference and writes for the DECC and Eric blogs.

Eloise Scotford

Eloise Scotford is a lecturer at King's College London. Her teaching and research interests focus on environmental law, and also include administrative law, EU law and tort law.



Richard Wald

Richard is a barrister at 39 Essex Street. He is acknowledged as a leading junior in the areas of Environmental Law and Planning Law. He is the General Editor of *Thomson's Encyclopedia of Environmental Law* and a member of the Attorney-General's London B-Panel of Counsel to the Crown.

Contributions

INTERNATIONAL ENVIRONMENTAL LAW UPDATE JULY 2011

Welcome to the seventh update on developments in international environmental law. You may recall from previous editions of E-law that we aim to publish regular updates on recent developments in international environmental law and to highlight future meetings and expected outcomes.

Any comments, please contact Elizabeth Hattan or Carla Pike, both at Defra and members of the GLS Environment Group.

A look back over recent developments...

Forestry

The **FOREST EUROPE Ministerial Conference on the Protection of Forests in Europe** took place from 14th – 16th June in Oslo, Norway. The conference was attended by ministers and high-level representatives from 42 of the 46 FOREST EUROPE Signatories, with 6 countries from outside Europe and numerous organisations, including environmental and social NGOs and

forestry industry bodies, participating as observers.

As well as adopting European 2020 targets for forests as part of the ongoing FOREST EUROPE Strategy, the Ministers at the Conference decided to launch negotiations for a legally binding agreement on forests in Europe. Negotiations will commence in the last quarter of 2011 with the goal of concluding no later than 30 June 2013. In the meantime the work of FOREST EUROPE will continue in parallel. For further information, see the FOREST EUROPE website: www.foresteuropa.org.

Plant Genetic Resources for Food and Agriculture

The **4th Session of the Governing Body to the International Treaty on Plant Genetic Resources for Food and Agriculture** took place from 14-18 March 2011. The Governing Body adopted procedures and mechanisms on compliance and reached consensus on the long-standing issue of the financial rules for the Treaty. These two issues have been outstanding since the Treaty entered into force and resolutions on both should have been finalised at the first Session of the Governing Body in 2006. Intensive all night sessions saw movement on all sides that unlocked the issues and enabled the adoption of comprehensive resolutions on both issues. The compliance resolution in particular marks a new era for compliance regimes under multilateral environmental agreements, with negotiations resulting in an innovative approach that aims to avoid the inertia experienced under compliance mechanisms in other MEAs. The Governing Body also adopted resolutions on a number of issues, including farmers' rights and sustainable use.

Long-Range Transboundary Air Pollution

The **48th meeting of the Working Group on Strategies and Review under the Convention on Long Range Transboundary Air Pollution** took place from 11-15 April 2011 with a view to progressing proposals for amendments to the Protocol to Abate Acidification, Eutrophication and Ground Level Ozone. The primary focus of the proposals was to introduce amendments that would enable a greater number of countries to become Parties to the Protocol and thus enhance the environmental and health benefits. Initial consideration was also given to the inclusion of black carbon within the scope of the Protocol.

Access and Benefit Sharing

The **4th meeting of the Ad-Hoc Informal Open-Ended Working Group to study issues related to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction** took place from 31 May – 03 June 2011. The meeting agreed to recommend to the General Assembly to initiate a process to ensure that the conservation and sustainable use of marine biodiversity in areas beyond national jurisdiction is sufficient, including through the possible development of a new agreement under the UN Convention on the Law of the Sea (UNCLOS). The process would include consideration of a number of issues, including marine protected areas, environmental impact assessment and access and benefit sharing in areas beyond national jurisdiction.

The **1st meeting of the Intergovernmental Committee on the Nagoya Protocol on Access and Benefit Sharing (ICNP1)** took place from 05-10 June 2011. Issues for discussion included capacity building, awareness raising, compliance and the establishment of a clearing house mechanism. It was agreed that a pilot phase for the Access and Benefit-sharing Clearing-House would commence as soon as possible, based on guidance discussed at the meeting. The Clearing-house will provide relevant information for the implementation of the Nagoya Protocol and will support capacity-development activities.

[Chemicals]

Looking Forward..

61st Meeting of the Standing Committee under the Convention on International Trade in Endangered Species (CITES), August 2011 – the meeting will consider a range of issues in follow-up to the 15th Conference of the Parties, which took place last year, including: introduction from the sea; compliance and enforcement; e-commerce; and monitoring of the effectiveness of measures regarding a range of species, including elephants, rhinos, big cats, great apes, sturgeon and mahogany.

9th Meeting of the Legal Board to the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention), September 2011 – the Legal Board will continue its work on a proposal for a mechanism to facilitate and support implementation and compliance.

49th meeting of the Working Group on Strategies and Review under the Convention on Long Range Transboundary Air Pollution, September 2011 – negotiating session on amendments to the Protocol to abate acidification, eutrophication and ground level ozone, including negotiating proposals to include black carbon within the Protocol.

WINNING ESSAY

Is access to justice under Art 9 Aarhus Convention a necessity or a luxury the UK cannot afford?

Oliver Newman

Art.9 Aarhus Convention states that access to environmental justice requires “adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive”. The biggest barrier identified to access in the UK is the last of these- not prohibitively expensive. In a modern democratic society the state has huge resources, even in a recession. Whether something is affordable becomes a question of priorities. How do we rank access to environmental justice against the other demands of an increasingly strained public purse? The question as a result has two elements- what would access to environmental justice cost, and at that cost, is it a necessity or a luxury- should it be prioritised or not?

I offer two linked arguments as to why access to environmental justice should be a priority. Firstly, purely on an economic basis, funds spent protecting the environment are likely to be dwarfed by the benefits gained from its protection. The economic value of ecosystem services have been estimated at US\$ 33 trillion in one study (compared to US\$ 18 trillion for global GDP)¹. This number is rough and ready but provides some context to the debate.

