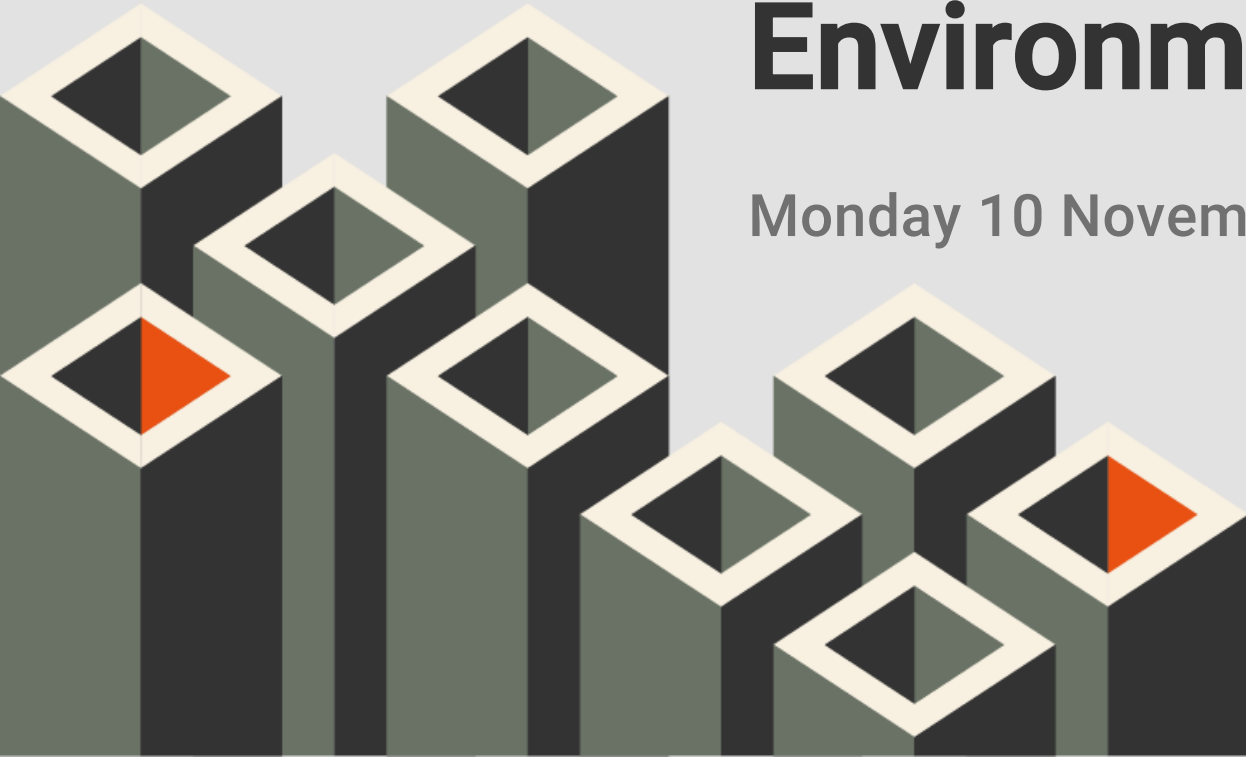


Landmark Chambers

Planning High Court Challenges 2025 webinar series - Session 1: Environmental issues

Monday 10 November 2025



Your speakers for today:



Dan Kolinsky KC (Chair)



Jenny Wigley KC

SEA and EIA Case Law Round-up



Robert Walton KC

Clean water: legal and policy framework,
proposed reforms and case law



Harley Ronan

Habitats case-law round up and a look forward to
likely judicial review challenges related to Part 3
of the Planning and Infrastructure Bill



Odette Chalaby

Clean energy issues: Solar and battery
storage



Habitats case-law round up and a look forward to likely judicial review challenges related to Part 3 of the Planning and Infrastructure Bill



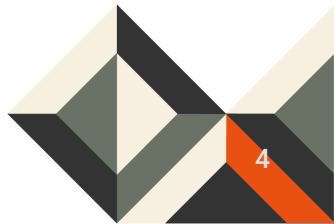
Harley Ronan



CG Fry & Sons Limited v Secretary of State for Housing, Communities and Local Government **[2025] UKSC 35**

Two issues before the Supreme Court:

1. Does reg 63(1) apply to reserved matters approvals?
2. If it does apply, was it lawful to require an AA in this case given that the requirement was derived from national policy (para. 181 NPPF) as opposed to reg. 63 itself?



CG Fry & Sons Limited v Secretary of State for Housing, Communities and Local Government **[2025] UKSC 35**

- 2015: Outline PP granted for mixed use development including 650 homes.
- June 2020 – RMA granted, subject to conditions concerning water and drainage.
- August 2020 – NE publishes advice on nutrient neutrality
- June 2021 – developer applies to discharge the conditions on the June 2020 RM approval.
- LPA considers an AA is required before such a decision could be made – relying on para 181 of the NPPF – and refuses the application.
- Developer appealed; inspector determined that para. 181 applied and that AA required before the conditions could be discharged.



Issue 1 – Do the assessment provisions apply at RM stage?

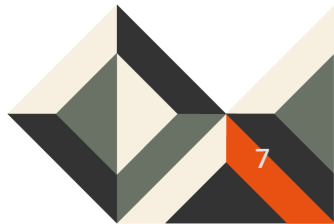
Yes. Reg 63(1) of the Habitats Regulations applies “*before deciding to undertake, or give any consent, permission or other authorisation for*” a relevant plan or project:

“That is not language capable of being limited to the grant of planning permission. On the contrary... the language is deliberately broad in its effect and, having regard to the way in which the planning system works in the context of the multi-stage planning regime of the kind operated in the present case, the words “or other authorisation” naturally cover a decision to give approval for reserved matters or to discharge conditions attached to a reserved matters approval which would have the effect of authorising the developer to proceed with the development” [54].



Issue 1 – Do the assessment provisions apply at RM stage?

- Reg. 70 did not change that.
- Reg 70 says positively that the assessment provisions apply in relation to the grant of planning permission.
- It does not say in negative terms that the assessment provisions do not apply to RMA stage [53].
- Reg 63 was therefore applicable to a decision to discharge conditions attached to a RM approval.



Issue 2 – was it lawful to require an AA in this case?

- Reg 63 did not apply to this scheme – the site was a Ramsar site, and Ramsar sites do not fall within the scope of reg. 63 of the Habitats Regs.
- Para. 181 NPPF, however, states that Ramsar sites should be treated as protected European sites.
- Therefore, if reg. 63 applied in this case, the requirement for an AA was derived from para. 181 of the NPPF, not the Habitats Regulations.
- On that basis, the Council and Inspector refused to discharge the condition on the basis of national policy and NE advice.
- The issue for the Court was whether this was a lawful exercise of their discretion.



Issue 2 – was it lawful to require an AA in this case?

