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Talking Point--the evolution of environmental law practice

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Environment analysis: Our panel of experts gives its views on whether practice as an environmental lawyer has changed significantly over the last three years.

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

Has your practice as an environmental lawyer changed significantly over the last three years and, if so, how?

Simon Tilling: The practice area is one of constant evolution rather than sudden revolution and the past three years have been no different--the scope of my practice has increased rather than changed course. My practice is still concerned with traditional environmental issues such as industrial emissions, land contamination and nature conservation, but it is increasingly also about products, supply chains and compliance with regimes such as REACH and RoHS.

Robert Biddlecombe: No, the last three years (ie the tail end of the recession) has not seen a significant change in the type of work we do. While there was generally less opportunity for transactional work during the depths of the downturn, they have not been able to simply ignore important new environmental legislation and guidance that has been issued (such as the widening of the environmental permitting regime and the updated statutory guidance for the contaminated land regime), significant environmental cases that have been heard in the courts (for example, the decision regarding nuisance in *Barr v Biffa Waste Services Ltd* [2012] EWCA Civ 312, [2013] QB 455) or wide-ranging new government policies that have been launched (for example, the Green Deal) because these have directly affected them--whether they like it or not.

Professor Karen Morrow: I am not a practitioner, but even as an academic the last three years in my sector we have seen an initial dip in recruitment in undergraduate law students from the UK in the wake of the global economic recession. The home student recruitment market in my own institution has, however, returned to (and even exceeded) its pre-recession level in the most recent intake (2013/14).

The numbers of students opting to study environmental law as an undergraduate option have, in my experience remained steady--which is very encouraging as there is always a danger that environmental law

may be regarded as an option that can be easily side-lined in economically challenging times. The numbers of both home and overseas students wishing to undertake research degrees in environmental law in my institution have remained healthy despite the economic downturn and are currently increasing.

Gordon Nardell QC: Much of my work is in the energy sector, which has been hugely affected by the financial crisis. Investment in renewables tends to be highly leveraged and dependent on a subsidy regime.

Pre-crunch, much of my work was about the consenting process for wind and other projects, often turning on how environmental impacts are addressed. If a consent fell to a challenge, the developer would move on to the next project. But what happens when the unfavourable credit climate and political uncertainty mean there isn't a next project? Attention shifts to how effectively the contractual framework spreads project risk down the supply chain.

Similarly the collapse in the carbon price has undercut project funding deals based on emissions trades. The result is that more and more of my work is now about resolving what are essentially commercial disputes through litigation and, increasingly, arbitration and ADR. Full-blown disputes can be enormously costly, so ADR is becoming an increasingly important feature of the renewables scene.

Emma Feeney: Most definitely. We are seeing a change in the enforcement approach from regulators following the introduction of relatively new civil sanctions powers. The Environment Agency in particular is amenable to discussing options such as enforcement undertakings as an alternative to criminal prosecution. The majority of civil sanctions have been issued in relation to packaging waste offences and it will be interesting to see how the Agency uses these in other areas. We are also noticing that the courts are treating environmental offences with greater severity and on occasion imposing higher fines--a trend which will no doubt continue following the recent *Sellafield* case (*R v Sellafield Ltd; R v Network Rail Infrastructure Ltd* [2014] EWCA Crim 49, [2014] All ER (D) 111 (Jan)) and the publication of the Sentencing Council's guidelines on the sentencing of environmental offences.

Catherine Davey: There has been slightly more regulatory work, for example, advising defendants on Environment Agency investigations/prosecutions for breaches of water and waste legislation.

More work at the interface between planning and environment (eg advising on solar farm applications, complex planning applications involving EIA, advising corporate clients on how to respond to shale gas exploratory applications).

Interviewed by Nicola Laver.

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