

Institution: University of Kent
Unit of Assessment: 20
Title of case study: 'Water and Environmental Law: Design, Enforcement and Practical Operation.
<p>1. Summary of the impact</p> <p>Professor Howarth's extensive research has had considerable and cumulative impact on the design, enforcement and practical operation of UK environmental law, particularly (but not exclusively) in relation to water and fisheries. His specific contribution has been in influencing national policy on enforcement and sentencing. In particular, two key ideas developed and advanced in his research – 'modernisation' and 'purposiveness' – have provided an important alternative to the previously dominant, traditional, reactive approach of criminalising environmentally unacceptable behaviour. Howarth's research has impacted in three direct ways. First, it has 'significantly influenced' the work of the Department for the Environment, Food and Rural Affairs (DEFRA), making a material contribution to improvements in the legislative framework and operation of UK environmental law. Second, it has had a 'direct and significant' impact on the work of <i>Fish Legal</i>, a key environmental NGO, with which Howarth has developed a close, ongoing relationship and which has found his advice 'invaluable'. Finally, it forms part of the canon widely relied on by professional legal and environmental practitioners in their day to day work. The impact of Howarth's research has been furthered through an extensive range of high level consultancy and policy-oriented advisory activities, which have allowed him to feed in the insights of his research at a high level. These include acting as a specialist legal consultant to the Food and Agriculture Organization of the United Nations and as a legal advisor to the Northern Ireland Environment Department.</p>
<p>2. Underpinning research</p> <p>Howarth is author of the leading UK treatises on water pollution and water quality law, flood defence law and watercourses (outputs 1, 3 and 7), and has published over a hundred research papers and articles on environmental law and policy in academic journals since his appointment to Kent in 1992. This work represents a sustained and ongoing, policy-oriented engagement with both the substance of UK environmental law and its practical operation. His major research contribution has been a detailed and extended study of the challenge of translating global environmental imperatives regarding sustainable development and sustainable management of the aquatic environment into workable regulatory mechanisms capable of effectively securing acceptable levels of environmental quality in practice. Typically, this has involved critical scrutiny of environmental measures adopted at European Union level, their transposition into national legislation and the evaluation of the effectiveness of specific legal measures as they operate in practice (e.g. outputs 1, 4 and 6). This scrutiny of environmental legislation has produced many critical and constructive suggestions as to how environmental regulation and its enforcement might be enhanced across a spectrum of environmental areas: in relation to the balance of public and private responsibilities for water resources planning; in relation to the effectiveness of public participation in water quality management; and in relation to international standards of 'good practice' for aquaculture development (e.g. outputs 2, 6, 8).</p> <p>Howarth's research has centred around the advancement of two key, innovative ideas. First, his concern with 'modernisation' has sought to reveal the limitations of existing environmental laws which involve the control of longstanding high profile industrial polluting operations and relatively neglect the cumulative environmental impacts of individual lifestyle choices in post-industrial societies. A second key focus, 'purposiveness', relates to the need for environmental law to embrace the need to use law to achieve specified standards for the environmental media and ecosystems, rather than the reactive traditional approach of criminalising environmentally unacceptable behaviour. These ideas are pursued, in different environmental contexts, in the outputs listed below.</p>

3. References to the research

1. Howarth and McGillivray, *Water Pollution and Water Quality Law*, Shaw and Sons (2001) cxiii + 1,212 pp (RAE2008).
2. Howarth, Hernandez and Van Houtte *Legislation Governing Shrimp Aquaculture - Legal Issues, National Experiences and Options*, published by the Food and Agriculture Organization of the United Nations, Rome, Italy (2001) 151 pp (specially commissioned by the UN)
3. Howarth, *Flood Defence Law*, Shaw and Sons (2002) lv + 552 pp (RAE2008).
4. Howarth, 'The Progression towards Ecological Quality Standards' (2006) *Journal of Environmental Law* 3-35 (peer reviewed, RAE2008).
5. WRc, *The Effectiveness of Enforcement of Environmental Legislation* (2006, DEFRA Report 7208, 154 pp., with Howarth the author of the legal parts of this report, particularly Ch.4 ss.1 to 5).
6. Howarth, 'Aspirations and Realities under the Water Framework Directive: Proceduralisation, Participation and Practicalities' (2009) *Journal of Environmental Law* 391-418 (peer reviewed, REF2).
7. Howarth and Jackson, *Wisdom's Law of Watercourses* (6th ed 2011) Sweet and Maxwell liv and 479 pp.
8. Howarth, 'Planning for Water Security' (2012) *Journal of Planning and Environment Law* 357-73 (REF2).