Secondly, we regard spending on the NHS as a priority. Why? Because there is a common understanding that there should be a minimum level of medical care available to everyone in our society. Let us call this horizontal equality, equality across all classes of society. But what about vertical equality- equality between generations? When we speak about and prioritise equality, we should speak about vertical as well as horizontal equality and a key part of vertical equality is preservation of the environment. What sort of environment and natural resources do we want to be left for the next generations?

So, as we prioritise healthcare, we should prioritise environmental protection. But is access to justice really the best thing to be spending money on to protect the environment? It is because access to justice is the way we, the people, hold the government, corporations and our neighbours accountable for individual decisions in a way that elections cannot. It is how we ensure the laws are followed.

But, would reducing the cost of litigation really make all that much difference to substantive outcomes? The answer to this is difficult, as much of the evidence is anecdotal. The Environmental Law Foundation estimates that of the 46% of cases brought to them (2005-09) in which the client sought and was advised to pursue judicial review, 56% were stopped by the costs barrier². This strongly suggests that cost is a major barrier to access to justice under Art.9.

This raises the question of how to ensure that access to environmental justice is “not prohibitively expensive” for those seeking redress, while at the same time minimising the cost to everyone else. The Jackson Review of Civil Litigation Costs³ says that in environmental judicial review cases the costs ordered against the claimant “should not exceed the amount (if any) which is a reasonable one for him to pay having regard to all the circumstances” and the 2010 Sullivan Update Report⁴ says that an unsuccessful claimant in judicial review proceedings should not have to pay the costs of any other party unless they have acted unreasonably in bringing proceedings.

Changes such as these would shift most, if not all, the costs of proceedings onto the Respondent, whether the Claimant succeeds or not. However, the twin safeties of the permission stage of judicial review, when combined with the either formulation of the ‘reasonable’ test should protect the Respondent against bearing the brunt of vexatious litigation. The Sullivan formulation is probably the most preferable as providing the most certainty for the potential litigant, whereas the Jackson formulation still leaves the litigant vulnerable to the discretion of the Judge⁵. It is however questionable whether either of these tests would be Aarhus compliant as they still leave some uncertainty as to what costs will be payable pre-litigation⁶.

A further problem is that in *Morgan and Baker*⁷ the Court of Appeal accepted that the Aarhus Convention was capable of applying to private nuisance proceedings. Subsequent complaints to the UN-ECE Aarhus Compliance Committee have also



Oliver Newman (centre) receives the Andrew Lees prize from Prof Mark Poustie, with judge Tim Sheppard of No 5 chambers.

1 P.29, TEEB Interim Report (2008) <http://www.teebweb.org/LinkClick.aspx?fileticket=u2fMSQoWJf0%3d&tabid=1278&language=en-US>

2 P.15 Costs barriers to environmental justice, a report by ELF in association with BRASS (2009) <http://www.elflaw.org/wp-content/themes/elftemplate/media/Access-to-Justice-Report-2009.pdf>

3 <http://www.judiciary.gov.uk/NR/rdonlyres/8EB9F3F3-9C4A-4139-8A93-56F09672EB6A/0/jacksonfinalreport140110.pdf>

4 http://www.unece.org/env/pp/compliance/C2008-33/correspondence/FrCAJE_updatedSullivanReport_2010.09.14.pdf

5 See for example the extremely helpful discussion in David Hart QC’s blog post ‘Pressure grows for reform of access to environmental justice’ <http://ukhumanrightsblog.com/2010/09/15/pressure-grows-for-reform-of-access-to-environmental-justice/>

6 See for example comments made by Sandy Luk at the Client Earth seminar ‘The Aarhus Convention and the UK: What Next?’

7 *Morgan and Barker v Hinton Organics (Wessex) Ltd* [2009] EWCA Civ 107

highlighted the limitations of judicial review, particularly in the uncertainty of its time limits and its limited scope⁸. It seems that access to environmental justice cannot be satisfied just by changing the costs rules just for judicial review but that the operation of Aarhus will need to be considered in private law cases too. In private law cases, the protection of a permission stage does not exist and the issue of expensive preliminary litigation over the question of what is an environmental case subject to Aarhus arises. As a result complete Aarhus compliance has the potential to challenge the fabric of the current legal system.

Partial compliance with the access to justice requirement under Art.9 Aarhus convention is a highly desirable necessity, as it would be likely to improve our protection of the environment, promoting vertical equality and even saving us money in the long run. This could be achieved by changing the costs rules for judicial review as suggested by the 2010 Sullivan Update Report. However, such a change would certainly not amount to total compliance, and the changes required for total compliance would almost certainly be prohibitively expensive. As a result total compliance is a luxury we cannot afford.

⁸ <http://www.unece.org/env/pp/compliance/C2008-33/DRF/C33DraftFindings.pdf>, helpfully considered by David Hart QC's blog post 'Pressure grows for reform of access to environmental justice' <http://ukhumanrightsblog.com/2010/09/15/pressure-grows-for-reform-of-access-to-environmental-justice/>

RUNNERS UP

Is access to justice under Art 9 Aarhus Convention a necessity or a luxury the UK cannot afford?

Edward Mitchell, Nabarro LLP

Access to justice is a fundamental right recognised by law and a primary means to hold law-makers, policy-makers and regulators to account.

In his recent article, "Environmental principles and environmental justice,"¹ Ole Pedersen considers "justice" in an environmental context. He identifies various environmental justice "definitions," including "distributive justice" (the even distribution of environmental harms across society) and a "substantive right" to protection against those harms.²

Pedersen also identifies three strands of "procedural justice": circulation of proper information about environmental impacts; public participation in decision-making; and opportunities to challenge those decisions.

Full distributive justice and a substantive right to an unblemished environment are admirable aims. However, both are a luxury given the expense and difficulty inherent to their provision.

The Aarhus Convention³ has a simpler goal. Article 9(2) emphasises that public participation in decision-making will help hold environmental decision-makers to account. Article 9(4) requires these to provide "adequate and effective remedies" which are "fair, equitable, timely and not prohibitively expensive."

The UK legal system recognises the need for procedural justice but relies on judicial review to meet the access obligation. The Report of the Working Group on Access to Environmental Justice⁴ describes established procedures for obtaining judicial review, based on standing and sufficient public interest, as not inherently unfair. As such, the opportunity to obtain review of environment decisions is theoretically available.

