Environmental Law Monthly

ENVIRONMENTAL JUSTICE

R (oao Dowley) v Secretary of State for Communities and Local Government [2016] EWHC 2618 (Admin)

S 53 Planning Act 2016, Human Rights Act, Aarhus Convention and costs caps

In this case, Mrs Justice Patterson considered a challenge to the Secretary of State's authorisation for a nuclear power company to enter onto private land under s53 of the Planning Act 2008 for site investigations prior to the construction of Sizewell C.

The investigations would include surveys and intrusive works such as drilling boreholes and trenches over 75 acres of land on the Theberton Estate.

The Claimant - the owner of the estate - feared that she would not be compensated for some of her losses including disruption to a game shoot, crop management and subsidies.

She argued that the secretary of state had made its decision without taking these losses into account

Section 53 (7) – compensation regime

Section 53(7) of the Act covers situations where authorisation is given for such works:

7) Where any damage is caused to land or chattels—

(a) in the exercise of a right of entry conferred under subsection (1), or

(b) in the making of any survey for the purpose of which any such right of entry has been conferred,

compensation may be recovered by any person suffering the damage from the person exercising the right of entry.

(8) Any question of disputed compensation under subsection (7) must be referred to and determined by the Upper Tribunal."

The problem for the Claimant was that the wording does not provide certainty that all her losses would be covered. The Secretary of State countered that he did not need to specify the scope of the compensation at the decision making stage, as s53(7) allowed the landowner to enter

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into a separate process of claiming for compensation for "damage caused to lands or chattels" through a claim to the Upper Tribunal.

In a twist to the usual circumstances in which human rights are invoked in litigation, the Defendant (Secretary of State) argued that even if s53(7) did not, on an ordinary interpretation, include compensation for all of the Claimant's losses such as subsidies, the legislation could be read in terms of the Human Rights Act s3 and her Convention rights under the ECHR.

Dismissing the claim, Patterson J agreed with the Secretary of State that the question of compensation could be left to the tribunal. She concluded that as there was a statutory process for compensation, the Secretary of State did not need to detail which losses he thought would be compensated under s53(7) when giving authorisation for the investigations.

Aarhus Convention

The second main issue in this case related to costs protection. Even though it took up a only few of the final paragraphs of Patterson J's judgment, it is of some significance.

The Claimant argued that her case was an "Aarhus" environmental claim subject to the provisions of 45.41–43 of the Civil Procedure Rules (CPR) which provide a costs cap to limit the liabilities in environmental judicial reviews for Claimants to £5,000 (for an individual) and £10,000 (for an organisation or group) and £35,000 for a Defendant.

These provisions of the CPR reflect changes made following infraction proceedings against the UK for non-compliance with its obligations under the Convention as incorporated into European Environmental Law.

Article 9(3) of the Aarhus Convention applies to provide access to justice for members of the public to challenge "acts or omissions by … public authorities which contravene provisions of national law relating to the environment." Article 9(4) requires that access to justice should not be "prohibitively expensive"

As reported here in the December 2014 edition of ELM, in *The Secretary of State for Communities and Local Government v Venn* [2015] 1 WLR 2328, Lord Justice Sullivan explained the breadth of what is meant by an "environmental claim" for the purposes of the Convention in his consideration of a statutory appeal from a decision by a planning inspector to grant permission for a residential development. There, Sullivan LJ commented, in relation to what might be construed as environmental, that,

"National legislation may address the issue of environmental protection in different ways. The UK has a sophisticated Town and Country Planning system, and parliament has chosen to implement much of the UK's environmental protection through that system. . ."[para 15]

In other words, environmental matters and environmental information are to be given a broad meaning where, for instance, a challenge is made based within the thresholds of planning law.

However, at an earlier stage in the Claim, Mr Justice Cranston decided that this claim was not an Aarhus Claim and that it therefore did not benefit from the default cap under the CPR.

Before Patterson J, the Claimant argued that the case involved law relating to the environment and was therefore an Aarhus Claim for the purposes of the CPR in two clear respects. Firstly, the Secretary of State's authorisation affected the Claimant's land use, including agriculture and the commercial grouse shoot. It would also have an adverse effect on the land per se.

The, Defendant, however submitted that this was a challenge about compensation for access to land and was not a decision relating to environmental law; nor did it benefit the environment.

