



*"I am so grateful to the team at Irwin Mitchell who have helped support me in this campaign."*

### Information law and the environment

The public has a right to information on environmental issues where that information is held by a public authority, subject to certain exclusions.

However, just what a public authority is and what constitutes environmental information can often be complex and confusing. Much of the law in this area is derived from the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention) to which the UK and the European Union are signatories. The relevant areas of the Convention are transcribed into European Law and then into UK legislation through the Environmental Information Regulations 2004.

The purpose of the Convention, Directive and the Regulations is to ensure that public authorities, in response to request for environmental information, make that information available to the public.

At Irwin Mitchell, we can give advice on information requests under the Environmental Information Regulations, as well as providing advice and representation on legal challenges including complaints to the Information Commissioner and appeals to the First Tier and Upper Tribunal in England and Wales.

### Legal Costs

At Irwin Mitchell, we can advise on funding cases and ways of limiting exposure to the defendant's costs if the case is lost.

**CFAs** - Although some clients may be able to fund cases privately, we can sometimes consider 'No Win No Fee' agreements where, if a case is lost, you will only pay for our 'disbursements' or expenses such as court fees and sometimes barristers' fees.

**Public Funding** - At Irwin Mitchell, we are experts on public funding or Legal Aid, which is sometimes available for planning and environmental nuisance cases, depending on your financial eligibility, chances of winning the case and public interest. If Public Funding is available, it provides not only the funding for a case but the protection from the defendant's costs.

**Insurance and insuring against the risk of losing** - Some clients benefit from "Before the Event" legal insurance cover which means that if they need to make a claim or defend one, their legal expenses – and those of the opposition if they lose - will be covered. However, in our experience of judicial review and environmental nuisance, this kind of cover is the exception rather than the rule. Sometimes, "After the Event" insurance or ATE is possible – but since recent changes to the law, you may have to pay for the insurance premium – even if you win. We can advise you on this should you wish to pursue a case.

**Protective Costs Orders (PCOs)** - One way to protect against exposure to the defendant's costs in an environmental or planning case may be to issue proceedings and apply for a 'Protective Costs Order' or PCO. Since April 2013, claimants in certain kinds of case involving judicial review can expect such an order to be granted. However, for other kinds of cases – such as environmental nuisance – a claimant has to demonstrate that he or she isn't able to afford to pay the defendant's costs if he or she loses.

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## Public Law: Environment, Planning and Local Government

Irwin Mitchell is one of the UK's leading national law firms, with specialist teams dealing with environmental law and planning within the Public Law Department.

### Making a difference for small communities, organisations and individuals

With more and more changes to regulation from Europe and domestic legislation, Environment and Planning Law are always high on the agenda.

But these legal disciplines span such a vast area of legal practice that it is sometimes confusing for the client to follow.

In the Public Law department, we have a team of specialists who can provide guidance and representation in these complex areas. We also work closely with other departments within Irwin Mitchell so that, as a firm, we can provide a one-stop service for clients.

Irwin Mitchell's experienced Public Law team works with organisations, individuals and campaign groups to advise on legal issues. We are also experts in judicial review and challenges to decisions by public bodies.

We can provide advice and representation in many areas including the following:

- General planning
- Renewable energy planning issues
- Nuisance law
- Tree preservation orders and green space issues
- Built heritage - including listed building status
- Compulsary purchase

- Environmental Impact Assessments
- Water resources
- Fisheries/angling
- Environmental information rights, complaints to the Information Commissioner and appeals
- Funding.

For the full range of Environmental Law Services visit [www.irwinmitchell.com](http://www.irwinmitchell.com) or contact Justin Neal on 0114 274 4311 or [justin.neal@irwinmitchell.com](mailto:justin.neal@irwinmitchell.com)

## General planning

The UK is an island of green spaces and urban environments, but also a land where competing interests, unless managed properly, can lead to conflict. The Government has introduced new legislation in England – the Localism Act 2011 and the National Planning Policy Framework (NPPF) – which, together are intended to remove obstacles to development and to allow local communities more power in planning procedures as well establishing a presumption in favour of “sustainable development”. With a lack of legal clarity in these changes, it is likely that clients will increasingly need to seek advice and assistance.

Often decisions are made by planning committees or by the planning inspectorate with which organisations and local people may not be happy. We can advise on grounds of challenge or representation. We are also experts in funding – whether by way of Public Funding, Conditional Fee Agreements (CFAs) or private paying arrangements.

## Environmental Impact Assessments

As one of the planning “tools” introduced through European Law, Environmental Impact Assessments (EIAs) have been central to establishing whether, and in what way, developments will affect the environment. In some circumstances, due for instance to the size of a development or project or the sensitivity of location, an EIA will automatically be required. In other circumstances, however, an EIA may be needed only where the development is likely to give rise to significant environmental effects.

However, the local planning authority (LPA) will need to give “a screening opinion” to see if it thinks that an EIA is necessary. Reasons need to be given by the local authority if it believes that one is not necessary.

There is a similar but more sensitive system under the European Habitats Directive where an “appropriate assessment” is needed for development in a protected area where there are possible adverse effects on the environment.

At Irwin Mitchell we can advise on these issues and provide representation where the issues become contentious. Most recently, Irwin Mitchell won a case for a client where the EIA screening for a wind turbine application was found to be unlawful.

