

SUSTAINABILITY IN THE ENGLISH WATER INDUSTRY – PART II

AN EVALUATION OF HOW THE INTRODUCTION OF THE ENVIRONMENTAL INFORMATION REGULATIONS 2004 INTO THE WATER INDUSTRY MAY IMPROVE SUSTAINABLE WATER PROVISION

MICHAEL JAMES BOWES

*Scholar and Solicitor, Berwin Leighton Paisner LLP**

This article aims to explore the impact of the Environmental Information Regulations 2004 on private water and sewerage providers in England. The Environmental Information Regulations 2004 mandate that water providers must provide environmental information, such as the cause of pollution incidents, upon request. This article aims to analyse whether the new legislation has changed organisational transparency or operational processes in relation to pollution. It hopes to answer the following research question: How far has implementing the Environmental Information Regulations made water companies more transparent and to what extent could these changes lead to a potential reduction in water pollution by water and sewerage providers?

1 INTRODUCTION

In an attempt to make water and sewerage undertakers (undertakers) more accountable and transparent, the courts have recently decreed that they must adhere to the requirements imposed by the Environmental Information Regulations 2004 (EIRs).

The focus of this article is on water pollution in England by private water and sewerage undertakers. The article aims to understand if the environmental information rights gained by individuals as a result of the EIRs has altered the undertakers' transparency and could alter their behaviours.

The scope is limited to considering changes in corporate transparency and operational change based on the new legislation. As the legislation has only recently been held applicable (February 2015), an analysis of the effect of legislation on water pollution results is premature.

The chosen methodology has focused on qualitative 'elite interviewing'. This enables experts to contribute to the findings expressed in this article through the interview process, which allows the procurement of first-hand insight and information. Thirty elites were interviewed, the majority of whom were representatives from water and sewerage undertakers or organisations affected by water pollution.

The results showed a dramatic increase in undertakers' transparency. Undertakers have had to alter their structures in order to meet the legal demands of the new powers, which enable individuals and organisations to

access previously withheld information. However, many undertakers declared that there have as yet been no significant organisational changes relating to pollution reduction in response to environmental information requests.

Opinions are polarised as to whether there will be direct operational changes aimed at reducing pollution in the future. Some organisations believe that, as competition enters the market, customer and retailer demands for a reduction in pollution will necessitate operational change. The undertakers' operational changes in relation to answering information requests, their increase in information provision and increase in transparency, however, are significant.

The research question is therefore: 'How far has implementing the Environmental Information Regulations made water companies more transparent and to what extent could these changes lead to a potential reduction in water pollution by water and sewerage providers?'

The first part of the article introduced the reader to the relevant literature and case law (published in 25 *JWL* 3). It discussed the impact that water pollution has on the environment and described how the introduction of the EIRs has now become applicable to water and sewerage undertakers.

The second part of the article will present the empirical evidence gathered and the resulting conclusions.¹

2 METHODOLOGY AND DATA GATHERING

2.1 Introduction and appropriateness of methodology

This section explains and discusses the methodology used in order to answer the research question: 'How far has implementing the Environmental Information Regulations made water companies more transparent and to what extent could these changes lead to a potential reduction in water pollution by water and sewerage providers?'

¹ The author would like to thank those interviewed for this research, including: Albion Water, Anglian Water, Angling Trust, Berwin Leighton Paisner, British Association for Shooting and Conservation, Canal River Trust, Game and Wildlife Conservation Trust, Natural England, National Farmers' Union (NFU), Northumbrian Water, Otters' Trust, Salmon and Trout Conservation Trust, Southern Water, South East Water, South Staffs Water, Surfers Against Sewage, United Utilities, Wessex Water, Wild Trout Trust and Yorkshire Water. In addition, the author would like to thank Cambridge University and the Cambridge Institute for Sustainable Leadership.

* Dr Bowes LLB (Hon), GDL (Eng), GDL (Sco), MSt (Cantab), LLM (Hon), JSD (Cornell) is a specialist in water law. This research was carried out in 2015–16 as part of the MSt in Sustainability Leadership at the University of Cambridge Institute for Sustainability Leadership (CISL). Contact: drmjbowes@gmail.com.

