

Environmental enforcement—2015 in review

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Corporate Crime analysis: Christopher Badger, barrister at 6 Pump Court Chambers specialising in commercial regulatory investigations and prosecutions, with an emphasis on environmental enforcement, looks at the most significant developments in 2015 in the area of environmental enforcement.

What legal developments have had the biggest impact on your practice in 2015?

The judgment in the case of *R v Thames Water Utilities Ltd* [2015] EWCA Crim 960 has in my view had the biggest impact on my practice this year. This was the first appeal judgment to be heard since the Definitive Guideline for Environmental Offences came into force and has confirmed the huge change in the landscape for sentencing environmental offences in criminal courts. The decision has quite wide ranging potential, not only for criminal cases but also for those that have an interest in the potential size of environmental liabilities that may impact on transactional issues. The headline figure of fines up to £100m has certainly made people sit up and take notice.

How have these affected your ongoing cases and working life? How have you dealt with these on a practical level?

The potential existence of a highly damaging and significant fine has resulted in all parties taking much closer attention to the preparation of criminal proceedings and the work that is required in each of these cases. This has been true whether it is the regulator seeking to bring a case or a defendant company seeking to ensure that the courts have all of the appropriate information before it when considering the case. Getting the right advice to the client at an appropriate time has never been more important.

Have all of the expected developments of 2015 come to pass?

2015 represents a time of great potential developments for environmental law. Remedies in private nuisance cases have become significantly more uncertain as the judgment in *Coventry v Lawrence* [2015] AC 106, [2014] 4 All ER 517 continues to reverberate and the significance of the decision of the Supreme Court in *R (on the application of ClientEarth) v Secretary of State for the Environment, Food and Rural Affairs* [2015] UKSC 28, [2015] 4 All ER 724 doesn't yet appear to have been fully appreciated by those in the government, particularly in respect of the potential cost of being required to comply with the decision. To this end, we wait to see what the full impact of environmental legal decisions in 2015 will be.

How has your business developed in 2015? Has this been a good year for work in your area?

Environmental law has become increasingly important. The potential economic and social impact of waste crime is high on the agenda, both for businesses that have an associated cost with environmental compliance but also for those with an interest in maximising potential revenues by way of environmental levies. The use of notices as a means of enforcement has become increasingly prevalent, which has resulted in an increase in the use of judicial review proceedings as a means of challenge, in conjunction with appeals to the Planning Inspectorate. Further, in times of increased tightening of belts, the impact of European legislation and associated costs has been of direct relevant to industry. All of the above mean that there are plenty of environmental legal issues currently being debated.

How has the profile of your clients developed? Can you identify any trends in your clients or types of cases?

Rather than witnessing any change in the profile of clients, it is the timing of advice where I have seen most change. As you see above, there are a number of developing trends in environmental law, but key is being able to effectively assess the various options and develop strategies at an early stage in proceedings.

Interviewed by Kate Beaumont.

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