However, in practice, that opportunity is limited. Part 44.3 of the Civil Procedure Rules requires the loser to pay costs in civil proceedings, and applies to environmental judicial reviews, leaving applicants exposed to significant costs risks. The European Commission⁵ and the Aarhus Compliance Committee⁶ view this risk as a breach of the duty to provide effective access to justice.

The case of *R (Burkett) v London Borough of Hammersmith and Fulham* [2004] EWCA Civ 1342, in which the unsuccessful applicant faced costs of £35,000 following an environmental judicial review, exemplifies the potential exposure. Brooke LJ felt these costs made judicial review prohibitively expensive and he questioned whether the UK could "ever live up to the Aarhus ideals" (at paragraph 76).

1 Environmental Law Review, 2010, 12(1), 26.

2 Ibid., 27-28.

3 UNECE Aarhus Convention on information, public participation in decision-making and access to justice in Environmental Matters.

4 "Ensuring access to environmental justice in England and Wales," May 2008. Hereafter "**the Sullivan Report**".

5 See recent EC Reasoned Opinion: <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/312&format=HTML&aged=0&language=EN&guiLanguage=en>

6 Communications to the Committee available at www.unece.org/env/pp/pubcom.htm

The Government's most recent Aarhus implementation report, however, suggests increased judicial discretion and protected costs orders (“PCOs”) as a solution. The report notes that “UK authorities are currently working to codify the case law on PCOs into court rules.”⁷

Cases such as *Morgan v Hinton Organics* [2009] EWCA Civ 107 and *R (Edwards) v Environment Agency* [2010] UKSC 57, however, show that Aarhus principles are no more than a factor for courts to consider in awarding PCOs. Far from providing certainty and clearly defined risk, the current system creates a further procedural hurdle for applicants. Mere codification will not give individuals confidence that judicial review will not be prohibitively expensive.

In addition, other elements of the UK system make justice in environmental matters prohibitively expensive.

Article 9(5) of the Convention requires “appropriate assistance mechanisms to remove or reduce financial or other barriers to access to justice,” but civil legal aid in the UK extends only to low income individuals. Injunctions, which might offer immediate environmental protection, often require cross-undertakings by applicants to pay damages suffered by defendants as a result of the injunction.

These structural deficiencies mean that only wealthy individuals and pressure groups can confidently expect effective access to justice in environmental matters. However, while increasing the civil legal aid budget may be a luxury which the UK cannot currently afford, the UK can afford enhanced access to justice through other means.

The 2010 update to the Sullivan Report⁸ welcomes the findings on costs in judicial review in Lord Jackson's recent costs review.⁹ He recommended adoption of qualified one way costs shifting to replace the general loser pays principle with a presumption that applicants will not be liable for other parties' costs, other than in exceptional circumstances.

The Sullivan Report also suggests that the requirement for a cross-undertaking in damages should be removed “where the court is satisfied that an injunction is required to prevent significant environmental damage.”¹⁰

If individuals and public interest groups avoid paying public bodies' costs, the expenses incurred by those bodies will naturally increase. In light of recent public sector budget cuts, this is unfortunate but, relative to individual claimants, public bodies are well-resourced and some extra expense is a realistic price for enhanced environmental accountability. Moreover, as the Sullivan Report forecasts¹¹, there should only be a small increase in judicial review applications because of the well-established rules on commencing proceedings and the remaining resource and risk implications.

Aarhus refers to “adequate and effective remedies” and does not seek to offer absolute access to the legal system. Any reform must be balanced and protect courts and public bodies against vexatious and unmerited claims. These changes would offer increased certainty, but it would remain essential that applicants who act unreasonably meet the other party's costs. Ensuring that the system does not disproportionately favour applicants will require the exercise of some discretion by the courts. However, the system would be relatively straightforward to operate and would enhance the perception of the availability of access to justice.

Reform, through which the UK could meet its Aarhus obligations, is not economically or legally unrealistic. It is indispensable in enhancing protection for the environment and creating a level playing field on which to hold public bodies to account. Full implementation of the Aarhus requirements is a necessity, and it is a necessity which the UK should be able to afford.

7 “Implementation Report submitted by the United Kingdom,” GE.08-23292, paragraph 116.

8 “Ensuring access to environmental justice in England and Wales.” Update Report, August 2010.

9 “Review of Civil Litigation Costs: Final Report,” December 2009.

10 Note 4 above, p36, paragraph 8.

11 Ibid., paragraph 106.

Is access to justice under Art 9 Aarhus Convention a necessity or a luxury the UK cannot afford?

Alice Tichborne, Law School Waterloo

The Aarhus Convention sets a new kind of environmental standard: it does not set new limits on the release of pollutants, nor specify environmental targets to be met. Instead, it is concerned with increasing the control that ordinary members of the public have over environmental matters. Rather than tackling head-on the problem of distributive justice (how environmental ‘goods’ and ‘bads’ are shared in society), it focuses on participative justice: the level of control that citizens should have over public decisions. As the remit of the state widens, representative democracy legitimised by occasional elections is increasingly seen as inadequate: we must build a *participatory* democracy, in which the public has an appropriate level of input into decisions which

affect them. This is particularly important with respect to environmental matters, given the way that environmental burdens are easily dumped on poorer members of the public, who have fewer resources with which to resist. The Aarhus Convention promotes such 'environmental democracy'.

The UK became a full Party to the Convention in May 2005. Under Article 9(3), it must ensure that members of the public have access to procedures by which they can challenge acts and omissions which contravene national environmental law. Under Article 9(4), these procedures must be fair, equitable, timely, and not prohibitively expensive. The UK has stated that its existing judicial review procedures meet these requirements, and so it has not made any structural changes under the Convention. Unfortunately, it has become apparent that the existing system is not adequate: ordinary members of the public who do not qualify for legal aid cannot afford the costs associated with judicial review. In a system where defendants may incur costs of £100,000 for a one day hearing, most potential claimants simply cannot run the risk of a costs order. In many cases, citizens want to halt a project which is causing irreversible destruction. Currently, they must provide a cross-undertaking in damages to obtain an injunction halting the activity: again, this is impossible for most claimants. In the UK, environmental justice can only be accessed by wealth.

