



# Hot Tips on Litigating to Cool the Planet and Freeze the Assault on Nature

Building Impactful Strategic Litigation from Conception to Close



 6pm - 7.30pm

 Wednesday 11 September



# DEFENDING CIVIL INJUNCTIONS

Stephanie Harrison KC, Garden Court Chambers

11<sup>th</sup> September 2024



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# PERSONS UNKNOWN

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- **Wolverhampton City Council v London Gypsies and Travellers [2023]**  
UKSC 47
- **Ineos Upstream v Persons Unknown [2019]** EWCA Civ 55
- **UKOG v Persons Unknown [2019]**
- **Canada Goose UK Retail (Ltd) v Persons Unknown [2020]** EWCA Civ 303



## Defendants or Interested Parties?

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- CPR 40.9
- National Highways Injunction [2022]
- Esso Petroleum v Breen and Persons Unknown [2022] EW HC 2600



# Enforcement /Contempt

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- Cuciurean v SS for Transport [2021] EWCA Civ 357
- Caudrilla Bowland v Persons Unknown [2020] EWCA Civ 9
- Cuciurean v SS of Transport and HS2 Ltd [2022] EWCA Civ 1519



# COSTS

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- AG V Crosland [2021] UKSC 15
- SoS for Transport v Cuciurean [2022] EWCA 661



# Thank you

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# Experiences of working with an NGO

Acland Bryant, Garden Court Chambers

11<sup>th</sup> September 2024



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# The Importance of NGO's

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Lady Hale at the Public Law Project Conference in 2013:

- NGOs contribute to the enforcement of law and the protection of human rights
- NGOs play a vital role in holding government accountable and ensuring that public bodies act within the law – which is essential for maintaining the rule of law.
- NGOs frequently present arguments or material that might not otherwise be considered



## Litigation – what are the statistics for individuals and NGOs?

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LSE - Global trends in climate change litigation: 2024 snapshot:

*“In 2023 the plaintiffs in more than 70% of all cases, both US and Global, included either individuals, non-governmental organisations (NGOs) or both.”*



# What can an NGO bring to a potential legal challenge?

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- Guidance and support (emotional and practical)
- Education and training
- Advocacy, policy and campaigning support
- Research, expertise and insights
- Funding/fundraising support
- Legal representation, advice and/or assistance (organisation dependent)



# Ways of litigating with an NGO

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- NGO led cases (individually or with other NGOs)
  - *R (Friends of the Earth; ClientEarth; Good Law Project) v Secretary of State for Energy Security and Net Zero* [2024] EWHC 995 (Admin)
  - *Greenpeace and Uplift v Secretary of State for Business, Energy and Industrial Strategy and the Oil and Gas Authority* [2023] EWHC 2608 (Admin); and recent success in respect of Rosebank where the Government has said it will not contest the case
- Co-Claimant cases (with community groups and individuals)
  - *In the Matter of an Application by No Gas Caverns and Friends of the Earth for Judicial Review* [2024] NICA 50
- Cases where NGOs intervene/ act as an amicus curiae
  - *R (on the application of Finch) v Surrey County Council* [2024] UKSC 20 (Friends of the Earth and Greenpeace)
  - *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law* (CASE NO. 31) (Opportunity Green)
- Cases where NGO's provide litigation support
  - *In the Matter of an Application for Judicial Review by Clodagh Miskelly* [2024] (Public Interest Litigation Support Northern Ireland (PILS (NI)))
  - *HM Solicitor General v Trudi Warner* [2024] EWHC 918 (KB) (Good Law Project)



# What might an individual need to consider before approaching an NGO?

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- What litigation support do I need from an NGO/ could an NGO usefully provide in my case?
- Which NGO(s) may be able to assist me in my case?
- When should I approach an NGO about my case?



# What might an NGO consider before agreeing to assist an Individual with their case?

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- Strategic alignment
- Organisational priorities
- Capacity
- Timing
- Costs



# Standing – Individuals

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*John Mussington and another v Development Control Authority and others* [2024] UKPC 3:

- Geographically [49-50] – the appellants live in close proximity to the runway and were likely to be adversely impacted by the development (in terms of noise, disruption, drinking water quality impacted due to run-off);
- As a consequence of failures to follow due process [51-55] – in this case, the respondents’ commencing development without a development permit, failing to lawfully consult the public and having allegedly breached the duty of candour;
- Having demonstrated “some knowledge or concern” for a subject [57-58] – in environmental cases, this applies to flora, fauna and the environment as a whole.



## Standing – Associations/NGOs (1)

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*Verein KlimaSeniorinnen Schweiz and others v Switzerland* Application No 53600/20:

***498. The specific considerations relating to climate change weigh in favour of recognising the possibility for associations, subject to certain conditions, to have standing before the Court as representatives of the individuals whose rights are or will allegedly be affected. ...***

***499. Moreover, the special feature of climate change as a common concern of humankind and the necessity of promoting intergenerational burden-sharing in this context (see paragraph 489 above), speak in favour of recognising the standing of associations before the Court in climate-change cases.***





## Standing – Associations/NGOs (2)

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Para 502 onwards:

*(a) lawfully established in the jurisdiction concerned or have standing to act there; (b) able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and (c) able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.*

*In this connection, the Court will have regard to such factors as the purpose for which the association was established, that it is of non-profit character, the nature and extent of its activities within the relevant jurisdiction, its membership and representativeness, its principles and transparency of governance and whether on the whole, in the particular circumstances of a case, the grant of such standing is in the interests of the proper administration of justice.*

*In accordance with the specific features of recourse to legal action by associations in this context (see paragraphs 497-499 above), the standing of an association to act on behalf of the members or other affected individuals within the jurisdiction concerned will not be subject to a separate requirement of showing that those on whose behalf the case has been brought would themselves have met the victim-status requirements for individuals in the climate-change context as established in paragraphs 487 to 488 above. (emphasis added)*



# Aarhus Convention Claim?

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- A judicial review claim which falls within “the scope of the convention” and which relates to access to environmental information and “environmental justice”.
  - Elements of the environment;
  - Factors affecting the environment; and/or
  - The social environment (Art 2(3)).
- **Word of Caution!** - *R(ClientEarth) v Financial Conduct Authority* [2023] EWHC 3301 (Admin) – Lang J held that Aarhus costs protection did not apply because the case really concerned financial law and not national law relating to the environment or a sufficiently close connection to the environment.



## Costs and Costs Capping

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- The Default costs limits (inclusive of VAT – see: *R (Friends of the Earth) v Secretary of State for Transport* [2021] EWCA Civ 13):
  - Individuals - £5,000
  - Legal entities or unincorporated associations - £10,000
  - Respondent authorities - £35,000
- Amending the adverse costs cap? (see: *R(RSPB) v Secretary of State for Justice* [2018] Env LR 13).



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