The methodology is qualitative and empirical and focuses on a method known as ‘elite interviews’. Elite interviewing allows experts to provide information through the interview process, enabling the procurement of first hand insight.² This is a recognised and practised method, used in a variety of fields.³ It is the objective of this work to gain insight into an area which is new and important. Using this form of research, it is possible through a series of interactive representations including interviews and conversations, that observation learning can take place and first-hand knowledge be gained.⁴ As May highlights, interviews are a unique way to obtain not just information about organisations but about individuals and their perspectives.⁵ Learning from the ‘field’ enables the interviewer to gather various opinions and allows the work to combine a holistic picture from multiple realities.⁶

2.2 Objective of the methodology

The first stage of the research question relates to corporate transparency of water companies (undertakers). The second focuses on potential reduction in water pollution as an outcome. This potential reduction would have evolved from corporate change in reaction to environmental information requests. The work recognises that the *Fish Legal* determination, which made the EIRs applicable to water and sewerage companies, is very current (February 2015) and that an analysis of actual pollution levels would be premature at this stage.⁷ The change in behaviour is being assessed as an appropriate proxy for any pollution analysis.

This work therefore focuses on three key stakeholder groups:

- First of all, interested organisations, namely those that have been directly impacted by water pollution to establish their use of these new powers of access to environmental information. The work seeks to determine the extent to which they are utilising these new powers of access to make water and sewerage providers more sustainable by reducing pollution incidents. Twelve representatives were interviewed from this group.
- Secondly, water and sewerage undertakers in response to the new legislation. The work analyses what changes have taken place and if there are improvements in transparency and operational changes, which may potentially reduce pollution. Thirteen water and sewerage undertaker representatives were interviewed.
- Thirdly, five specialist lawyers were interviewed, in addition to these two principal groups, to gain a better understanding of the case law and legislation involved.⁸

2 R Hertz and J B Imber (eds) *Studying Elites Using Qualitative Methods* vol 175 (Sage Publications 1995).

3 I Seidman *Interviewing as Qualitative Research: A Guide for Researchers in Education and the Social Sciences* (4th edn Teachers College Press 2013).

4 M B Miles and A M Huberman *Qualitative Data Analysis: An Expanded Sourcebook* (2nd edn Sage 1994).

5 T May *Social Research* (McGraw-Hill Education 2011).

6 A Kezar ‘Transformational elite interviews: principles and problems’ (2003) 9(3) *Qualitative Inquiry* 395.

7 *Fish Legal v Information Commissioner* [2015] UKUT 52 AAC

8 Information gathered from interviews provided by the Forestry Commission, Thames Water and Fish Legal has not been included in this article.

2.3 Advantages of the method: the ability to gain industry opinion and factual information

Tansey states that:

One of the strongest advantages of elite interviews is that they enable researchers to interview first hand participants of the process under investigation, allowing for researchers to obtain accounts from direct witnesses to the events in question. While documents and other sources may provide detailed accounts there is often no substitute for talking directly with those involved and gaining insights from key participants.⁹

Social interaction is also possible with face to face interviewers, allowing the interviewer to probe further into a topic.¹⁰

Understanding the decision making process behind decisions and the thoughts of those in the industry made a topic which is filled with highly technical regulations more relevant to the issues involved. Interaction with representatives from various organisations who are directly impacted by pollution from undertakers identified the high level of priority that they placed on this topic.

Seidman is of the view that interviewing is the best way to give meaning to a topic through language.¹¹ Communicating with those representatives in organisations that were negatively impacted by pollution introduced an emotional element, which statistics in isolation could not bring. By carrying out such interviews it created a human element to what would otherwise be an academic and isolated study.

2.4 Disadvantages: access, bias and time

According to Goldstein: ‘Many factors are important when it comes to conducting high quality elite interviews ... Unfortunately none of these skills matter if you do not get the interview. In other words, [it] depends on getting in the door, getting access to your subject’.¹² Obtaining initial contact and then subsequently an interview is not an easy task.¹³ Goldstein recommended that the interviewer introduce what they were doing and why.¹⁴ This method was used particularly with organisations where the interviewer had no previous contact. Highlighting the fact that it was for academic purposes had a positive impact on the majority of those contacted.

The most prominently documented disadvantage of using interviews as a method of research is bias. Different individuals have different perspectives on different events. Bias does not always materialise from intention; it can be

9 O Tansey ‘Process tracing and elite interviewing: a case for non-probability sampling’ (2007) 40(4) *Political Science & Politics* 765, 767.

10 R Opendakker ‘Advantages and disadvantages of four interview techniques in qualitative research’ (2006) 7(4) *Forum: Qualitative Social Research* <http://www.qualitative-research.net/index.php/fqs/article/view/175/392>.

