

Neutral Citation No: [2018] NICC 16

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*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

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IN THE LONDONDERRY CROWN COURT

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R

-v-

NORTHERN IRELAND WATER LIMITED
—

BEFORE HIS HONOUR JUDGE BABINGTON

- 1) The defendant, Northern Ireland Water Limited, pleaded guilty to one count on this indictment concerning Pollution of a Waterway, contrary to Article 7(1) (a) of the Water (Northern Ireland) Order 1999. The particulars of that offence being that on 15th February 2017 at Fortwilliam Bridge, Maghera Road, Tobermore it knowingly or otherwise discharged a polluting matter so that it entered a waterway.
- 2) On 15th February 2017 at about 17:50 hrs an employee of the Department of Agriculture Environment and Rural Affairs who was carrying out duties on behalf of the Water Management Unit of the Northern Ireland Environment Agency visited the Moyola River close to where the defendant's waste water treatment works discharges, under consent, into the river. He said there was a strong odour of sewage.

- 3) Contact was made with the defendant's Operations Room at Altnagelvin and enquiries revealed that an alarm had sounded in that Operations Room at 2.24 am. A decision was taken to wait until 8.00 am before informing the Area Manager. It appears that when he was informed he then instructed staff to go to the treatment works and staff arrived on site at 10.30 am.
- 4) Samples were taken from the river which revealed a BOD (Biochemical Oxygen Demand) reading of 1070 milligrams per litre. This is 142 times the accepted E.U. Directive limit of 7.5 milligrams. Similarly there was a suspended solids reading of 2740 milligrams per litre which is 55 times the 50 milligram limit under the Directive.
- 5) The discharge was said to contain a noxious, poisonous and polluting matter which was potentially harmful to aquatic life and as Mr McCrudden, who appeared for the prosecution said, it was a serious polluting discharge. He described it as "completely preventable".
- 6) The defendant, through its "Area Operations Manager - North" made a statement under caution to the Northern Ireland Environment Agency bearing date 26th June 2017. It was confirmed that the person who made the decision to wait until 8.00 am before notifying the Area Manager based his decision on the operating conditions of the waste water treatment works at that time. Mr Rafferty BL, who appeared for the defendant, described this as being a human decision although he accepted that the person making the decision knew it had the potential to cause a discharge. It seems that the auto-desludging valve had failed in the open position and this permitted primary effluent to flow out into the thin sludge holding tank. That tank was full and was overflowing through its emergency overflow pipework into the return liquors pumping station which does not have a high level overflow. It seems that the station was then pumping the contents back around the works to the inlet but this had become overloaded. There was thus an overflow and

sewage escaped from the site making its way into road gullies and from thence to the river.

- 7) Photographs were taken of the material discharging to the Moyola River. It is described as a grey-brown coloured liquid and it created a brown coloured plume in the river which was visually clean upstream of the discharge site. The conclusion drawn on the site was that the discharge contained screened but untreated sewage. At about 6.00 pm on 15th February 2017 it was noted that the plume had spread at least 400 metres downstream and covered the entire width of the river. This discharge was still on-going at 19:18 hrs. A further site visit at 8.20am on 16th February 2017 confirmed the discharge to be almost visually clear. However it is clear that the discharge continued for some time after 19:18 hrs.
- 8) Mr Rafferty said that the valve at the primary settlement tank did not close fully as it was blocked by other material in the system. He said this valve had now been changed to a manual system and he described the ignoring of the alarm in the early hours of the morning as being a judgement call and that no action was taken in relation to the alarm as the site normally operates well. Indeed he said the material was in the process of being returned to the site but the flow of material was too great for the systems in place.
- 9) The defendant company entered a plea of guilty on arraignment to this count. There were two other counts that were left on the books on the normal terms.
- 10) This defendant has a record comprising 56 relevant convictions relating to pollution and breaching consent limits. All this offending has, to date, been dealt with at various Magistrates' Courts throughout Northern Ireland. Various fines have been imposed by those courts in relation to those matters.
- 11) Mr Rafferty said that the defendant had entered a plea at the earliest opportunity and had explained in an extremely detailed response what had actually occurred. He also said that changes had been made in that a manual

system had been brought in and that staff had undergone further awareness training. He suggested that conviction rates had been falling and this had been due to the success by the defendant in dealing with its processes.

