

## ANNEX D – COURT CASE STUDIES

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## **Case Study 1: Pesticide leak into a river**

### **Alleged offence:**

That three defendants (an international freight forwarder, a specialist cleaning company and a local authority) allowed the unlawful release into a river quantities of the chemical TriButyl Tin Oxide, contravening s.85(1) of the Water Resources Act 1991. The release caused substantial, widespread pollution, affecting industrial, commercial, riparian and public users of the waters.

### **Verdict and sentence:**

All three defendants pleaded guilty under the strict liability regime, although the local authority maintained a not guilty plea until just before sentencing began.

The freight forwarder was fined £40,000 with £33,000 costs.  
The cleaning company was fined £40,000 with £33,000 costs.  
The local authority was fined £50,000 with £38,000 costs.

### **Sentencing remarks - notes:**

#### ***Fit with enforcement purposes***

The judge recognised the seriousness of the incident, but also that it was not a major ecological disaster on the scale of Milford Haven. He noted that the Howe case determined that it was not possible to lay down a tariff and that each case must be dealt with on its merits.

*Condemning moral wrong-doing* – there was little to choose between the defendants on basis of fault. They all failed to engage with and assess the problem. The minute balance of apportionment of criminal liability could not be considered because of the strict liability regime – there was no need to prove culpability. It would be wrong to sentence a strict liability offender on the basis of recklessness or neglect without the benefit of a jury, and there had been no admission of recklessness or gross negligence. The judge considered that the fact of conviction and reputation penalty would be the worst punishment.

*Remediation of damage* – the judge specifically excluded consideration of remediation costs as a matter for the civil courts. The Environment Agency claimed £150,000 investigation and £60,000 legal costs. The judge considered this, taking into account the fact that Environment Agency employees would be paid anyway and that some of the costs related to a report that was more about remediation than investigation.

*Restitution to communities* – not explicitly considered

*Remove economic gain* – not explicitly considered

### ***Mitigation***

*Culpability* – the court recognised that there had been no deliberate pollution or dumping, which would put the offence in a very different category. It also recognised timely guilty pleas and the record of the offenders. There were no specific aggravating factors in place apart from the local authority's late guilty plea which did feed through into sentence.

*Ability to pay* – there was substantial consideration of the freight transporter's turnover and size. The judge had acquired webpage information which differed from the firm's financial submission to court. But what mattered was that the freight transporter and cleaning company still had sufficient resources to pay any likely fine. The local authority did too, and was not immune from punishment. While it was noted that its budget is used for public good, this did not appear to make much difference to the fine.

## **Case Study 2: Sewage effluent discharge into controlled waters**

### **Alleged offence:**

That a water company caused sewage effluent to discharge into controlled waters, committing an offence under s85 of the Water Resources Act 1991. Over 8,000 fish were killed and the damage to the river's ecology was substantial.

### **Verdict and sentence:**

The water company pleaded guilty under the strict liability regime and was fined £50,000 with agreed costs of more than £8,000.

### **Sentencing remarks - notes:**

#### ***Fit with enforcement purposes***

*Condemning moral wrong-doing* – the judge gave emphasis to the offence being one of strict liability, and noted that it was difficult to assess culpability. He considered that the real underlying issue was the degree of priority that the company gave to environmental safety. Society expects a very high standard. The company in this case failed to meet that standard, and was running unacceptable environmental risks.

Aggravating features were that the time taken to resolve the problem looked to be far too long; inadequate steps were taken to stop the escape of sewage; and the company did not co-operate with the Environment Agency.

The defendant did have previous convictions – ten similar offences in the past year – but given the size of the company the judge considered it inevitable that there would be previous convictions.

*Remediation of damage* – not explicitly considered

*Remove economic gain* – not explicitly considered

*Restitution to communities* – not explicitly considered

#### ***Mitigation***

The sentence reflected some credit for pleading guilty at first available opportunity. The judge also recognised that the company does work to help the environment, but considered this largely irrelevant in this context.

*Culpability* – the court felt that the company's lack of co-operation was misguided rather than deliberately obstructing.

*Ability to pay* – not explicitly considered.