The main obstacle to claimants is the exposure to costs. However, the courts do have a wide discretion over costs. Protective costs orders can be made, capping the amount of costs payable. This could be used to reduce uncertainty for claimants in environmental cases, shifting the burden of costs towards defendants. The presumption that a cross-undertaking in damages is required for an injunction could be discarded for appropriate cases with a public interest element. Environmental cases could be given an 'Aarhus certificate,' allowing judges to apply these different costs rules. Alternatively, claimants could be publically funded.

The essential question is this: who should bear the burden of ensuring environmental justice? It is not acceptable under the Convention to expect all claimants to fund themselves: this leaves too many members of the public unable to access justice. It is somewhat unfair to shift the burden of costs onto defendants, who may be innocent of any wrongdoing. Publically funding claimants seems to be the only fair option. However, it seems fundamentally unsavoury for lawyers to propose increased public funding as the solution to poor access to justice, as this essentially takes money from the public purse and funnels it through claimants to lawyers' pockets. Access to justice is blocked by the prohibitive expense of the legal system: lawyers, as those who intimately understand and help create that system, have a duty to actively explore ways of reducing its expense.

It might be better to use a different procedure for environmental claims. There are serious problems with the current use of judicial review to meet the Article 9 obligation. Firstly, judicial review is not the ideal way to resolve environmental disputes, as it can only examine the legality of decisions, not their merits. To resolve environmental disputes fairly and equitably, as required by Article 9(4), the procedure should be able to look at the merits of a decision. Secondly, despite the virtues of the adversarial system (which is excellent for establishing individual rights and duties), it is not designed to weigh up the many competing interests that characterize environmental issues. Thirdly, it is also a vastly expensive enterprise, as the opposing sides are essentially engaged in an arms race to engage the best lawyers and experts. It is evident from the above considerations that a far more flexible, and less expensive, system than judicial review is desirable to achieve access to environmental justice. An Environmental Tribunal might provide this system. Such a Tribunal could adopt a more flexible, inquisitorial approach to reach a fair and equitable result. By avoiding the formality of the ordinary courts, costs might be reduced. It would also address the lack of environmental expertise within the judiciary.

However, this alone is unlikely to be enough. Access to justice under Article 9 cannot be isolated from the rest of the Convention. Article 6 requires public participation in decisions on whether to permit proposed activities with potential environmental impact. The Convention as a whole calls for a restructuring of public decision-making on environmental issues. 'Access to justice' is only the last stage in this process, vindicating the earlier participatory rights. Without fully implementing these rights, ensuring access to justice by funding environmental claims could indeed become an expensive endeavour. Conversely, setting up a better participatory framework would result in fewer claims.

The UK has already committed itself to environmental justice by ratifying the Convention. The European Commission has issued the UK with a final warning for failing to meet this obligation, and it could eventually face a penalty running into millions of Euros. If only for financial reasons, this issue must be addressed. Environmental justice is linked to sustainability: a necessity, rather than a luxury. Finally, the Convention provides a new model for participatory democracy, which promises to strengthen our democracy by building transparency, accountability, and public participation. This cannot be seen as a luxury: it is the most crucial kind of investment a society can make.

Is access to justice under Art 9 Aarhus Convention a necessity or a luxury the UK cannot afford?

James Potts, City Law School

In England, access to environmental justice is open to all – like the Royal Suite at the Ritz Hotel. The UK, as a signatory to the Aarhus Convention, has acknowledged the value of the Convention’s objective of better environmental protection through public participation, but almost ten years after it came into force access to justice under Article 9 remains a luxury few citizens of the UK can afford. The future effects of global warming need not be the only argument for the UK to prize the aims of the Convention highly: at a time of present pressures on space and resources, the UK can little afford to take decisions about its built and natural environment, energy and air, without stringent self-scrutiny. Article 9 should give teeth to these aims. Despite this, the Sullivan Report, the Aarhus Compliance Committee and the European Commission have all warned UK its judicial review procedures fall foul of Article 9’s requirement that they must not be ‘prohibitively expensive’.¹ But if UK citizens are to get access to justice which is not prohibitively expensive, can the state afford to pick up the tab?

The UK’s compliance record

The UK has been the subject of two recent findings by the Aarhus Compliance Committee of non-compliance with Article 9. The first involved costs of £39,454 ordered against a residents’ association which had challenged the expansion of Belfast City Airport.² The second concerned prohibitive costs faced by charitable bodies challenging a waste disposal scheme in the Port of Tyne.³ The Committee highlighted four ways in which the UK costs regime acts as a barrier to justice.⁴ First, the *Corner House* requirements⁵ of ‘general public importance’, ‘no private interest’ and ‘exceptional circumstances’ for Protective Costs Orders (PCOs) mean they are rarely granted. Second, the costs of applying for a PCO which is not granted and the effect of a PCO which caps the costs of both parties are extremely limiting. Third, the requirement of a cross-undertaking in damages often prevents claimants bringing injunction cases. Fourth, the Committee found that the public interest nature of environmental claims is not given sufficient consideration in allocating costs. These were recognised as serious concerns in the Sullivan Report, and judicially have been said to raise serious questions ‘as to the possibility of ever living up to the Aarhus ideals within our present system’.⁶

These criticisms have been given added weight by the formal warning of the European Commission that the UK has not fully transposed into domestic law provisions in the Environmental Impact Assessment (EIA) Directive and the Integrated Pollution Prevention and Control (IPPC) Directive which mirror those of Article 9.⁷ Aarhus itself is not directly effective in the UK via EU law, but given the identical phrasing in the EIA and IPPC Directives – that access to justice must be ‘not prohibitively expensive’ – the implication is clear: the UK must change its costs regime to become Article 9 compliant or it faces eventual referral to the ECJ. Recent proceedings against Ireland have shown the ECJ willing to rule against member states on access to environmental justice grounds.⁸ Potential enforcement action by the Commission suggests one answer to the question whether Article 9 compliance is a luxury the UK cannot afford: in short, the UK must provide cheaper access to environmental justice or face fines until it does so.