- Outcome: not a lawful approach.
- In determining applications for RM, “... the extent to which the authority can withhold approval is restricted to what has been expressed to be so reserved and it is not permitted to go back on points of principle which it has accepted by granting permission”
- The conditions in this case did not require an AA, or for the development to demonstrate nutrient neutrality. The NPPF did not (and could not) change that.
- The LPA and the Inspector therefore had no power to refuse to discharge the conditions until some extraneous requirement had been met: see [70].



R. (on the application of Caffyn) v Shropshire Council [2025] EWHC 1497 (Admin)

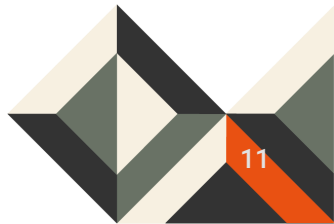
- Planning permission for an intensive poultry unit (“IPU”) and associated development, involving 200,000 chickens producing an annual 3,600 tonnes of manure.
- Environmental impacts of this development included ammonia emissions, and the effect of spreading manure on land as fertiliser.
- Various issues before the Court, including EIA and habitats.



Caffyn – the 1% issue

(1) Determining whether LSE on a protected site

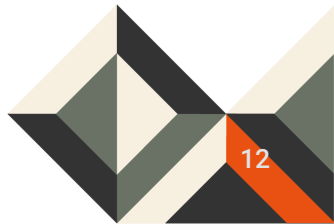
- In determining whether the proposal was likely to have a significant effect on a protected site for the purposes of reg. 63 of the Habitats Regulations, the Council had regard to the percentage increase in ammonia and nitrogen at the protected site.
- An increase less than 1% was considered unlikely to have significant effects on the protected site.
- Issue: Did the LPA fail to carry out a lawful AA by assessing the significance of some of the development's impacts on protected sites by reference to a 1% "threshold"?



Caffyn – the 1% issue

No.

- The 1% threshold was an “evaluative tool” for approaching questions of likely significant effects etc.
- No authority shown to the Court which suggested that threshold values were unlawful.
- “Benchmarks can involve judgment rather than pure arithmetic”: [54].



Caffyn: “in combination” effects

- In assessing the “in-combination” effects of the proposed poultry unit, the officer considered proposals to expand existing IPU.
- Logically, considering the scheme with the proposals to enlarge other units might give rise to an “in combination” effect.
- For the purposes of assessing in-combination effects, the officer considered proposed IPU developments which needed a new planning decision, but excluded projects which merely needed a new environmental permit.



Caffyn: “in combination” effects

Reasoning in the OR was:

“Environmental permitting is a separate system to the planning system. Permits are often given for larger numbers of livestock than are actually present on the site (to allow for growth within an existing permit without having to reapply). Permits do not need to be considered as part of in-combination assessments.”

Issue: Did the Council fail to carry out a lawful AA by only considering IPU projects which needed a new planning decision and excluding projects which needed a new environmental permit?



Caffyn: “in combination” effects

The LPA failed to lawfully assess the in-combination effects for the purposes of reg. 63(1).

1. The fact that environmental protection permits were a “separate system” was not a lawful basis to exclude planned IPU projects which required an EP but not PP.
2. The “wording and purpose” of reg. 63(1)(a) was that “real-world in-combination impacts are confronted” and “Environmental protection is about real-world effects and the environmental reality takes effects of plans and projects when viewed together”: [61]i),
3. Nothing in reg.63(1)(a) limits “other plans or projects” to those with which the individual competent authority is concerned...To the habitat and its species, there is no material distinction based on who hands out the permit”.



***Transport Action Network v Secretary of State for Transport* [2024] EWHC 2885 (Admin)**

- Challenge to grant of DCO for road improvement works on A66.
- Project was judged likely to have a significant effect on protected European site.
- Reg 63(5) of the Habitats Regulations prevents the grant of PP unless decision maker satisfied that the development will not adversely effect the integrity of the European site.
- That restriction is subject to reg. 64.



Transport Action Network

- Reg 64(1) allows the decision maker to grant PP notwithstanding an adverse impact on a protected site if they are satisfied that (a) there are no alternative solutions and (b) that “the plan or project must be carried out for imperative reasons of overriding public interest (which, subject to paragraph (2), may be of a social or economic nature)”
- Those reasons may be social or economic in nature. But if the site concerned hosts a priority natural habitat type or a priority species, the reasons must be either:
 - (a) reasons relating to human health, public safety or beneficial consequences of primary importance to the environment; or
 - (b) any other reasons which the competent authority, having due regard to the opinion of the appropriate authority considers to be imperative reasons of overriding public interest” (reg 64(2).



Transport Action Network

SoS accepted that the imperative human health benefits included:

- reconnecting communities
- better links between settlements along the route thereby providing better links to healthcare, employment areas, education, sporting, leisure and cultural facilities and increased opportunities for social interaction
- Better local links and increased connectivity with the creation of improved public rights of way network will encourage active travel choices leading to concurrent health benefits to non-motorised users
- Shorter journey times with decreased congestion (which will benefit mental health and wellbeing to both motorists and non-motorised users of the Proposed Development)



Transport Action Network

No arguable error of law in that conclusion.

“...human health is a very broad concept (see, for example, the assessment carried out in chapter 13 of the Environmental Statement in this case) and extends widely to matters of wellbeing. The challenge, therefore, boils down, essentially, to an attack on the defendant having given weight to those matters in drawing his overall conclusion...”: [29].

Not irrational to find that the human health considerations together with other considerations were sufficient to justify the development in the public interest for the purposes of reg. 64.



Other habitats cases in the last year

Crest Nicholson Operations Ltd v Secretary of State for Housing, Communities and Local Government [2025] EWHC 2194 (Admin) – lawfulness of planning condition restricting development until water neutrality demonstrated

R. (on the application of Wild Justice) v Pembrokeshire Coast National Park Authority [2025] EWHC 2249 (Admin) – failure to publish background documents and failure to take into account relevant considerations when assessing habitats.

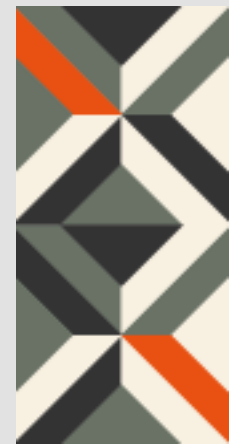
R. (on the application of Bradbury) v Awdurdod Parc Cenedlaethol Bannau Brycheiniog (Brecon Beacons National Park Authority) [2025] 4 W.L.R. 58 – whether to refuse a remedy on a claim for judicial review on the basis that the outcome would not have been substantially different if the conduct complained of had not occurred

Ward v Secretary of State for Housing, Communities and Local Government [2025] Env. L.R. 13 – accounting for effects where development implemented prior to NE advice





Likely judicial review challenges related to Part 3 of the Planning and Infrastructure Bill



Overview

61 Overview of EDPs

- (1) An environmental delivery plan is a plan prepared by Natural England, and made by the Secretary of State, that sets out, in relation to development to which it applies – 5
- (a) the environmental features that are likely to be negatively affected by the development,
 - (b) the conservation measures that are to be taken by or on behalf of Natural England in order to protect those environmental features, 10
 - (c) the amount of the nature restoration levy payable by developers to Natural England to cover the cost of those conservation measures (see sections 64 and 74 to 83), and
 - (d) the environmental obligations in relation to development that are discharged, disapplied or otherwise modified if a developer pays the nature restoration levy in relation to the development (see section 74 and Schedule 3). 15

EDPs: form and content

- EDPs must specify the development to which it applies by area and the kind of development: cl. 62.
- An EDP must identify one or more “environmental features” which are likely to be negatively affected by development to which the EDP applies, and one or more ways in which that negative effect is likely to be caused by the development (but need not identify all possible impacts on a feature): cl. 63.
- An “environmental feature” is a protected site or a protected species: cl. 63(2).
- An environmental impact identified in an EDP may only affect nutrient neutrality, water quality, water resource or air quality: cl. 63(3).



