

ENVIRONMENT AGENCY

and

NATURAL ENGLAND

-v-

JOHN PRICE

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SENTENCING REMARKS

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**Before District Judge (Magistrates' Courts) Strongman on 18 to 20 April 2023**

Mr Bernard Thorogood appeared for the prosecuting authorities.

Mr Adam Farrer appeared for the defendant.

Sentence pronounced on 20 April 2023

1. Mr Price has pleaded guilty to two sets of offences arising out of works he directed on the River Ludd where it runs through the farm which Mr Price owns and operates at Day House Farm, Kingsland, Herefordshire. The first set of offences relate to November 2020. They are two offences contrary to regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016 of causing a regulated activity without authority, failing to take reasonable precautions to prevent agricultural pollution contrary to regulation 10 of the Reduction and Prevention of Agricultural Diffuse Pollution Regulations 2018 and an offence of conducting operations on a site of special scientific importance without permission contrary to section 28E of the Wildlife and Countryside Act 1981. The second set of offences relate to December 2021. They are offences of operating a regulated activity and conducting operations on a site of special scientific importance without authority and a further offence contrary to paragraph 6 of schedule 3 to the Environmental Civil Sanctions

(England) Order 2010 of failing to comply with a stop notice served on Mr Price in December 2020.

2. The River Lugg rises in Wales. It is one of the best examples of a clay river in mainland Britain. It supports a large collection of river plant communities which, in turn, supports a diverse population of invertebrates and fish. It is tree lined with alder and willow for most of its length. It is a core refuge area for otters. Native white clawed crayfish are common. Salmon, trout, lamprey and bullheads can be found. Bird life includes dippers, grey wagtails, common sandpiper and kingfishers. 121 different species of plant are to be found. Midland Fly Fishers Ltd own the fishing rights to a significant stretch of this part of the river and, prior to Mr Price's works, this was a much-loved stretch of river for fishermen. It is of European importance for both habitats and species.
3. Such is the importance of the River Lugg that in 1995 it was notified as a site of special scientific interest (SSSI) in order that this significant natural resource may be conserved, enhanced and managed for the benefit of present and future generations. The River Lugg also falls within the River Wye Special Area of Conservation.
4. Phosphates have been a problem in the river. Steps have been taken in recent years to limit development in the catchment area to reduce phosphate runoff into the river. One of the measures is to ensure there is a 10 metre buffer zone between the edge of any crops grown adjacent to the river and the riverbank.
5. Mr Price has produced a large number of character witnesses, many of whom live close to him. He is held in high regard and well respected in his local community. Some speak about the meticulous way in which the farm is managed by Mr Price and his attention to detail, almost obsessively so. I am therefore invited by Mr Farrer to treat Mr Price as a man of exemplary character. Whilst I acknowledge the high standing in which he is held within his community, history suggests that over a number of years his attention to conservation and the environment has been sadly lacking, notwithstanding advice and assistance having been made available to him by the various authorities. He seems to adopt the attitude that the rules do not apply to him.
6. Several examples of that un-cooperative and sometimes unlawful behaviour have been brought to my attention by the prosecution. In 1998 he piled some rubble against the

riverbank claiming it was some sort of flood barrier. He was given a warning and reminded about his obligations in a SSSI. In August 1999 he removed about 10 tons of gravel from the river without consent. When challenged by officials and told it was an offence he asked if they could “forget about it”. In July 2007 he was prosecuted for creating a dam across a tributary and a sump to extract water to irrigate his potato crop. The dam had the effect of drying up the river for 1.5 Km downstream with the consequential damage to wildlife. He was fined by the Magistrates. Whilst this is an old offence, one would have thought it would have served as a ‘shot across the bows’ to deter him from similar behaviour in the future.

7. In November 2018, Mr Price reprofiled the river at Oxpasture and created flood embankments using material he had scraped from the river. There was a history of hostility demonstrated by Mr Price towards officials and so he was given guidance remotely and an agreement reached whereby the material in the embankments would be spread over the adjoining land. He was reminded of his obligations and the need to obtain the appropriate permits before embarking on any work of this kind.
8. Undertaking work of this kind at this time of year is particularly damaging to the fish population, as from October time salmon and brown trout lay their eggs in the river gravel. Moving gravel and operating machinery in the river will destroy the eggs and compromise the gravel where the eggs are laid. Moreover, sediment stirred up by the process will travel downstream and be deposited over the gravel restricting access to oxygen.
9. In July 2020 Mr Price was warned about planting crops right up to the riverbank and failing to observe a buffer zone. The use of heavy agricultural vehicles close to the riverbank causes damage and degrades it. Fertiliser and pesticides spread on the crops is highly likely to be washed into the river. His failure to observe the buffer zone can only be explained by his wish to maximise the size of the crop and increase his profits.
10. In November 2020, Mr Price embarked on the works which give rise to the first set of offences. He hired an 18 ton bulldozer. Under his instruction this was used over several days to move gravel from the riverbed and push it over the banks. Other heavy equipment was used to uproot mature trees, remove vegetation and reprofile the banks as well as straighten the river. The bulldozer was fitted with a GPS tracker, so it was possible to track its movements. A significant part of its operation involved the bulldozer driving along the riverbed. This would have crushed any fish eggs and other invertebrate life as well as stir

