

Lord Justice Jackson has recommended a fixed costs regime to ensure the government fulfils its duty in environmental judicial review cases. These cases are often complex and a forum for expert witnesses propounding both sides of the argument.

The Ministry of Justice launched a consultation last year to ask how to comply with the UK's international obligations as part of the UN Aarhus Convention. The multilateral agreement requires parties to guarantee access to justice and ensure the public can challenge decisions.

In his response to the consultation, Lord Jackson says that protective costs orders devised by the courts will generate hard-fought satellite litigation, presumably with their own expert witness testimony, and drive up costs. Instead, he backed the government's plans to limit a claimant's recoverable costs to £30,000 and those of a defendant to £5,000.

Jackson stated this new regime should be developed and located in part 45 of the costs rules. The costs regime should apply to claimants that are both individuals and companies, although the court should have discretion to disapply it if the claimant's resources mean they can afford the costs of the action.

Jackson's response says his proposals would ensure a 'copper-bottomed compliance' with the requirements of Aarhus, while still being fair to both parties. He adds that his preferred solution was a system of one-way costs shifting, but accepts the Government's wish to wait until qualified one-way costs shifting (QOCS) has been tried in personal injury and clinical negligence cases before being extended.

He says both claimants and defendants criticised his support for QOCS and notes that 'the experience of being shot at equally from both sides' confirmed he had struck the right balance.

The consultation closed in January and the Government is expected to publish its response in

the spring.