11 See Seidman (n 3).

12 K Goldstein ‘Getting in the door: sampling and completing elite interviews’ (2002) 35(4) *Political Science & Politics* 669, 669. See also A Cochrane ‘Illusions of power: interviewing local elites’ (1998) 30(12) *Environment and Planning* 2121; and E Cunningham-Sabot ‘Dr Jekyll, Mr H(i)de: the contrasting face of elites at interview’ (1999) 30(4) *Geoforum* 329.

13 R J Thomas ‘Interviewing important people in big companies’ (1993) 22(1) *Journal of Contemporary Ethnography* 80.

14 See Goldstein (n 12) 669.

conscious or subconscious.¹⁵ Bias is something that has to be recognised as part of the methodology. Subjects of the interview have a purpose for giving the interview and have something they want to say – usually what they have achieved and a justification of why.¹⁶ In addition, there is always the possibility of dishonest respondents.¹⁷ Dishonesty and inaccuracy differ from bias in that bias can be subconscious. It should be noted that when providing information on, for example, pollution, water companies are under a legal obligation to ensure that the information is accurate. In order to analyse the information provided, facts were subsequently verified. A high level of sincerity was encountered in all interviews undertaken.

Time is another considerable disadvantage of the method. In addition to the time needed to obtain the interview, there is the transposition time. Bryman had stated that one hour of recorded interview would take six hours to transpose, which this research confirmed.¹⁸ This study found that the method was indeed very time consuming. Time was consumed in a variety of different ways and, in particular, in establishing initial contact (which is difficult with elites) taking the interviews, writing and analysing. The interview with one undertaker, for example, was an all-day event (as considerable travel time was involved). Those who were unable to meet did provide rich material through email or telephone; however, face to face interviews, although longer, were more informative.

The next section describes the analysis and evaluates some of the key findings.

3 DATA INTERPRETATION AND ANALYSIS

This section aims to analyse data that was gained from 30 interviews with elites. In order to gain a better understanding and ultimately answer the research question, the interviews focused on: (i) the action taken by interested organisations to effect change; and (ii) the action taken by the undertakers resulting from the introduction of the EIRs. Specifically from the perspective of interested organisations, the interviews sought to understand the motivation behind any reduction in pollution, in conjunction with their views on water and sewerage companies. Following this, the focus was on why and when they may be interested in using the new powers of information, along with their desired future results. The interviews also focused on what has changed in relation to the transparency of the undertakers and the extent to which these changes may potentially lead to a change in corporate procedure with an aim to reduce water pollution.

The interviews can be divided into the three stakeholder groups: interested organisations, undertakers and legal experts. An analysis of the interviews of the first two groups is detailed below. The information gained from the legal experts was beneficial to the work in that it allowed for a better understanding and description of both statute and case law.

15 D G Lilleker 'Interviewing the political elite: navigating a potential minefield' (2003) 23(3) *Politics* 207, 207.

16 J M Berry 'Validity and reliability issues in elite interviewing' (2002) 35(4) *Political Science & Politics* 679.

17 Z S Morris 'The truth about interviewing elites' *Politics* (2009) 29(3) 209–17.

18 A Bryman *Social Research Methods* (5th edn Oxford University Press 2015).

This is valuable because, as discussed in the literature section, there is a need, in order to assess the effective nature of legislation, to consider more than implementation and compliance. Legislation may be implemented and complied with, but the purpose behind its creation and the problems which its creation determined to resolve have not been eliminated or reduced.

Like most regulations, the EIRs describe what should be done, rather than why it should be done. Therefore, the regulations stipulate that information relating to the environment should be provided upon request in certain circumstances by various organisations. The word transparency is not specifically used, but on reading this is an obvious intent as it allows for the access to otherwise unobtainable information.

Therefore, there must be an assessment of whether there is a need or desire for such information, if the information requested is being provided and if the quality and amount of that information has changed. It is not the principal objective of the legislation to reduce water pollution by water and sewerage undertakers, but this work ascertains whether the potential for this has been a consequence of the pursuit of increased transparency.

3.1 The view from interested organisations

3.1.1 *The detrimental effects of water pollution and the motivation to prevent it*

It was initially important to ascertain the views of interested organisations towards water pollution. Water pollution was clearly a concern to those who were interviewed and the great majority knew of pollution incidents caused by water and sewerage providers, which had a directly detrimental impact on their interests. In addition to the strongly held views on pollution, many pointed the finger of blame at water and sewerage companies as one of, if not the, main culprits in directly polluting the waterways. The motivation behind any form of action was obvious and unanimous. Each interested organisation interviewed held the belief that water pollution was detrimental to the environment and had a negative impact on the objectives of their organisation and the interests of their members. The way in which it had an impact on each organisation varied: some were worried about their members consuming raw sewage while partaking in water related activities and the ecology of the beaches and waterways; others were perturbed about pollution causing illness and death to wildlife as well as the decline of species diversity in rivers, which in turn has an impact on fish and fish kills.¹⁹