In the present case, Patterson J followed Sullivan LJ and – it is arguable – broadened the coverage of the principle that he had established in *Venn*. The surveys would have "*a temporary but significant impact*" on the land of the Estate and "*the decision relates to environmental law on a much larger level. It is part of the planning consent process for a project with major environmental implications.*"

And such claims should not be solely for the benefit of environmental groups:

> *If the decision were under challenge by an environmental amenity group arguing, for example, that the surveys would affect their management, or that it ought to have been consulted, it would unarguably have been an environmental claim. It is submitted that the position should be no different because the claim is brought by landowners. . . .*
>
> *The execution of such surveys, in my judgment, relates to the environment; especially when that is given a broad meaning.*

However, she sought to distinguish claims which are not environmental under s53 where for instance there was a claim "*against an award or the principle of compensation under section 53(7) or 53(8)".* But that was not the case here.

She concluded: "*whilst compensation matters have featured large and may be the ultimate interest of the Claimant, in terms of this claim, which is to the validity of the authorisation, in my judgment, Aarhus protection applies.*"

Comment

The judgment confirms that the Secretary of State, in authorising such development, may leave the detail of compensation to a later date and process.

However, more importantly, Mrs Justice Patterson's judgment confirms that the definition of what constitutes an Aarhus claim has widened. The uniqueness of her reasoning is that the definition is not solely based on the grounds of challenge in the judicial review (i.e. whether the legal arguments relate to the environment); it is also determined on the basis of the subject matter of the challenge (e.g. land).

That may not be the end of the story: the Government has indicated its intention to introduce a subjective/ means test element to granting protective costs caps. CPR 45.41–43, which usually provides some certainty as to whether protection is available, is likely to be amended. Additionally, with the expected divorce from Europe around the corner, the Aarhus Convention which partly depends for its effect in the UK on its implementation in European Legislation, may well lose its purchase on domestic environmental law.

Justin Neal, Aaron & Partners LLP

Peter Higham v Information Commissioner and another (EA/2015/0078)

Opinion of Advocate General in Case C-60/15 P Saint-Gobain Glass Deutschland GmbH v European Commission

Two recent cases on information access and confidentiality

As discussed in previous issues of ELM, there are often tensions between the right to know and commercial confidentiality.

For instance, under Regulation 5 of the Environmental Information Regulations 2004 – which implement EU Directive 2003/4/CE on access to Environmental Information - there is an obligation to disclose environmental information on request. However, that obligation is subject to the exceptions to the rule under regulation 12. Regulation 12 includes a list of circumstances including commercial confidentiality where the public authority may refuse to disclose information.

But Regulation 12(1)(b) in turn moderates the commercial confidentiality exception because a public authority may only refuse disclosure if "in all the circumstances of the case, the public interest in maintaining the exception outweighs the public interest in disclosing the information."

The appellant in this case had requested the aggregated financial data from Cornwall Council relating to proposals for wind turbine scheme. The council refused the request under the exemption at 12(5)(e) citing commercial confidentiality. The Information Commissioner agreed, the decision was appealed to the First Tier Tribunal (FTT) and then appealed to the Upper Tribunal which remitted the case to the FTT.

The FTT then provided its ruling. The test to be applied was "whether the harm which the Information Commissioner and the Council contend for is more likely than not to occur if we order disclosure. . ." Although there would be some limited harm to the council's negotiating position in releasing information relating to financial projections for the scheme, the information should be released because of the public interest factors.

The council had argued earlier in the process that it did not have the aggregated information only separate data so it did not "hold" such information. The FTT repeated the earlier finding by the Upper Tribunal that even where no aggregate information existed, it can still be subject to disclosure requirements: "In general, information which can be made available by a process of simple addition of figures already compiled and recorded would appear to be information 'held' by a public authority."

In *Saint-Gobain Glass Deutschland GmbH v European Commission* the company Saint-Gobbain appealed an earlier ruling of the General Court of the European Union that supported the European Commission's refusal of an information request relating to documents sent to the Commission by the German Government on the allocation of greenhouse gas emission allowances. The Commission had argued that the refusal was on the grounds that the request would "adversely affect the confidentiality of the proceedings of public authorities."

The Advocate General – in his advisory role to the Court – suggested in his Opinion that such exemptions should be read narrowly and went on to recommend the court should set aside the judgement of the lower court.

Comment

Both the decision of the FTT (in the context of domestic law relating to confidentiality exemptions) and the opinion of the Advocate General in the European Court of Justice are a reminder of the presumption which is derived from the Aarhus Convention that environmental information should be made available to the public including companies and that institutions of the member states as well as the Union itself are subject to such requests. Exemptions must be read narrowly – particularly where there is a public interest in disclosure.