### **Case Study 3: Controlled waste treated and stored without a Waste Management Licence**

#### **Alleged offence:**

Three counts of treating, and three counts of storing controlled waste including bricks, rubble and plastic without a Waste Management Licence. The owner of the site repeatedly ignored Environment Agency demands and statutory notices to clean up the area as well as requests to acquire a licence.

#### **Verdict and sentence:**

The operator pleaded guilty and was fined £45,000 in total (£7,500 per charge) with more than £1,500 costs. [Possibility of appeal noted.]

#### **Sentencing remarks - notes:**

##### ***Fit with enforcement purposes***

*Condemning moral wrong-doing* – the magistrates indicated that a high community service sentence would be appropriate, but the probation service accepted the defendant's claim that the time he spent on his business coupled with personal circumstances meant that this was not suitable. Given the six charges and the aggravating factors (principally the operator's behaviour) the magistrates opted instead for a substantial fine.

*Remediation of damage* – the magistrates recognised that the operator had already cleaned up the damage.

*Remove economic gain* – not explicitly addressed

*Restitution to communities* – not explicitly addressed

##### ***Mitigation***

*Culpability* – the operator's culpable behaviour in dismissing and ignoring Environment Agency demands was clearly considered a substantial aggravating factor. His mitigating claim that he was distracted at the time by the death of his spouse and that day-to-day running of the site was delegated to someone else did not appear to affect the sentence.

*Ability to pay* – even though the defendant had requested a fine rather than a community sentence, he claimed that his means were limited and he would have to pay any fine through re-mortgaging his house. The magistrates appreciated his circumstances but were not minded to consider a lower fine or gradual payments.

## **Case Study 4: Operating a crusher without a permit**

### **Alleged offence:**

Three charges that a demolition company operated a crusher without a permit, an offence under the Pollution Prevention and Control Regulations 2000. Three charges that an individual director operated a crusher without a permit under the same regulations. His actions led to a dust cloud being caused in the local area.

### **Verdict and sentence:**

The company was fined £4,500 (£1,500 for each charge) plus £600 costs. The director was fined £450 (£150 for each charge) plus £100 costs.

### **Sentencing remarks - notes:**

#### ***Fit with enforcement purposes***

*Condemning moral wrong-doing* – the court heard that there had been an attempt to mislead investigators by presenting them with a permit that did not relate to the company in question.

*Remediation of damage* – the company addressed the dust problem as soon as it was pointed out and there was no ongoing loss of amenity.

*Remove economic gain* – not explicitly considered

*Restitution to communities* – not explicitly recognised

#### ***Mitigation***

*Culpability* – it was acknowledged that there were no previous convictions and that the director did not take a 'hands on' approach. The attempt to mislead through presentation of a non-valid permit was also considered.

*Ability to pay* – the court heard that the director had a net discretionary income of £250 per month. He was ordered to pay his fine at the rate of £200 per month. The company submitted accounts showing a £54,000 trading loss, implying that the fines were significant in the circumstances.

## **Case study 5: the unlicensed disposal and keeping of waste**

### **Alleged offence:**

Fourteen charges against a skip hire firm owner involving the unlicensed disposal and keeping of waste, some of which related to special waste including asbestos, waste paint and car batteries. The fire brigade had attended the site on a number of occasions to put out waste fires.

### **Verdict and sentence:**

The individual pleaded guilty and was given an eight-month prison sentence and ordered to pay £4,171 in costs to the Environment Agency.

### **Sentencing remarks - notes:**

#### ***Fit with enforcement purposes***

*Condemning moral wrong-doing* – the defendant had failed to pay a previous £10,000 fine, which contributed to the magistrates' decision to award a custodial sentence. The individual's activity had undermined the regulatory system and he did not appear to have intended to comply with the relevant regulations.

*Remediation of damage* – the fire brigade had to be called on more than one occasion to remediate damage. These and other costs of remediation did not appear to be passed on to the defendant.

*Remove economic gain* – the offender had avoided the cost of a waste management licence of £1,700, with other fees of around £1,800 a year, not including additional costs for the operation to reach an acceptable environmental standard. These seem to have been reflected in the original fine, but could not be accommodated in the subsequent prison sentence. It was acknowledged that the defendant had obtained a commercial advantage over lawful competitors.