The awareness of pollution was high and, in some organisations, with visible and disturbing effects, including water pollution being to blame for a large number of wildlife deaths and numerous recorded incidents of mass fish kills owing to water pollution. No organisation interviewed mentioned that water pollution had no negative impact on their industry or the interests of their members. All

19 Angling organisation, chief executive: 'We have suspected for a long time that our rivers are not as ecologically healthy as the EA etc would have us believe, and so last year we instigated our Riverfly Census across 12 English rivers ... The results were not good reading ... a decline in species richness, which is what we are seeing in many UK rivers, is a sure sign that the environment is under stress'.

interested organisations interviewed were concerned by water pollution and, although some commented that certain waterways had improved in quality, none was of the opinion that water pollution had reduced enough to be considered acceptable.^{20,21,22}

Motivations were varied in relation to the interested organisations. Some focused on how pollution had an impact on animals such as otters and fish; other organisations were concerned about humans being harmed by pollution. All of the interested organisations saw pollution as having a detrimental impact on their interests and wanted it to reduce. The organisations who had made requests in the past all said that they would consider making requests in the future. Furthermore, many organisations who had not made requests stated that they not only recognised the benefit but would consider doing so in the future.

3.1.2 Attribution of pollution to water and sewerage undertakers

In addition to interested organisations being concerned about the amount of pollution in waterways, many attributed incidents that affected them directly to incidents caused by water and sewerage undertakers. Some organisations were aware of the negative impact of indirect pollution caused by farming, but the great majority cited water and sewerage undertakers as having caused the most pollution incidents that they were aware of.^{23,24}

20 Wildlife organisation, director: 'Pollution was a cause of a massive decline in [species] numbers in the 1950s and 1960s as it affected the reproductive system of the species ... The dangers will be that pollution will eventually affect other life in the waters affected and possibly kill off plant life and other wildlife within it ...'.

21 Water travel organisation, national environment manager: 'Our network of 2000 miles of inland waterways is used primarily for recreation, so water quality is important from an aesthetic point of view for users; we also have a significant wildlife value which is just as susceptible to harm by pollution as natural watercourses are; and we have a valuable water sales business which is vulnerable to both short term and long term impacts of pollution. Nutrient loading [through pollution] of canals creates excessive plant growth and algal blooms. We spend tens of thousands of pounds a year responding to one-off pollution incidents ...'.

22 National cultural and environmental organisation, principal specialist, pollution and freshwater biodiversity delivery team: '[Our organisation] works closely with the Environment Agency to understand and then to manage the impacts of pollution, especially in relation to our designated sites within which we operate and sites of specific interest [SSSIs] where we have specific roles and responsibilities. Water pollution continues to be a cause of unfavourable condition on such sites although working closely with the water and sewerage undertakers during recent asset management planning rounds there has been significant investment in tackling the impacts from point of source and much of our current effort consequently now focuses on diffuse sources'.

23 Angling organisation, director: 'Our conservation officers deal annually with numbers of angling and conservation groups whose waters have been subjected to acute pollution events. We are currently drawing up plans for habitat remediation work in Staffs, funded by a contribution from Severn Trent Water following a fish kill on a river adjacent to one of the company's sewage treatment works'.

24 Angling organisation, chief executive: 'Yes, we are presently "discussing" with [an undertaker] about various pollution issues, including overflowing sewage works at the bottom of the [river] and the fact that some 35,000 more houses are due to be built in the area with no additional planned sewage works upgrade ... We must admit that water companies have spent a great deal of money since privatization on improving sewage works, infrastructure etc but they are commercial organisations whose primary aim is to make money! They will only do what they have to do in terms of environmental protection and they are not sufficiently influenced by political commitment from the government – the environment generally, and particularly rivers, is not a government priority, especially in these austere times ...'.

In an effort to understand the extent to which environmental information requests had been used (to access data) and would be considered in the future, the organisations were asked to describe their knowledge and use of the process. Not all of the organisations interviewed had made requests, for a variety of different reasons including lack of knowledge that the process was available. The great majority of the organisations interviewed could foresee environmental information requests being made more frequently, including water sports organisations who were using them on a regular basis to tell their members when there are pollution incidents, allowing those members to avoid those areas and exercising in potentially unhealthy waters. It is noteworthy that freedom of information (FoI) requests are not applicable to water companies and, until recently, environmental information requests were not considered applicable, hence the route to information has in the past been blocked. The interviews revealed the value of being able to request information concerning pollution legally, which must be provided within a specified timeframe (less than a month) and allows those who are interested, for example the aforementioned organisations, to receive and use current information for the benefit of their members.

