

# Waste law update

Sam Sandilands and Stephen Lavington from Burges Salmon LLP highlight some of the goings on in the world of waste law

## Consultation on Sentencing Guidelines for environmental offences closes

On 6 June, the Sentencing Council's public consultation on sentencing for environmental offences closed. The consultation was prompted by: the fact that there is limited guidance available on the sentencing of environmental offences; concerns over inconsistency in fines; and suggestions that the level of fines currently being levied is not large enough given the severity of offences being committed. As a result, the Sentencing Council sought views on the principal factors that make an environmental offence more or less serious, the additional factors that should influence the sentence, and the sort of sentences that should be given for environmental offences.

In developing its proposed guidelines, the Sentencing Council has suggested a tariff-based model, setting out specific starting points and ranges of guideline financial penalties, combined with general principles for a sentencer to follow in setting the level of any fine. The proposals are that culpability and level of harm be considered in determining the seriousness of the offence, and also that the financial status of the offender be taken into account.

A full range of penalties is proposed (for large companies, this ranges from a starting point of £3,000 for the lowest level of offence with limited culpability up to a starting point of £750,000 for a deliberate offence with the greatest level of harm), but there is a suggestion that these starting point penalty levels may increase in the final guidelines. The Sentencing Council will now review responses received during the consultation, but have yet to indicate when new sentencing guidelines will be published.

## Environment Agency issues guidance on fly infestation

In May, the Environment Agency published 'Fly Management: how to comply with your environmental permit' – specific guidance to waste site operators that sets out guidelines for the monitoring, investigation and management of flies and fly-related complaints. The advice includes taking measures to prevent infestation before waste is taken to a transfer station, conducting twice-weekly monitoring procedures from April to October,

and ensuring that waste does not accumulate in inaccessible areas.

Management and control of flies and similar pests is perhaps one of the less obvious conditions under an environmental permit. However, it is important not to overlook such conditions: on 30 May, a Wigan-based waste management company was ordered to pay £54,000 (of which £42,000 was a fine) following various environmental permit breaches that had led to a significant fly infestation affecting other businesses in the locality.

Some environmental permits require that an activity not give rise to the presence of pests likely to cause pollution, hazard or annoyance outside the boundary of the site in question and can call upon the operator to produce and implement a pest management plan. Even where a permit does not specifically refer to pest management, the guidance indicates that a general management condition in a permit, referring to a written management system that identifies and minimises risks of pollution, can still place obligations on the operator to manage flies.

## Custodial sentence for failure to comply with confiscation order

On 30 May, Westminster Magistrates Court added three years to the sentence of an offender already serving four and a half years in jail for waste and money laundering offences, owing to a failure to comply with a confiscation order for over £900,000. As well as a jail sentence, the offender had been ordered to pay £917,000 under the Proceeds of Crime Act, of which he still owed a total of £578,845.71 at the time of his new sentence.

This is not an isolated incident. On 16 May, another waste operator received a three-year sentence after being arrested on a flight due to leave Heathrow, having failed to pay the full amount of a £881,513 confiscation order, also for waste crimes.

This seems to clarify the attitude of the Environment Agency: that prosecution will not stop with conviction or payment of a fine, but will extend to pursuit of all sums due under the Proceeds of Crime Act. It also clarifies the approach of the courts, which seem increasingly prepared to impose substantial custodial sentences in certain circumstances. 

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