



Summary

2 April 2025

Secretary of State for Environment, Food and Rural Affairs (Appellant) v The King (on the application of Pickering Fishery Association) (First Respondent) and the Environment Agency (Second Respondent) and Office for Environmental Protection (Intervener)

[2025] EWCA Civ 378

Court of Appeal: Sir Keith Lindblom (Senior President of Tribunals), Lord Justice Fraser and Lord Justice Holgate

References in square brackets are to paragraphs in the judgment.

Background to the Appeal

Upper Costa Beck (“UCB”) is a water body in the Ryedale district of North Yorkshire which was once renowned for its recreational fishing. For many years, UCB has been polluted by discharges from several sites, including sewage treatment facilities, along its length which have caused its fish populations to decline. [1]

UCB falls within the Humber River Basin District, which is covered by the Humber River Basin Management Plan (“the Humber RBMP”). On 14 December 2022 the Secretary of State for Environment, Food and Rural Affairs approved the Plan under the Water Environment (Water Framework Directive) (England and Wales) Regulations 2017 (“the WFDR 2017”). [2]

Pickering Fishery Association (“PFA”), which owns fishing rights in UCB, successfully challenged the legality of the Secretary of State’s decision in the High Court. The Secretary of State now appeals to the Court of Appeal against the order of Lieven J allowing PFA’s claim for judicial review, and quashing the relevant part of the Humber RBMP. [3]

The single ground of appeal is that the judge misinterpreted the EU’s Water Framework Directive (“the WFD”) as transposed into our national law by the WFDR 2017. [68]

Under the legislation the Environment Agency (“the EA”) has to prepare, and the Secretary of State must decide whether to approve, two things:

- (1) **Environmental Objectives (“EOs”)** for each water body in the country firstly, to prevent deterioration in its ecological and chemical status and secondly, to enhance and restore that status so as to achieve certain standards within set timescales;
- (2) a **Programme of Measures (“POM”)** for achieving those EOs.

In addition, the **River Basin Management Plan (“RBMP”)** for each district has to contain a **Summary of the PoMs** for all the water bodies in that area.

The main issue is whether the judge was wrong to decide that the WFDR 2017 requires the PoM for a river basin district to include measures for each individual water body to achieve the EOs which have been set for that body. [13]

The Secretary of State and the EA submit that a PoM is not required to include measures for each water body. A PoM and RBMP are high-level or strategic documents. A PoM may contain measures which relate to the whole of a river basin district or the nation. [69]-[78]. PFA and the Office for Environmental Protection (“the OEP”), which intervenes in these proceedings, submit that the PoM is required by law to identify measures for each water body. [79]-[99]

The legislation

By the EU (Withdrawal) Act 2018, the WFDR 2017 continue to have effect in domestic law post-Brexit [14] & [29]

The legislation is summarised at [14]-[41]

By regulation 12, the EA must, *inter alia*, prepare and submit to the Secretary of State proposals for:

- (a) environmental objectives (“EOs”) for each river basin district, and
- (b) a PoM to be applied in order to achieve those EOs.

Those EOs are defined in regulation 13 by reference to each water body within a river basin district. The EOs and PoM must be periodically reviewed, and, where appropriate, updated. [33]-[34]

The UCB is classified as a “heavily modified water body” under regulation 15. [35] & [43] By regulations 13 and 16, the EOs for UCB are to achieve “good ecological potential” by December 2027. [34], [36] & [48] UCB’s ecological potential is only “moderate”. [49]

The judgment of Lieven J and the submissions of the parties

The Court of Appeal’s judgment summarises the grounds for judicial review [51]-[57], the judgment of Lieven J [58]-[67] and the parties’ submissions in the appeal. [68]-[99]

The Court’s decision

The Court of Appeal unanimously dismisses the appeal [193] and concludes that:

- (1) To comply with the WFD and the WFDR 2017 a PoM must identify a programme or scheme of actions for each water body in order to achieve its EOs within the deadline.
- (2) Where the EA and the Secretary of State rely upon generic provisions in a PoM, e.g. national legislation or policy, they must set out in the PoM action(s) for each water body, by applying those provisions to achieve the EOs for that body within the deadline.
- (3) The level of detail in a PoM is for the judgement of EA and the Secretary of State. [192]

The Court of Appeal’s reasons

(1) What do the PoMs approved by the Secretary of State set out to do?