What are the solutions?

The Environmental Law Foundation has found that the costs barrier prevented 56% of cases with reasonable prospects of success from proceeding.⁹ PCOs remain rare, and the practice of reciprocal cost capping can make a PCO of limited use (for example, £10,000 for a High Court challenge in one recent case¹⁰). Addressing these problems, the Sullivan Report recommends less stringent criteria for Aarhus-compliant PCOs, which should be made where (a) the case is one which falls within Aarhus, (b) permission is granted, and (c) the costs and risk of exposure to costs would be prohibitively expensive to the claimant – that is, costs which would reasonably prevent ‘ordinary’ members of the public from embarking on the challenge.¹¹ The question

1 Aarhus Convention, Article 9(4).

2 Draft Findings, ACCC/C/2008/27.

3 Draft Findings, ACCC/C/2008/33.

4 Para. 127.

5 *R (Corner House Research) v SS for Trade & Industry* [2005] EWCA Civ 192.

6 *R (Burkett) v Hammersmith and Fulham LBC* [2004] EWCA Civ 1342, per Brooke LJ, para. 76.

7 European Commission, First Written Warning in Case 2006/4033.

8 *Commission v Ireland* (Case C-427/07).

9 <http://www.endsreport.com/docs/20100126.pdf>.

10 *R (Buglife) v Thurrock Gateway Development* [2008] EWCA Civ 1209.

11 Sullivan Report, para. 54.

whether assessment of costs should be made on the objective basis of ‘ordinary’ members of the public, or subjectively on the basis of claimants’ individual means, has itself led to a reference to the ECJ in *R (Edwards) v Environment Agency* [2010] UKSC 57 (where the costs concerned are £88,000). The ECJ is likely to use the ruling to confirm that the UK continues to breach Aarhus and the EIA and IPPC Directives, and require a move to objective assessment.

Additionally, the Jackson Review of Costs has recommended the introduction of one-way costs shifting, to much the same end. Another recommendation of the Sullivan Report would remove the requirement for claimants to give undertakings in damages in environmental injunction cases.

All three of the above measures will necessarily transfer some of the costs of environmental litigation from claimants to public bodies and third parties such as developers. But given the alternative of prohibitive claimant costs this is surely a fair division of the burden. To adopt Michael Fordham’s argument as considered in the Jackson Review, there is essentially ‘no “unfairness” in the State absorbing the cost of this vital public law audit’.¹² The cost to the government of either reformed PCOs or one-way costs shifting is itself unlikely to be prohibitive: the Sullivan Report estimates that only 20 or so environmental cases each year would be affected.¹³ Such measures are also likely to be considerably cheaper to the UK than two more radical proposals: the first, introduction of an Aarhus Act akin to the Human Rights Act with Aarhus “rights” as a separate ground for judicial review;¹⁴ the second, creation of a separate environmental tribunal (a ‘one-stop shop’) bringing together the disparate routes by which environmental challenges can now be brought.¹⁵ In this age of budgetary austerity, reform of the costs regime is likely to be preferred – and presents a realistic way for the UK to afford its citizens very necessary access to environmental justice.

12 Jackson Review of Civil Litigation Costs, pg 303.

13 Sullivan Report, para.104.

14 As suggested by the communicants (ClientEarth, the Marine Conservation Society and Robert Latimer) in the Aarhus Compliance Committee Draft Findings, ACCC/C/2008/33.

15 As suggested in *Environmental Justice: A Report by the Environmental Justice Project*, discussed in Carnwath LJ, ‘Environmental Litigation – A Way Through the Maze?’ (1999) JEL 3 13), and mentioned in *Morgan v Hinton Organics* [2009] EWCA Civ 107.

UKELA Simon Ball Academic Prize

THE UKELA SIMON BALL ACADEMIC PRIZE FOR OUTSTANDING STUDENT ACHIEVEMENT SPONSORED BY OUP

The UKELA Simon Ball Prize is awarded annually to recognise and celebrate student achievement in the field of environmental law. The award is open to undergraduate and postgraduate students at a UK higher education institution from any academic discipline so long as the basis of the contribution has relevance to the advancement of environmental law or otherwise to the charitable objects of UKELA. The basis of the award is not limited to academic achievement and may extend to any achievement attained by, or contribution made by, the student.

UKELA is grateful to Oxford University Press for providing the prize of book vouchers and a subscription to the Journal of Environmental Law for 2011 winner. The Prize is awarded at the prestigious Garner Lecture.

2011 Winner

UKELA is delighted to announce that the winner of the 2011 competition is Frances Aldson, formerly a student at the School of Oriental and African Studies (SOAS) at the University of London. Fran wins a year's subscription to the Journal of Environmental Law and £250 worth of book vouchers from OUP.

Fran was nominated by her MA dissertation supervisor who said that, in terms of academic performance, intellectual and analytical rigour, and commitment to the study, development and application of environmental law, Fran was very easily the best student in about twenty years as an academic and practitioner. The judges said that they had no hesitation in recommending Fran as a winner and found her entry to be of a very high quality which they very much enjoyed reading. Her winning entry was a dissertation on EU law and sustainability in focus: will the Lisbon Treaty lead to ‘the sustainable development of Europe’? You can read Fran’s dissertation [here](#).



Mark Brumwell (UKELA Chair and Partner at Dundas and Wilson)

I became Chair of UKELA in April. I've been an environmental lawyer for more than 20 years during which time there have been dramatic changes in how environmental law is perceived. I've seen the environment develop rapidly from a very marginal subject to the central and all pervading issue it is today.

I'm married and live in Hertfordshire (with three cats as well as my wife). For an environmental lawyer, I have a completely inappropriate hobby that I'm passionate about. I collect, repair and restore classic and sports cars.



What is your current role?

Partner and Head of Environment at Dundas & Wilson LLP

How did you get into environmental law?

