

# Air pollution on trial

Presentation to the Clean Air Network  
14<sup>th</sup> July 2012



# An introduction to ClientEarth

We are activist lawyers  
committed to securing  
a healthy planet

Offices in London,  
Brussels and Warsaw.

Forests  
Fisheries  
Air Quality  
Biodiversity  
Toxic Chemicals  
Climate & Energy



**London, 22 April 2011**

## Judicial Review

*“The legal procedure for challenging a decision, action or failure to act by a public body”*



# The Air Quality Directive

- Sets limits on levels of air pollution
- Deadlines:
  - 2005 (PM<sub>10</sub>)
  - 2010 (NO<sub>2</sub>)
- Member states must monitor air quality
- Must draw up “air quality plans”
- Time extensions

The Queen (on the application of ClientEarth) v Secretary of State for Environment, Food and Rural Affairs



v



# Grounds for judicial review

1. Failure to consult on the amendment to the PM<sub>10</sub> plan for London
2. Failure to produce plans which achieve compliance with NO<sub>2</sub> limits by 2015

12th October 2011:

Defra concede  
defeat on Ground 1





Hourly limit  
breached within 1st  
3 weeks of 2010

Marylebone Road  
London

# NO<sub>2</sub> over triple legal limits



Brixton Road  
London



# 40

air quality  
zones breach  
NO<sub>2</sub> limits



# 17

air quality plans will not  
achieve compliance with  
NO<sub>2</sub> limits until  
after 2015

# 17 zones which will not achieve limits until after 2015

- London
- Manchester
- Liverpool
- Teeside
- Hull
- Southampton
- Glasgow
- Belfast
- South Wales
- West Midlands
- Eastern England
- South East England
- East Midlands
- The Potteries
- Yorkshire and Humberside
- West Midlands
- North East England

# Chronology

9 June 2011	Defra publish NO <sub>2</sub> plans for consultation
22 June 2011	ClientEarth issue “letter before action”
27 July 2011	ClientEarth file claim for judicial review
16 September 2011	Court grants permission to proceed
September 2011	Defra send plans to the European Commission
12 October 2011	Defra agree to hold PM <sub>10</sub> consultation
13 December 2011	High Court hearing
31 May 2012	Court of Appeal hearing

# Remedies

1. Declaration that the UK is in breach of EU law
2. Declaration that the 17 plans do not comply with EU law
3. Court order requiring Defra to draw up new plans which will achieve limit values by 2015

# Defra's case

- Time extensions **only** for those zones where plans project compliance by 2015
- Reliance on Article 23:  
*“...shall set out appropriate measures so that the exceedance period can be kept as short as possible”*

# ClientEarth's case

- “As short as possible” means no later than 2015
- Compliance by 2015 is possible
- The Mayor's air quality strategy