Procedure for making EDPs

- Procedure for making EDPs provided for in clause 66.
- A draft is published for consultation.
- After consultation, the EDP to the SoS to be made.
- Relevant legal test for the SoS in making the EDP provided for in cl. 67:

“(3) The Secretary of State may make the EDP only if the Secretary of State considers that the EDP passes the overall improvement test.

(4) An EDP passes the overall improvement test if, by the EDP end date, the effect of the conservation measures will materially outweigh the negative effect of the EDP development on the conservation status of each identified environmental feature.



Legal challenges to an EDP

- Clause 73 of the Bill (as amended):
- (1) A court may entertain proceedings for questioning an EDP or anything done, or omitted to be done, by the Secretary of State or Natural England in the course of preparing an EDP only if—
 - (a) the proceedings are brought by a claim for judicial review, and
 - (b) the claim form is filed during the period of six weeks beginning with the day on which the EDP is published (see section 68).
- Note that time runs from date decision is made, even if the challenge is to something done or not done in the process of making the EPD.
- Similar provisions in relation to decisions not to make an EDP, an amendment to an EDP, not to make an amendment to an EDP, revoking an EDP, refusal to revoke EPD.



Potential challenges to the making of an EDP

Failures by the SoS and/or NE SoS to comply with the provisions of Part 3 concerning the making of an EPD?

e.g. failures to properly comply with consultation provisions, or failure to comply with requirements as to form and content of EDPs.

- Many procedural obligations on NE and the SoS – but no express statement in the Bill as to the legal consequences of failing to comply.
- Is the resulting SPD invalid in these circumstances? Not necessarily: see *A1 Properties (Sunderland) Ltd v Tudor Studios RTM Co Ltd* [2025] A.C. 1075



Potential challenges to the making of an EDP

Challenges to the SoS's judgement on the "the overall improvement test"?

- The SoS can only make the EPD if "by the EDP end date, the effect of the conservation measures will materially outweigh the negative effect of the EDP development on the conservation status of each identified environmental feature."
- Potential for challenges in how the SoS goes about making that judgement on conventional public law grounds - e.g. failure to have regard to a relevant consideration, error of law, etc).
- Beyond what is said in the definition of the "overall improvement test", no express statement in the Bill as to what factors must be taken into account when determining whether the test is met.



Potential challenges to the making of an EDP

Challenges to decisions not to amend or revoke an EPD?

- CI 73(4) concerns challenges of decisions not to amend an EPD.
- Similarly, cl. 73(6) concerns challenges of decisions not to revoke an EPD.
- Potential for requests to amend/revoke an EPD, and any refusal subsequently challenged by way of judicial review.



SEA and EIA Case Law Round-up



Jenny Wigley KC



Case Law Round-Up

- No SEA caselaw in the last year
- No seismic EIA caselaw this year, but still some highlights:
 - *R (oao Caffyn) v. Shropshire Council* [2025] EWHC 1497 (Admin) (intensive poultry unit)
 - *R (oao Glass Woodin) v. Oxford CC* [2025] EWHC 489 (Admin) (pedestrian / cycle bridge)
 - *R (oao Hilltop Experiences Ltd) v. Norfolk CC* [2025] EWHC 1447 (Admin) (household waste recycling centre)
 - *R (oao Boswell) v. SSESNZ* [2025] EWCA Civ 669 (gas-fired electricity generator with carbon capture storage)
 - *R (oao Hynot Limited) v. SSESNZ and ors* [2025] EWHC 2644 (Admin) (carbon capture storage)
 - *Natural England v. Cooper* [2025] EWCA Civ 15 (NE enforcement powers – agriculture EIA)



R (oao Caffyn) v. Shropshire Council **[2025] EWHC 1497 (Admin)**

- IPU - 200,000 chickens with annual total of 3,600 tonnes of manure containing 60,000kg of nitrogen
- EA had issued an environmental permit
- JR challenge to planning permission granted subject to condition that all manure be taken off site to an anaerobic digester
- no assessment of environmental effects of spreading resulting digestate on third party farmland



R (oao Caffyn) v. Shropshire Council [2025] EWHC 1497 (Admin)

- Planning permission quashed [32]:
- EIA ground based on Finch and lack of evaluative judgement as to 'Finch criteria'
- Failure to carry out a legally adequate assessment of the effect of the spreading of digestate on third party land.
- Council only considered spreading of manure, not the spreading of digestate which was a potential consequence of the required mitigation
- This was a potential indirect environmental effect that was not assessed
- No evaluative judgment by the Council as to Finch causation criterion (i.e whether potential effects on watercourses were 'likely indirect effects')
- Processing by an anaerobic digester does not 'break the chain of causation'
- Council also failed to evaluate the 'capability of meaningful assessment' issue



***R (oao Glass Woodin) v. Oxford CC* [2025] EWHC 489 (Admin)**

- Judicial review of planning permission for a pedestrian and cycle bridge
- LPA considered the bridge as a standalone project that did not require an EIA
- Claimant group challenged on basis of argument that bridge part of a wider project, namely planned wider development allocated in the local plan
- Claimant relied 'bridge to nowhere case', namely *Ashchurch Rural PC v. Tewkesbury BC* [2023] EWCA Civ 101



R (oao Glass Woodin) v. Oxford CC [2025] EWHC 489 (Admin) (2)

- Claim dismissed:
- No error of law as to bridge being a standalone project – scope for disagreement with the committee’s assessment but that did not render the assessment irrational.
- Scope to differentiate between according support for a project which serves wider purposes and the concept that the project was so closely connected with that wider development that they must be treated as a single project
- Reference in OR to fact that a future EIA would be carried out in relation to wider development was an observation and not essential to conclusion that no EIA required for current project (on basis that it was standalone)
- Distinction between officer’s practical advice that no realistic basis to reopen the screening decision question and the allegation of erroneous misleading advice that committee not lawfully entitled to revisit screening opinion



R (oao Hilltop Experiences Ltd) v. Norfolk CC [2025] EWHC 1447 (Admin)