up considerable amounts of silt. As a consequence, very turbid water was detected in monitors 7Km downstream. Silt of this kind will cover plants and deprive them of oxygen, cause sensitive areas of animals such as fish gills to be abraded and fill spaces between gravel harming eggs, juvenile fish and invertebrates. About 1.5 Km of the river was remodelled by Mr Price.

11. There is a wealth of photographs which show the river before and after the work done by Mr Price. Any person, with even a passing interest in the countryside and conservation, could not fail to be dismayed by the devastation caused by Mr Price. He has turned a traditional, tree lined, meandering river, full of wildlife, into a canal void of most life. It is nothing short of ecological vandalism on an industrial scale.
12. The motivation behind Mr Price's action appears to have been a desire to reduce the risk of flooding for the properties near the river. Some residents who live nearby are grateful to Mr Price for taking this action and observe there have been no floods since the work was done. The Environment Agency points out that the overall river level has not been as high as it was in the recent floods, so it is not surprising that nearby homes have not been flooded since. In fact, Mr Price's actions have made matters worse. The channel is deeper, wider and straighter which increases flow rate and volume as it approaches the road bridge which still provides a choke point for the water. The riverbanks have been denuded by the removal of trees and vegetation. It seems to me, that the praise of Mr Price's remodelling of the river by some local residents arises out of a total ignorance of the true impact of his actions to nature and the environment.
13. On 3 December 2020, Mr Price was served with a stop notice requiring him to stop any further work of this kind. Work did stop. When challenged about his behaviour he claimed, quite falsely, that he had permission for the work or that he was responding to requests from officials to take action. The only conversation was concerning the silting up which had occurred in one of the arches of the road bridge and the need to clear it. It was being implied at an earlier stage of these proceedings that the local council had requested or encouraged Mr Price to take action to carry out further work. That is no longer asserted.
14. Notwithstanding the stop notice, Mr Price embarked on further work on the river and the banks in December 2021. This was further upstream and nearer to his home. It was also out of sight of the main road. Although a public footpath runs nearby, it seems to me that Mr

Price took the view that his activities were unlikely to come to the attention of the authorities. Once again, heavy machinery was operated in the river and so-called improvements made to the riverbank by removing gravel from the river. Once again this was taking place at a critical time of year in the life cycle of salmon and brown trout. There were multiple crossings of the river by heavy machinery as evidenced by the tracks left in the mud.

15. Although the amount of work done and the length of river affected was less than in November 2020, significant damage was done to the river structure and the flora and fauna in that area.
16. Until about May 2020 there was a copse near his home, part of which was within the SSSI. This was completely removed without the necessary permission. By the time of the photographs taken in November 2020, the copse was reduced to a muddy patch. Part of the 2021 works was to put hard standing down here and lay a metalled road without any regard to the rules relating to the SSSI. These works had nothing to do with a desire to reduce flooding but was a blatant disregard for the law and the environment.
17. Mr Price had applied for and been granted limited permission to manage the woodland by coppicing a limited number of trees on certain parts of the riverbank. The fact he made the application is evidence of his knowledge of the controls in place.
18. 71 mature trees in this section of river within the SSSI were completely uprooted by Mr Price. 24 trees were felled, not including those in two copses. Indigenous vegetation was removed. It will take about 50 years for new trees to reach maturity. Mature trees form a vital part of the river ecology. It is likely to be at least 10 years before this section of river will look anything like it did before the work.
19. Where the riverbanks were left bare, invasive, non-native Himalayan Balsam has sprung up. It is an aggressive plant which outgrows native plants. The Himalayan Balsam plant and its roots die back in the winter affording no support to the riverbank. Crayfish were wiped out from this stretch of river. Non-native Signal crayfish which are larger than the native white clawed crayfish and can tolerate more polluted and faster flowing water have returned, but there is little evidence of any recovery by the native variety. Prior to the work, white clawed crayfish were doing well in this stretch. Otters pass through and feed there,

but their habitat has gone. Similarly, the removal of trees and other vegetation has destroyed nesting sites for birds and other animals. The shade offered by mature trees to keep the river water cool in summer, which is essential for fish and to restrict algae growth, has been lost.

