



Neutral Citation Number: [2022] EWHC 2608 (Admin)

Case No: CO/1978/2022

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 18<sup>th</sup> October 2022

**Before :**

**MR JUSTICE BOURNE**

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**Between :**

**WILD JUSTICE**  
**- and -**  
**THE WATER SERVICES REGULATION**  
**AUTHORITY**

**Claimant**

**Defendant**

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**David Wolfe KC and Emma Foubister** (instructed by **Leigh Day**) for the **Claimant**  
**Hanif Mussa KC and Natasha Simonsen** (instructed by **Gowling WLG**) for the **Defendant**  
**Charles Morgan** for the **Office for Environmental Protection** attended to assist the Court

Hearing date: 27<sup>th</sup> September 2022

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**Approved Judgment**

This judgment was handed down remotely at 10am on 18<sup>th</sup> October 2022 by circulation to the parties or their representatives by e-mail and by release to the National Archives

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**The Hon. Mr Justice Bourne :**

Introduction

1. This is an application for permission to apply for judicial review. An oral hearing on notice to the Defendant was directed by Ellenbogen J on consideration of the papers on 6 July 2022.
2. The Defendant, known as “Ofwat”, is the economic regulator of the water and sewerage industry in England and Wales. It is also one of several environmental regulators of that industry, that responsibility being shared with the Environment Agency (“EA”), Natural Resources Wales, Natural England, the Drinking Water Inspectorate, the Welsh Government and the Department for Environment, Food and Rural Affairs (“DEFRA”).
3. By this proposed challenge the Claimant contends that Ofwat is not properly carrying out its environmental regulatory duties in relation to the planned and unplanned discharge of untreated sewage into rivers and other water bodies by water and sewerage undertakers, to whom I will refer collectively as “water companies”. The present scale and the effect of such discharges have recently received considerable press and public attention.
4. The Claimant is a not-for-profit company set up to advocate on behalf of wildlife to further nature conservation in the UK, to encourage public participation in nature conservation issues and to ensure that UK laws, policies and practices protect wildlife. No issue has been taken as to its standing to bring this claim.
5. The following statutory provisions are relevant.
6. Section 2 of the Water Industry Act 1991 provides:

“(1) This section shall have effect for imposing duties on the Secretary of State and on the Authority [defined as Ofwat] as to when and how they should exercise and perform the powers and duties conferred or imposed on the Secretary of State or the Authority by virtue of any of the relevant provisions.

...

(2A) The Secretary of State or, as the case may be, the Authority shall exercise and perform the powers and duties mentioned in subsection (1) above in the manner which he or it considers is best calculated—

...

(b) to secure that the functions of a water undertaker and of a sewerage undertaker are properly carried out as respects every area of England and Wales;

... .”
7. Section 94(1) of the 1991 Act imposes a duty:

“(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers and any lateral drains which belong to or vest in the undertaker as to ensure that that area is and continues to be effectually drained; and

(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.”

8. Section 18 of the 1991 Act empowers the Secretary of State and Ofwat to make enforcement orders to secure compliance by water companies with statutory and other requirements including those referred to above. Section 94(3) provides that the section 94(1) duty is enforceable under section 18 by the Secretary of State or by Ofwat in accordance with a general authorisation given by the Secretary of State. Such authorisation has been given.
9. In England, the Urban Waste Water Treatment Directive, which set standards for the treatment of sewage across the EU, was implemented through the Urban Waste Water Treatment (England and Wales) Regulations 1994 (“the 1994 Regulations”). The 1994 Regulations remain in force as retained EU law.
10. Regulation 4(2) of the 1994 Regulations requires sewerage undertakers to ensure the provision of collecting systems, i.e. sewers, which satisfy the requirements of schedule 2, in certain places or in certain circumstances. Paragraph 2 of schedule 2 to the 1994 Regulations provides:

“The design, construction and maintenance of collecting systems shall be undertaken in accordance with the best technical knowledge not entailing excessive costs, notably regarding—

  - (a) volume and characteristics of urban waste water;
  - (b) prevention of leaks;
  - (c) limitation of pollution of receiving waters due to storm water overflows.”
11. Regulation 4(4) imposes a duty to ensure that urban waste water entering collecting systems is, before discharge, treated in accordance with regulation 5, which imposes certain requirements on the treatment of urban waste water, and that:

“a. plants built in order to comply with that regulation are designed (account being taken of seasonal variations of the load), constructed, operated and maintained to ensure sufficient performance under all normal local climatic conditions;

b. treated waste water and sludge arising from waste water treatment are reused whenever appropriate; and

c. disposal routes for treated waste water and sludge minimise the adverse effects on the environment.”
12. Regulation 4(1) provides:

“(1) This regulation supplements the duty imposed on every sewerage undertaker by section 94 of the Water Industry Act 1991 (general duty to provide sewerage system) and any contravention of the requirements of this regulation shall be treated for the purposes of that Act as a breach of that duty.”

13. Therefore Ofwat's enforcement powers under section 94(3) also apply to the requirements imposed on water companies by regulation 4(2) and 4(4) (which also include the requirement to comply with regulation 5).
14. The Claimant accuses the Defendant of failing to police the specific requirements arising under regulation 4. The claim is not directed at enforcement of the other, more general requirements under section 94.
15. Section 27(2) further imposes a duty on Ofwat to, so far as appears practicable from time to time, collect information with respect to the carrying on by companies of the functions of water and sewerage undertakers and of the carrying on by licensees of the activities authorised by their licences. The Claimant also contends that Ofwat is failing to perform that duty, in so far as it concerns the water companies' obligations under regulation 4.
16. As I have said, the accusation of a failure to act is put in a general or generic way. The Claimant has not identified any specific action which the Defendant should have taken and has failed to take. Rather it alleges a general failure to act and relies on an asserted lack of evidence of any such action.
17. Meanwhile, the EA has related but different regulatory functions in respect of waste water. In particular the EA grants environmental permits, subject to conditions, to water companies for the discharge of sewage into watercourses under the Environmental Permitting (England and Wales) Regulations 2016. Under regulation 6(2) of the 1994 Regulations, the EA also has a duty to secure that discharges from urban waste water treatment plants satisfy the requirements of Part 1 of Schedule 3 to the 1994 Regulations. Those are requirements for samples of discharged waste water to be taken and checked for compliance with the requirements of the Regulations. Regulation 11 also imposes monitoring duties on the EA, e.g. of "waters subject to discharges from urban waste water treatment plants provided in accordance with regulation 5 in cases where it can be expected that the receiving environment will be significantly affected".
18. The claim was preceded by a number of requests to Ofwat and others by the Claimant and others for information.
19. A convenient starting point may be an email dated 15 February 2019 from the Chief Executive of Ofwat, Rachel Fletcher, to Ashley Smith. Ashley Smith has provided a witness statement in support of this claim, commenting on the state of the River Windrush in West Oxfordshire and describing work with a local charity which campaigns against the discharge of untreated sewage in rivers, and had addressed a number of questions to Ms Fletcher. In her response, Ms Fletcher summarised the roles of water companies, the EA and Ofwat in these terms:  
  
    "• Each water and sewerage company has a duty to provide, maintain, improve and extend its wastewater network and treatment to be able to effectively deal with wastewater from its existing customers and any new developments without polluting the environment.