- Judicial review brought by residential outdoor education facility to a planning permission granted for a household waste recycling centre in the AONB
- EIA ground was challenge to screening opinion for failure to consider effects of certain types of waste and risks to human health arising from proximity to Claimant
- Challenge dismissed (reliance on well known principles in *Kenyon* [2021] Env LR 8)
- Need for an EIA matter of planning judgement for the local authority subject only to well-known principles of public law error.
- Relatively small development adjacent to existing household waste recycling site of approximately the same size and no evidence of significant complaints or concerns
- Rational conclusion of LPA where no evidence of existing adjacent site causing harm to human health and where changes to composition of the waste were minimal



R (Boswell) v. SSESNZ [2025] EWCA Civ 669 (1)

- Challenge to a DCO for a gas-fired electricity generating station with post-combustion carbon capture and storage (“mid-merit plant”)
- SoS determined GHG emissions would amount to ‘significant adverse effect’
- Attributed “significant negative weight” in the planning balance
- But found consistent with trajectory towards net zero



R (Boswell) v. SSESNZ [2025] EWCA Civ 669 (2)

Grounds of Challenge – all rejected – raised following issues:

- Status and relevance of IEMA guidance (issued by Institute of Environmental Management and Assessment) (re: significant adverse impact makes no meaningful contribution to trajectory towards net zero)
- ‘flawed logic’ - alleged lack of logic in finding of GHG significant adverse impact and conclusion as to consistency with transition to net zero



***R (Boswell) v. SSESNZ* [2025] EWCA Civ 669**

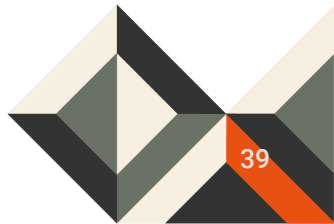
(3)

- Need for benchmark comparison in reasoned basis for judgment on significance of effects
- Reliance on National Policy Statement EN-1 in assessment of significance of GHG emissions for purposes of the Infrastructure Planning (EIA) Regulations 2017
- Relevance of *Finch* (scope of EIA v. judgement on significance)



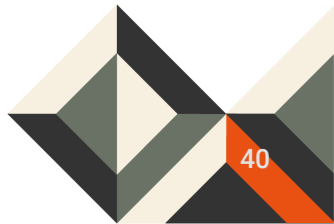
***R (Hynot Ltd) v. SSESNZ* [2025] EWHC 2644 (Admin) (1)**

- Carbon Capture and Storage under the Irish Sea
- Challenge to consent for HyNet Carbon dioxide transportation and storage project offshore - 3 geological gas storage sites in the Liverpool Bay Area
- Relationship to the “HyNet Cluster” – number of elements of infrastructure in the same area for carbon dioxide transport and storage, hydrogen production, transport and storage.
- Challenges to decisions of SoS and NSTA under the Offshore Oil and Gas Exploration, Production, Unloading and Storage (EIA) Assessment Regulations 2020.
- EIA grounds related to alleged failures to assess ‘major accidents and disasters’ ‘MAD’ effects, failure to carry out a lawful public consultation and failure to assess cumulative effects on climate.



***R (Hynot Ltd) v. SSESNZ* [2025] EWHC 2644 (Admin) (2)**

- Permission for JR refused on all grounds
- Scope of EIA is a matter of evaluative judgement for the Secretary of State subject only to *Wednesbury* review
- Court found compliance with consultation requirements but, in any event, that ground was ‘plainly out of time’, as SoS’s earlier notice as to further information / documents was a ‘final and fully formed decision at the time’ which should have been challenged at the time
- Challenge not close to forming an arguable ‘paper chase’ argument



***R (Hynot Ltd) v. SSESNZ* [2025] EWHC 2644 (Admin) (3)**

- As to cumulative effects on the climate:
- Rational of SoS not to assess effects of development cumulatively with the effects of the HyNet Hydrogen Production Plants as lack of causation between the effects of the latter and the effects of the development. And very little connection at all between the two
- Vast majority of CO2 was to be transported and stored will be derived from wide range of industrial sources across North Wales and North West of England. Nature and scale of those sources was, as yet, unknown and any kind of assessment would involve the sort of speculation or conjecture disapproved of in *Finch*.
- NB – interesting discussion of lack of ‘promptness’ and Court ‘saw force’ in the suggestion of a required ‘more demanding test of ‘arguability’ – i.e “reasonably good prospect of succeeding”. But normal arguability test not met anyway.



Natural England v. Cooper [2025] EWCA Civ 15

- NE applied for an injunction under s.37 Senior Courts Act 1981 to protect archaeological features on land leased from the National Trust
- Requirement to refrain from ploughing, harrowing, discing or rotavating eight fields
- Enforcement under Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006 (SI 2006/2522) (re an “uncultivated land project”)



***Natural England v. Cooper* [2025] EWCA Civ 15 (2)**

- Relied on its power under s.13(1) Natural Environment and Rural Communities Act 2006 to do anything “conducive or incidental to the discharge of its functions”
- High Court held NE did not have power nor standing to bring claim for an injunction
- Overturned by CA – NE did have standing and power on basis of its statutory responsibilities to secure compliance with EIA Regulations



Forthcoming legislation

- Provision for environmental outcome reports to replace EIA under ss 152 – 167 (Part 6) Levelling Up and Regeneration Act 2023
- Treasury promised a ‘roadmap to delivery’ in January 2025 (and see Working Paper published in December 2024)
- But still no draft regulations or consultation on EORs
- Meanwhile, Part 3 of the Planning and Infrastructure Bill sets out provision for Environmental Delivery Plans and Nature Restoration Levy (which are outcome focused and may be expected to dovetail with forthcoming EOR provisions).
- But, as per current version of PIB, EDPs will only apply to impacts affecting nutrient neutrality, water quality, water resource or air quality (Article 63(3))
- Many environmental effects currently subject to EIA will not be affected by EDPs



Clean energy issues: Solar and battery storage



Odette Chalaby



***Drayton Manor v Stratford* [2025] EWHC 775**

- Is new solar farm an “extension” meaning 50MW threshold exceeded?
- Adjacent land, same landholding
- Separate leases, separate DNO connections
- “a matter of impression”
- Most significant factor is interdependence in function of generating electricity from solar power



Ross v SoS [2025] EWHC 1183

- EN-3 §2.10.55 “*installed generation will decline over time in correlation with reduction in array efficiency, applicants may account for this by overplanting*”
- Can you overplant for other reasons:
 - actual output in field less than in laboratory conditions?
 - site maximisation at times where sunlight fluctuates?