By accident. I was a planning lawyer at Ashurst when the firm identified a need for an environment specialist. I thought it was an exciting area to go into that would widen my expertise. Over time, the environmental aspects of my practice grew and took over from everything else.

What are the main challenges in your work?

Because of the economic situation at the moment, doing more for clients for less in fees.

What environmental issue keeps you awake at night?

Climate change and the lack of an effective international response to a problem that could wipe us off this planet, as well as my cats taking a short cut over my stomach, when I'm asleep which doesn't help my local environment.

What's the biggest single thing that would make a difference to environmental protection and well-being?

A response to climate change that allows India, China and other developing nations the opportunity to tackle poverty with truly sustainable economic development.

What's your UKELA working party of choice and why?

Water. It was the area that I started focussing on when I became involved with environmental issues and it has remained a substantial part of my practice ever since. Water is the most basic element for our existence on this planet and the most precious resource of all. We should never forget that.

What's the biggest benefit to you of UKELA membership?

The opportunity to meet with like-minded people. This is very important as we can become isolated in our different areas of practice, stuck in our offices, so the support of like-minded people is essential.

ANNUAL STUDENT CAREERS EVENING – 16 November 2011

UKELA is holding its annual student careers evening, at Landmark Chambers (approx 5.45 - 9). Each year some members kindly volunteer to spend some time with students, advising them about their professional backgrounds and careers. It really helps to have people from a range of backgrounds so the students (there can be up to 100 throughout the evening) can gather a variety of information.

We receive very positive feedback from the students and from the advisers - it's a fun, informal evening and really helps young people find their way in Environmental Law.

If you are able to help please could you contact Vicki Elcoate.

Internships

LEGAL INTERN

Old Street London

Voluntary

Closing Date: 18 July 2011, 12 noon

Intern positions are available at the Friends of the Earth Rights and Justice Centre in London for law graduates, those in the final year of a law degree or postgraduate legal studies, and newly qualified lawyers.

We're looking for a motivated, proactive intern who is a good team worker to support the work of our busy Rights and Justice Team.

Friends of the Earth's Rights and Justice Centre offers free legal advice to individuals and communities facing environmental problems. As well as our free advice line, we take on a number of public interest cases each year on behalf of local communities. We also provide legal advice and bring cases relating to Friends of the Earth's campaigns.

Based in our London (Old Street) office, you will work closely with members of the Rights and Justice Team to support them by providing legal research and helping out with cases and campaigns. More information about the position and the work of the Rights and Justice Centre can be found at www.foe.co.uk/legal

About you

Candidates should have good computer literacy and be familiar with Microsoft Word, email and the internet. Candidates should also have good analytical and writing skills and experience of undertaking legal research.

Interns should also have an interest in environmental law, public interest law or community legal advice. Experience in public law or environmental law is helpful, but not essential.

We welcome all applications, but particularly encourage applications from people from groups who are currently under-represented in the legal profession.

Availability of positions

Internships ideally run in 4 to 6 month blocks, starting between September and December.

We are able to consider interns who wish to work full or part time, but we require a minimum commitment of 3 days per week.

Internships

How to apply

To apply, please send a CV together with a covering letter, by email or by post.

Your covering letter should explain:

- **Why you wish to be considered** for an intern position
- **The dates** you're available to take up an intern position
- Why you have an **interest in Friends of the Earth**

Please send your application to legal@foe.co.uk with the word "Intern" in the title, or by post to:

Legal Internship, Rights and Justice Centre, Friends of the Earth, 26 - 28 Underwood Street, London N1 7JQ

Applications will close at 12 noon on 18 July. Interviews will be held at our London office during the last week in July.

If you have missed this deadline, please do still get in touch, although it's less likely that an opportunity will be available.

If you don't hear within 3 weeks of the closing date for applications in each round, your application hasn't been successful. We regret that we're not able to offer feedback in cases where candidates aren't invited to interview.

Funding

Unfortunately we can only provide reasonable travel expenses and a small lunch payment of £4.00 per day for interns.

We understand that this can make it difficult for some interns to take up the position and we're seeking sources of grants and funding for interns. If you'd like further information about potential sources of funding please email us at legal@foe.co.uk and we'll forward some information to you.

Note to potential interns: the UKELA bursary scheme may be opening again this autumn. Please look out for it as it could provide up to £1500 to support your internship.

Special offer

The ENDS Report is the UK's No 1 source for news, analysis and comment on green issues.

It provides business and environmental professionals with an in-depth understanding of UK environmental policy and its implications. Discover in-depth analysis, dedicated news channels, weekly email bulletins, specialist reports and exclusive document links at endsreport.com.

Claim your complimentary one month subscription today [here](#).

Events update

UKELA Events

West Midlands regional group meeting on Localism 7 September

The regional group is meeting in Birmingham at the offices of Wragge and Co to hear presentations on the localism bill. Further details, including how to book here: <http://www.ukela.org/rte.asp?id=59>

North East regional group seminar on the new Environmental Tribunal

The next meeting of the NE regional group is on Wednesday 7th September at the offices of Pinsent Masons at 1 Park Row, Leeds.

Registration will run from 4.30pm for a prompt start at 5pm.

The seminar will be jointly run by UKELA and PEBA and the subject will be the new Environmental Tribunal. Delegates will watch a video of the seminar held in London on 16 May. This seminar, chaired by Lord Justice Carnwath, explored the new tribunal and how it might be used as a low cost solution to fill a perceived gap in environmental law administration. Simon Phillips QC of Park Court Chambers will kindly lead a discussion with delegates after the showing of the video during which drinks will be served.

The meeting will be followed by the formal appointment of branch Committee members. There is no charge to attend this event but all places must be booked. Bookings should be addressed to Gillian Whyte at Pinsent Masons - gillian.whyte@pinsentmasons.com or 0113 368 7694.

London meeting on Climate Change 14 September

The next London meeting will be on Tackling Climate Change and will be held at Herbert Smith in London starting at 6pm, with registration from 5.30pm.

