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Utilities

Supreme Court to hear test case over sewage in UK waterways

Challenge to United Utilities one of a number of legal claims against water companies



Manchester Ship Canal at Salford Quays. United Utilities argues that the owners of the ship canal cannot seek redress for the release of 'untreated foul water' © Getty Images

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One of Britain's largest privatised water companies will appear in the Supreme Court on Monday in a landmark case where it will argue it should not be held liable by private landowners and individuals for [sewage released](#) into UK waterways.

The legal challenge is one of a number faced by [water companies](#) and the government as anger mounts over the mixture of storm water and raw sewage that is pouring into rivers and coastal waters, [threatening human and environmental health](#).

United Utilities argues that the owners of the 129-year-old Manchester Ship Canal cannot seek redress for the release of “untreated foul water” without permission, and that only regulators can take action.

“This case has never been about avoiding accountability,” the water company said. “The aim was to clarify the regulatory position regarding storm overflows.”

Although the High Court has previously ruled in favour of United Utilities, the Environmental Law Foundation, supported by the Good Law Project, is intervening to support the Manchester canal, which is owned by Peel Ports, to try to overturn the decision.

“This case will have significant ramifications for how we can hold water companies to account — by opening up the opportunity for us to sue them and force them to stop polluting our rivers with huge amounts of raw sewage,” said Emma Dearnaley, legal director at the Good Law Project.

Colm Gibson, head of Berkeley Research Group’s economic regulation practice, said that in addition to fines and prosecutions, utility companies were increasingly vulnerable to class action claims.

“Customers are physically connected to companies’ networks and they have standard structures for charging households, making it easier to pass the legal tests for defining who is included in a ‘class’,” he said.

Gibson cited as precedent a £600mn claim faced by BT for allegedly overcharging 2.3mn landline-only customers.

Leigh Day, which is also running the “dieselgate” case against a number of car manufacturers in the High Court, has announced it is preparing claims to be brought in the Competition Appeals Tribunal on behalf of UK water bill payers.

It alleges that water companies are “unlawfully discharging large volumes of raw sewage into England’s waterways, and customers are being overcharged as a result”.

Fideres, an economic consultancy, has also appealed to the Competition and Markets Authority arguing that water companies have exploited the inability of consumers to switch away by providing poor quality services.

It argues that water companies may have overcharged consumers by £1.1bn over the past six years for sewage treatment services that had not been provided since the effluent was dumped rather than treated.

In another case, the Good Law Project is aiming to compel the government to rewrite its plan to reduce sewage discharged during periods of high rainfall. It alleges that the government’s current plan is unlawful as it gives water companies until 2050 to improve storm overflows and put a stop to industrial-scale sewage dumping, while all but excluding coastal waters from protection.

The slew of legal cases threatens to overhaul the regulatory landscape for water companies, which have already been forced to increase transparency as a result of previous court rulings.

In 2012, Yorkshire Water and United Utilities went to the European Court of Justice to claim that England's water monopolies were private businesses, not "public authorities", and should be exempt from disclosing when or how much sewage they were releasing.

The UK government supported their "right to secrecy" but FishLegal, a fishermen's charity, ultimately won. A second case by FishLegal in 2015 forced water companies to open up to freedom of information-style requests.

Faced with public pressure, regulators the Environment Agency and Ofwat have also been setting tougher targets, raising the possibility of claims for not meeting them, lawyers said.

The regulators also have long-running [investigations](#) into whether companies have complied with environmental permits, which allow a certain [amount of sewage](#) to pour into watercourses during times of heavy rain.

Water UK, which represents the industry, said: "Water companies are focused on delivering against targets set by government and regulators. It is for them to decide on the shape and pace of company obligations."