Walsall MBC v SoS [2025] EWHC 2368

- Grey Belt ✓
- §155 (a) – undermine purposes taken together across plan area?
- No conflict with purpose (e) (regeneration of urban land) because no alternative sites
- ASA excluded sites with competing interest for higher value developments



Credit: UniEnergy Technologies



***Test Valley v Fiske* [2024] EWCA Civ 1541**

PROPOSAL: Installation of a ground mounted solar park to include ancillary equipment, inverters, substation, perimeter fencing, cctv cameras, access tracks and associated landscaping

LOCATION: Woodington Farm, Woodington Road, East Wellow

DATE REGISTERED: 17.11.2015

In pursuance of its powers under the above mentioned Act the Council, as local planning authority, hereby grants full planning permission for the above development in accordance with the approved plans listed below and subject also to due compliance with all conditions and notes specified hereunder:

Approved Plans:

Site Layout - Plan Ref no. H.0357_06-H - 20/01/17

Site Location Plan - Plan Ref no. H.0357_01-D - 21/10/15

Site Location Plan - Plan Ref no. H.0357_24-C - 21/10/15

[....]

Details - Plan Ref no. DIS000 - 21/10/15 [33kv substation drawing]



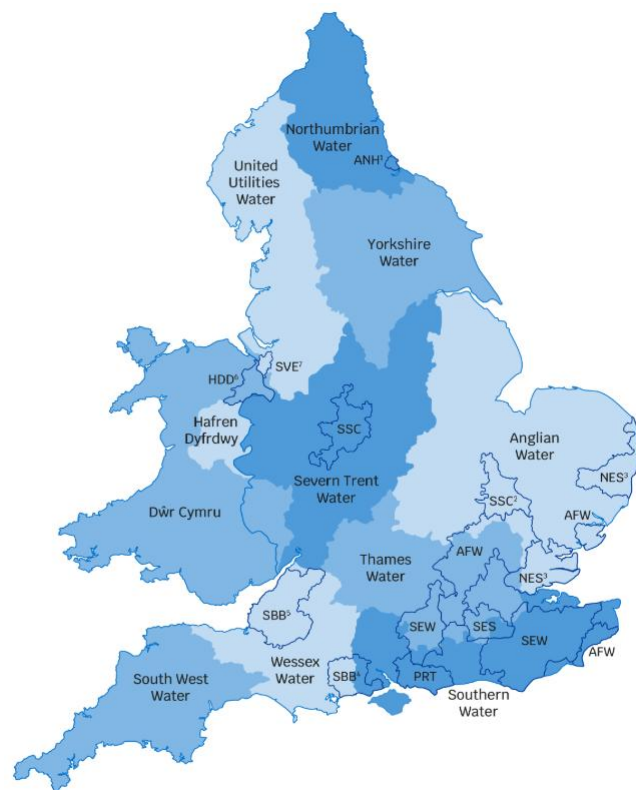
Clean water: legal and policy framework, proposed reforms and case law



Robert Walton KC



1989: Water Privatisation



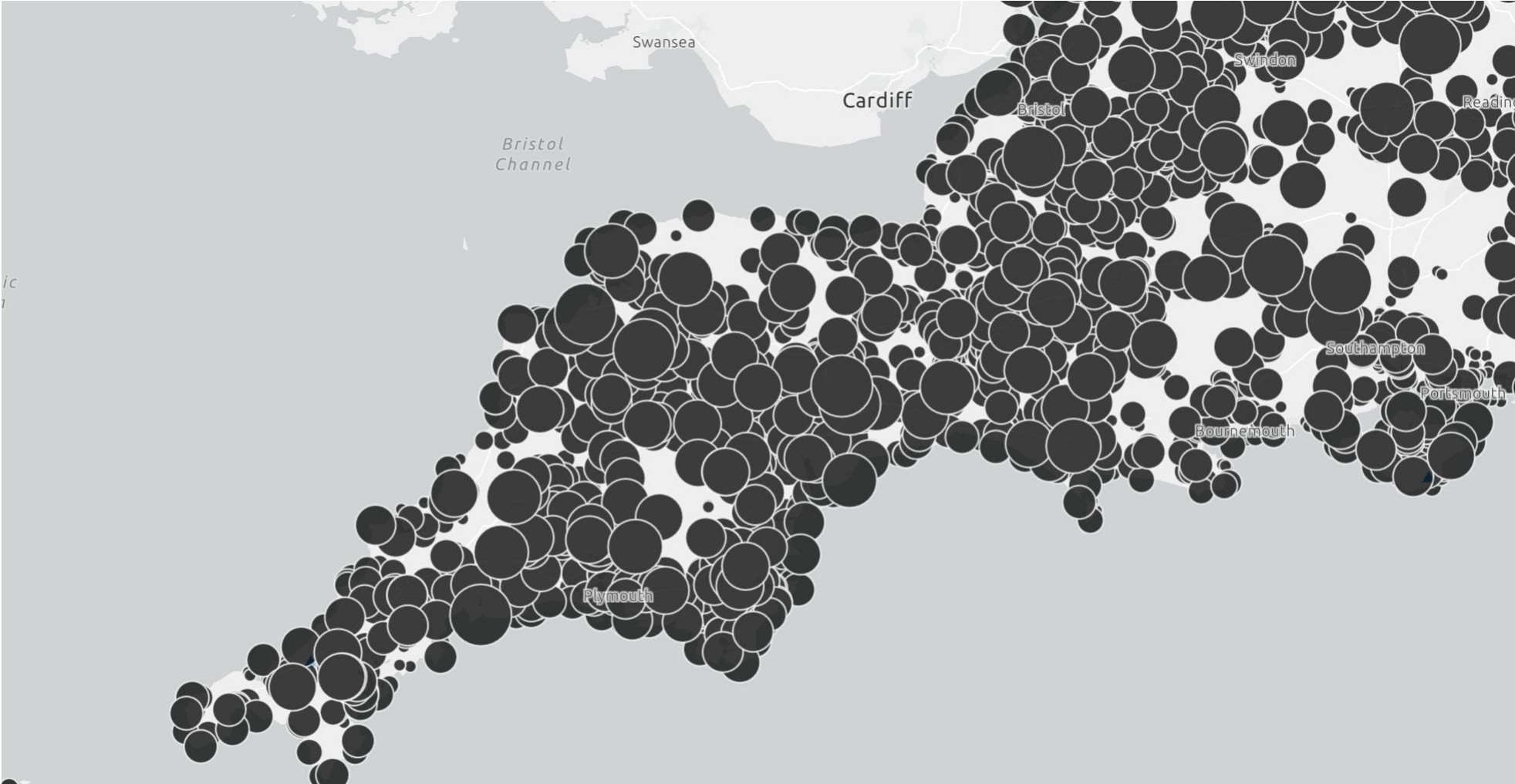
35 years on ...

Tourist influx turns Windermere green, researchers say

© 7 May 2024 · 838 Comments



2025



Storm overflows



How do storm overflows work?

Storm overflows are part of the design of the sewers and are regulated by the Environment Agency. They're used in areas where combined sewers were built to carry both wastewater and rainwater.

Storm overflows release excess water during periods of rain through outfalls into rivers and the sea. This is to prevent the sewer system from becoming overwhelmed, which can lead to flooding and excess water backing up into homes and businesses.