4. Details of the impact

Professor Howarth's extensive research has had considerable and cumulative direct impact on the design, enforcement and practical operation of UK environmental law, particularly (but not exclusively) in relation to water and fisheries. His research has had significant influence on the work of the Government, on *Fish Legal* (an important and longstanding environmental NGO), and on the practice of professional legal and environmental practitioners. The impact of this research has been furthered through an extensive range of high level consultancy and policy-oriented advisory activities, which have allowed him to feed in the insights of his research at a high level. While these are too numerous to be detailed here, by way of illustration, these include acting as specialist legal consultant to the Food and Agriculture Organization of the United Nations and as a legal advisor to the Northern Ireland Environment Department.

a) Impact on Government Policy and Practice

Howarth's work, and particularly his research on the effective formulation and enforcement of environmental law, has both shaped the terms of policy debate and had considerable direct influence on government environmental policy and practice (source 1).

The Pathway to Impact: Prior to this REF period and laying the groundwork for significant impact within it, Howarth worked with WRc (formerly the Water Research Centre, now a leading UK environmental consultancy), providing the legal components of a report for DEFRA on *The Effectiveness of Enforcement of Environmental Legislation* (DEFRA Report 7208; WRc, 2006), which draws closely on his research (e.g. output 1, Ch.9 on pollution offences). Throughout a subsequent, ongoing and lengthy reform process in which Howarth has continued to be closely involved, this Report has provided an important source of evidence of the multiple inadequacies of the current law and continues to serve as a basis for the development of further measures contributing to a more stringent legal regime for dealing with environmental offences. Most immediately, the influence of the Report was seen in its effect on the Government's *Review of Enforcement in Environmental Regulation* (2006). Drawing specifically on what a DEFRA spokesperson describes as Howarth's 'helpful' contribution to the WRc report, serving to identify 'problems that had to be overcome in any new enforcement system' (source 1), the *Review*

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highlighted some key underlying obstacles to more proportionate, consistent, transparent and effective environmental enforcement. DEFRA's longest serving environmental lawyer explains that this preparatory work also influenced the authors of the subsequent DEFRA Report, *Review of Enforcement in Environmental Regulation* (2006) (source 2).

Impact since 2008: The WRc Report and the 2006 Review, which draws on it, have continued to frame reform efforts and to exert a strong influence on Government thinking since 2008. The DEFRA spokesperson cited above describes the legal research (authored by Howarth and cited extensively in Annex B of the Report) as having 'put Defra in a good position to respond to the subsequent Macrory Review, which was very influential in shaping Defra's subsequent policy on enforcement, culminating in the civil sanctions order in 2010'. The 2010 Order allows environmental regulators to impose civil sanctions on a business committing certain environmental offences, as an alternative to prosecution and/or criminal penalties of fines and imprisonment. This represents a key step in making enforcement more effective and proportionate, particularly in relation to minor offences and offences that are committed unintentionally. In addition to this introduction of provision for civil penalties, the Report has also underpinned ongoing work on more detailed proposals for strengthened sentencing powers in relation to environmental offences. As such, the DEFRA lawyer confirms that after six years and a number of further initiatives down the line, the recommendations of the Report 'continue to resonate' (source 2).

These important issues received further attention in DEFRA's *Fairer and Better Environmental Enforcement Project*. Begun in 2007 and ongoing throughout this REF period, this project built on the *Review* to develop recommendations for a more transparent, proportionate, consistent and effective environmental enforcement system in England and Wales (<http://archive.defra.gov.uk/environment/policy/enforcement/review/report.htm>). In pursuance of these aims, a public consultation took place in 2009 to seek views on Government proposals to introduce civil sanctions for existing environmental offences in England and Wales under the Regulatory Enforcement and Sanctions Act 2008. Howarth's work was deemed an important part of the evidence base for this highly significant ongoing work (source 1), being found by DEFRA to be particularly valuable in showing the limitations of data available, evaluating the role of strict liability in sentencing and highlighting the concern that judicial precedent may serve to undermine proportionality in sentencing practice (source 1).