*Restitution to communities* – not explicitly recognised

#### ***Mitigation***

*Culpability* – the defendant's behaviour indicated a high degree of culpability, as was reflected in the sentence. In mitigation it was claimed that the individual had co-operated with the Environment Agency and was aware of the seriousness of the offence. The court heard that the individual's head was 'buried in the sand' and environmental regulations were ignored.

*Ability to pay* – not explicitly referred to at this stage.

## **Case Study 6: Pollution of urban watercourse by sewage**

### **Alleged offence:**

That a water company caused untreated sewage to flow into an urban watercourse, contrary to Section 85(1) and 85(6) of the Water Resources Act 1991.

### **Verdict and sentence:**

The company pleaded guilty under the strict liability regime and was fined £50,000 plus agreed costs of over £2,800.

### **Sentencing remarks - notes:**

#### ***Fit with enforcement purposes***

The defendant had several previous convictions, though not at this site.

*Condemning moral wrong-doing* – the magistrates court sent the case to the Crown court on the basis of what they saw as the serious nature of the incident and an element of culpability. The judge considered culpability and found the company's behaviour on the borders of carelessness and recklessness.

Aggravating features were that the storm tanks which finally leaked large quantities of sewage did not appear to have been well maintained - the judge made his own examination of several photographs supplied by the Prosecution, drawing attention to vegetation growing from the structures. The company's inspections had also been cursory. The tank which leaked, and possibly others linked to it, had been full at the time of the incident despite negligible rain over the previous month.

*Remediation of damage* - The judge noted the tankering of polluted water for three days from the watercourse in order to return it for treatment and reduce pollution of the river downstream. £20,000 had also been spent on repairing the tank. The judge said he did not intend to give any credit for clearing up a self-inflicted mess.

*Remove economic gain* - Not considered except to note that maintenance fell well below what was required, and this may have led to cost savings.

*Restitution to communities* - not explicitly considered

#### ***Mitigation***

The sentence reflected some credit for a timely guilty plea. The judge recognised that the company had acted quickly to mitigate the pollution. 4/5 of recent profits were being ploughed back into services. The judge declared

himself unimpressed with the Defence's submission of a list of various, not all environmental, awards the company had received.

*Culpability* - Nothing raised on this issue.

*Ability to pay* - The Judge noted that, in line with *R v F. Howe and Son (Engineers) Ltd*, ability to pay was not made an issue in the case. He also noted that the fine should be designed to be large enough to change the company's approach, and recognised that if too large it might impinge on investment in services.

## **Case Study 7: Dust emissions from manufacturing plant**

### **Alleged offence:**

Failure to maintain a silo's external door in breach of a Pollution Prevention Control Permit. A witness had observed the door hanging off its hinges, allowing a considerable amount of clinker dust to escape on the air. The dust travelled on light winds to a nearby residential area. EA received ten complaints from members of the public about dust covering cars and properties. Many cars were covered with a sticky deposit, which could not easily be removed.

### **Verdict and sentence:**

The company pleaded guilty to one offence under the Pollution Prevention and Control Regulations 2000. The Company was fined £400,000 and ordered to pay costs of £12,429.

### **Sentencing remarks - notes:**

#### ***Fit with enforcement purposes***

The judge remarked that there were a number of aggravating features in the case. He found that the company had not carried out frequent enough inspections of the doors and that record keeping and housekeeping had been inadequate.

*Condemning moral wrong-doing* – He was particularly critical of the company's "sloppy attitude" following previous warnings from the Environment Agency. The fact that the company had restarted the kiln while knowing the door had been imperfectly repaired was "a recipe for disaster".

*Remediation of damage* - Environmental damage not main issue.

*Remove economic gain* - Not explicitly addressed.

*Restitution to communities* – Not addressed explicitly in the judgement. However, the company stated in mitigation that it had apologised to the community.

#### ***Mitigation***

The company said they had pleaded guilty at the first opportunity. The company also said that it was a short-lived incident and there was no evidence of any adverse impact on the health of residents. The company had apologised to residents, as mentioned above.

*Culpability* – No comments recorded.

*Ability to pay* – No submission made.

## **Case Study 8: illegal waste management site**

### **Alleged offence:**

Nine charges relating to depositing, keeping and treating waste on land without a waste management licence, contrary to section 33 of the Environmental Protection Act 1990.