20. A significant aggravating factor in this case is Mr Price's repeated aggressive and uncooperative attitude towards officials. A particularly serious example of that behaviour was that directed at [REDACTED] on 3 December 2021. He is [REDACTED] at [REDACTED]. He visited the area where the 2021 work was ongoing having been tipped off. From the public footpath he could see machinery being operated and work done in and around the river in contravention of the SSSI regulations and in breach of the stop notice. He took photographs and video of what he saw. He was wearing an official high visibility top. He returned to his car which displays the [REDACTED]. As he drove off, so Mr Price came in the opposite direction, turned his car around and proceeded to follow [REDACTED] flashing his lights, shouting for him to get out and driving aggressively. At one stage he stopped across the carriageway blocking [REDACTED] and other motorists. In all, Mr Price pursued him for 11.8 miles. Mr Price's explanation for that behaviour is that he was concerned that [REDACTED] was photographing his partner and children. I do not find his explanation credible. [REDACTED] was clearly an official from [REDACTED] and Mr Price thought his unlawful operations had been found out.

21. Mr Farrer, for the defendant, has set out for me in a comprehensive manner the mitigating circumstances which he invites me to take into account in passing sentence. I have not been invited to order a pre-sentence report. Mr Farrer agrees with me that one is not necessary. He realistically concedes four things. Firstly, that by his guilty pleas he is in peril of a custodial sentence. Secondly, that by his actions, Mr Price has caused considerable damage. Thirdly, that it will take many years for this stretch of river to recover. Finally, that Mr Price knew he needed permission to carry out this work and that therefore his actions were deliberate.

22. Having made those concessions he invites me to have particular regard to Mr Price's diagnosis that he has Autistic Spectrum Disorder. It is, according to the medical evidence, a factor in his offending. When rules do not make sense to him or are not logical to him, he

is prone to ignore them. When challenged with a view different from his own, he becomes irritable and arrogant. He may be provoked to temper outbursts and disruptive actions.

23. Whilst conceding that it is a factor relevant to sentence, Mr Thorogood for the prosecution points out that Mr Price has been able to run a successful business for many years, that his autism does not impact on his intellectual functioning, that he is perfectly capable of making a decision and was not compelled to act as he did. On occasions he did engage with the regulatory bodies by seeking permission for restricted activities. These were not spur of the moment decisions. They involved considerable planning and consideration.
24. Accordingly, whilst Mr Price's autism is a factor to be taken into account, having regard to the overall circumstances in this case in my view it affords him only minor mitigation.
25. I have been supplied with a significant amount of financial information about Mr Price. For the purposes of the sentencing decision, it is sufficient to observe that he had capital assets in excess of £20 million and is therefore well able to meet any financial penalty I may be inclined to order, so long as he is given time to pay.
26. I turn next to the sentencing guidelines. There is a guideline for the regulation 12 offences, albeit that the guideline is predicated on the maximum penalty being 5 years' imprisonment, whereas the particular offences charged in Mr Price's case carry a maximum of 2 years. The guidelines discourage an arithmetic approach. However, if I were to divide each of the guidelines by two, it seems to be that would represent a fair adjustment to starting points and ranges.
27. The prosecution invites me to put this case in the "deliberate" culpability category. The defence do not disagree, save that Mr Farrer invites me to say that Mr Price's autism is of such a nature that I ought to reflect that fact by reducing culpability to "reckless". As I have already observed, whilst it is proper to reflect his medical condition, I do not consider it affords him that level of mitigation.
28. As to harm, the prosecution say it is Category 1 because it satisfies bullet point two (major adverse effect or damage to water quality or property), bullet point 4 (major costs incurred through clean-up or restoration) and bullet point 5 (major interference with other lawful activities (fishing by the owners of the fishing rights) or regularity regime (SSSI)). Mr Farrer invites me to say it is "Significant" rather than "Major" so falls into Category 2 harm.

Whilst it may be a matter of semantics, it seems to me that where it is likely to take at least 10 years to rectify many of the problems and 50 years for mature trees to re-establish themselves and where the likely cost of the restoration works is £700,000, that falls squarely into the “Major” category.

29. The starting point for deliberate culpability and category 1 harm is a sentence of 18 month’s imprisonment, with a range of 1 to 3 years. As I have already observed, having regard to the lower maximum penalty available in this case, I shall discount those figures to a starting point of 9 months and a range of 6 to 18 months. Of course, that is the starting point for a single offence with no aggravating or mitigating circumstances.