These storm water overflow releases are typically heavily diluted with rainwater. In most cases, they are consented releases, permitted by the Environment Agency.



Feargal Sharkey challenges Scottish Water CEO to drink glass of river water amid sewage dump row

It comes after **Scotland's publicly-owned water company** revealed overflow pipes discharged sewage into the environment more than 24,000 times in 2024. At least 30million cubic metres of wastewater spewed into the nation's waterways **last year** - enough to fill 12,000 Olympic swimming pools.



Labour Manifesto

Britain's coasts, rivers, and lakes are being polluted by illegal sewage dumping. Labour will put failing water companies under special measures to clean up our water

Clean water

Britain's coasts, rivers, and lakes are being polluted by illegal sewage dumping. The Conservatives have turned a blind eye and weakened rather than strengthened regulation, with serious damage being done to our countryside, our tourism industry, and people's health.

Labour will put failing water companies under special measures to clean up our water. We will give regulators new powers to block the payment of bonuses to executives who pollute our waterways and bring criminal charges against

persistent law breakers. We will impose automatic and severe fines for wrongdoing and ensure independent monitoring of every outlet.



Water (Special Measures) Act 2025

Royal Assent 24th February 2025

- blocking bonuses for executives who pollute our waterways
- bringing criminal charges against persistent law breakers
- enabling automatic and severe penalties for wrongdoing
- and ensuring monitoring of every sewage outlet



Bonus Blocking

“35B Rules about remuneration and governance

- (1) The Authority may issue rules about the arrangements made by relevant undertakers for—
 - (a) the remuneration of their directors and other persons, and
 - (b) their governance.
- (2) The Authority must exercise its power under subsection (1) to issue rules which achieve the following effects—
 - (a) prohibiting a relevant undertaker from giving to persons holding senior roles performance-related pay in respect of any financial year in which the undertaker has failed to meet specified standards;
 - (b) requiring a relevant undertaker—
 - (i) to appoint persons to hold senior roles only if they meet specified standards as to fitness and propriety or in respect of other matters, and
 - (ii) to prevent persons from continuing to hold senior roles if they fail to meet such standards;
 - (c) requiring a relevant undertaker to have arrangements in place for involving consumers in decisions of the undertaker that are likely to have a material impact on consumer matters.
- (3) Rules made for the purposes of imposing the prohibition mentioned in subsection (2)(a) (“the pay prohibition”)—
 - (a) must include standards that relate to—
 - (i) consumer matters,
 - (ii) the environment,
 - (iii) the financial resilience of undertakers, and
 - (iv) the criminal liability of undertakers;



Performance related executive pay prohibition rule

Prohibition of performance-related executive pay

6. Subject to the exceptions (set out in paragraphs 7 and 8), an undertaker must prohibit the payment of performance-related executive pay to a Director based on performance in a PRP Year if the undertaker:
 - a) has, within the PRP Year:
 - i. had a financial penalty imposed on it by Ofwat under section 22A of the Act for breach of section 37 and/or section 94 of the Act, or Ofwat has stated it would have imposed such a financial penalty but for Undertakings provided under section 19 of the Act; or
 - ii. been found by Ofwat to have failed to comply with any Enforcement Order issued by Ofwat under section 18 of the Act, or Undertaking provided under section 19 of the Act, linked to such a breach
("Consumer Matters Standard"); or
 - b) has:
 - i. been given a 1 star rating as reported by the Environment Agency or Natural Resources Wales in its Environmental Performance Assessment (EPA) for the calendar year finishing in the PRP Year; or
 - ii. had one or more category 1 pollution incidents recorded in the EPA for the calendar year finishing in the PRP Year
("Environment Standard"); or
 - c) has, within the PRP Year:
 - i. been found by Ofwat to have breached its licence (Condition P) by failing to ensure that it or any Associated Company which issues corporate debt on its behalf maintains, at all times, two Issuer Credit Ratings which are Investment Grade Ratings from two different Credit Rating Agencies, other than where Ofwat has provided written agreement for the it to maintain only one Issuer Credit Rating which is an Investment Grade Rating; or
 - ii. been found by Ofwat to have failed to comply with any Enforcement Order issued by Ofwat under section 18 of the Act, or Undertaking provided under section 19 of the Act, linked to such a breach
("Financial Resilience Standard"); or
 - d) has, within the PRP Year, received a sentence, following a conviction for a criminal offence, within the PRP Year ("Criminal Liability Standard").



Water bosses' bonuses blocked over pollution issues



PA MEDIA

| Six water companies have been blocked paying bosses' bonuses by industry regulator Ofwat

5 November 2025

Six water companies have been blocked from paying bonuses to bosses over serious pollution incidents and other performance issues.

More than £4m of potential bonuses were banned under new rules on performance-related executive pay, according to regulator Ofwat.



Impeding investigations

The Act introduces provisions that:

enable the courts to include imprisonment as a sanction in cases where the regulators' investigations have been obstructed

enable this offence to be heard in the Crown Court

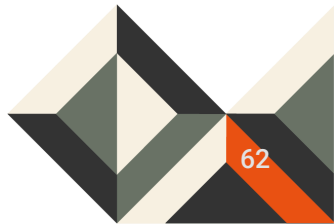
enable executives and directors to be prosecuted for this offence, where it is committed with their consent or connivance, or is attributable to their neglect



Lowering standard of proof

7 Civil penalties: modification of standard of proof

- (1) This section is about the powers to provide for fixed monetary penalties or variable monetary penalties conferred by sections 36 and 62 of the Regulatory Enforcement and Sanctions Act 2008 (“the 2008 Act”).
- (2) In relation to an offence within subsection (3) that is committed by a water company, the powers may be exercised as if “on the balance of probabilities” appeared instead of “beyond reasonable doubt” in sections 39(2) and 42(2) of the 2008 Act.
- (3) The offences are those under—
 - (a) any of the following provisions of the Water Resources Act 1991—
 - (i) section 24(4) (unlicensed abstraction or related works or contravening abstraction licence);
 - (ii) section 25(2) (unlicensed impounding works or contravening impounding licence);
 - (iii) section 25C(1) (contravening abstraction or impounding enforcement notice);
 - (iv) section 80 (contravening drought order or permit);
 - (v) section 201(3) (contravening water resources information notice);
 - (b) regulations under section 2 of the Pollution Prevention and Control Act 1999 (regulation of polluting activities etc);
 - (c) regulations under section 61 of the Water Act 2014 (regulation of water resources etc).



