



THE LAWYER
AWARDS 2018
LAW FIRM OF THE YEAR

Environmental Law Update

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Topics

- Recent Fines/Enforcement Undertakings:
 - a) Water Company Enforcement Undertakings;
 - b) Other Enforcement Undertakings; and
 - c) Prosecutions
- The Environment Bill – An update
- Nuisance – Lockdown warning



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Water Company Enforcement Undertakings

Severn Trent Water

- The largest undertaking agreed recently was by Severn Trent Water, which donated £306,509 to the Staffordshire Wildlife Trust.

Yorkshire Water

- Yorkshire Water donated £300,000 to the Yorkshire Wildlife Trust for sewage pollution to Leeds' Wyke Beck in July 2019.

Wessex Water

- Wessex Water contributed £175,000 to Moorlinch National Nature Reserve and £50,000 to Plymouth University for sewage pollution from its Moorlinch treatment works in Somerset in July 2018.

United Utilities

- United Utilities failed to comply with permit conditions at its Liverpool wastewater treatment plant in June 2018, leading to a £95,000 payout.

Thames Water

- Thames Water donated £200,000 to South East Rivers Trust for both operating without an environmental permit and in breach of one relating to sewage pollution of the Hale Bourne in Surrey and a failure at its Lightwater sewage treatment works.



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Other Enforcement Undertakings

Barclays Bank

- Barclays Bank made an unpermitted discharge of oil to Sunderland's Hendon Burn in November 2016, leading to a £100,000 payout.

Veolia Energy & Utility Services UK

- Veolia Energy & Utility Services UK, which operates energy centres for third parties, paid £45,000 to the Lancashire Wildlife Trust.

Albert Bartlett & Sons

- Potato grower Albert Bartlett & Sons polluted a Norfolk stream with sludge in September last year. It agreed to remediate the site, increase monitoring and pay £14,000 to the Norfolk Rivers Trust.

The Works Stores Limited

- UK high street discount retailer The Works Stores has made a financial contribution £35,868.12 to Warwickshire Wildlife Trust for waste packaging violations.



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Prosecutions (1)

Grays Waste Management Ltd and Eaden Homes Ltd

- Mold Crown Court has imposed fines totalling £5,125 and costs of £19,000 against Eaden Homes Ltd for allowing Grays Waste Management Ltd to dump waste on its land in Anglesey.
- Grays Waste deposited around 13,000 tons of the material at the land in Trearddur Bay between March and September 2016.



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Prosecutions (2)

Carr and Bircher Ltd

- Two former company directors of waste management company Carr and Bircher Ltd have been ordered to pay more than £22,000 and £19,000 in costs for not following a suitable waste testing regime and filling their landfill with unsuitable waste.
- Colin Carr and David Bircher admitted to breaching landfill permit regulations from October 2012 to March 2015. The pair were sentenced at Chelmsford Crown Court on 11 September. Carr and Bircher stepped down from their director positions in May 2015 which followed with the company entering administration in August 2017.
- Carr was fined £7,000 plus costs of £9,600, with 12 months to pay and six months' imprisonment in default. Meanwhile Bircher was fined £15,400 plus costs of £9,600 with 28 days to pay, and 12 months' imprisonment in default.



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Prosecutions (3)

Rhino Recycling Ltd

- The owner of a notorious waste firm has been told to pay back £179,000 of his unlawful profits, while avoiding imprisonment for concealing his assets. Barry Connally was the sole director of Rhino Recycling Ltd. He ran the waste treatment facility in Pershore without an environmental permit between March 2013 and December 2015.
- He acquired around £1m from his criminal activities, partly by avoiding expenditure of around £450,000 to bring the site up to lawful requirements and around £17,000 in fees to the Environment Agency. A year ago, Connally was handed a suspended jail sentence and was ordered to complete 160 hours' unpaid work, a judge finding that he had an 'arrogant approach to the regulatory regime'.
- Following an investigation into his financial affairs by the Environment Agency, Worcester Crown Court heard that he had attempted to conceal his identity as the controlling entity behind Rhino Recycling. Although the confiscation order is far less than what he made, the court was told that it represents all of his current assets.
- Connally also admitted to contempt of court. The elderly criminal had tried to dispose of some of his assets between September 2019 and July 2020, contrary to a court order, for which he received a four-month prison sentence on Thursday. However, it was suspended for 18 months.



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The Environment Bill – Where is it?

- The landmark Environment Bill would make significant changes to laws relating to air quality, water resources, waste management, nature improvement and chemicals, and sets out how a new green watchdog would enforce environmental rules.
- The Bill was introduced to the House of Commons and given its First Reading on Tuesday 15 October 2019. Following the General Election the Bill returned to parliament in January 2020 with new powers on plastic waste and a requirement for ministers to review and report on international green law.
- However the passage of the Bill was paused on Thursday 19 March due to the coronavirus outbreak.. It returned to Parliament on 3 November 2020. It was over 200 days since the Environment Bill was last seen.
- The Environment Bill stalled while other bills on immigration, trade, pensions and the Commonwealth Games have all leapfrogged it. The government has extended the timetable for the Environment Bill on three occasions, and the latest change pushed the deadline for detailed scrutiny in the House of Commons back to 1 December.