Another continuous theme in the interviews was that interested organisations did not believe that the undertakers were doing enough to prevent pollution. They were aware that undertakers were heavy polluters and did not consider that adequate prevention was in place.

3.1.3 Changes in access to information and transparency

Importantly, every organisation that had filed a request had the information delivered in full and within the timeline specified in the legislation. Thus, the actions of the undertakers had changed to comply with the legislation. It was recognised that the information obtained would not have been obtainable without compliance with the EIRs. The great majority of interested organisations praised the fact that the legislation had been introduced and considered that the introduction had brought greater transparency. Organisations made requests generally to obtain more information about the extent of pollution incidents. This certainly was the case when Fish Legal made its initial request, which eventually clarified the legal situation and stated the Regulations should apply to undertakers.

Some organisations would do this to mitigate damage; for example, one sports organisation uses email to alert its members not to exercise where an incident has taken place. Other organisations use the requests to ascertain why there was damage; for example, why there had been a pollution incident which resulted in a mass fish kill, which company was responsible and why the operations to prevent such incidents had failed.²⁵

25 Water sports organisation, campaign director: '[Our organisation] promotes scientific, economic and health evidence to support calls for a cleaner and safer marine environment. We inform the general public about issues affecting UK waves, oceans and beaches. [Our organisation] is aware that the water industry makes billions of pounds in profits yet continually pollutes our environment ... Water companies are failing the customer and impacting the environment because they are not maintaining their assets and network adequately, they are not leaving enough capacity in the system to cope with rainfall events and they are not doing enough to educate and enforce responsible treatment of the sewers by the public'.

Importantly, the water sports organisation has been allowed access to unobtainable information which it uses on a regular basis to inform its members of dangers. This would have been impossible if not for the obligations imposed by the EIRs.

3.1.4 Future hopes?

The introduction of the EIRs was not seen by anyone interviewed as a panacea for a reduction in pollution, but many thought that it could lead to improvements. For example, the one angling organisation stated:

Naming and shaming by making relevant data available is certainly one way of trying to improve water quality, but we would prefer a change in the political attitude so that protecting the water environment becomes a priority and water companies have their part to play in that, but by no means the only part.²⁶

No interested organisation interviewed was aware of any corporate change in either policy or implementation of new practices which had resulted from an EIRs request being made. As stated above, there had been a visible increase in the amount and quality of information which undertakers released upon request. This has clearly increased the transparency of the actions of those undertakers. Most of the organisations interviewed were aware that in the near future (April 2017) the non-domestic market is being opened to competition. Several of the organisations realised that as choice is being brought to the non-domestic market, the way in which undertakers operate and their attitude to pollution may be further influenced by the demands of organisations, lobby groups and individuals.

There was hope expressed by almost all of the organisations that environmental information requests may change corporate practice and access to more information was seen as a very positive thing.^{27,28} Nonetheless, the only way to ascertain what has actually changed at a corporate level was to seek to obtain this information from the water companies.

3.2 Discussion

Before analysing the interviews with the water companies, the following commentary offers a reflection on some of the key themes emerging from the interviews with interested organisations.

It was very clear that there is a great desire by interested organisations to obtain information for a variety of different reasons. These reasons vary from warning surfers not to surf in an area where there has been a pollution incident to understanding the link between a large fish kill and the pollution that caused the incident. Resoundingly,

and businesses. [Our organisation] has made several EIR requests ... [Information from such requests which was previously unobtainable]. [This has allowed] our service to provide information to the public for free and in real time and has resulted in several problem assets being identified and remedial action taken'.

26 Angling organisation, chief executive.

27 Interested organisation, director: 'There can never be enough support or information out there'.

28 Interested organisation, environmental specialist: '[Access to environmental information through use of the Environmental Information Regulations] should increase public awareness and therefore feed into customer challenge groups to raise this with their water companies rather than focusing on charges to the customer'.

the interested organisations interviewed were positive about the introduction of the EIRs, which clearly did effect change in that information that was previously unobtainable is now obtainable. This change has benefited many of the organisations interviewed. The information must be presented to the organisations or individuals in a cost-efficient time conscious and comprehensible manner, thus providing a way of overcoming secondary barriers (such as cost), which would have prevented either obtaining or understanding the data provided.