Monitoring of every sewage outlet

- (1) The [Water Industry Act 1991](#) is amended as follows.
- (2) In [Part 4](#) (sewerage services), after [Chapter 4](#) (storm overflows) insert—

“CHAPTER 5

EMERGENCY OVERFLOWS

141F Reporting on discharge from emergency overflows

- (1) Where there is a discharge from an emergency overflow of a sewerage undertaker, the undertaker must publish the following information—
 - (a) that there has been a discharge from the emergency overflow;
 - (b) the location of the emergency overflow;
 - (c) when the discharge began;
 - (d) when the discharge ended.
- (2) The information referred to in subsection (1)(a) to (c) must be published within an hour of the discharge beginning; and that referred to in subsection (1)(d) within an hour of it ending.
- (3) The information must—
 - (a) be in a form which allows the public readily to understand it, and
 - (b) be published in a way which makes it readily accessible to the public.
- (4) The duty of a sewerage undertaker under this section is enforceable under section 18 by—
 - (a) the Minister, or
 - (b) the Authority, with the consent of or in accordance with a general authorisation given by the Minister.
- (5) The Minister may by regulations made by statutory instrument make provision for exceptions from the duty under this section (for example, by reference to descriptions of emergency overflows, frequency of discharge or the level of risk to water quality).



Pollution incident reduction plans

After section 205 of the [Water Industry Act 1991](#) insert—

205A Duty to prepare and publish plans

- (1) Each relevant undertaker must, before 1 April in each calendar year, prepare and publish a pollution incident reduction plan.
- (2) A pollution incident reduction plan is a plan for how the undertaker intends to reduce the occurrence of pollution incidents that are attributable to its system.
- (3) For the purposes of this section, references to pollution incidents that are attributable to the system of an undertaker—
 - (a) are references to discharges from any structure or apparatus comprised in that system of any content which may be harmful to health or the quality of the environment, but
 - (b) do not include references to discharges of treated effluent in accordance with an environmental permit (including any conditions to which it is subject).
- (4) A pollution incident reduction plan must address in particular—
 - (a) the frequency with which pollution incidents have occurred during the preceding calendar year,
 - (b) the seriousness of those incidents and their causes,
 - (c) the steps the undertaker has taken to maintain any structure or apparatus comprised in its system which has been the cause of any such incidents,
 - (d) the measures the undertaker intends to take or continue for the purpose of reducing the occurrence of pollution incidents,
 - (e) the impact that the undertaker considers the measures will have in furthering that purpose,
 - (f) the likely sequence and timing for implementing those measures, and
 - (g) any other matters specified by the Minister in directions.



Environment Agency continues to call for urgent action as water company performance declines

Water companies in England achieve only 19 stars out of 36 —the lowest since EPA began in 2011

6 Sector performance over the 2020-25 period

		2019-20 sector average ¹	2024-25 sector average ¹	Sector average change, 2019-20 to 2024-25 ²
Sewer collapses	per 1,000 km of sewer	9.78	6.29	36% ↓
Water quality compliance	score	3.21	2.11	34% ↓
Internal sewer flooding	per 10,000 sewer connections	2.56	1.83	29% ↓
Priority services register reach	percentage	2.0	12.8	11% ↑
Leakage (three-year average)	sector total megalitres per day	3,272.1	2,966.5	9% ↓
Mains repairs	per 1,000 km of main	136.7	128.9	6% ↓
Per capita consumption (three-year average)	litres per head per day	141.0	138.3	2% ↓
Unplanned outage	percentage	3.72	1.80	2% ↓
Treatment works compliance	percentage	98.65	98.81	0.2% ↑
Water supply interruptions	hr:min:sec	00:09:17	00:10:00	8% ↑
Customer satisfaction	Score	82.35 ³	74.74	9% ↓
Pollution incidents	per 10,000 km of sewer	36.29	45.91	27% ↑

The table compares the performance of companies before the 2020-25 period started (2019-20) to performance at the end of the 2020-25 period (2024-25) for 12 of the common performance commitments set at the 2019 price review.

We are pleased to see that for nine of the 12 performance commitments reported on in the WCPR there has been an improvement in the sector average over the 2020-25 period. The biggest improvements have been for sewer collapses (36%), internal sewer flooding (29%), and drinking water quality compliance (34%).

However, disappointingly there has been a deterioration in performance across the period for three of the performance commitments. Pollution incidents has seen the biggest deterioration, with the number of incidents per 10,000 km of sewer being 27% higher at the end of the 2020-25 period than at the beginning. Water supply interruptions and customer satisfaction have also seen some deterioration (8% and 9% respectively).

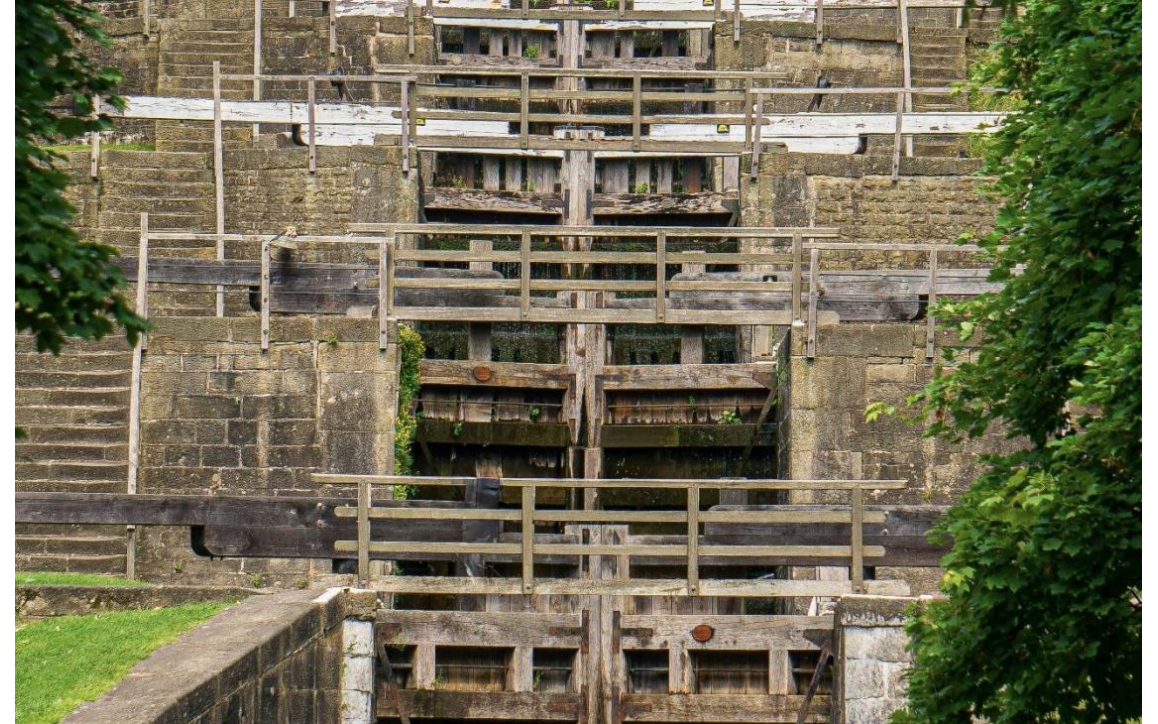
We look at these performance commitments in more detail and show



Independent Water Commission (the Cunliffe Review): Final Report 21st July 2025

The Independent Water Commission has undertaken the most comprehensive review of the water sector since privatisation. Its aim is to provide recommendations for a fundamental 'reset' of the water sector. A reset is needed to restore public confidence in the sector and its regulation, to attract the investment needed to clean up the waterways of England and Wales, and to establish a framework that will meet the water demands of the future.

