

## Environmental Enforcement

<https://www.richardmatthewsqc.com/environmental-breaches/>

Richard Matthews QC has advised and acted for corporations in environmental cases concerned with the [Environmental Permitting Regulations 2016](#), [Environmental Protection Act 1990](#), the [Water Resources Act 1991](#), [The Food and Environment Protection Act 1985](#), groundwater / controlled waters pollution, waste management regulation, waste permits / licenses, the meaning of ‘waste’, Producer Responsibility Obligations and Transfrontier Shipment of Waste Regulations.

Richard provided expert assistance to the Sentencing Council prior to the consultation and publication of the [Definitive Guideline on Environmental Offences](#).

Richard is listed as a leading QC in Environmental by the independent legal guides, Chambers & Partners and the Legal 500:

‘Frighteningly intelligent with truly excellent forensic criminal acumen, he is the go-to barrister for serious or technical environmental matters.’ (Legal 500 [2021]).

‘He is frequently instructed to act on the defendant side for major corporate clients in cases concerned with water pollution and waste management.’ (Chambers & Partners [2021]).

He appeared for the appellant in the Court of Appeal before the Lord Chief Justice in *Natural England v Day* [2014] EWCA Crim 2683, a challenge to the strict liability causation test in environmental offending and concerning the sentencing of individuals for environmental offences.

Richard also appeared for the appellants in the leading sentencing authority concerned with major corporations and breaches of the Environmental Permitting Regulations (*R. v. Sellafield* [2014] EWCA Crim 49; [2014] Env. L.R. 19; [2014] L.L.R. 572) and for the appellant in *R. v. Frampton* [2012] EWCA 2697, concerning depositing substances in UK waters without a licence.

He has conducted a challenge on behalf of a company by way of judicial review to the issuance of an enforcement notice by the Environment Agency suspending the operation of an environmental permit to store waste wood.

Richard represented [Murfitts Industries Ltd](#) at Cambridge Crown Court in a prosecution brought two years after a devastating fire at the company’s licensed tyre recycling facility in Littleport for an alleged breach of the [Environmental Protection Act 1990](#) relating to the keeping of controlled waste allegedly in a manner likely to cause pollution. After two days of argument and following rulings by the trial judge, the EA offered no evidence and the company was acquitted. See [here](#) and [here](#).

Richard acted for [Community Waste Limited and Atlantic Paper](#) in the Environment Agency prosecution

brought in relation to exports of sorted waste paper in alleged breaches of Transfrontier Shipment of Waste Regulations. Both companies were acquitted when no evidence was offered by the Prosecution. This followed a defence statement challenge regarding Environment Agency sampling of alleged waste and the percentage contamination threshold.

Richard was instructed on behalf of the HSE and Environment Agency in the prosecution resulting from the investigation into the Buncefield oil terminal explosion and fire.

## **Reported Cases**

### **R. (Natural England) v. Day**

[\[2014\] EWCA Crim 2683](#) [\[2015\] 1 Cr. App. R. \(S.\) 53](#); [\[2015\] Env. L.R. 15](#)

**Lord Thomas ( Lord Chief Justice ), Openshaw and Lang JJ**

**December 2014**

Environmental prosecution by Natural England in which Richard Matthews QC acted for the appellant (but not in the court below) following conviction in respect of the felling of 43 trees in an area containing a Site of Special Scientific Interest without an authorisation and the consequent imposition of a £450,000 fine and a sum of costs of approximately £457,000.

The appeal concerned legal arguments regarding causation and the appropriate test in law.

The Lord Chief Justice of England and Wales described how Richard Matthews Qc had “conducted the appeal with his customary skill and learning’.

### **R v. Sellafeld Ltd**

[\[2014\] EWCA Crim 49](#); [\[2014\] Env. L.R. 19](#);

**The Lord Chief Justice of England and Wales Mr Justice Mitting and Mrs Justice Thirlwall**

**January 2014**

Richard Matthews QC led for the defence in this defining appeal before the Lord Chief Justice of England and Wales, which concerned the sentence of very large organisations for health and safety offences and environmental offences. The approach adopted by the Court informed the subsequent guidelines issued by the Sentencing Council.

S, with turnover of £1.6 billion and an annual profit of £29 million, had been fined £700,000 for offences relating to the disposal of radioactive waste. N, with turnover of £6.2 billion, had been fined £500,000 following a collision at an unmanned level crossing which resulted in very serious injuries to a child. The

judge found that S's failure was systemic and potentially exposed the public and those who handled waste off-site to unnecessary risk. S had relevant previous convictions. The judge took into account the fact that the instant breaches were not deliberate or reckless, no harm had been done and the actual risk of harm was low.

S submitted that the level of fine equated to a major public disaster or loss of life, a significant nuclear event or an unmitigated environmental pollution incident. N submitted that a starting point of £750,000 would only be appropriate where there was more than one fatality, a public disaster, or where the defendant was convicted of corporate manslaughter.

S's offences were of medium culpability, extending to management but with no actual harm and a very low risk of harm. Guilty pleas had been entered at the first opportunity and S had co-operated considerably. Account was also taken of its previous offences. It was not appropriate to consider a fine of £1 million as apposite only to a major disaster. That would ignore the court's obligation under s.164 of the 2003 Act to have regard to the offender's financial circumstances and the sentencing guidelines. There was no ceiling on the amount of fine that could be imposed. It was clear that a fine of £700,000 after a guilty plea reflected moderate culpability, no actual harm and a very low risk of harm. It also had to be viewed against the requirement that directors or shareholders of companies involved in the nuclear industry had to give the highest priority to safety, as Parliament had directed. The fine imposed would achieve the statutory purposes of sentencing by emphasising to those directors and professional shareholders the seriousness of the offences, and provide a real incentive to remedy the failures found to exist.

## **Environment Agency v. Murfitts Industries Limited**

**September 2011**

This case involved a prosecution for alleged breach of Environmental Protection Act 1990 (keeping of controlled waste in a manner likely to cause pollution) arising out of a tyre fire that burned for weeks at the defendant's recycling premises, which was operated subject to an Environmental Permit with license conditions and thus was the subject of regular inspection by the Environment Agency.

Richard Matthews QC acted for the defence. After two days of legal argument the EA offered no evidence and the defendant company was acquitted with costs – reported [here](#). The case involved extensive expert evidence and argument concerning the status of Home Office Guidance.

## **Environment Agency v. Community Waste Ltd & Atlantic Paper**

**February 2010**

Richard Matthews QC appeared for the defence. This was a prosecution of two companies by the Environment Agency for alleged breaches of the Transfrontier Shipment of Waste Regulations. The prosecution was not proceeded with following the service of a defence statement that challenged the prosecution's sampling of alleged waste and its evidence concerning the percentage contamination threshold.

The decision received widespread industry publicity and [reporting](#)

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