In no instance did an organisation complain about water companies not complying with an information request, nor were there complaints about the process or cost. Those who had not benefited from actual requests nonetheless recognised that the undertakers were now more transparent and saw this as being important for accountability, but also as a useful tool to acquire information. There was hope expressed by various interested organisations that undertakers may improve their practices as more information can be made available and used to persuade either the undertakers to change their practices, or non-household (and, in the future, potentially household) customers to change their retailer. It should be noted that many pollution incidents are the fault of the wholesaler, but it is within the retailer's power to convey the desires of customers on to the wholesaler. If a certain retailer is not doing this then those customers could change to another retailer. This recent change is permissible through the introduction of new legislation as discussed in the first section of this article, published in 25 *JWL* 3.

3.3 The view from water companies

3.3.1 To what extent has there been a change in transparency?

Environmental information requests are being made in great numbers. United Utilities has received 125 requests to date, Northumbrian has received 154 in a period of 12 months and Northern Irish Water has received 266 since May 2015. These are specific environmental information requests that have been made and would not otherwise have to be answered.

Although the interviews did not indicate that operational procedures to reduce pollution have altered, they did suggest that the way in which information is handled and provided has. The great majority of undertakers have had to alter their procedures relating to information requests in order to comply with the demands of the EIRs.^{29,30}

29 Water and sewerage undertaker, EIR department, regulatory solicitor: 'Actual existing operations have not changed ... However, in advance of the *Fish Legal* decision, and in anticipation of potentially adverse decisions, an additional corporate operation had to be set up to deal with requests. This included the creation of an EIR Working Group and Steering Group to oversee the implementation of EIRs, the identification information types and sources held. Staff training was also developed. An EIR web portal was also developed to facilitate requests and an EIR home page ... Following the *Fish Legal* decision, and it immediately taking effect, a relevant post-holder was identified to manage the process, including co-ordinating the collection of information responses, a full corporate process for dealing with requests has been set up and implemented, logging and tracking of requests, quarterly Steering Group meetings to report on issues. EIR contacts for each area of the business have been identified. Desktop training for all staff has also been rolled out. I would estimate that requests have caused an estimated 1–5% drain on resources, in terms of diversion of staff time, to meet requests, and this represents an operational change'.

As detailed above, many companies have had to employ new staff in the form of environmental information officers, implement training in order to allow staff to identify requests and update their technology in order to process the requests efficiently. As such, there has been direct action by undertakers to adhere to their obligations under the EIRs.

The fact that such great changes have been implemented demonstrates the extent of the demand for the information.

All of the companies interviewed acknowledged that they changed both the information provided upon request and the efficiency of how the request was considered, due to the implementation of the EIRs. Some undertakers attributed the changes to the EIRs, but opinions were polarised. Not all undertakers attributed any changes in the delivery or processing of information to the EIRs. There was a reluctance on the part of some undertakers to accept that the new legislation was responsible for what they considered to be an increase in transparency. This contradicts evidence that most of the undertakers had dramatically changed their approach to the delivery of information and thus highlights a disconnect.³¹

Although willing to accept that they were seeking to be compliant and had altered their procedures, this was not (by the majority of undertakers) attributed to the legislation.

3.3.2 *Change of process by undertakers*

The researcher was left to ascertain if requests under the EIRs had in any way changed the operational procedures of water and sewerage services, with an aim to reduce water pollution. It was a particular objective to understand if the revelation of bad practices as a result of the EIRs had acted as a catalyst for change or upgrade in operational processes.

Most undertakers stated that there had not been any physical changes in operations aimed at reducing pollution to requests for information under the EIRs.³²

There was acceptance that there had been procedural changes in relation to the way in which information was

provided; however, processes had not changed in an effort to reduce pollution.³³

Some undertakers stated that they used the requests as a way to anticipate the future. Other undertakers said that there may have been changes, but they could not be solely attributed to the request for information under the EIRs. Some undertakers refused to attribute any benefits to such requests.

A specific example of the potential impact regarding pollution awareness was given by one undertaker. Interestingly, the undertaker commented and acted on a request by one organisation interviewed which had actively been using the requests in a move both to gain information from undertakers and improve their practices in relation to pollution.³⁴

3.3.3 *The potential for change*

Opinion as to how the requests for environmental information may change operations in the future was polarised. Some were convinced that there would inevitably be change and others held the opposite belief. Some organisations that were interviewed thought that the new competition entering the market would be a catalyst for change.