- The Environment Agency has responsibilities for protecting and enhancing the environment as a whole. The Environment Agency sets the standards for companies to deliver in protecting the environment, monitors to ensure that they are met and takes action if they are not. For example several major incidents in the period 2015-20 have resulted in eleven prosecutions and three enforcement actions. In addition to this these incidents have affected the reputational performance rating the EA gives to companies resulting in the company attaining three stars out of a possible five.
  - Ofwat's role is to make sure that efficient companies have appropriate resources to deliver their duties and have the incentives to deliver economic and efficient services to both customers and the environment. We also step in if there are systemic issues that indicate water companies are not delivering their statutory duties.”
20. Mr Wolfe KC, representing the Claimant, makes no complaint of what was said in that email, but points out that it made no reference to the requirements of the 1994 Regulations. Given, however, the general terms in which the letter was expressed, I draw no conclusion from that.
  21. On 4 February 2022, the Claimant made a request to Ofwat for information under the Environmental Information Regulations 2004 (“the EIR request”). The information requested included an explanation of Ofwat’s function in monitoring and enforcing compliance with the obligations of companies under s.94(1) of the 1991 Act and regulation 4 of the 1994 Regulations. On the same date it also addressed targeted requests to DEFRA, the EA and all of the water companies in England.
  22. DEFRA replied that it is Ofwat which enforces the relevant duties.
  23. The EA replied that it does not have that function and that the section 94 duty placed on sewerage undertakers is enforced under section 18 by the Secretary of State and by Ofwat.
  24. A reply from Southern Water stated that its compliance with the obligations under the 1994 Regulations is monitored by the EA and DEFRA. South West Water and Anglian Water both replied that it was the EA which monitors its compliance. Those replies did not refer to Ofwat. The Claimant makes the point that if Ofwat is performing its duties in this regard, these water companies do not appear to be aware of it.
  25. Ofwat responded to the EIR request on 3 March 2022. Among other things, the response stated that, when monitoring and enforcing compliance with section 94(1) and regulation 4, Ofwat uses (1) information on compliance by companies with environmental permits and (2) information obtained from companies in the course of (a) setting regulatory price controls, under which companies explain what funding they need in relation to their assets to meet their legal obligations and (b) annual monitoring of performance commitments given in the price control process. It also referred to a current Ofwat investigation of non-compliance by the English water companies with permit conditions and the possibility that this would lead to enforcement action by Ofwat for breach of duties under section 94. It did not provide any internal documents discussing Ofwat’s enforcement strategy.

26. On 9 March 2022, Ofwat commenced enforcement processes against five water companies, serving statutory notices which referred to breaches of duty under section 94. Ofwat's case is that these include breaches of regulations 4(4) and 5 of the 1994 regulations.
27. On 19 April 2022, the Claimant sent a letter to Ofwat under the judicial review pre-action protocol ("the PAP letter"), referring to a "lack of action (including monitoring and enforcement action) in relation to the planned and unplanned discharge of untreated sewage into rivers and other water bodies" and alleged that "Ofwat is unlawfully taking an entirely passive stance... including taking no steps to obtain information relating to compliance".
28. Ofwat responded to the PAP letter on 17 May 2022. It explained the related functions of Ofwat and the EA in relation to waste water treatment works. It set out Ofwat's current general approach to monitoring and enforcement in relation to the obligations of companies under section 94 and regulations 4 and 5 and denied that Ofwat was taking no steps to obtain information in relation to compliance. It also asserted that no useful purpose would be served by commencing a claim because (1) Ofwat was in fact currently investigating all of the water companies and (2) Ofwat was also developing the manner in which wastewater monitoring and compliance assessment takes place. It suggested that if the Claimant had specific points to make as to how monitoring and enforcement could be improved, it should raise those separately rather than commencing a claim, for example in the forthcoming consultation on its draft methodology for setting price controls for the next price control period.
29. The claim was issued on 30 May 2022. The challenge is stated to be against "the Defendant's failure to discharge its obligations under section 94 of the Water Industry Act 1991, as articulated in its Environmental Information Regulations 2004 response of 3 March 2022 and its pre-action protocol response letter of 17 May 2022".
30. The question for me is whether there are any arguable grounds for judicial review which have a realistic prospect of success.

## Ground 1

### *The parties' contentions*

31. By ground 1, the Claimant accuses the Defendant of "unlawfully taking a passive stance in relation to enforcement of the [1994 Regulations] obligations including taking no steps to obtain information relating to compliance with them from undertakers with specific obligations in relation to their [sewage treatment works]".
32. Ofwat's response in its summary grounds of resistance and in argument largely reflects the contents of its replies to the EIR request and the PAP letter.
33. In particular Ofwat says that it carries out various kinds of routine monitoring activity which may uncover non-compliance with those obligations. One example arises from the cyclic processes for setting price controls. Those processes, which are relevant to companies' obligation under the regulations to maintain their collecting systems "in

accordance with the best technical knowledge not entailing excessive costs”, include the imposition of performance commitments, and annual monitoring of those commitments helps to identify maintenance issues.