Chaired by Tim Clare of WSP Environment & Energy, speakers are:

Dan Dowling – PriceWaterhouseCoopers LLP, Climate Change & International Development Team

Ben Stansfield - Clifford Chance LLP

Giles Bristow – Carbon Leapfrog

To book, please contact angela.pallett@herbertsmith.com

Cost: £20 members, £30 non-members, students/unwaged members free. All places must be booked.

Wild Law weekend 23 to 25 September

The theme of this year's workshop is "Earth, Society and Commons - law in a time of economic and ecological change". The workshop will be held at the Sustainability Centre, East Meon, in Hampshire, part of the UK's newest National Park - the South Downs.

Speakers include Professors Jane Holder and Ted Benton who will explore the issues in depth. You will also meet Ben Law, celebrated Sussex woodsman and designer. His stunning outdoor classroom is part of the conference facilities. Attendees will help UKELA plan and develop its thinking about Wild Law. For further information and to book, click [here](#).

If we don't secure enough bookings by the end of July for this event, we will have to cancel it. All those who have already booked will receive a refund but we'd very much like the event to go ahead so if you're thinking of attending, please get on the online system and book your place!

Scottish Annual Conference on Waste, Recycling and Other Issues 6 October

The UKELA Scotland Conference 2011 takes place this year at The George Hotel, Edinburgh on Thursday 6th October 2011 and will gather leading speakers from the public and private sectors to debate the hot issues of the day. For further information and to book, click [here](#).

Northern Ireland conference on Contaminated Land 13 October

UKELA's third annual half day seminar in Northern Ireland takes place this year on 13 October at the Law Society in Belfast in association with EPLANI. Chaired by Dr Trevor Elliot, speakers include Andrew Wiseman, Stephenson Harwood and convenor of the Contaminated Land working party and Richard Moules, Landmark Chambers.

Bookings will open shortly. For more information click [here](#).

The Environment Court in Practice Seminar in conjunction with UCL 1 November

Judge Merideth Wright of the Environmental Division of the Vermont Superior Court of the USA explains how the court works in practice. This is a joint event with University College London and will start at 6pm. Full details including how to book will be published on the website shortly.

Student Careers and Social evening 16 November

The annual careers evening for students takes place at Landmark Chambers in London on 16 November from 6pm. To reserve your place, email alisonboyd.ukela@ntlbusiness.com Further details will be published on our website soon.

Annual Garner Lecture 1 December

The Garner Lecture 2011 will be given by David Kennedy, the CEO of the Committee on Climate Change (which provides independent advice to government on building a low carbon economy). Please put the date in your diary now - further details to follow.

Non UKELA events

Hamburg International Environmental Law conference – A contribution to global dialogue 15 – 16 September

Joachim Sanden, UKELA member based in Germany, was a delegate at the UKELA Conference and asked that members are made aware of this conference. It takes place on 15th – 16th September in Hamburg, Germany and aims to formulate legal arrangements that promote and advance environmental law worldwide. The programme includes plenary sessions on international climate change policy, European and national initiatives, reduction of greenhouse gases, prevention of shipping accidents. There are also working groups exploring the issues in more depth. More details can be found at www.iurt.de or email the organisers: kuhbier@kuhbier.com or kerstin.groehn@jura.uni-hamburg.de

Will national climate change legislation cool down global warming? Seminar 27 October

UKELA's Climate Change and Energy Working Party (CCEWP) has been forging links with our European and US colleagues and is supporting this event. The conference should be of interest to those with pan-European practices and who may struggle to keep up-to-date with the legislation and policy in this fast moving area. Further information including how to book, click [here](#).

Master of Laws (LLM) in: Environmental Law & Practice – by Distance Learning

From Leicester De Montfort University

Further your knowledge, skills and career without interrupting your employment by enrolling on the Environmental Law distance learning course. Tailor the programme to suit your job role and industry by selecting your own personal combination of modules.

You can select modules from these Environmental Law modules: Environment, Legal Control and EU Regulations; Atmospheric Pollution; Health and Safety Law; Waste Management and Contaminated Land; Planning Law; Biodiversity and Nature Conservation Law; Water Pollution Law; Environmental Assessments; International Environmental Law; Noise Pollution Law; Light Pollution; Environmental Crime; Nuclear Energy and Environmental Challenges; Negotiated Study Module (explore an area of law that you select).

Plus you can mix and match these with modules from within De Montfort's other LLM courses!

For a full list of available modules, tutor information and admission requirements please see the [Environmental Law and Practice brochure - available on the event website](#).

Sponsored events

There is one more sponsored event which we'd encourage you to support – either by kayaking or by making a donation. David Hart's kayak paddle will support the Lord Nathan Memorial Fund for the Environment which helps maintain UKELA's public information website, www.environmentlaw.org.uk. In the last month this has helped 22,500 people find out information about environmental law and the Memorial Fund pays to keep the site up to date. Support the kayak here: <http://www.charitygiving.co.uk/kayakpaddle2011>

Kayak paddle in aid of Lord Nathan Memorial Fund for the Environment 10-11 September

David Hart QC invites you to join him on a sponsored kayak over the weekend of 10/11th September 2011, in aid of the Lord Nathan Fund. A similar event in May 2010 raised over £5,000, and my objective is to meet or beat that target. I think the 30-odd people who joined me also had a very good time. A number of them were first-timers in kayaks, so don't worry about that. However, all entrants must be reasonable swimmers. If you can't join in please pledge your support: <http://www.charitygiving.co.uk/kayakpaddle2011>



I will provide the kayaks etc. The plan is to paddle from Burnham Overy Staithe quay very near my house (in North Norfolk), to a buoy in Brancaster harbour, and then return, a distance of about 6 miles.

The route is inshore, along a creek dividing Scolt Head Island from the mainland. It is a birdwatcher's paradise, protected by every conceivable European and domestic designation. It is also beautiful in a muddy, sandy, saltmarshy, peaceful sort of way.

The event is not intended to be a race, indeed far from it, though be warned that a certain pace will be required otherwise you will find yourself paddling for much longer periods against a fast-flowing ebb tide. You will also have to carry or drag your kayaks over a short distance (50m at most) of marshland, a manoeuvre which will save you over a mile of paddling against the tide.