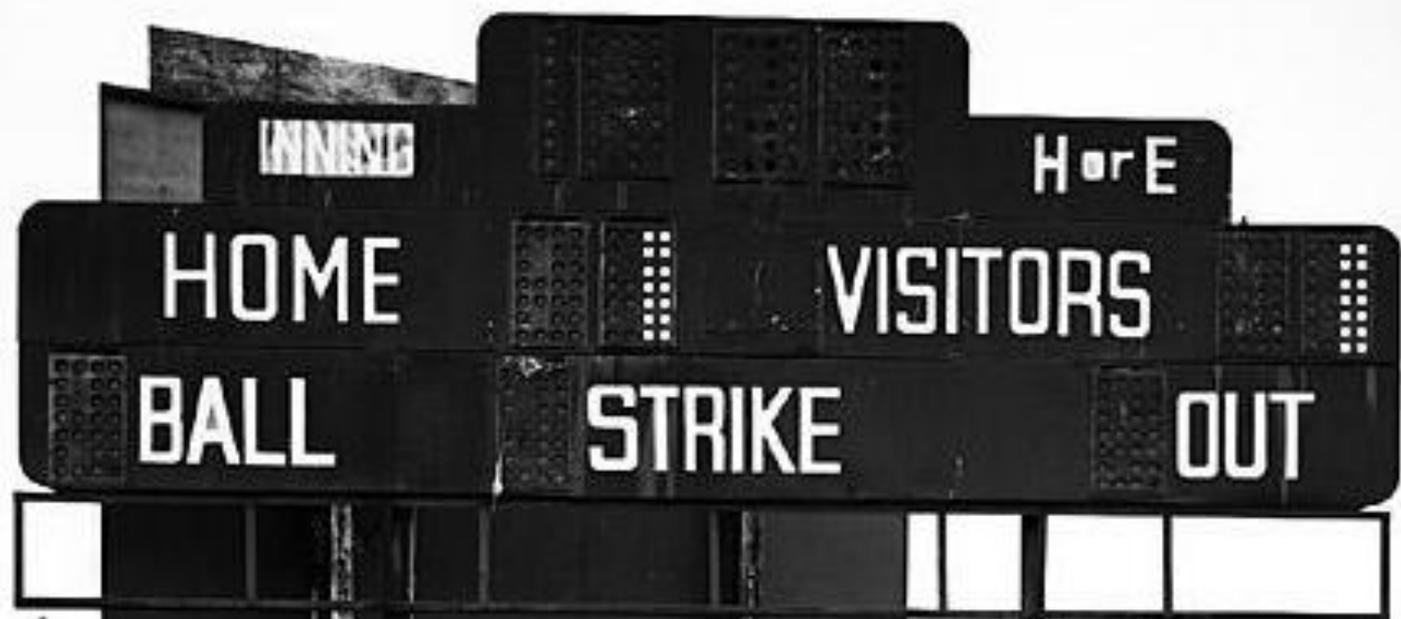
Royal Courts of Justice, London

# The High Court

- Government in breach of “primary obligation”
- Time extension not mandatory
- No obligation to provide a remedy
- For the European Commission to enforce the AQD



Mr Justice Mitting



INNING

HOME

HOME

VISITORS

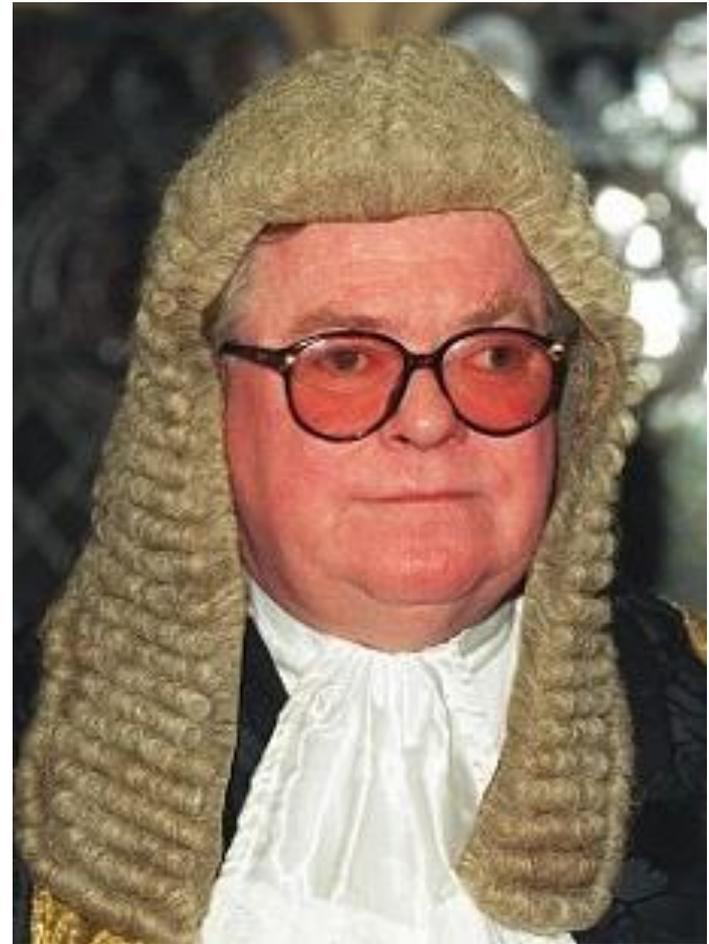
BALL

STRIKE

OUT

# The appeal

- “As short as possible” means no later than 2015
- National courts must enforce EU law
- Effective remedies
- Court order requiring Government to produce plans which meet limits by 2015



Lord Justice Laws



The Supreme Court of  
the United Kingdom,  
Westminster



The European Court  
of Justice,  
Luxembourg



The logo for the Red Tape Challenge features a green shield-like shape with a 3D effect, containing the text "RED TAPE CHALLENGE" in white, bold, uppercase letters. This shield is positioned on the left side of a red banner that tapers to the right.

## RED TAPE CHALLENGE

*“Working in partnership with other Member States, we will also use the European Commission review of air quality legislation, expected in 2013, to seek amendments to the Air Quality Directive which reduce the infraction risk faced by most Member States, especially in relation to nitrogen dioxide provisions.”*

# Conclusion

- We have a legal right to clean air
- ClientEarth is fighting to uphold that right
- The Government cannot be allowed to undermine it



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