34. As I have said, Ofwat also relies on obtaining data from the EA concerning compliance with the requirements of the permits which it issues for treatment and discharges. Non-compliance with those requirements may trigger an Ofwat investigation in respect of compliance with the regulations. Ofwat says that the two types of compliance or non-compliance, though different, are related.
35. Ofwat also repeats that it makes use of other sources of information including complaints from stakeholders.
36. Further, if any of those types of monitoring activity triggers a concern, Ofwat says that it can and does request relevant information from the water companies. Enforcement action can be commenced by the giving of statutory notices. That is what has happened in the enforcement cases mentioned above, which were initially triggered by information provided to Ofwat by the EA.
37. The Claimant contends that Ofwat has not even considered or addressed its mind to monitoring or enforcing compliance with regulations 4 and 5. The disclosure request included a request for any and all documents “even mentioning” Ofwat’s oversight of compliance with the regulations. Ofwat rejected that request as being disproportionate. That, it says, is the reason why the Court does not have a set of documents setting out express consideration, in Board meetings or otherwise, of monitoring or enforcement methods.
38. Mr Wolfe refers by way of contrast to a “regulatory position statement” issued by the EA in 2012. That is a document of just over 3 pages, and “sets out how we will regulate overflows to relieve pressures on sewers following groundwater infiltration”. It states that the EA will require companies to submit detailed “infiltration reduction plans” where it is aware of systems that are vulnerable to groundwater infiltration, and asserts an intention to hold companies responsible for discharges even from drains and sewers which are not under their control. It also sets out a requirement for quarterly reporting on progress against such plans. The document states that the regulatory position will be reviewed after two years, but I have not seen a more recent version. Mr Wolfe nevertheless makes the point that Ofwat has not disclosed any comparable document relating to regulation of matters arising under the 1994 Regulations, and he invites the Court to conclude that Ofwat has not given proper thought to its regulatory strategy.
39. Ofwat did disclose its letter dated 18 November 2021 to Chief Executives of the water companies which launched the investigation referred to above. The letter included this:

“In response to ongoing analysis by the Environment Agency of flow data from wastewater treatment works in England, and information which companies themselves have collated, which has recently been shared with Ofwat, we have significant concerns about the possible scale and extent of companies' non-compliance with the Flow to Full Treatment (FFT) conditions set out in the environmental permits for their wastewater treatment works in England. This could potentially be leading to significant numbers of unpermitted storm overflow spills,

potentially resulting in environmental harm to local watercourses and communities. If so, this is wholly unacceptable. It could indicate that there are companies that are not meeting their general duty under section 94 of the Water Industry Act 1991 (WIA91) to provide a sewerage system to the requisite standard.”

40. That passage is quoted in Ofwat’s summary grounds of resistance, but with the addition in square brackets, after the reference to section 94, of the words “as supplemented by regulation 4 of the UWWTR”. Mr Wolfe contends that the original reference to section 94 which did not contain those words would not have been understood by the water companies as a reference to regulation 4.
41. In addition to the statement of Ashley Smith, the claim is also supported by a witness statement from Professor Peter Hammond, who has retired from an academic career in the field of Computational Biology. He too gives evidence of fact from what he has observed about the state of the River Windrush and about his involvement with the campaign group to which I have referred. He has made a number of EIR requests to water companies for records of sewage treatment and discharges of untreated sewage and has participated in research into such discharges. His evidence contributed to the January 2022 report of the Parliamentary Environmental Audit Committee, *Water Quality in Rivers*. He criticises the quality of data provided by water companies to the EA and, for that reason, the reliance on those data by Ofwat. He has shared data with Ofwat and has been dissatisfied with their response, which in his view betrays a lack of enthusiasm to investigate.
42. Mr Wolfe submits that Ofwat’s references to enforcement action are not relevant to the obligations imposed by the 1994 Regulations. He says that there is no evidence that the current enforcement cases relate to regulation 4 obligations as opposed to the more general obligations under section 94.
43. Mr Mussa KC, representing Ofwat, refers in response to the service by Ofwat on water companies, when enforcement action was opened, of notices under section 203 of the 1991 Act requiring information about compliance with section 94 (in particular the section 94(1)(b) duty to make provision for dealing effectually with the contents of sewers), including but not limited to breaches of regulations 4(4) and 5.

