

Case Name: *WWF-UK & Ors, R (On the Application Of) v Secretary of State for Environment, Food and Rural Affairs & Anor* [2021] EWHC 1870 (Admin) (07 July 2021)

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Commentary:

This application arose from a claim for judicial review brought by the Claimant in 2015, alleging the Defendant's failure to comply with the requirements of the Water Framework Directive ("WFD") 2000/60/EC by failing to make orders to establish Water Protection Zones ("WPZs"). The 2015 proceedings were disposed of by a consent order in which the Claimant agreed to withdraw their judicial review application other than for the purpose of enforcing a schedule appended to the order. The schedule, entitled "DEFRA/Environment Agency Position Statement", established the future approach that DEFRA and the Environment Agency would take to the designation of WPZs and stated that their analysis of individual sites would be set out "as soon as reasonably practicable in the Diffuse Water Pollution Plans (DWPPs) and/or Site improvement Plans".

This application was brought in relation to an alleged breach of the terms in the schedule, more specifically the statement that results for the appropriate site would be set out "as soon as reasonably practicable in the Diffuse Water Pollution Plans and/or Site improvement Plans" –the Claimant alleged that only four out of the required 37 DWPPs had been produced.

The first issue before the court was whether the terms of the consent order had any legal effect, particularly given the fact that there was no statutory obligation on DEFRA or the Environment Agency to produce DWPPs. Lang J held that the form of consent order agreed in 2015 was similar to a Tomlin order in private law proceedings and was therefore enforceable as if it were a contract. He also held that it was not unlawful for a public body to enter into such a binding agreement and that "such agreements are enforceable, on application to the Court, and do not require a fresh claim to be commenced."

Lang J went on to hold however that the Defendants had not breached the schedule to the consent order, he found that the qualification within the schedule that the Defendant would state the results "as soon as reasonably practicable" meant that resource constraints and the scale and complexity of the task could justify the failure to prepare DWPPs.

Case summary prepared by Emma McDonald