12) As far as sentencing is concerned the defendant is a Limited Company albeit with the government as its only shareholder. Mr McCrudden told the court that the most recent set of accounts showed a turnover of £420 million which resulted in a profit of £96 million. Although domestic users do not pay water charges directly in Northern Ireland they are encapsulated in rates bills but both agricultural and business users do pay water charges. It was suggested by Mr Rafferty that as water companies in England were public companies with multiple shareholders they were, in some ways, different to this situation where there was only one shareholder as here, particularly as the company was in effect government owned. I have carefully considered that point but in the circumstances of this case find no merit in it. The Court of Appeal in R v Milford Haven Port Authority (2000) 2 Cr. App.R.(S) 423 did suggest that if a substantial fine would inhibit the proper performance by a statutory body, which this defendant might try and say it is, of the public function it has been set up to perform, that factor should not be disregarded. There has been no credible evidence placed before the court to suggest that may be relevant.

13) Mr Rafferty made reference to the Magistrates' Court Guidelines whereas Mr McCrudden referred to the England and Wales Guidelines applicable to the Crown Court. In particular I have given consideration to what was said in R. - v- Thames Water Utilities Limited (2010) EWCA Crim. 202 and R. -v- Anglian Water Services Limited (2003) EWCA Crim. 2243.

14) In the first mentioned of those cases Sweeney J, who gave the judgment of the court, set out at paragraph 39 various principles and the following are worth particular consideration -

- (i) “The environment in which we live is a precious heritage, and it is incumbent on the present generation (including the courts) to play a part in preserving it for the future. Rivers and watercourses are an important part of the environment and there is an increasing awareness of the necessity to preserve them from pollution.
- (ii) Parliament has imposed on the defendant and other similar companies a heavy burden to do everything possible to ensure that they do not cause pollution by the escape of materials from sewerage treatment plants into controlled waters.
- (iii) Although environmental safety involves the question of where to strike the balance of priority, there was a clear onus on a prudent water company to conduct ongoing risk assessments looking at not only the likelihood of events occurring that might lead to pollution but also looking at the extent of the damage or possible damage if such events do occur. When the level of risk requires it, failsafe systems must be put in place.
- (iv) The size of the overall penalty will be dependent on the peculiar facts of each case.
- (v) Punishment, deterrence (thereby protecting the environment and the public in the future) and reparation are all particularly important purposes of sentence in this type of case.
- (vi) The purpose of deterrence includes making clear that the overall penalty for a breach of the law is always likely to be more costly than any expense that should have been incurred in avoiding the breach in the first place and the need for the overall penalty to be such as to bring the necessary message home to the particular defendant in order to deter future breaches.

- 15) This particular offending was aggravated by two particular matters. Firstly the fact that nothing was done between 2.24am and 10.30am when somebody eventually arrived on site to investigate. Furthermore it is clear that the discharge was still continuing at 19:18 hrs on the 15th. The remedial work was far too slow and no satisfactory explanation has been given. I regard the initial response as being particularly serious as there is an acceptance that it was known that a discharge could have been an outcome of the alarm going off. This was then followed by a dilatory clean-up. Secondly, the defendant has a very poor previous record. I do, however, note what has been said about records in relation to water companies and I also, in saying that, recognise that this particular defendant has 1,030 waste water treatment works and 1,300 waste water pumping stations as well as other centres. Accordingly the record of previous offending has to be seen in context (see paragraph 18 of the Anglian Water Services case). However the defendant must be fully aware of the dangers involved in dealing with raw sewage beside a watercourse into which it discharges by consent. One can only conclude that the attitude of those who dealt with this matter was one of extraordinary complacency on this occasion.
- 16) As far as mitigating factors are concerned, a plea of guilty was entered at the first opportunity. There was no fish kill in this incident although if fish had been in the river there is little doubt that they would have been killed. This court recognises the work that the defendant is doing in relation to waste water treatment works and notes that since 2007, £374 million has been spent on these matters. That does not excuse what happened here.
- 17) In coming to my conclusion regarding sentence I have taken note of principles set out in the England and Wales Guidelines and the cases mentioned. I also take account of everything else set out in these remarks. I feel that the appropriate fine to be imposed in these circumstances is one of £40,000. If this matter had been contested I would have imposed a fine of £60,000. I make a Collection Order.

18) There is an Offender Levy of £15.

7th June 2018