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Case Summary posted by the Task Force on Access to Justice

Compton v Wiltshire Primary Care Trust [2008] EWCA Civ 749

1. Key issue	Costs – The Court of Appeal held that the "criteria" established in the Corner House case regarding the granting of Protective Costs Orders (PCOs) have general applicability, but must not be dealt with too restrictively. Specific reference was made to the criteria of "general public importance", "private interest" and "exceptionality".
2. Country/Region	UK
3. Court/body	Court of Appeal
4. Date of judgment /decision	1st July 2008
5. Internal reference	[2008] EWCA Civ 749, para 19 onwards
6. Articles of the Aarhus Convention	Article 9(4)
7. Key words	Prohibitive costs, Protective Costs Orders (PCOs)

8. Case summary

This case was neither a planning case nor a case concerning the environment, but it was the first case in which the proposals set out in the "Sullivan Report" were considered by a court in England and Wales.

Lord Justice Waller, giving the lead judgment of the Court, said that the "criteria" for granting a PCO as set out in *Corner House* were "*not to be read as statutory provisions, nor to be read in an over-restrictive way*". He considered that:

(i) the "no private interest" criterion might be dispensed with if the other conditions were met;
(ii) "exceptionality" was not an additional criterion to be met over and above the criteria in paragraph 74 of *Corner House*, but a prediction about the likely effect of the application of those criteria; and
(iii) "general" public importance did not mean that it must be of interest to the public nationally, but a local group might be so small that issues in which they alone were interested might not be issues of general public importance.

The Court also addressed the observations made in the "Sullivan Report". Having set out the main concerns identified by that report, Waller LJ noted:

"*In [the Corner House case], the Court of Appeal accepted that PCOs should only be granted in 'exceptional' cases. But it now seems this 'exceptionality' test is being applied so as to set too high a threshold for deciding (for example) 'general public importance', thus overly restricting the availability of PCOs in environmental cases. For example, in a recent case, the implicit approach taken in the High Court and confirmed in the Court of Appeal was that there really should only be a handful of PCO cases in total every year. Such an approach if generally adopted would ensure that the PCO jurisdiction made no significant contribution to remedying the access to justice deficit it was intended to deal with, including in the environmental field. Unless the exceptionality criterion is eased, PCOs cannot be used in any significant way to assist compliance with [the Aarhus Convention].*" However, it is important to note that in this case, the Court also considered that it would be "*less than satisfactory to carve out different rules where environmental cases are involved as compared with other serious issues*" and insisted that the rules relating to PCOs were of general application. Finally, in this case, the Court of Appeal repeated an earlier call in *Corner House* for the Civil Procedure Rules Committee to codify the position on PCOs (see para 43). This request was also subsequently made in *Morgan* (para 47).	
9. Link address	http://www.unece.org/fileadmin/DAM/env/pp/a.to.j/Jurisprudence_prj/UNITED_KINGDOM/ComptonvWiltshire/Judgement_Compton_vs_Wiltshire.pdf