

Case Name: *Pickering Fishery Association), R (On the Application Of) v Environment Agency* [2023] EWHC 2918 (Admin) (15 November 2023)

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Commentary: This was a successful challenge to the decision of the Defendant, the Secretary of State ("SoS"), on 14 December 2022 to approve the updated Humber River Basin Management Plan ("HRBMP") under regulation 31(1) of the Water Environment (Water Framework Directive) England and Wales Regulations 2017 ("the Regulations").

The Claimant is the Pickering Fishery Association which owns the leasehold and freehold fishing rights for most of the Upper Costa Beck ("UCB"), a surface water body in the Ryedale district of North Yorkshire. The SoS is the "appropriate authority" for river basin districts in England under the Regulations. These transpose the Water Framework Directive 2000 ("WFD") into domestic law (with minor necessary amendments as retained EU Law). The Interested Party, the Environment Agency ("the EA"), is the "appropriate agency" for river basin districts in England and has various water management responsibilities under the Regulations.

Permission was granted on all Grounds by Mrs Justice Lang. At the heart of all the Grounds lies the issue of whether, and to what degree, the HRBMP or any other documents produced by the EA pursuant to the Regulations must set out information at the level of the individual water body as opposed to at river basin district level, or even national level. The information in question is what measures are going to be taken to achieve the environmental objectives referred to in the WFD and the Regulations.

A significant complication in the case is that although the decision under challenge is the SoS's approval of the HRBMP, the real thrust of the case is that there is an obligation on the SoS to set out the measures that are to be taken to meet the objectives in respect of the individual water body (here the UCB); to review those measures; and to consult upon them. It is these specific water body measures which the Claimant submits have not been lawfully set out, consulted upon and approved by the SoS.

Mrs Justice Lieven's view is that the claimant's interpretation of the WFD and the Regulations is correct and the Programme of Measures must set out the measures which meet the requirements of the WFD/Regulations. There may be cases where the required measures are wholly generic, i.e. they apply across a range of water bodies, either across the country or the River Basin. There is nothing unlawful about the Programme of Measures referring to such generic measures. Equally the level of detail required in the Programme of Measures will vary, and the EA will have a discretion in that regard.

The issue in this case is one of statutory interpretation, whether the Defendants erred in law in their interpretation of the Regulations in failing to appreciate that the Programme

of Measures needs to have measures which relate to specific water bodies. Given that error of law the Defendants never got to the stage of exercising a discretion as to what water body specific measures were necessary in respect of the UCB. Once the correct legal analysis is applied there may be further dispute over what is required in the water body specific Programme of Measures, but that is not the issue before this Court.

As with all statutory documents, it is necessary to read the document as a whole, and with a view to its mischief. The submission that the water body specific measures in Article 11(5) are different from the measures in Article 11(8) fails to read the WFD as a whole. The River Basin is the administrative area created within the WFD, but that does not dictate how the measures are to be drawn up. If the measures are generic and there is no way to refer them to specific water bodies in order to consider their effectiveness in reaching the deadline then this would appear to rob regulation 16(6)(b) of any effect. This analysis is entirely supported by the statutory guidance document produced by the Secretary of State in September 2021, which is in such clear terms and rather undermines the suggestion that it is administratively impossible for the Programme of Measures to be water body specific.

It may also be the case that having to set out a Programme of Measures on a water body specific level involves additional resources. However, that is not a matter for the Court. The Court's function is to interpret the statutory provisions.

It was concluded that there was an error of law in the consultation because the Plan itself did not contain the legally required information.

The court found in favour of the claimant on each of its argued grounds, in what is believed to be the most significant UK Court ruling on the Water Framework Directive since the river basin planning process commenced in 2003.

Case summary prepared by Amy Fender