

Case Name: *Secretary of State for Environment, Food and Rural Affairs v Pickering Fishery Association, R (On the Application Of) & Anor [2025] EWCA Civ 378 (02 April 2025)*

Full case: [Read here](#)

Commentary: The Appellant, the Secretary of State for the Environment, Food and Rural Affairs (“the SSEFRA”), unsuccessfully appealed the order of Lieven J allowing a claim for judicial review. That claim was brought by the First Respondent, the Pickering Fishery Association (“the PFA”) against the SSEFRA’s decision to approve the Humber River Basin Management Plan under regulation 31(1) of the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (SI 2017 No. 407) (“the WFDR 2017”). The WFDR 2017 transpose Directive 2000/60/EC of the European Parliament and of the Council “establishing a framework for Community action in the field of water policy”, commonly referred to as “the Water Framework Directive” (“the WFD”). The Officer for Environmental Protection made submissions as an Intervener that the judgment of Lieven J was correct.

The appeal hinged on whether Lieven J erred in holding that regulation 12 of the WFDR 2017 required the programme of measures in the Humber River Basin Management Plan to include measures for each individual water body in the river basin district. The SSEFRA submitted that there was no such obligation and that a river basin management plan could be “generic.”

Background

Upper Costa Beck is water body in North Yorkshire once renowned for recreational fishing, but has now been polluted, including by sewage treatment facilities, causing fish populations to decline. Fishing rights to the Upper Costa Beck are owned by the PFA. Upper Costa Beck falls within the Humber River Basin District, which is covered by the Humber River Basin Management Plan.

Regulation 12 of the WFDR 2017 requires the Environment Agency, the second respondent, must prepare Environmental Objectives (EOs) for each body of water in the country as well as a Programme of Measures (PoM) for achieving those objectives. The River Basin Management Plan (RBMP) for each district must contain a summary of the PoMs for all water bodies in that area. EOs are defined in regulation 13 of the WFDR 2017 by reference to each water body within a river basin district. The EOs and PoM must be periodically reviewed, and, where appropriate, updated.

The ground of appeal

The single ground of appeal submitted that Lieven J misinterpreted the WFD as transposed by the WFDR 2017. In support of that ground, the following points were made:

1. A PoM and a River Basin Management Plan may lawfully rely on generic measures which are not specifically related to a water body. The WFD and WFDR 2017 intend that a PoM and a RBMP be strategic, high-level documents setting a direction of travel for how the EOs will be achieved in a river basin district as a whole, which was not grappled with by Lieven J;
2. The term “programme of measures” is not apt to refer to separate measures for each water body, and the judge erred in holding that regulation 12 of the WFDR required a PoM to include measures for each individual body of water in a river basin district;
3. The term “river basin district”, which refers to the area for which a PoM and RBMP must be approved, does not include the term “body of water”;
4. Articles 4 and 11 of the WFD and regulations 12 and 13 of the WFDR 2017 require the PoM to be directed at planning for the river basin district as a whole, not individual water bodies, and therefore the Lieven J was wrong to conclude that, on a purposive reading, the measures in a PoM have to be water-body specific; and
5. The SSFRA’s interpretation is supported by regulation 32 of the WFDR 2017, which Lieven J did not address. That regulation confers a power on the EA to prepare a “supplementary plan” to add to a RBMP, which can relate to, for example, a particular description of a body of water, or a particular catchment or geographical area.

The Court of Appeal’s analysis was set out under the following headings:

1. What do the PoMs approved by the SSEFRA set out to do?
2. Is a PoM intended to be only a high-level, strategic document?
3. Other regimes for identifying water body specific measures.
4. The interpretation of the term “Programme of Measures.”

What do the PoMs approved by the SSEFRA set out to do?

The Court of Appeal emphasised the “clear distinction” between a PoM and a RBMP in the WFD, which sets out separate approval processes resulting in separate documents. That distinction is also borne out in the WFDR 2017, while the Secretary of State’s River Basin Planning Guidance (“the RBMG”) also distinguishes between a PoM and the summary of PoM(s) (“the Summary PoM”) to be included in a corresponding RBMP. An analysis of the text of RBMPs gave the impression that there exists for each river basin district a PoM which is more detailed than the Summary PoM in each plan, which would also be necessary to comply with legislation and guidance.

The Court of Appeal was surprised to discover that no individual PoMs had been produced, only Summary PoMs found in each RBMP, which counsel for the SSEFRA and

EA said stood as the PoM in each district for which a RBMP has been approved. Evidence from DEFRA also confirmed that the programme in the RBMP was only a “summary of national measures” set out for reporting purposes in “broad categories.” A PoM compliant with the WFD and WFDR 2017 could not simply be a summary of national measures, and so the Court concluded that it was apparent that no consideration was given by the EA and SSEFRA as to what a compliant PoM should contain, even as an exercise of judgment.