A successful reset of the water sector will have significant and long-term benefits, touching all sectors of society. To realise these benefits, we need to steer the water system to a future state that fundamentally differs from the status quo.



7 themes:

the 'strategic direction' of the water system; planning; legislative framework; regulator reform; regulation reform; company structures, ownership, governance and management; and infrastructure and asset health.

88 recommendations:

35 requiring primary legislation



Government response: Steve Reed

It is clear the water industry is broken.

Our rivers, lakes and seas are polluted with record levels of sewage.

Water pipes have been left to crumble into disrepair.

Soaring water bills are straining family finances.

There are hosepipe bans across the country right now because not a single new reservoir has been built in over 30 years,

The lack of water infrastructure is holding back economic growth.

Water companies have been allowed to profit at the expense of the British people when they should have been investing to fix our broken water pipes.

A broken regulatory system let them get away with this.

Failing customers, investors and the environment.

The public expressed their fury in last year's General Election, and they voted for change. That change will now come.



First, we will establish a new statutory water ombudsman - a single, free service to help customers resolve complaints such as incorrect bills, leaking pipes or water supply failures.

The new ombudsman will have the legal powers to protect customers and will bring the water dispute resolution process in line with other utilities like energy – it is part of the Government’s ambition to put customers at the heart of water regulation.

Second, we will end the era of water companies marking their own homework.

We will end operator self-monitoring and transition to Open Monitoring to increase transparency and help restore public trust.

Water companies are already required to publish data on some sewage spills within one hour. We will roll out real-time monitoring across the wastewater system. All this data will be made publicly available online.

This will ensure both the regulator - and the public – have the power to hold water companies fully accountable.

Third, we commit to including a regional element within the new regulator to ensure greater local involvement in water planning. By moving to a catchment-based model for water system planning, we can tackle all sources of pollution entering waterways so they can be cleaned up more effectively and more quickly.



Summary

- Very widespread public dissatisfaction
- Independent Commission recommending very fundamental overhaul of every aspect of system
- Government commitment to reform
- (Excluding nationalisation)



Case law

Manchester Ship Canal Co Ltd v United Utilities Water

[2024] UKSC 22

The [Water Industry Act 1991](#) did not prevent the owner of a watercourse from bringing claims in trespass and nuisance against a sewerage undertaker who had made unauthorised discharges of untreated effluent into the watercourse, even if the discharges were not the result of negligence or deliberate misconduct.



***R (Saferwaters) v SSEFRA* [2025] EWHC 1885**
23rd July 2025

Challenge to SS's decision to authorise publication of the Water Resources Management Plans of Thames Water and Affinity Water without ordering a public inquiry or a hearing under regulation 5(1) of the WRMP Regulations 2007

Grounds: (i): decision procedurally unfair; (ii) irrational.

RELIEF SOUGHT INCLUDED ORDER THAT INQUIRY HELD

Rejected: rejection based on close analysis of the facts.



Portsmouth Local Plan

Portsmouth City Council is in the course of preparing its new Local Plan.

Inter alia, the Plan proposes housing in the vicinity of the Portsmouth Harbour Special Protection Area (“SPA”) and Ramsar site.

To support the plan preparation process, the City Council commissioned a Habitats Regulations Assessment (“HRA”) of the draft Local Plan which concluded that Policy PLP3, a strategic allocation at Tipner West and Horsea Island East in the Pre-Submission Local Plan, was likely to have adverse effects on the integrity of protected habitats. However, the HRA also concluded that there were imperative reasons of overriding public interest (“IROPI”) to adopt the draft Local Plan with Policy PLP3 intact, notwithstanding those adverse effects.

Council applied to SS for IROPI Opinion under regulation 107 of the Habitats Regulations: Opinion issued a day before plan due for submission for EIP; withdrew following PAPL; second Opinion issued nearly three months later, also withdrawn following PAPL.



Crest Nicholson Operations Ltd v SSHCLG

[2025] EWHC 2194 (Admin)

22nd August 2025

Challenge to Inspector's decision to impose condition preventing occupation until water neutrality demonstrated, in order to comply with regulations 63(5) and 70(3) of the Habitats Regulations.



Ground (i): Inspector had wrongly thought might ultimately be allowed under IROPI. Crest argued that couldn't happen, as there were alternatives, and you can't have IROPI where there are alternatives. Court upheld the Inspector's approach, matter of planning judgement.

Ground (ii): more interesting, concerning the interaction between the planning regime (i.e. need for the condition) and other statutory regimes, and how that impacts on assessment of necessary degree of certainty as to potential environmental impacts.



103. The proposition that a planning decision-maker is entitled to proceed on the basis that other regimes will operate effectively and properly is not a legal requirement to do so. It is a rebuttable presumption that a decision-maker may depart from, if the evidence justifies it. Whether or not to do so is an evaluative public law judgment for the decision-maker, subject only to challenge on *Wednesbury* grounds: see *An Taisce* at [48]; *Sizewell C* at [90]; *National Farmers Union* at [72] and [81]. Moreover, in *Finch*, at [106] – [108], the Supreme Court held that the existence of other regulatory controls does not remove the obligation on a planning authority to undertake a full EIA. It is likely that this principle applies, by analogy, to an appropriate assessment under the Habitats Regulations.



107. The Inspector properly explored the uncertainty in the evidence base and its consequences before concluding that it could not be ascertained with reasonable certainty that the proposal will not adversely affect the integrity of the Arun Valley sites (IR/10.90). No public law error is disclosed in the carefully reasoned conclusions by the Inspector and the First Defendant that, in their judgment, reliance upon other

regulatory regimes lacked the necessary degree of certainty to reach the high standards required of the Habitats Regulations. For example:

“10.68 In these circumstances the Secretary of State is being asked to do little more than rely on the unspecified future action of parties fulfilling responsibilities under the Habitats Regulations under other regulatory regimes, including the assumption that any necessary favourable HRA must come forward. The Secretary of State is entitled to assume that other regimes will operate effectively. However, without more detail of what will happen and when, in this case it does not provide evidence of reasonable certainty that can be relied upon to confirm that no adverse effects on the integrity of the Arun Valley Sites will result from the proposal.”



R (Wildfish) v Buckinghamshire Council

Case heard 14 – 16 October

Challenge to RMA. Condition imposed on OPP required RMA to include foul water drainage scheme. Issues concerned determination of that application where sewers faced capacity issues.



Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the Q&A section, which can be found along the top or bottom of your screen.



Thank you

180 Fleet Street
London
EC4A 2HG

clerks@landmarkchambers.co.uk
www.landmarkchambers.co.uk
+44 (0)20 7430 1221

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 Landmark.Chambers
 Landmark Chambers

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