

**PRESS RELEASE : 27. 1. 2018**



## **The Badger Crowd**

Government forced to release documents about potential environmental damage caused by badger cull



***The government's new 'Green' offensive aimed at young voters has today faltered as one of Michael Gove's DEFRA Agencies has lost an appeal against a Freedom of Information ruling in a decision by the Greater Regulatory Council on 24<sup>th</sup> January 2018; EA/2017/0160.***

- Natural England are now directed to release details on environmental decisions and safeguards from the Government's badger killing policy roll-out in 2016. Release of such information may inform the recent Judicial Review Applications concerning badger cull licences that wildlife campaigners have objected to for four years.
  - Concerns have been raised by campaigners that NE had repeatedly failed in their duty to demonstrate safeguards from a widespread natural ecological process known as *carnivore release effect*. This is the change in number and behaviour of wild animals that occur when for example badgers are culled in large numbers in an attempt to influence bovine TB rates in beef and dairy herds – the government policy that has been failing to stop the spread of the disease in England since 2011.
  - Such 'ecosystem disruption' can have significant impacts both on and off nature reserves. By law such disruption must be assessed in detail and where possible avoided. Otherwise, specialist and expensive monitoring and mitigation measures must be undertaken. Natural England had however withheld the locations and species that they assessed. Natural England routinely requires such measures of developers e.g. home and road builders before projects and plans are approved.
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- Badger culling has taken place in and around some of the most strictly protected beauty spots and nature areas in western England, guarded for their internationally acclaimed rare wildlife interest. Natural England are responsible for properly assessing all potentially damaging activities before licences are issued. Failure to do this assessment correctly might make the issue of badger culling licences unlawful.
- Barrister Tim Nesbitt QC representing Tom Langton pointed out that behind release of the information were details of how well Natural England had assessed ecological impacts of badger culling and ‘the evils’ of environmental damage that may have gone unscrutinised.

Judgement Conclusions:

- The Information Commissioners original judgement in July 2017 had been that it was ***“not satisfied that release of the withheld information would cause direct or actual harm to public safety or increase the risk of harm to a degree which could be said adversely to affect public safety.”*** They concluded that the exception (12) (5) (a) relied upon was not engaged, so did not need to consider the balance of public interest. ***“evidence of damage to badger traps was not what Parliament intended to be covered by public safety because such activity, whilst unlawful, had “no impact on the wider community”.***
- The ICO legal representative pointed out that the NE witness ***“had repeatedly referred in her statement to whether disclosure “would be likely to...”, rather than the test in the EIRs of whether it “would” have the required adverse effect. Furthermore, she had relied on examples of harassment which pre-dated the disclosures directed by the Tribunal in Dale without pointing to any later adverse consequences of that disclosure. Finally, her evidence as to more recent events was unsatisfactory in failing to link the isolated incidents she described to organised protest, and she had not provided equivalent data about the number of arrests which had been presented to the Tribunal in Dale.”***
- In conclusion, the Tribunal were not persuaded by Natural England’s approach. ***“We note that she [NE staff witness] relied on incidences of lawful protest as supporting Natural England’s case, some of which was at some distance in time from the date of the information request and Natural England’s reply, and we regret that her evidence to the Tribunal failed to distinguish in a number of important respects between instances of lawful protest and criminal activity. On balance, we preferred Mr Puttock’s evidence (for Mr Langton) on contention that “Stop the Cull” is a minority group and not representative of the anti-cull movement and that the local groups which comprise the movement have their own boundary maps and are not reliant on “Stop the Cull” for information.”*** For these reasons, the Tribunal was not satisfied that Natural England proved its case on contention or persuaded on the evidence that the disclosure of the withheld information would have any more than a minor impact of the refinement of cull zone boundaries.
- Natural England’s evidence about the scale and impact of badger cull protestor behaviour ***“was confused and largely related to the wrong period. We received no witness evidence from the owner of a damaged trap, no evidence from the police about patterns of such behaviour, and found it difficult to rely on witness A’s confused and confusing data.***

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- The Tribunal found **“Natural England offered us no evidential connection between witness C and D’s experiences and the behaviour of the wider anti-cull movement which would suggest that such behaviour would be repeated, let alone increased, for any reason. On the contrary, we accept Mr Puttock’s evidence that the number of protestors has decreased, the number of cull areas has increased and that in consequence the behaviour of the grass roots movement has changed, to focus on the protection by local groups of viable badger clans. This evidence was, in our view, consistent with his uncontradicted evidence about the scaling down of the police operation, witness A’s own evidence of an almost complete absence of criminal charges and convictions of protestors in recent years, and the reported decision of NFU not to apply for a new injunction.**
- In reaching their conclusions the Tribunal took **“into account our finding above that the evidence indicates a low-level risk to public safety from disclosure, consisting of a low risk of incidences of harassment and the higher risk of damage to badger traps, the consequences of which are unclear. Weighed against that risk is the importance of public access to environmental information, and the public interest in holding an informed debate about a matter of considerable public interest and national environmental significance. We reach no conclusions about the theories advanced by Mr Langton and Mr Woodfield, but we do find that there is a public interest in them being published and debated by the scientific community, and considered by the wider public, with the benefit of the information contained in the withheld material. For all these reasons, Natural England’s appeal is dismissed. The Decision Notice is upheld and Natural England is directed to disclose the withheld information.”**

Tom Langton who brought the FOI request and opposed Natural England’s appeal at the Tribunal welcomed the decision;