From 1 April 2017, non-household customers have been able to choose their retailer; the previous government made a statement that this would extend to household customers. Thus, the wholesalers are divided from the retailers and there should be a free market allowing customers to choose which company they buy their water from. Some organisations interviewed highlighted the fact that organisations such as fishing groups have a vested interest in promoting retailers that will promote their interests and pressurise the undertakers (providing the wholesale water) to pollute less. In a response to the changing market and the new powers provided by EIRs, undertakers will have to consider the desires of individual organisations and their customers – the water retailers – in relation to their operations.

Importantly, as discussed in the introduction, some water wholesalers and retailers are owned by the same organisations. Therefore, disgruntled non-household customers

30 Water and sewerage undertaker, information access team: 'Since June 2015 to May 2016 we have received 154 EIR requests... Since being subject to the Regulations we have a more structured and centralised way to respond to requests for environmental information which may mean responses are more comprehensive ... In order that we comply fully with our EIR obligations we have undertaken the following: Widened the remit of our information access team in order to handle requests, carried out a campaign to increase awareness for employees including training sessions and communications through our internal communication channels, written new procedures to support compliance with the new regulations and have written a new policy'.

31 Water and sewerage undertaker, customer solutions: '[Our organisation] has changed its operations to a minor extent in that a process has been established for responding to EIR requests ... [We] had already committed to being a more transparent and environmentally sustainable company. We expect our regulators and our customers to be challenging of poor performance and note that both regulatory framework and companies are becoming more transparent but EIR requests are not a driver of the change. We regard EIR requests as part of good customer service. In addition, the regulation and associated reporting of the industry is rigorous and comprehensive ...'.

32 Water and sewerage undertaker, information access team: 'We have not altered any practices in response to an environmental information request query'.

33 Water and sewerage undertaker, EIR department regulatory solicitor: 'There is now a greater awareness that information held could be placed into the public domain. This has not affected the day-to-day operation of the business. It has caused us to focus on document retention, but this has not altered our current position... Although we have not found EIR specifically to make industry more environmentally sustainable, there could be an indirect benefit. EIR requests in part act as pulse reading as to current areas of concern to the public ... Whilst no new projects involving environmental sustainability has specifically arisen from an EIR request, the types of information requested is carefully monitored by the business as a whole'.

34 Water and sewage undertaker, head of environment: 'No, our operations haven't changed but we have developed an auditable procedure to record and respond to Requests when they are received. This information is available on our website ... The only example where EIR may have had an influence is around the way in which we started to report spills from combined sewage overflows impacting bathing water beaches. We developed our [coastal] system in 2011 to inform customers in near real time when assets were spilling near bathing water beaches. However, at this time the industry came under pressure from [a water sports organisation] and in response to various newspaper articles and a *Panorama* programme. It is difficult to attribute this solely to EIR but it may have contributed towards the recognition that there are more pro-active ways to provide environmental information to the public and interest groups'.

could change from the Company X Retailer to another company, knowing that there is an organisational link to the Company X Wholesaler (with whom they were displeased).

Several undertakers recognised that the industry is looking more at issues relating to the sustainable provision of water. In the past, issues relating to sustainable provision have not been a priority. One undertaker's representative stated that the EIRs could be a potential catalyst for change. These thoughts were mirrored by other undertakers.^{35,36,37}

The importance of the anticipated change in the competition market was also highlighted by some undertakers. Interviewees stated that these alterations through the introduction of further competition would bring environmental issues to the immediate concern of their boards. If there is a pollution incident then this will be the responsibility of the wholesaler, from whom the retailer buys its water and services, but pressure from customers will come directly to wholesalers through environmental information requests and, in addition, customers would pressurise retailers to ensure environmental standards were put in place by wholesalers.

For example, an undertaker as a wholesaler provides water and services to the retailer(s). If customers did not think that their retailer was representing customer interests and attempting to reduce pollution incidents by their provider (the undertakers) then the customer may change retailer to another more vocal company. Now consumers are being given the freedom to determine their retailer. Undertakers are susceptible to consumers changing retailer owing to practices which consumers disapprove of, including pollution. There is a vested interest for the retailer to represent its customers fully. In addition, and importantly, the interviews highlighted that pollution incidents not only have repercussions on an organisation through fines, but the share price of the company can drop.

3.4 Discussion

There was evidence from the interviews that undertakers did not attribute their increased transparency to the EIRs. There was, however, evidence of operational change regarding transparency and information provision by the undertakers but not pollution abatement practices. In order to comply with the EIRs, environmental information officers (and, indeed, teams) have been employed, staff

35 Water and sewerage undertaker, head of information: 'The regulations have not affected out operations in relation to water provision or pollution control ... Requests themselves have had little impact on the environmental sustainability of the industry however the openness and transparency could trigger change in the wider industry'.