The WFD, the WFDR 2017, the Secretary of State’s River Basin Planning Guidance (2021) and the RBMPs distinguish between a PoM and the Summary of that PoM in the corresponding RBMP. They must be prepared and approved as separate documents. [101]-[107]

The Guidance also distinguishes between “measures”, i.e. actions taken on the ground, and “mechanisms”, i.e. the policy, legal and financial tools used to bring about those actions. It treats legislation as a mechanism, not a measure. [106]

Although the RBMPs give the impression that separate PoMs had been approved, it turns out that only Summary PoMs have been produced, as set out in each RBMP. The evidence for the Secretary of State was that these “Summaries” essentially focus on national measures and no PoMs have been produced [108]-[111] This approach does not comply with the WFD and the WFDR 2017. [112]

Due to this fundamental error of the EA and the Secretary of State, the appeal must fail. The lawfulness of a RBMP, including its Summary PoM, presupposes the existence of a lawful PoM upon which it has been based. [113]

The information provided to the court about the Summary PoM in the Humber and other RBMPs confirms that the Summary PoMs are focused on national or generic measures, e.g. legislation, and do not identify measures specific to each water body. [114]-[122]

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

There is nothing in the WFD or in policy documents to indicate that measures need only be defined at a national level or for a river basin district or river basin. [124]-[131]

Substantial parts of the WFD impose specific, detailed requirements for water bodies. They are not of a high-level or strategic nature. [132] The EOs required under Article 4 are specific to individual water bodies. [133]

The WFD involves a series of interconnected stages concerned with identifying and implementing the measures necessary to achieve the EOs for each water body. The preparation and approval of a PoM under Article 11 serves that purpose [134]-[140]

The requirements in Article 11 for a PoM are not high-level or strategic. They are specific and measurable. They are required to achieve the EOs under Article 4 for each water body. [141]

Even a RBMP is not a purely strategic or high-level plan. It may include strategic and high-level material, but it is not so limited. [144]

The court’s analysis of the WFD applies to the reviews of the PoMs and RBMPs required by Articles 11 and 13, and to the similar requirements laid down in the WFDR 2017. [145]

(3) Other regimes for identifying water-body-specific measures.

The Secretary of State submitted that his approach to the PoMs allowed for other regulatory regimes to deal with the need for actions on the ground as well as economic and financial factors, e.g. the Environmental Permitting (England and Wales) Regulations 2016 (“the EPR 2016”) and the Water Industry Act 1991 (“WIA 1991”) [146]

The Court does not accept this line of argument for four reasons:

- (1) Other legislation which any national legislature chooses to enact provides no guide to the meaning or scope of an EU Directive; here the term “PoM” used in the WFD. [147]
- (2) The WIA 1991 and the EPR 2016 do not cover all the actions needed to achieve the EOs under Article 4 and to comply with the WFD and the WFDR 2017. [148]
- (3) The WFD and the WFDR 2017 also have regard to economic and financial issues. [150]

- (4) Although Article 11 allows a PoM to rely upon “measures *following from* legislation adopted at a national level”, it is insufficient for a PoM simply to rely upon the mere existence of that legislation. The document needs to explain how such legislation would be applied to a water body so as to achieve its EOs. [148]

(4) The interpretation of the term “Programme of Measures”.

In this context, a “programme” refers to a plan or scheme of any intended proceedings, or a planned series of activities or events. A “measure” refers to a plan or course of action intended to attain some object or a suitable action. [151]

The Court rejects the submission of the Secretary of State and EA that EOs and PoMs are “merely aspirational”. Their objective is to achieve the appropriate status for each water body. [153]

The natural reading of Article 11 of the WFD is that a Member State must establish a PoM at the same level as the EOs which are to be achieved, i.e. at the level of individual water bodies. The measures must either be specific to a water body or, if generic, related to the achievement of the EOs for each water body. This is clear from the overall scheme of the WFD. There are a number of provisions in the WFD that support this interpretation. [154]-[170]

The Court’s analysis of those provisions applies equally to the WFDR 2017. [171] If anything, the WFDR 2017 are even clearer on the point than the WFD. [173]

The Secretary of State’s own guidance on river basin planning accords with the Court’s interpretation of the WFD and the WFDR 2017, in particular on the obligation to include water-body-specific measures in PoMs. [174]-[183]

The Court explains why it rejects the submissions of the Secretary of State and the EA that its interpretation of the WFD and the WFDR 2017 would result in “administrative unworkability”. [184]-[190]

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

<https://www.judiciary.uk/judgments/>

<https://caselaw.nationalarchives.gov.uk/>