

# Legal queries in land drainage

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# **Manchester Ship Canal v United Utilities**

- This case in the Supreme Court questioned the right of a sewerage undertaker to discharge sewage, both surface water and treated effluent to a watercourse.
- The case raised a number of issues but for our purposes decided:-

# Manchester Ship Canal v United

## Utilities

- A) The implied right of an undertaker without either the consent of the owner of the watercourse or the exercise of compulsory powers to create new outfalls or to increase the discharge through previously constructed outfalls beyond consented limits ended in 1991, with the passing of the Water Industry Act.
- B) Pre-existing outfalls and discharges constructed or made under the previous legislative regime remain legal.
- C) As far as protected bodies such as IDBs are concerned, both the right to discharge and the right of a developer to connect to an existing public sewer under section 106 of the Water Industry Act are “relevant sewerage provisions” and therefore require consent from (inter alia) IDBs where their systems would be adversely affected IN ADDITION to any consents from the sewerage undertaker.

# Definition of “Watercourse”

- There have been cases where a risk management authority has tried to enforce either sections 23 and 24 (culverts, mill dams, like obstructions) or section 25 (watercourse in such a condition where the proper flow of water is impeded) where what is being worked on is not a watercourse within the Land Drainage Act. Although the definition section of the Act (section 72) gives a wide definition of watercourse, essentially, the “channel” must be a channel which does or is capable of a flow. It is not necessary that the channel always contains water, but it must flow in a regular channel, between banks more or less defined *R v The Inhabitants of Oxfordshire* (1830); *Stollmeyer v Trinidad Lake Petroleum Co* [1918].
- Where the “channel” is truly a “dead-end ditch” which does not flow anywhere, it will therefore not be a watercourse.

# **Fish Legal v Yorkshire Water and** **United Utilities**

The environmental and angling organisation, Fish Legal, has won what may be a groundbreaking victory in a case against Yorkshire Water Services Ltd and United Utilities Plc, “which was the culmination of a six year legal campaign for greater transparency within the water and sewerage industry.” The Court ruled that water companies in England & Wales are ‘public authorities’ for the purposes of the Environmental Information Regulations (2004) and so are under a legal duty to disclose environmental information they hold to the public. Such companies have always resisted such disclosures in the past because they argued that they were not public authorities. The implications of this test case, could also affect companies operating in other privatised industries which have a similar role managing resources and services of public interest, such as the oil, gas, electricity providers and the Royal Mail.

# **Data Protection Query**

- Data Protection queries should be referred to the legal adviser of the body (data controller) concerned.
- A few basic principles however. Data Protection is covered by the Data Protection Act 1998 and “personal data” is data which relates to a living individual who can be identified from that data or other information in your possession. It must be obtained for one or more specified lawful purposes. There is a right under section 10 for an individual to require a data processor to stop processing data by service of a notice where distress or harm

# Data Protection Query

- However, data can only be disclosed for the purposes for which it is registered as being held and must be processed in accordance with the 7 data protection principles. These include that it must not be processed unless one of the conditions in Schedule 2 is met. Schedule 2 contains a number of conditions such as consent of data subject (does not have to be express); **the performance of a contract to which the data subject is a party or for the taking of steps at the request of the data subject with a view to entering into a contract.**
- It will therefore depend on circumstances such as the information held, whether it is particular to a property or covers an area, whether the information is already in the public domain, eg in an LLFA Flood Investigation. Prospective vendors will also have been asked about flooding. More general questions eg is the property in a flood risk area should not present a difficulty. Most of the questions we receive will relate to whether the property is at flood risk, which we can answer by reference to the arterial position but also saying that flood risk will remain if local private arrangements do not function

# **SuDS maintenance**

- Planning Applications are now being granted to developers using SuDS to dispose of surface water thus depriving Drainage Boards of a developers financial contribution towards the cost of maintaining the main system in the future.
- To believe that surface water will soak away quickly in areas of South Holland in times of high rainfall is unrealistic.
- When the question was asked at a planning meeting regarding who will maintain the SuDS it was said that a Management company would be set up - is it possible to set up a Private Management Company in perpetuity?