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Talking Point--current work trends

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Environment analysis: Our panel of experts gives its views on trends in the type of work occupying environmental lawyers.

The experts

Simon Tilling, Burges Salmon

Robert Biddlecombe, Squires Sanders

Professor Karen Morrow, Swansea University

Gordon Nardell QC, 39 Essex Street Chambers

Emma Feeney, Bond Dickinson

Catherine Davey, Stevens & Bolton LLP

What are you currently working on?

Simon Tilling: As a team, we cover the full spectrum of environment and energy, so we are working on a diverse range of projects and cases. Energy remains a big area, and the nuclear and renewables sectors are very active. My practice includes energy litigation and I am currently defending a wind turbine operator in a High Court private nuisance action in which the claimant seeks an injunction on the grounds of visual impact and, in particular, the flashing of the sun's rays into her property. The outcome will be of interest to the industry as a whole and written judgment is due early this year.

Product stewardship is becoming a big concern, and I am advising clients on product compliance issues such as REACH and product labelling, as well as advising a REACH consortium on what we understand to be one of the first data sharing disputes before the European Chemicals Agency. Product stewardship is also an increasing element of environmental litigation--we are defending a claim in which it is alleged that our client's product has contaminated drinking water supplies for a small island.

Robert Biddlecombe: In the last six to twelve months, there has been a steady but noticeable increase in the amount of referral work we have received from our corporate and real estate colleagues, which is symptomatic of the gradual recovery in the transactional market and the economy generally. Typically, this takes the form of a requirement for advice on regulatory compliance (particularly in connection with asbestos management, waste electrical and electronic equipment, restriction of hazardous substances and packaging waste) in the context of a sale or acquisition.

Additionally, we continue to provide 'stand-alone' environmental advice. In particular, we are advising clients:

- o in the house builder sector with regards to a number of contaminated land determinations under the Environmental Protection Act 1990, Pt 2A

- o in the chemicals industry about their ongoing obligations under REACH and CLP and
- o in the manufacturing sector about the requirements of the CRC Energy Efficiency Scheme

Professor Karen Morrow: I am currently working on the need to integrate an understanding of the impacts of gender into the regimes and processes employed in environmental decision-making in relation to climate change. In particular, I am considering the impact of gender in respect of attempts to foster 'bottom-up' public participation in this area, as a prerequisite to achieving sustainable solutions to a range of societal problems that are already beginning to be made manifest as specific adverse impacts of climate change make themselves felt.

Gordon Nardell QC: At the moment, I'm being kept busy by the EU Habitats Directive 92/43/EEC. I'm advising on a tricky due diligence issue involving potential liability for causing disturbance to a protected species in the course of developing an energy project. I'm also working on an interesting point about screening under art 6(3) and the relationship between a 'plan' and a 'project' where the project is specifically anticipated by a plan that has already been subject to appropriate assessment.

Emma Feeney: Some current work involves advising a multinational client in relation to complex permit, planning and water resource issues as well as advising an online paint retailer in relation to the CLP Regulation (EC) 1272/2008 (regarding the classification, labelling and packaging of chemicals). I am also advising an individual householder in relation to a protracted environmental permit application.

Catherine Davey: Like many firms with a dedicated team of environmental lawyers, we advise clients on environmental issues and liabilities in stand-alone instructions:

- o environmental liabilities including contaminated land, water pollution and the Environmental Liability Directive and Environmental Damage Regulations
- o climate change law
- o waste
- o the Environmental Protection Act 1990, Pt 2A (contaminated land regime)
- o discharge consents
- o the Habitats Directive and associated regulations
- o disclosure obligations under the Environmental Information Regulations
- o environmental insurance
- o statutory nuisances
- o asbestos
- o regulatory investigations and prosecutions concerning alleged breaches of environmental legislation
- o environmental and health and safety advice:
 - o to corporate clients of all sizes in share and asset acquisitions and disposals
 - o to corporate clients and lenders in a wide variety of property transactions

Catherine Davey: They still expect the best advice and a cost effective outcome.

Interviewed by Nicola Laver.

The views expressed by our Legal Analysis interviewees are not necessarily those of the proprietor.