Provisional programme

16.00 Saturday 10th September Assemble at Burnham Overy Staithe quay for briefing and issue of kayaks

16.30 start (conditions permitting)

18.00 high tide

19.00-20.00 repair for supper to my house (Lapwing House, Glebe Lane, Burnham Overy Staithe PE31 8JQ)

I will underwrite kayaks, lifejacket and wetsuit hire, food and wine.

The kayaks are a mixture of single/double/triple kayaks. All are easy to paddle: no prior experience required.

However, I would be greatly assisted if those who have some kayaking/canoeing experience could say this when booking. My ceiling on numbers will depend upon having a sufficient number of experienced kayakers amongst us.

Landlubbers

For those who do not fancy getting wet bottoms, there will be a number of spaces either in rescue craft or you can follow our progress at least part of the way by walking along the coastal path from Burnham Overy Staithe towards Burnham Deepdale.

Numbers

Ceiling on kayak numbers is about 40 people, and we can feed and "water" a further 10 people who wish to stay on dry land. **So book soon.**

Burnham Overy Staithe quay can be reached by public transport from London – train to King's Lynn, then Coasthopper bus. I would also hope that some car-sharing clearing-house be set up closer to the time.

Cost

Cost per head **£50 or £25** if trainee/pupil/equivalent – you will pay this by contributing directly to the Fund. Please visit this [Justgiving page](#) to make this donation online.

Sponsored events

Participants are invited to seek individual sponsorship on top of this. I would hope that everybody would aim at least to match their individual contribution with contributions from others. Last year, we raised over 3 times the entry fees from generous friends and relations.

Accommodation: I can provide between 10 and 20 beds in or near the village – under dormitory conditions. First come, first served.

Dossing in the house also welcome, and there is a reasonable sized garden in which Wild Law-ites can pitch their tents – popular last year.

Alternatively, within 2 miles there are (a) two elegant hotels (the Victoria, Holkham or the Hoste, Burnham Market) or (b) a backpacker's hostel in Burnham Deepdale. There are also some B&Bs nearby.

Booking:

Please contact louise.brown@lcor.com who will be helping with the organisation

Please tell her

- (i) whether you would like to kayak or stay on dry land
- (ii) if a dry-lander, would you be happy to be aboard a rescue craft
- (iii) whether you would like me to see whether I can find accommodation (no promises);
- (iv) whether you have some experience of kayaking/canoeing;
- (v) which kind of craft you would prefer (single/double/treble). I will do my best to provide this, though there will also be an element of 1st come, 1st served on the day.

Your side of the deal

- (i) you must agree to donate to the Fund at or before booking;
- (ii) you must be able to swim,
- (iii) you must agree to wear the lifejacket,
- (iv) you must agree to wear the wetsuit if I so direct (September evenings can be cold).
- (v) you must agree not to do anything daft.

You must also turn up at 4pm on the Saturday if you wish to kayak. I will then give you a detailed briefing on where we are to go, and set the ground rules for the event.

Prompt arrival will also enable you to choose the kayak/canoe combination which suits you best.

ANNOUNCING NEW JOURNAL TRANSNATIONAL ENVIRONMENTAL LAW

The first issue of Transnational Environmental Law will be published by Cambridge University Press in Spring 2012. This peer-reviewed journal is dedicated to the study of environmental law and governance beyond the state. Editors-in-chief, Thijs Etty and Veerle Heyvaert, and Editors, Cinnamon Carlarne, Daniel Farber, Jolene Lin and Joanne Scott, strive to develop a new generation of environmental scholarship which bridges geographical, generational, disciplinary and academic-practitioner divides. Prospective authors may contact the Editors with proposals for planned submissions. The Editors will also consider revised versions of previously released working papers, provided that such publication is clearly acknowledged upon submission of the paper for consideration to TEL.

All contributions in the journal are peer-reviewed (double-blind), and will be evaluated on their:

- Originality
- Analytical thoroughness
- Affinity with the mission and scope of the journal
- Conformity with the highest standard of scholarly presentation

The editorial team invite submissions to thijs.etty@ivm.vu.nl or v.heyvaert@lse.ac.uk.

More details and author guidance can be found at <http://journals.cambridge.org/TEL>.

By **Simon Boyle**

Good Food for Everyone Forever

Author- Colin Tudge

Few books really change the way you think about things in an every-day sense- but for me this was one of those few.

Anyone who has given thought to the way we eat food will have realised that eating lots of red meat, as well as being unhealthy is not terribly efficient. For example the conversion rate of plant material to cow protein is only about 10%.

What I hadn't gone on to consider is the implications of my red meat eating for the 1 billion or so of my fellow humans who are chronically undernourished.



Photo: Stephen Elcoate

But here's the thing- of all the wheat grown, 50% goes for animal foodstuff. For maize it is 80% and for soya a staggering 90%.

The reason that the poor are starving is that they cannot afford to buy these essential foods – because we force the price up so we can feed the cows.

So next time you are thinking of ordering a nice juicy T bone just stop and consider- should I do this in the knowledge that this is taking food from someone who is starving.

Of course the food industry do not want us to know this or think like this. As Colin shows us, the industry wants to make its value add- and converting plant to animal protein means making a lot of money.

Colin sums up what we should eat in an easy to remember phrase- 'Plenty of plants, not much meat, and maximum variety.'

The book is full of other fascinating and thoughtful facts – it's definitely worth getting a copy and discovering these for yourself.

And if you ever catch me eating a steak you will know what to say!

Colin's book costs £9.99 and is published by Pari Publishing.

UK ENVIRONMENTAL LAW ASSOCIATION

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For information about working parties and events, including copies of all recent submissions contact:
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The editorial team wants articles, news and views from you for the next edition due to go out in July 2011. All contributions should be dispatched to Catherine Davey as soon as possible by email at:

catherine.davey@stevens-bolton.com by 7 September 2011

Please use Arial font 11pt. Single space. Ensure headings are in bold capitals.

Letters to the editor will be published, space permitting

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