### *Discussion*

44. The core obligation under section 94 (before any reference to regulation 4) is to provide and maintain sewers in each area “to ensure that that area is and continues to be effectually drained”.
45. Regulation 4 describes itself as supplementing that duty. It imposes standards on “collecting systems”, which are defined by regulation 2 as “a system of conduits which collects and conducts urban waste water”. Those conduits, it seems to me, must be included in the term “sewers”. Regulation 4(4) further requires water treatment plants to be such as “to ensure sufficient performance under all normal local climatic conditions”.



46. There is therefore a substantial overlap between the subject matter of section 94 and regulation 4, but the latter's requirements as regards water treatment plants are distinct from the generality of section 94.
47. However FFT, which was referred to in Ofwat's letter of 18 November 2021 to water companies, is a measure of how much waste water a treatment works must be able to treat under normal climactic conditions. It is therefore clear that concerns about FFT are directly relevant to those distinct requirements of regulation 4.
48. And, whilst Mr Wolfe is right to say that a water company's compliance or otherwise with its EA permit in respect of the amount of pollution caused to receiving waters does not prove that it has or has not complied with its obligations as to the design and construction of its water treatment plants, that does not prevent non-compliance with the one from providing evidence of non-compliance with the other.
49. That much, indeed, is acknowledged in the Claimant's Reply (at paragraph 13). The Claimant retorts that compliance with an EA permit does not prove compliance with regulation 4, but Ofwat is not contending the contrary.
50. It is therefore equally clear that Ofwat's letter to water companies of 18 November 2021 (which included a requirement to state the causes of non-compliance with FFT permit conditions – which logically could include issues arising from the design, construction or maintenance of treatment plants) related at least in part to compliance with regulation 4 and not merely with the generality of section 94. So does the enforcement action against five water companies which began before the PAP letter was sent (and therefore before this claim was issued) and the action against a sixth which has begun since.
51. That is very important, because the Claimant's case is put in such sweeping terms. What is alleged is the taking of an entirely passive stance and an entire failure to obtain information.
52. In light of these investigation and enforcement steps which have occurred and are continuing, it is simply not arguable that the Defendant has not turned its mind to compliance with its statutory duties or that it is guilty of an entire failure to perform those duties.
53. None of this means that Ofwat has necessarily discharged its investigation and enforcement duties in a sufficient or satisfactory way. This claim does not allege any specific, individual failure to do so (despite some more specific criticism in the supporting witness statements) but is expressed in general terms. This Court may not be well placed to assess, and has not been asked to assess, the merits or demerits of the specific action which Ofwat is taking. Instead, the claim is based on a lack of connection with the regulation 4 obligations but, as I have said, there is plainly a connection with those obligations.
54. Moreover, there is no proper basis on which this Court should go behind Ofwat's assertion that, rather than being purely passive, it gathers information in several ways and uses that information for enforcement purposes, as is demonstrated by the current enforcement action. The Claimant has not shown that each of those types of

information (which are listed in the summary grounds) is irrelevant to the potential enforcement of the regulation 4 obligations.

55. For these reasons there is no real prospect that the Administrative Court at a substantive hearing will find that Ofwat is simply not performing its monitoring and enforcement obligations in respect of water companies' section 94 duties.

#### Grounds 2-3

56. There is a very considerable degree of overlap between the grounds of claim.
57. Ground 2 alleges that, in breach of section 27(2) of the 1991 Act, Ofwat has unlawfully failed to collect information in relation to the performance of the obligations under the 1994 Regulations. This mirrors the second component of ground 1 but is, if anything, put in even more general terms. The statement of facts and grounds states:

“The illegality arises from the fact that the Defendant does not appear to have even considered or decided how this duty will be exercised in respect of the [1994 Regulations] obligations. It is not for the Claimant to specify what is required. The Claimant’s concern is that this exercise has not been conducted (or, if it has, then it has irrationally resulted in the Defendant not even collecting information which would show compliance or not with the [1994 Regulations] obligations) ...”.

58. Ground 3 alleges that, in breach of section 2(2A) of the 1991 Act, Ofwat has unlawfully failed to discharge its functions so as best to secure that the obligations of water companies under the 1994 Regulations are properly carried out. This is related to the first component of ground 1 but is wider, alleging a wholesale failure instead of merely a “passive stance”. The statement of facts and grounds states:

“... the illegality starts with the fact that the Defendant does not appear to have even considered or decided how this duty will be exercised in respect of the [1994 Regulations] obligations. For the reasons given above, the measures now relied on by the Defendant simply cannot be described as ‘a multi-faceted regulatory regime for ensuring compliance with section 94 of the 1991 Act’”.