The consultation has been followed by a *Government Response and Summary of Replies* (2010, <http://archive.defra.gov.uk/environment/policy/enforcement/pdf/summary-reponses.pdf>) supporting proposals for the introduction of civil sanctions and initial proposals to strengthen the powers of criminal courts in sentencing the worst environmental offenders.

b) Impact on the work of NGOs

Howarth's work has also impacted on the activities of NGOs, particularly those of *Fish Legal*, the legal action organisation associated with the Angling Trust (a not-for-profit organisation which represents angling interests and the protection of the water environment with 11,000 subscription-paying members). It is dedicated to using law to fight pollution and other damage to the freshwater and marine water environment, protecting aquatic ecosystems and fisheries, and acting for fishing clubs, fishery owners, syndicates and commercial fisheries, having brought a range of significant cases ([http://www.fishlegal.net/page.asp?section=168§ionTitle=Current Cases](http://www.fishlegal.net/page.asp?section=168§ionTitle=Current%20Cases)). It is also active in lobbying government and public bodies on issues relating to the protection of the aquatic environment. Drawing upon his academic legal research, and particularly his extensive study of water pollution and water quality law (output 1), Howarth advises on whether particular legal actions, including litigation, can and should be pursued in relation to water pollution and water quality concerns impacting upon fisheries. Howarth is the sole academic advisor on the Advisory Committee.

In the words of the chief solicitor of *Fish Legal*, Howarth's work has had 'direct and significant impact on the way in which we have been approaching issues of rights of access and navigation on watercourses, the law on Freedom of Information and Environmental Information Regulations,

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European law, interpretation of sections of the Water Resources Act 1991 on abstraction and other matters' and his advice has been 'invaluable' (source 3). To take just one, specific example of this impact, he cites the inclusion of Howarth's research in the bundle of materials put into the court in the groundbreaking case of *Fish Legal and Emily Shirley v ICO and Yorkshire Water, United Utilities and Southern Water* (EA/2010/0069 & 0076).

c) Impact on Professional Practice

In the field of environmental law there is a particularly close interface between 'academic' and 'practical' scholarship and Howarth's research is typically in areas which span the academic-practitioner divide, with articles in academic journals frequently used by legal and environmental practitioners. Notably, non academic readership of the *Journal of Water Law* (edited by Howarth) and the journals in which his publications have appeared is significantly higher than might be expected for other fields of legal 'academic' research, on occasion citing a non-academic readership of over 80% (source 5). Further, publications that draw on the underpinning research, e.g. in outputs 1 and 7 above, have appeared in a form which is designed to be accessible and useful to a practitioner audience. Most notable, however, is the translation of Howarth's academic research into practical legal guidance undertaken in his capacity as a consultant editor of *Halsbury's Laws of England*, Volumes 100 and 101, *Water and Waterways*, LexisNexis (5th ed. 2009) and Volumes 45 and 46, *Environmental Quality and Public Health*, LexisNexis (5th ed. 2010). This is the UK's leading legal encyclopaedia and is used daily by legal practitioners in England and Wales.

In summary, through the body of work described above, Professor Howarth's research has made a significant contribution to broader efforts to achieve sustainable development in relation to the aquatic environment, aiming to shape law and policy capable of impacting on behaviour in ways that help to protect the aquatic environment. This impact has been felt on the work of Government, playing a key part in framing and informing significant policy development since 2008 and making a significant contribution to legal reform, particularly in the form of the Civil Sanctions Order (2010) and on the work of NGOs and environmental practitioners.

5. Sources to corroborate the impact

1. Peter Johnson, Team Leader, Fairer and Better Regulation Branch, DEFRA (7 September 2009, e-mail on file), describing how Howarth's research formed an important part of the evidence base for DEFRA's *Fairer and Better Environmental Enforcement Project*, particularly in highlighting the concern that judicial precedent might undermine proportionality in sentencing practice.
2. Alistair McGlone CBE, environmental lawyer (since 1983) in DEFRA (14 February 2012, e-mail on file), outlining the significant impact of the WRc Report (co-authored by Howarth and drawing significantly on his research) on DEFRA since 2008.
3. Dr Justin Neale, head solicitor at Fish Legal (19 January 2012, e-mail on file), describing the 'direct and significant impact' of Howarth's work on the way in which this major environmental NGO has approached issues of rights of access and navigation on watercourses, the law on Freedom of Information and Environmental Information Regulations, European law, interpretation of sections of the Water Resources Act 1991 on abstraction and other matters.
4. Commercially confidential communication regarding non-academic subscription rates from the publishers of *Journal of Water Law* (28 August 2012, email on file); *Journal of Environmental Law* (22 August 2012, email on file); *Journal of Planning and Environment Law* (22 October 2012, email on file).