## Renewable energy

Despite some turbulence, today’s market for green energy is still buoyant. The UK has been set the tough target of 15% for energy consumption from renewable sources by 2020 under European Directives. In addition, there are ambitious measures set out under the Climate Change Act 2008 for a “low carbon economy”.

These targets have provided opportunities for the renewable energy industry with incentives such as the Feed in Tariff Scheme (FITs) which provides payments for small scale generation of renewable electricity. However, renewable energy developments and projects have often led to conflict between supporters of, for instance, wind energy and campaigners.

What is important, however, is that sensible decisions are made on such developments and campaigners, developers or local planning authorities are given the best possible advice and representation to help them with such conflict from the start.

## Nuisance

On such a small island, whenever neighbouring businesses or home owners domestic premises, wish to use their land in a particular way it will often have an impact on their neighbours.

In the Public Law Team we can deal with cases where “Statutory Nuisances or Private Nuisances” have occurred.

Statutory Nuisance usually falls under the Environmental Protection Act 1990 where local authorities are required to issue an abatement notice, where fumes, light or noise have been injurious to health or a caused nuisance. To ignore an abatement notice is a criminal offence.

There are also common law rights in “Private Nuisance” where those who have experienced an unlawful interference with their use or enjoyment of land can sue for damages or an injunction. This includes noise, smell and water pollution.

## Green spaces and town and village greens

Long-standing users of “green space” can apply to have areas of land registered under the Commons Act 2006. However, with new laws coming in, such applications will not be as straightforward.

At Irwin Mitchell we have a history of working with those affected by village green issues, most recently in the case of R (on the application of Lewis) v Redcar and Cleveland – a case which was instrumental in clarifying the law on town and village green applications.

## Tree preservation orders (TPOs)

Under the Town and Country Planning Act 1990, LPA’s can make tree preservation orders which are intended to give some protection to old or unique species of tree or woodlands for their amenity value, which can include nature conservation.

TPOs cover not only the protection of trees from being felled but also maintenance work for which a licence would then need to be granted.

Whilst some may fight hard to lobby the local authority to make a TPO, others find that the same tree may cause damage to their property.

At Irwin Mitchell we are able to advise on TPOs whether pushing for a TPO or challenging one through an application to the High Court under Section 288 of the Town and Country Planning Act 1990 by “aggrieved” applicants.

## Water resources

Water is a natural resource which is often under threat, and with increasing populations needing water to support domestic and industrial use, there will be impacts on the environment. Changes are afoot with the recent Water Bill which proposes increased competition between water companies. There will also be changes to the way that water “abstraction” is regulated and licensed.

Water is not only “abstracted” from rivers and lakes across the UK, it also receives “discharges” of treated sewage under licence from the Environment Agency.

With such pressures on the environment, there are often tensions between regulators such as the Environment Agency, the water industry and also users of waterways.

In the Public Law Department we can advise or represent in the following areas:

- Abstraction licences – including variation, revocation appeals and challenges;
- Nuisance claims where rivers or other waters have been polluted
- Protected species/ habitat status in relation to licensing for abstraction
- Conflicts between users of waterways including anglers, canoeists and water companies.

## Fisheries

Angling in the UK is a popular pastime for both freshwater and sea anglers. Unlike sea fishing, inland fisheries on non-tidal waters in England and Wales are mostly privately owned due to the common-law “riparian rights” which go hand in hand with ownership of the land. That means that owners of fishing rights have a right of legal action if their fishing is unlawfully affected by, for instance, pollution.

At Irwin Mitchell we can provide a full service for angling clubs and individuals in such legal areas as:

- Pollution-related nuisance claims
- Constitution of angling clubs
- Advice and representation when dealing with government bodies such as the Environment Agency and Natural England or Natural Resources Wales
- Planning issues relating to fisheries including development near to or on fisheries, including hydropower
- General water law issues including abstraction and discharges into waterways
- Rights of navigation and conflicts with angling.

## Built Heritage

Town and Country planning has for a long time held protection of buildings of special architectural or historic interest as a central objective.

The Secretary of State approves lists compiled by English Heritage which effectively protects buildings from alteration or demolition without first obtaining listed building consent. Local Planning Authorities need to take such listings into account when considering planning applications.

In the case of R(Gibson) v Waverley Borough Council and Fossway, Irwin Mitchell successfully represented a client in challenging the Local Planning Authority’s decision to grant planning and listed building consent for the conversion and development of the author, Arthur Conan Doyle’s Grade II listed house.

## Compulsory Purchase Orders (CPO)

CPOs can be an important part of urban regeneration and development. However, local authorities are often prepared to use their powers to purchase private land without the consent of the owner. CPOs can therefore be controversial and are often met with firm resistance from both individual landowners and communities alike.

However, because the grounds upon which objections can be made and legal action taken is limited, it is important that those at the receiving end of a CPO receive legal advice at the earliest opportunity.

We are experts at representing organisations and individuals at all stages of the CPO process from drafting written objections to providing representation at public inquiries as well as negotiating relocation agreements and compensation packages. Our former clients include a large group of residents displaced by the 2012 London Olympic development.

For the full range of Environmental Law Services visit [www.irwinmitchell.com](http://www.irwinmitchell.com) or contact Justin Neal on 0114 274 4311 or [justin.neal@irwinmitchell.com](mailto:justin.neal@irwinmitchell.com)