### **Verdict and sentence:**

Following a guilty plea, 8 months imprisonment for running an illegal transfer station and fly-tipping significant amounts of waste in the surrounding area.

Evidence included video surveillance and examination of fly-tipped waste to compare it with what was at the illegal site.

### **Sentencing remarks - notes:**

#### ***Fit with enforcement purposes***

The judge said that it was important to him that the Environment Agency was seen to be taking these matters seriously and protecting the environment.

*Condemning moral wrong-doing* – The judge remarked that the defendant had behaved dishonestly and had shown a flagrant disregard for his obligations under the law. Most serious was that the defendant had carried on his illegal activities even after receiving a warning letter and being interviewed at EA offices. The defendant had showed a flagrant disregard for the law simply to make more money for himself and to undercut licensed operators.

*Remediation of damage* – not addressed.

*Remove economic gain* – addressed in sentencing remarks

*Restitution to communities* – not explicitly addressed

The judge added that no order would be made to pay any of the Environment Agency's £14,000 prosecution costs.

#### ***Mitigation***

The defendant said in mitigation that he had nine children, elderly parents and a full-time job.

*Culpability* – The defendant took full responsibility for his actions and had pleaded guilty at the first opportunity.

*Ability to pay* – Defence Counsel said the defendant could pay £40 per week if the court was minded to impose a fine.

**Magistrates Court cases under section 28 of the Wildlife and Countryside Act 1981, amended by Countryside and Rights of Way Act**

County	Habitat	Offence	Nature of Operations	Damage to SSSI	Outcome			Date of conviction	Notes
					Fine	Costs	Restoration Order		
Wiltshire	Unimproved grassland	<b>Section 28P(6) - 3<sup>rd</sup> party</b> (prior to his ownership)	Excavation of existing pond resulting in spoil dumped onto grassland (orchids)	Damage to <b>nationally rare grassland</b> plants (185m <sup>2</sup> )	<b>£4,000</b>	<b>£1,000</b>	collection of seed, preparation & sowing of seed bed, & monitoring	Feb-03	First prosecution + 3rd party prosecution under CROW
Cornwall	Bryophytes	<b>Section 28P(1) - Occupier</b>	Vegetation clearance, dumping & storage of materials	<b>Significant damage to nationally rare bryophytes &amp; habitats</b>	<b>£3,000</b>	<b>£10,000</b>	removal of dumped material, small scale management & monitoring (est cost £2000)	Dec-03	First occupier prosecution under CROW
Cornwall	Unspoilt river corridors and excellent habitat for wildlife	<b>Section 28P(1) - Owner</b>	Clearance of vegetation & dumping of material	Approx <b>1740m<sup>2</sup> of riparian habitat</b> damaged	<b>£13,000</b>	<b>£6,000</b>	Reinstatement of large boulders, small scale management & monitoring	Feb-04	First owner prosecution under CROW
Cornwall	Unspoilt river corridors and excellent habitat for wildlife	<b>Section 28P(1) - Owner</b>	Removal of river gravel, river bank works & clearance of vegetation	<b>450 cubic metres of gravel</b> removed from riverbed & <b>600 m<sup>2</sup> of riverbed &amp; riparian habitat</b> damaged	<b>£7,000 (£5,000 under CROW)</b>	<b>£7,834 (English Nature costs £6,169)</b>	put back the gravel, pull out the invasive weed & fence off the damaged riverbank to allow the area to recover (est cost £2000)	Apr-04	Joint prosecution with Environment Agency (Land Drainage Act)
North Yorkshire	Mire & heather moorland	<b>Section 28P(1) - Occupier</b>	Upgrading of a track	<b>Loss of 1860m<sup>2</sup> of dry heath habitat</b>	<b>£7,500</b>	<b>£6,787</b>	to restore heather along the centre of the original vehicle ruts	Apr-05	
West Yorkshire	Moorland	<b>Section 28P(1) - Owner</b>	Unauthorised track construction and upgrade and dumping	<b>Loss of 1.98 ha resulting from track works &amp; 1225m<sup>2</sup> from dumping</b>	<b>£16,500</b>	<b>£17,026</b>	Yes	Aug-05	