However, given that the source of the Regulations lies in the European Directive and the Arhuus Convention – the post Brexit situation may be different from the present circumstances. It is difficult to predict whether requesters will be able to rely on such rights once the split with Europe has occurred.

Justin Neal, Aaron & Partners LLP

Greenpeace and Hinckley Point

Order of the General Court of 26 September 2016 — Greenpeace Energy and Others v Commission (Case T-382/15)1

(Action for annulment — State aid — Nuclear energy — Aid in support of Hinkley Point C nuclear power station — Contract for difference, agreement of the Secretary of State and credit guarantee — Decision declaring the aid to be compatible with the internal market — Absence of any significant effect on a competitive position — Lack of individual concern — Inadmissibility)

Parties

Applicants: Greenpeace Energy eG (Hamburg, Germany) and the nine other applicants whose names are set out in the annex to the order (represented by: D. Fouquet and J. Nysten, lawyers)

Defendant: European Commission (represented by: É. Gippini Fournier, T. Maxian Rusche and P. Němečková, acting as Agents)

Re:

Application under Article 263 TFEU for the annulment of Decision (EU) 2015/658 of 8 October 2014 on the aid measure SA.34947 (2013/C) (ex 2013/N) which the United Kingdom is planning to implement for support to the Hinkley Point C nuclear power station (OJ 2015 L 109, p. 44).

Operative part of the order

The Court orders as follows:

The action is dismissed as inadmissible.

There is no need to rule on the applications for leave to intervene submitted by NNB Generation Company Limited, the Slovak Republic, Hungary, the United Kingdom of Great Britain and Northern Ireland, the French Republic, the Czech Republic and the Republic of Poland.

1 OJ C 337, 12.10.2015.

Greenpeace Energy eG and the other applicants whose names are set out in the annex shall bear their own costs and pay those incurred by the European Commission, with the exception of the costs relating to the applications for leave to intervene.

Greenpeace Energy and the other applicants whose names are set out in the annex, the Commission, NNB Generation Company Limited, the Slovak Republic, Hungary, the United Kingdom of Great Britain and Northern Ireland, the French Republic, the Czech Republic and the Republic of Poland shall bear their own respective costs relating to the applications for leave to intervene.

NEWS

Natural Resources Wales - State of Natural Resources Report

Natural Resources Wales (NRW) published its State of Natural Resources Report (SoNaRR) in October. This document has been prepared under s8 of the Environment (Wales) Act 2016 – the last of a suite of new statutes including the Planning (Wales) Act 2015 and the Well-being of Future Generations (Wales) Act 2015). The key areas of the Environment Act include sustainable management of natural resources, climate change, charges for carrier bags, the collection and disposal of waste, provisions for shellfish fisheries, marine licensing and flood & Coastal Erosion Committee and land drainage

The cornerstone of the Act is section 6 which sets out the new biodiversity duty for each public authority to "seek to maintain and enhance biodiversity in the exercise of functions in relation to Wales, and in so doing promote the resilience of ecosystems, so far as consistent with the proper exercise of those functions."

Whereas the Natural Environment and Rural Communities Act 2006, s40(1), required a relevant authority to "have regard to . ..purpose of conserving biodiversity", the new positive duty goes further in imposing an obligation to "maintain and enhance" biodiversity.

Welsh Ministers must now publish a list of living organisms and habitats of principal importance – after consulting NRW and take all reasonable steps to maintain and enhance the living organisms and types of habitat included in the list and encourage others to take such steps. NRW must publish the SoNaRR and the Welsh Ministers then prepare, publish and implement National Natural Resources Policy for achieving sustainable management. NRW will also need to prepare and publish "Area Statements".

The report looks at the extent to which resources in Wales are sustainably managed the approach to building resilience. It also links the resilience of Welsh natural resources to the well-being of the people of Wales (Well-Being of Future Generations Act 2015). As the first report created under the Act, it is an extremely broad overview relying on existing evidence sources including the River Basin Management Plans (for the Water Framework Directive) and JNCC reports; but a common theme is the pressure from climate change

It is advertised as the "start of the journey" and presumably will provide a stronger basis in the future upon which to assess the achievement of future goals in sustainable management.

