

Case Name: *Richards, R (On the Application Of) v The Environment Agency* [2021] EWHC 2501 (Admin) (16 September 2021)

Full case: [Click Here](#)

Commentary:

The case concerned a successful claim that the Environment Agency has failed to discharge its duty under section 6 of the Human Rights Act 1998 to protect the right to life (Article 2) and right to respect for private and family life (Article 8) of a five year old boy, Mathew Richards, by failing to address the issues caused by hydrogen sulphide emissions emanating from the Walleys Quarry Landfill Site in Silverdale, Staffordshire.

The Claimant was born prematurely and suffers from bronchopulmonary dysplasia. As a result, he is badly effected by the hydrogen sulphide emissions from the landfill site, which were described as a 'public health emergency' by Mathew's doctor. Continuing exposure to the emissions means that Mathew would be faced with the development of Chronic Obstructive Pulmonary Disease which would dramatically reduce his life expectancy.

Mr Justice Fordham derived a number of principles from Strasbourg case law including the following:

1. The responsibility of the state authorities in environmental cases may arise from a failure to regulate private industry.
2. State authorities have a positive operational duty to carry out its safeguarding obligations under Article 2 which apply to activities where the right to life may be at stake.
3. Severe environmental pollution directly affecting an individual's well-being and private life can trigger positive obligations on state authorities to take reasonable and appropriate measures to secure Article 8 rights
4. There is an overlap between the Article 2 positive operational duty and the positive obligation arising under Article 8.

The Court held that the current levels of hydrogen sulphide emissions from the landfill site places the EA in breach of its positive operational duty under Article 2 and its positive obligations under Article 8; with no fair balance being struck between the interests of the individual and of the community as a whole. This decision was arrived at in part because the EA is yet to provide or implement a plan to address the recommendation made by Public Health England that "all measures are taken" to reduce the emissions "as early as possible". The Court declared that the EA must implement the advice of Public Health England to reduce off-site odours as early as possible and reduce the daily concentration in the local area to the levels specified.

The Court also considered whether the EA was in breach of its public law duties to act reasonably and take reasonable steps to acquaint itself with relevant information. In light of the Court's declaration regarding the implementation of PHE's advice, the Court refrained

from determining whether the EA is currently in breach of these obligations but emphasised that “there is an obvious and pressing public interest imperative that it must [address its legal duties], as a matter of urgency.”

Case summary prepared by Matt Speed