This fundamental self-misdirection by the EA and SSEFRA was enough to ensure that the appeal would fail: the lawfulness of a RBMP, including its Summary PoM, presupposes the existence of a lawful PoM upon which it has been based. The Court nevertheless proceeded to deal with various issues that had arisen during the hearing.

Is a PoM intended to be only a high-level, strategic document?

The SSEFRA and the EA submitted that the RBMP is intended to be a high-level, strategic document and therefore is not required to contain measures specifically for each water body. However, the Court held that it was clear from the language of the 1996 EU Commission Water Policy that the envisaged approach for the Directive involved for each body of water an assessment of its characteristics and issues, specific water policy objectives and a programme of measures designed to achieve those objectives. It provided that although for administrative purposes integrated water management would be set at river basin district level, that integration would also include EOs and measures identified at water body level, and that the nature of the objectives and measures would vary within a river basin.

There was nothing in the WFD or in the policy documents preceding or following the Directive to indicate that coordination and integration related simply to measures defined at a national, river basin district, or river basin level. The Directive acknowledged the need for coordination of more detailed or local measures, and substantial parts impose specific, detailed requirements. Articles 3, 4, 5, 8, 11 and 13 of the Directive involve interconnected stages for identifying and implementing the measures to attain the EOs for each water body, including the preparation and approval of a PoM under Article 11.

Other regimes for identifying water body-specific measures.

Counsel for the SSEFRA submitted that interpreting the WFD as requiring only the high-level identification of measures in a PoM was consistent with other regimes like the Water Industry Act 1991 (“WIA 1991”) and the Environmental Permitting (England and Wales) Regulations 2016 (“EPR 2016”), which address the implementation of such measures through actions on the ground through detailed monitoring, investigations

and technical appraisal, and also take into account cost-benefit analysis and capital improvements.

However, the Court rejected this line of argument. First, other domestic legislation provided no guide to the meaning or scope of EU legislation such as the meaning of the term PoM in the WFD. Second, the WIA 1991 and EPR 2016 do not cover all the actions needed to achieve the EOs under Article 4. Third, the WFD also has regard to economic and financial issues. Fourth, a country's regulatory regimes for controlling the effects of particular uses and operations on individual water bodies, like sewerage operators under the WIA 1991 and EPR 2016, does not mean that PoMs are not required to contain water body specific measures. The WFD referred to measures "following from" national legislation: they cannot simply be a reference to a set of regulations, but must be their application.

The interpretation of the term "Programme of Measures."

In the context of the legislation, the Court held that a "programme" referred to a plan or scheme of intended proceedings, or a planned series of activities or events. A "measure" referred to a plan or course of action intended to attain some object or a suitable action. Contrary to the submission of counsel for the EA and SSEFRA, EOs and PoMs were not "merely aspirational" and instead had the objective of achieving the appropriate status for each water body.

The natural reading of Article 11 of the WFD was, the Court held, that member states must establish a PoM at the same level as the EOs which are meant to be achieved i.e. at the level of individual water bodies. The Secretary of State's own guidance on river basin planning accorded with this interpretation.

Finally, the Court rejected the suggestion that this interpretation of the legislation would result in administrative unworkability, and so should be rejected. There was no ambiguity in the legislation which would allow the principle to be invoked. Counsel for the SSEFRA and EA did not go as far to suggest that such an interpretation would be impossible to implement, result in absurd or illogical outcomes, or would be futile or pointless, only that it would be very difficult and would divert EA resources from other "essential duties" (though no examples were identified).

Conclusion

The Court reached the following conclusions:

1. To comply with the WFD and the WFDR 2017 a PoM drawn up under regulations 12 and 13 must identify a programme or scheme of actions for each water body in order to achieve the EOs for that body within the relevant deadline.
2. Where the EA and the SSEFRA rely upon generic provisions in a PoM, such as national legislation or policy, as a basis for identifying the measures for a water body, they must set out in the PoM measure(s) or action(s) for each water body to achieve its EOs which follow from an application of those provisions to that body.
3. So long as a PoM shows the measure(s) or action(s) programmed for each water body in order to attain its EOs within the relevant deadline, the level of detail to include in the PoM is a matter of judgment for the EA and the SSEFRA, subject to a legal challenge solely on *Wednesbury* principles.

For those reasons, the appeal was dismissed.

Case summary prepared by Gregor Donaldson