36 Water and sewerage undertaker, solicitor and Data Protection officer: '[The industry] is certainly having to focus more on sustainability and also education ... It will have to continue to become more sustainable in order to meet demand. The environmental information Requests will hopefully improve the transparency of sustainable water provision'.

37 Water undertaker, chief executive: 'One way which has the possibility to focus corporate minds on this is the introduction of the Environmental Information Regulations. These should focus corporate minds on sustainability improvement and pollution reduction. If more organisations are requesting information about more issues such as pollution then corporations will have to focus more on these issues for both the sake of the customers the regulators and their shareholders'.

training implemented and procedures to process the requests initiated. The operation of information analysis and provision has been transformed. Has transparency increased due to the EIRs? The present research would conclude that it has. In addition, is the access to information being utilised? Again, the number of requests shows that indeed it is and the requests are growing in number each month. As demonstrated above, the information obtained is also being used in a variety of different ways, each with great value to the organisations requesting it.

Transparency has changed. The interviews indicated that pollution reduction operations have not altered to date, but some interviewed think that they could. It should be noted that, in relation to future potential changes, attitudes were polarised. For those who believed that change was possible, this was attributed to: interested organisations highlighting the inadequacies in pollution prevention, which could force change through shame; concern about a reduction in share prices; retailers advocating their customers' interests and pressurising wholesalers to reduce pollution incidents; or a fear (or reality) of customers changing retailer (in protest) to another provider not associated financially or a parent company of their wholesaler.

4 CONCLUSION

The aim of this article was to answer the question: 'How far has implementing the EIRs made water companies more transparent and to what extent could these changes lead to a potential reduction in water pollution by water and sewerage providers?' In this respect, interviewing 30 elites produced insightful results.

The first part of the question explores the issue of transparency and, resoundingly, this research has shown that there has been a significant increase in transparency by water and sewerage undertakers. Interested organisations have the drive and motivation to obtain information and have been able to put this information to use in a variety of ways. Prior to the *Fish Legal* determination, undertakers were under the impression that they were not obliged to provide information under the EIRs. Once the determination had been made that this was not the case, and since that date, many requests have been made by interested organisations and individuals, showing a great demand for more information. The information that was otherwise restricted is now accessible for perusal and scrutiny. Not only this but the information has to be provided within a tight timeframe, in a manner which is easily comprehensible and if costs are charged (which often they are not) then those costs are kept low to cover labour alone. The quality and the quantity of the information received has increased massively and this access has been applauded as a huge increase in transparency from the interested organisations interviewed.

The water undertakers have had to alter dramatically the way in which they process such information requests in order to comply with the legislation imposed. Importantly, in the interviews, no interested organisation complained of any undertakers (in their opinion) failing to comply with the legislation and this work has not found any other evidence to state that there have been noted incidents of non-compliance. Most undertakers have had to employ

individuals specifically involved with answering the requests and educate staff on the procedures required to answer the requests.

The second element of the research question sought to ascertain if the EIRs and the increase in transparency could bring potential changes, which would lead to a reduction in water pollution by the undertakers. There was no evidence that there had been any form of serious operational change to plant, machinery or any form of improvement in maintenance procedure from a request under the EIRs. Many undertakers even accepted that sustainable provision and pollution, while recognised as important, had not been a priority. Although transparency has highlighted pollution incidents, this in turn has not brought action through reputational damage.

Perspectives on how the EIRs will have an impact on undertakers' decisions in the future were polarised. Some undertakers thought that it would have no impact, but some were adamant that this would greatly impact the managerial decisions of the future, in particular because the market opening might see non-domestic (and possibly

domestic) customers choose the retailer which suits their interests and protects their needs. Retailers will have to voice customer concerns to wholesalers and encourage reduction of pollution incidents. Non-domestic customers also now have the opportunity to change from one retailer in the same corporate organisation as their wholesaler to another non-related organisation in protest. Other factors have the potential to change corporate operations such as a drop in share price or corporate reputational damage.

The EIRs have brought transparency by design. They may in the future bring increased sustainable provision through a reduction in pollution but this result, although a possibility, has yet to be determined conclusively.

A new level of accountability has been reached. There are new obligations to provide information. These obligations are being used by organisations and being met by the industry. Transparency has been brought to the industry through legislation. Undertakers' transparency has transformed. Some believe pollution abatement operations may change, an analysis of which merits future research.