Justin Neal, Aaron & Partners LLP

UK must speed up Air Pollution Curbs

Readers may have spotted the news about the UK's air pollution problem and the recent court judgment on this. The High Court has ordered ministers to hasten their "flawed" efforts to curb air pollution. Mr Justice Garnham said "tainted" decisions by the environment department had led to delays in tackling the urgent problem of cutting nitrogen dioxide, a gas from diesel vehicles that has been linked with up to 23,500 deaths a year in the UK. Andrea Leadsom, environment secretary, should ensure the UK complies "by the soonest date possible" with EU air pollution limits originally due to have been met in 2010, the judge ruled on Wednesday.

Sadiq Khan, London's mayor, and others opposing a third runway at Heathrow seized on the decision to argue it raised "serious questions" about the legality of the airport expansion. Tim Farron, leader of the Liberal Democrats, said the ruling dealt a "huge blow" to the government's decision last week to build a third runway. The transport department said the government believed the new runway could be built without affecting the UK's compliance with air pollution rules, "with a suitable package of policy and mitigation measures".

Current government plans would allow higher pollution levels in many parts of the UK until 2020, or 2025 in the case of London, where dirty air has been blamed for 9,400 deaths a year.

The Environment Department said it accepted the high court judgment and "will now carefully consider this ruling, and our next steps, in detail". Nitrogen dioxide pollution from diesel vehicles has been linked with up to 23,500 deaths a year in the UK ClientEarth an environmental legal firm in London.

As a result of the firm's earlier action, the previous government of David Cameron came up with plans last December to ensure the air was legal in all 43 pollution zones across the UK, only five of which met EU limits at that time. The government proposed low-emission zones for Leeds, Southampton, Derby, Birmingham and Nottingham by 2020. Older buses, cabs and lorries are to pay an entry charge but not private diesel cars. However, Justice Garnham said there was clear evidence the government could have aimed for an earlier date than 2020, noting that Birmingham was planning such a zone for 2018 and Nottingham for 2019.

London already has plans for an ultra-low emissions zone for 2020 that Mr Khan has proposed bringing forward to 2019. Official correspondence produced during the high court case showed a transport department official had questioned the environment department's decision to aim for a 2020 compliance date, rather than an earlier one — a query Justice Garnham said was "entirely correct". The department should have been calculating what measures were needed to quickly meet the EU limits, he added, rather than "working backwards" from 2020. That year appeared to have been chosen because it was the earliest the EU would impose fines, and because costs could have been spread out over a longer period. "In my judgment that was a flaw in the department's approach which tainted the whole exercise," he wrote.

ClientEarth said that in his ruling, the judge, who listened to two days of argument at the High Court, questioned Defra's five year modelling; saying

it was "inconsistent" with taking measures to improve pollution "as soon as possible." Defra's planned 2020 compliance for some cities, and 2025 for London, had been chosen because that was the date when ministers thought they'd face European Commission fines, not which they considered "as soon as possible." The case is the second the government has lost on its failure to clean up air pollution in two years.

In April 2015, ClientEarth won a Supreme Court ruling against the government which ordered ministers to come up with a plan to bring air pollution down within legal limits as soon as possible. Those plans were so poor that ClientEarth took the government back to the High Court in a Judicial Review. In his judgment Mr Justice Garnham ruled that the government's 2015 Air Quality Plan failed to comply with the Supreme Court ruling or relevant EU Directives and said that the government had erred in law by fixing compliance dates based on over optimistic modelling of pollution levels. ClientEarth CEO James Thornton said: "I am pleased that the judge agrees with us that the government could and should be doing more to deal with air pollution and protecting people's health. That's why we went to court. The time for legal action is over. This is an urgent public health crisis over which the Prime Minister must take personal control. I challenge Theresa May to take immediate action now to deal with illegal levels of pollution and prevent tens of thousands of additional early deaths in the UK. The High Court has ruled that more urgent action must be taken. Britain is watching and waiting, Prime Minister."

During evidence, the court heard that Defra's original plans for a more extensive network of Clean Air Zones in more than a dozen UK cities had been watered down, on cost grounds, to 5 in addition to London. ClientEarth air quality lawyer Alan Andrews added: "We hope the new Government will finally get on with preparing a credible plan to resolve this issue once and for all. We look forward to working with Defra ministers on developing a new plan which makes a genuine attempt to achieve legal limits throughout the UK as soon as possible.

"We need a national network of clean air zones to be in place by 2018 in cities across the UK, not just in a handful of cities. The government also needs to stop these inaccurate Modelling forecasts. Future projections of compliance need to be based on what is really coming out of the exhausts of diesel cars when driving on the road, not just the results of discredited laboratory tests."

