

Research Project: Environmental Protection & Justice: Access to Environmental Justice.

Researchers: Prof Bob Lee, Frances Hines, Lori Frater, Jeroen Dijkshoorn, Hepzibah Egede

Background: Regulation represents a key mechanism by which the interests of stakeholders (such as local communities) are protected from any negative health and/or environmental impacts of business activity. However, to be effective in such a role, citizens and communities need to be able to gain access to the mechanisms of environmental justice, and access to the information relevant to their complaint in order to gain access to redress and appropriate solutions. The Aarhus Convention 1998 requires the UK and other member countries to facilitate public access to environmental information. This specific objective of the Convention has been implemented in the UK by the Environmental Information Regulations (EIRs) 2004. BRASS research has sought to explore the extent to which citizens have the appropriate access to the information and judicial solutions.

Aims & objectives:

- To increase the accessibility of information on environmental regulation for a wide range of stakeholders including intermediaries advising other parties;
- To explore barriers to participation in environmental decision making;
- To question the practicalities of access to court adjudication of environmental disputes particularly in the context of challenges to administrative decisions;
- To engage with arguments concerning UK compliance with both international law (the Aarhus Convention) and European Union law on questions of access to environmental justice.

About the research: There were several strands to this research project including:

- The United Kingdom Environmental Law Association (UKELA) commissioned BRASS to conduct a scoping study and desk based research study on the need for a public access online resource on environmental law information.
- On the basis of the results of that initial study, BRASS worked with UKELA to develop the Law and Your Environment website, a public access e-library on environmental law information for the UK. Following the scoping study and desk-based research, a prototype e-library was developed by BRASS and tested on focus groups under the auspices of Friends of the Earth, the Environmental Law Foundation (ELF) and the Civic Trust.
- BRASS also conducted quantitative research for the Environmental Law Foundation (ELF) into access to environmental justice, which analysed the progress of over 700 cases put forward between 2005 and 2009. The resulting report, *Cost Barriers to Environmental Justice*, was published with a foreword by Lord Woolf and officially presented at the House of Lords.
- There were also two qualitative studies undertaken, one a comparative study on the implementation of the Aarhus Convention in Poland and the UK; and the other a qualitative case study which highlighted the dynamic negotiations between the Member States, the European Union and civil society developed for a UN Economic Commission for Europe (ECE) meeting of the Parties to the Aarhus Convention.
- Access to environmental justice was also a key theme in some of the other BRASS Research Projects, particularly in relation to mining operations (see A42) and the impact of energy infrastructure projects including gas pipelines and wind farms on local communities (see A43).

Results and outputs:

The initial research investigating current websites providing environmental law information found that they typically lacked objective information and provided links to other resources as opposed to providing plain English information for stakeholders such as householders, communities and small businesses. This information and the results of the focus group pre-testing were all fed into developing the new online resource with UKELA.

In June 09 Lord Justice Carnwath launched the new website "*Law and Your Environment*" developed by BRASS through the joint project with UKELA. This provides a 'one-stop' solution for citizens, firms and Third Sector Organisations (such as NGOs or community groups) needing plain English legal information on environmental issues such as planning applications, pollution incidents through to tackling climate change. It promotes greater environmental justice by providing both citizens and organisations with details of their rights and responsibilities along with sources of further information.

The analysis of environmental judicial review cases revealed that 56% of cases passing through the Environmental Law Foundation, which lawyers had advised could proceed as valid claims, did not go forward for fear of the legal costs that could be incurred by taking the case forward.

- Lee, R. (2012), [Not so smart? Valuing sources of environmental information](#), *Environmental Law & Management*, 24 (2), 55-59
- Cowell, R., Bristow, G. and Munday, M. (2011), [Acceptance, acceptability and environmental justice: The role of community benefits in wind energy development](#), *Journal of Environmental Planning and Management*, 54 (4), 539-557
- Lee, R. and Stech, R. (2011), [Access to environmental justice in England and Wales: Funding representation for court reviews of administrative action](#), in Steele, J. and van Boom, W. (eds.), *Mass Justice: Challenges of Representation and Distribution*, Edward Elgar, pp. 138-168
- Stech, R., Lee, R. and Topley, D. (2009), *Cost Barriers to Environmental Justice*, BRASS/ELF Report
- [Law and Your Environment Website](#) – developed by BRASS for UKELA
<http://www.environmentlaw.org.uk/>
- Lee, R. (2007), [Judicial review and judicial developments after the Human Rights Act 1998: The example of environmental law](#), in Pauknerova, M., Priban, J., Kerner, A. and Young, J. (eds.), *Changes in Judicial Culture and Decision Making*, Univerzita Karlova v Praze
- Lee, R. (2005), [Resources, rights and environmental regulation](#), *Journal of Law and Society*, 32, 111-130 (also re-produced in Clements L and Thomas P, eds. (2006), *Human Rights Act: A Success Story?* Blackwell)

Impacts achieved/potential for impact:

The report into access to environmental justice for ELF was cited by the Aarhus Convention's Compliance Committee in its landmark ruling on the access to justice in the UK. It was also cited by the Environmental Data Services (ENDS) Report, the Guardian, and the Economic and Social Research Council (ESRC) magazine '*Britain in 2011*'. It is said to have influenced the European Commission which referred the UK government to the Court of Justice of the European Union. In 2012 the report was cited when the Ministry of Justice produced its response to the consultation on capping costs in environmental claims when it published *Cost Protection for Litigants in Environmental Judicial Review Claims* – in which it stated that: "*The Government therefore takes the view that costs protection should apply from the time the claim is issued, provided that the claim is clearly identified as being within the scope of the public participation provisions of the Aarhus Convention.*"

The *Law and Your Environment* website has made a considerable practical impact in putting complex information about environmental law and justice into an accessible format, and is now receiving over 300,000 hits per year.