59. Mr Wolfe suggested that, because each of grounds 2 and 3 focuses on a specific element, he could win on one of those grounds even if he failed on the more comprehensive ground 1.
60. Nevertheless, for the reasons I have given in relation to ground 1, neither of grounds 2 and 3 is arguable. Ofwat has collected information and has taken enforcement action. However well or badly it has done those things, it is not arguable that it has simply failed to do them.

#### Ground 4

61. Ground 4 alleges that Ofwat has misdirected itself in law that its regulatory obligations can be discharged by reference to data collected by the EA and steps taken to investigate breaches of environmental permits.

62. In more detail, the statement of facts and grounds refers to Ofwat's reliance, in its response letters, on its collection of data from the EA and its letter sent to the water companies in November 2021, and states:

“62. Crucially, none of that information relates to the [1994 Regulations] obligations and it is not capable of discharging the Defendant's obligations.

63. First, as outlined above, the EA has explained that it has no direct function in the [1994 Regulations] enforcement obligations. The EA does not appear to gather information about compliance with the [1994 Regulations] obligations. It is therefore not possible for this information to assist the Defendant. The Defendant's contrary view must be an error of law.

64. Second, the November 2021 letter sent by the Defendant to water companies does not evidence monitoring of the [1994 Regulations] obligations. The focus of that letter is on compliance with environmental permit requirements. The information sought in Annex 1 includes, by way of example, ‘details of the extent of any potential non-compliance with FFT permit conditions’ and ‘details of if and how your executive and board manage and scrutinise your company's compliance with its environmental permits’. The information provided by water companies in response to this letter would not enable the Defendant to monitor compliance with the wider [1994 Regulations] obligations.

65. It is therefore clear that the Defendant has misdirected itself in law in concluding that its section 94 obligations could be discharged by relying on entirely unrelated data or investigations.”

63. Although Mr Wolfe contended that ground 4 is materially different from grounds 1-3, I do not agree. I have already found that the data collected by the EA and Ofwat's enforcement action which began with the November 2021 letter were and are relevant to water companies' obligations under the 1994 Regulations, and therefore provide an insuperable obstacle to the allegation of a wholesale failure to address those obligations. The same finding means that ground 4 is not arguable, because ground 4 is based on the proposition that those data and investigations are “entirely unrelated” to the 1994 Regulations.
64. In any event, I also do not consider it arguable that Ofwat has directed (or misdirected) itself that it can discharge its section 94 obligations only by examining EA data and considering companies' compliance with permits. As I said at paragraphs 33-36 above, Ofwat claims to use information from a number of sources and of a number of kinds as a potential trigger for enforcement action. As I said at paragraph 54 above, there is no proper basis on which this Court should go behind that assertion.

### Conclusion

65. Permission for judicial review is refused.
66. One further point arises. In his skeleton argument, Mr Mussa referred to an investigation by the Office for Environmental Protection (“OEP”). The OEP has

recently been established under the Environment Act 2021 and is an independent body which investigates complaints about alleged failures of public authorities to comply with environmental law. It has announced an investigation of a complaint advanced by an NGO called Wildfish (formerly Salmon & Trout Conservation UK) against the Secretary of State, the EA, and Ofwat, with a view to determining whether those bodies have failed to comply with their respective duties in relation to the regulation, including the monitoring and enforcement, of water companies' duties to manage sewage.

67. Mr Mussa does not contend that the OEP investigation provides an alternative remedy of a kind which should prevent a grant of permission to seek judicial review. However, he argues that it lessens the importance of, or the public interest in, the proposed judicial review and therefore is relevant to the exercise of the Court's discretion as to the grant or refusal of permission.
68. In response, the OEP instructed Charles Morgan of counsel to attend in case he could be of assistance to the Court. I am grateful for the submissions of Mr Morgan, who emphasized the differences between an OEP investigation and a judicial review.
69. The public may be reassured to hear that the OEP is investigating the question of whether these important matters are being regulated in accordance with the legal requirements. However, in the absence of any arguable ground of judicial review, the existence of the OEP investigation did not influence my decision on this application.