See the May 2015 issue of ELM for discussion of the earlier ClientEarth decision in ***R on the Application of Client Earth v Secretary of State for the Environment, Food and Rural Affairs***.

Heathrow

Few readers will have missed the Government's recent decision to proceed with the third runway at Heathrow. The first legal challenge was reported in the Evening Standard – see http://www.standard.co.uk/news/uk/heathrow-runway-first-legal-challenge-amid-accusations-of-bias-a3381926.html?utm_source=Concep%20Send&utm_medium=email&utm_campaign=Planning_newsletter_11/11/2016

Other challenges are likely to follow.

EU and Canada sign CETA Deal

EU and Canada sign CETA trade deal

At the end of October and after years of negotiation the EU and Canada signed their trade and investment protection agreement. The EU says: “CETA will not affect EU rules on food safety or the environment. As now, Canadian products will only be able to be imported to and sold in the EU if they fully respect our regulations. For example, CETA does not affect EU restrictions on beef containing growth hormones or GMOs. Nor will CETA restrict either the EU or Canada from passing new laws in areas of public interest such as the environment, and health and safety. CETA provides the basis for a future dialogue between the EU and Canada on policy developments. Both sides will share information about best practices. This does not affect our scope for developing new laws in response to the needs and priorities of European citizens.”

The EU Q&A on CETA are at http://ec.europa.eu/trade/policy/in-focus/ceta/questions-and-answers. CETA has not been popular with everyone. Greenpeace EU trade policy adviser Shira Stanton said: *“It will take a lot more than a symbolic handshake and a photo op to impose CETA on Europeans. The cat is out of the bag – Canadian prime minister Trudeau and European governments know that CETA has been seriously wounded now that its true purpose has come to light. This agreement will probably not survive the democratic and legal scrutiny of the ratification process over the coming months. It’s time for our governments to break rank with corporate lobbyists and redesign a trade policy that respects democracy and promotes the public interest.”*

GreenPeace further said “CETA – the EU-Canada agreement on investor rights, regulatory cooperation, and trade – will soon face a vote in the European Parliament and then ratification by the parliaments of all 28 EU countries. The legality of a controversial system that allows multinational corporations to sue states under CETA - known as the Investment Court System or ICS - will also be the subject of a ruling by the European Court of Justice, and by the German constitutional court. Failure to stand up to this legal scrutiny will cause the annulment of CETA. A legal analysis (see http://www.greenpeace.org/eu-unit/en/Publications/2016/Investor-protection-in-CETA/) commissioned by Greenpeace shows that ICS also fails to comply with the political demands of the European Parliament. CETA’s primary aim is not to eliminate trade tariff barriers, but to remove any obstacles to trade due to differences in laws and regulations between the EU and Canada. This will result in an assault on public protection measures, threatening the right for governments to regulate to safeguard public health, the environment or social rights, said Greenpeace.

An independent study http://www.ase.tufts.edu/gdae/policy_research/ceta_simulations.html found that CETA could cause the loss of 200,000 jobs across the EU, while the European Commission’s own assessment predicted a tiny impact on GDP: a 0.02 to 0.03 per cent long-term GDP increase for the EU, and a 0.18 to 0.36 per cent increase for Canada. **Note**: CETA spin unspun - a myth busting Q&A on the EU-Canada trade deal.

BREXIT

Post Brexit Environmental Laws

In October Andrea Leadsom confirmed that most EU environmental legislation will be retained post- Brexit but there remains uncertainty over a third of green regulations which she said “won’t be easy to transpose”. She appeared before the Environmental Audit Committee in Parliament in a public hearing on the topic. She said she remained “absolutely committed to a smooth transition”. She said “As far as possible, we will be bringing all EU legislation into UK law, and at first glance it appears that will be feasible to do between two-thirds and three-quarters of legislation. That’s not to say there is some ulterior motive; it’s merely to say that a good deal of it will be relatively straightforward to bring into UK law. There are roughly a quarter that cannot be brought immediately into law either because it requires technical attention or falls away, and that’s the bit we will be looking at to see what steps need to be taken.”

She remained firm that Brexit would “leave the environment in a better state than we found it”. She referred to recent action such as enhancing marine conservation zones and phasing out microbeads from cosmetics products as examples of successful leadership by the UK in these issues.