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The Environment Bill – 2020 Updates

Despite widespread skepticism about the original Environment Bill there are just two significant additions to the bill and none of the existing clauses have been removed or amended.

The revised bill includes new commitments to review international green laws

- The updated bill includes a new commitment to publish a two-yearly review of “significant developments in international legislation on the environment” that will then be factored into the Department for Environment, Food and Rural Affairs’ (DEFRA) Environmental Improvement Plan and environmental target setting process.

It gives new powers to ban plastic waste exports to developing countries

- The bill makes good on a Conservative election manifesto pledge to tackle plastic pollution abroad by allowing the government to ban or restrict plastic waste exports to countries that are not members of the Organisation for Economic Cooperation and Development (OECD).

DEFRA has insisted the UK will not be bound by future EU green rules.

- In a press release accompanying the bill, DEFRA echoed comments made by senior ministers that the UK will go beyond the EU’s level of ambition on the environment and that by freeing ourselves from future changes to EU law... we will be able to lead the way at home and abroad.



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The Environment Bill – Why we needed it back

- It is central to the government's environmental ambitions.
- The Brexit clock is ticking.
- UK global leadership ambitions rest on decisive domestic action.
- A green recovery needs legal certainty.
- Nature needs the bill and we need nature.



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Nuisance – Lockdown warning

With more people working from home we are seeing an increase in the level of local authority activity regarding nuisance. Especially noise nuisance coming from constructions sites.

Two types of control:

- Statutory Nuisance
- Control of Pollution Act 1974



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Statutory Nuisance

- Environmental Protection Act 1990
- Each statutory nuisance must either amount to a common law nuisance or be prejudicial to health
- Section 79(1)(a) – (h) of the EPA 1990 lists the following categories of matters which can amount to a statutory nuisance:
 - physical state of any premises (including land and most vessels);
 - smoke from premises;
 - fumes or gases (from private dwellings);
 - dust, steam, smell or other effluvia from industrial, trade or business premises;
 - any accumulation or deposit;
 - keeping of animals;
 - insects from industrial, trade and business premises;
 - artificial light from premises;
 - noise from premises (including vibration);
 - noise from a vehicle, machinery or equipment in the street; and
 - any other matter declared by any enactment to be a statutory nuisance (e.g. under the Public Health Act 1936).



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Statutory Nuisance: Offence and Penalties

- Where a local authority (LA) considers that an issue is unreasonably and substantially interfering with the use or enjoyment of a home or other premises they have a duty to serve an abatement notice.
- Criminal offence to contravene or fail to comply with any requirement or prohibition in an Abatement Notice without reasonable excuse.
- On summary conviction in the Magistrates' Court, the penalty for committing the offence on industrial, trade or business premises is an **unlimited fine !**



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Control of Noise on Construction Sites

- Sections 60 to 61 of the Control of Pollution Act 1974 (COPA) provide for the regulation of construction noise.
- Where it appears to a LA that such works are being, or are going to be, carried out on any premises, the LA may serve a “Section 60 Notice” imposing requirements as to the way in which the works are to be carried out.
- It is a **criminal offence to contravene any requirement of a Section 60 Notice without reasonable excuse !**
- A person who intends to carry out “Section 60 Works” may apply to the LA for prior consent to carry out the works – being a “Section 61 Consent”.
- Any person who knowingly carries out the works, or permits the works to be carried out, in contravention of any conditions attached to the Section 61 Consent is guilty of a criminal offence – with unlimited fines!



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Control of Noise on Construction Sites: Recent Case Example

- Construction company working on the Thames Tideway Tunnel Project (New sewer system for London). Issued with Section 61 Consents for two separate sites.

First site

- Section 61 Consent unilaterally varied by local authority to reduce hours within which activity could take place. Potential to derail the whole project timetable at significant costs.
- Variation was made due to noise nuisance at unsociable hours, being alleged by local residents.
- Discussions led to reinstatement of original Section 61 Consent with a memorandum of understanding to limit movement of large equipment.



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Control of Noise on Construction Sites: Recent Case Example

Second site

- Invited to an Interview Under Caution following allegations that:
 - Noise from site exceeding the dB limits as set out in the Section 61 Consent; and
 - Machine “on” time set out in the Section 61 Consent to reduce vibration effects being exceeded.
- Also received a Community Protection Notice Warning Letter (Pursuant to S43 of the ASB Crime and Policing Act 2014) regarding alleged personnel noise (including late night take away deliveries to site). Threat of prosecution, leading to a fine/works order/confiscation order if these behavioural noise issues were not dealt with.



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Any Questions?

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