30. If I take the regulation 12 offences as the lead offences, then I need to take account of the other offences admitted as aggravating factors. The aggravating features in this case are:

- a. firstly, they were committed in a Site of Special Scientific Importance and, therefore, the effect on the environment was all the more severe. Mr Thorogood draws my attention to the observations of the Court of Appeal in the case of *Natural England v Day* [2014] EWCA Crim 2683 in which the court said the courts duty included passing such penalty as would deter others and protect the environment. The court also observed that SSSIs represent the common heritage of humankind.
- b. Secondly, having caused significant damage to the river and having been served a stop notice, Mr Price resumed his operation on a different stretch of river, out of view of the road, thereby causing even more damage to the river and the wildlife living there. Mr Thorogood invites me to mark the breach of the stop notice in particular. He points out that they are rarely issued and that it represents a marked escalation in a defendant’s behaviour. Moreover, he says, offences in SSSI’s are difficult to police and to detect offences and can properly be marked by a deterrent sentence. I agree with those observations.
- c. Thirdly, this behaviour is against the backdrop of repeated breaches of the SSSI and river management regulations and one previous conviction.
- d. Finally, his repeated aggressive and uncooperative behaviour towards officials such as that shown towards [REDACTED].

31. Mitting circumstances advanced are:

- a. the age of the defendant: he is 68;



- b. that he is on the autistic spectrum;
- c. the high regard in which he is held by his friends and neighbours and his contribution to the community;
- d. that the court costs and restorations cost he will be liable to pay (together approximately £1.3 million) represent a significant penalty in their own right; and
- e. his exemplary character.

32. I have already made observations about his autism and the way in which I propose to take that into account. Costs and restoration are not punishments in their own right. I do not consider him to be of exemplary character having regard to his history with respect to environmental regulations and his dealings with officials.

33. Looking at Mr Price's offending in the round, taking account of those aggravating and mitigating circumstances which I have identified and having regard to totality, in my judgment the correct sentence after trial would be 18 month's imprisonment. He is, of course, entitled to one-third credit for plea, his guilty pleas having been entered at the first opportunity. That reduces the sentence to 12 months' imprisonment. Such a sentence would ordinarily be outside the scope of the Magistrates' Court. However, the offences committed in 2021 deserve consecutive sentences and in that way fall within the sentencing powers of this court.

34. Accordingly, for those imprisonable offences relating to 2020 the sentence is six months' imprisonment. The regulation 12 offence in 2021 involved less damage than that in 2020 and so I shall impose 3 months imprisonment, consecutive to the 2020 offences. The offence of breaching the stop notice deserves a particular sentence in its own right of 3 months, also consecutive, making 12 months in all. No particular notice should be taken of the individual sentences, as I have said, my view is that having regard to the offending in the round, the appropriate overall sentence, after credit for plea, is 12 months.

35. I shall impose no separate penalty for the non-imprisonable offences as I have already taken them into account as aggravating factors to the imprisonable offences.

36. Having imposed a sentence not exceeding two years, I am obliged to consider whether it may be suspended. Firmly against suspending the sentence is my assessment that, having

regard to the nature of the offence and the need to deter others, appropriate punishment can only be achieved by a sentence of immediate imprisonment. Factors on the other side of the coin urged upon me by Mr Farrer are:

- a. his age, he will be an older prisoner,
- b. that there is a realistic prospect of rehabilitation, and
- c. that the prisons being full, the courts are encouraged not to impose short sentences of imprisonment or imprison those who are not a danger to the public.

37. Mr Thorogood makes a further observation: that the clearing of Himalayan Balsam from the riverbank needs to be done as soon as possible and before the plants seed. If Mr Price is allowed his liberty, he will be able to oversee that operation.

38. I have to say that having regard to Mr Price's history, I have no confidence that there is a realistic prospect of rehabilitation. Whilst I accept the force of the other arguments, I feel compelled to impose an immediate sentence of imprisonment to mark the seriousness of the impact to the environment in a SSSI and to serve as a deterrent to others.

39. I turn to the ancillary orders. Costs are agreed in the sum of £600,000. As I anticipate that capital assets will need to be realised to meet those costs, I shall allow time to pay and direct the sum is paid in full within 12 months. The terms of the restitution order have been agreed and I make an order in those terms.

40. I am invited to consider disqualifying Mr Price from being a director of any company. He is presently a director with his son in one of the farming businesses. Mr Farrer urges me not to make such an order as he says that it ought to be reserved to those cases in which some impropriety as a director is demonstrated. I think the case law suggests otherwise and that it can serve as a further punishment in suitable cases. As this case calls into question his decision-making process, I shall disqualify him from being a director for 3 years.