“In terms of continuity for businesses, whether they are farmers or environmental groups trying to actually work towards a particular goal in the UK, I think the certainty of the Great Repeal Bill will come as great comfort to them. The important point for certainty for business is that we make it clear is that nothing will change unless it has to on day one. And then, over a period of time, we will be able to repeal, amend, and strengthen laws at leisure.”

She refused to be drawn on which areas would be transferred into UK law following the Great Repeal Act in the environmental area. She said that air quality remains a “top priority” for Government, alongside progress surrounding water quality reforestation and flood defence.

She also said that frameworks for the two separate 25-year environment and food and farming plans will be launched “within the next few months,” but she was not prepared to provide an exact date for either. At the suggestion of the “madness” that the plans will be dealt with in isolation, Leadsom insisted that the establishment of two separate pathways was “absolutely the right thing to do”.

On food production Leadsom insisted that she wished to maintain a balance between the environmental outlook and food production. “I would like to see environmental goods being a focus,” she said. “But at the same time, food and farming is a very important economic sector, and we would like to see more innovation, more food production, more promotion of the Great British brand. But this must come in a way that advances and improves the environment. That would be the real sweet spot.”

PROSECUTIONS

Prosecution of Environmental offences: Update

A key element for the effective management of legal risk in the field of environmental law is to have a robust compliance programme in place. However issues can still arise which leave business and landowners open to the risk of prosecution or other enforcement action by regulators. This article explores some recent outcomes of prosecutions of environmental offences and considers one alternative to prosecution: enforcement undertakings.

Environmental offences

Prosecution for an environmental offence can have significant financial consequences, both directly in terms of having to pay a fine and prosecution costs and indirectly in terms of damage to the company's reputation and its future relationship with the regulator.The most serious cases bring the risk of imprisonment of company directors.

In our experience, the courts have begun to impose much heavier sanctions – no doubt driven by hardening attitudes to those causing environmental damage and, to a large degree, by the official Sentencing Guidelines for environmental offences published in July 2014. We discussed those guidelines, and the main case arising from them, in our September 2015 bulletin. As we explain in that bulletin, the guidelines provide ranges and "starting points" for fines based on the degree of culpability of the offender, the level of environmental damage caused and the size (turnover) of the commercial organisation concerned.

Some recent examples below demonstrate the courts serious attitude towards environmental offences:

- *A water company and its contractor has been fined a total of £933,000 following a conviction of polluting a waterway and ordered to pay the prosecutions costs. The offence occurred due to highly toxic chemicals being discharged into a brook which was a trout spawning ground which resulted in fish kill.*
- *A waste operator has been sentenced to 16 weeks' imprisonment for operating a waste facility without a permit.*
- *Another waste operator has been sentenced to seven and a half years imprisonment following conviction for breaching an environmental permitting condition, conspiracy to defraud and acting as a company director while disqualified. This is the longest term of imprisonment imposed for an environmental offence to date.*

It is open to the Environment Agency, as regulator, to make use of certain civil sanctions instead of prosecuting those guilty of environmental offences. We discuss one type of such sanction, the enforcement undertaking, in our Spring 2015 bulletin. An enforcement undertaking is a voluntary agreement made by the offender with the aim of remedying any environmental impact of the offence and other effects, such as financial impact on others, within agreed

timescales. Importantly,the undertaking must be offered by the offender and should be offered before the regulator decides to prosecute.

While the Environment Agency has been accepting enforcement undertakings for some types of offence for some time, it has only recently begun to accept undertakings for offences under the Environmental Permitting (England and Wales) Regulations 2010. The Environment Agency's recently published a list of civil sanctions it has used as an alternative to prosecution reveal two undertakings for environmental permitting offences, the terms of which included financial contributions and commitments to improve infrastructure and procedures to avoid a breach occurring again. The first undertaking accepted by the Environment Agency included a financial contribution of £8,500 to the West Country Rivers Trust and the second included a financial contribution of £12,000 split between the National Trust and the Marine Conservation Society. We are also working with a number of clients to agree appropriate undertakings with the Environment Agency.

Other civil penalties the Regulator could impose include a fixed monetary penalty (usually for minor offences), a restoration notice (requiring the offender to remedy any damage caused by their non compliance) or a stop notice (used to stop any damaging activity immediately).

Should you find that you are facing prosecution, or if you are at risk of being prosecuted for an environmental offence, our experienced team here at Freeths will be happy to assist. As a general rule, the earlier you get us involved, the more options we are likely to have available to us to help you manage the potential consequences for your business.

Penny Simpson, Freeths

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