*“After five years this is a huge victory for the environment against successive governments that appear not to want to listen or share in aspects of protection of our countryside. The information released is vital to help check the level of potential impacts on declining habitats and species following badger culling.*

*We can confirm that High Court Judicial Review Applications have been lodged to challenge licences issued on the back of recently released information on the 2017 Habitat Regulation Assessments. These show exactly how our request for these details in 2016 was a vital part of access to information that is made possible by the Aarhus Convention. Access was unfairly denied.*

*The ‘badger crowd’ cannot be thanked enough for support, funding and advice needed to help bring about this breakthrough. Badger Groups from across the U.K. including the Badger Trust charities and hundreds of individuals have joined together to help bring justice for badgers and other wildlife just a little bit closer.*

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*There are surely no prospects of further appeal to this crushing judgement via a Second Tier Appeal. We need to understand the potential unmitigated damage done to wildlife in 2016 and back as far as 2013 let alone that under scrutiny now for the 2017 badger cull licences. It is surely time to review the important legal and technical matters that have been overlooked for so long.*

*We thank Tim Nesbitt QC of Outer Temple Chambers, Expert witnesses Dominic Woodfield (Bioscan UK Ltd.) and Ray Puttock (Gloucestershire) for their dedicated efforts. Anna Dale and John Leston provided valuable advice and support.”*

Linda Griffiths Member of the Badger Crowd and Wildlife Campaigner said *“This win is a significant step in our opposition to the mass slaughter of Badgers in England. The information being released will help determine if the lawfulness of the 2016 Badger Cull Licences, can be challenged by way of Judicial Review. We will continue to support Tom Langton and his team in their efforts to effect a change in the Government’s failed Bovine TB policy and thank them and the hundreds of badger friends who have provided the finance to fund this and future legal challenges. We are currently awaiting decisions on applications for Judicial Review of the 2017 Badger Cull Licences and the West Gloucestershire and West Somerset supplementary Badger Cull licences.”*

Peter Martin chairman of The Badger Trust who helped crowd fund for the legal representation said. *“NE could be accused of time-wasting in its apparent weak arguments for withholding information, however it seems apparent that they are mainly concerned with frustrating the loss of badger killing traps. Such losses add slightly to the £50 Million of public money spent by government killing badgers since 2013 but with no demonstrable benefit, as opposed to better bovine TB testing in Wales where widespread badger culling is prohibited and bTB has dropped 44% over the last decade.*

Jeff and Pat Hayden, Badger Trust – Sussex said *“We are pleased to have helped raise funds to enable proper legal representation for Tom Langton whose tenacity has been rewarded by this victory. It is just one small step forward but sends a message to Government that the badger cull policy has many flaws and is likely to have caused more harm than good, as well as being a massive waste of public funds. We shall continue to help fight through the courts to expose further loopholes and deficiencies in Natural England’s approaches.”*

Pauline Kidner, Founder of Wildlife & Badger Care based in Somerset, said *“It seems incredible that anyone who cares for badgers and mourns the loss of so many innocent ones through licensed culls and persecution, would fail to contribute towards further legal action. Tom Langton has bravely led the fight against the suffering and killing of such an iconic species. He deserves unqualified support from all those concerned about the environment”*

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Please also see background information, links and contacts sheet for further details.

## Background.

Natural England (The Appellant) have lost their Appeal against the Information Commissioners ruling on 4<sup>th</sup> July 2017. They were instructed to release unredacted information to Tom Langton on seven 2016 Habit Regulations Assessments relating to the impact of badger culling on wider wildlife interests in English badger culling areas.

The case was heard in the first tier tribunal General Regulatory Chamber (information Rights) on 12-13 December 2017, Field House, Bream's Buildings, London.

Respondents were The Information Commissioner and Tom Langton.

The case was brought by Tom Langton a consultant conservation biologist who had requested copies of environmental impact assessments (known as "Habitats Regulations Assessments" HRA's) in relation to the areas of the badger cull that include or are near to designated areas such as Special Areas of Conservation ("SAC's"), Special Protection Areas ("SPA's) and 'RAMSAR' sites of designated international wetland importance.

[https://en.m.wikipedia.org/wiki/Ramsar\\_Convention](https://en.m.wikipedia.org/wiki/Ramsar_Convention)

In responding to the request Natural England had released extensively redacted copies of the assessments, on the purported basis that the information engages the "public safety" exception in the Environmental Information Regulations ("EIR"). EIR exception 12(5)(a), which states that information may be withheld if: '... disclosure would adversely affect international relations, defence, national security or public safety; or the protection of the environment to which the information relates.'

This issue had been subject to detailed consideration by another Tribunal in late 2015 in the case of Natural England v Information Commissioner & Dale (EA/2014/0094) when the Tribunal rejected the contentions advanced by Natural England. The Information Commissioners Office had in our case similarly rejected the Natural England claim that the exception is engaged (i.e. following the approach in Dale.)

The case focussed upon the exemptions to the Environmental Information Regulations regarding public safety versus public interest in release of environmental information. Would release of the information lead to an increased threat of intimidation, harassment and criminal activity to landowners and farmers involved in badger culling such that it outweighed the public interest value in making such information available for independent scrutiny

Release of the HRAs will allow independent experts to assess their adequacy and if found wanting could lead to further legal action to challenge the legality of the 2016 badger cull licences. Many 2017 licences are already under challenge as are badger culling methods approved in 2017.

### Further Links and Sources

Link to preliminary Judgement.

[https://docs.wixstatic.com/ugd/0c3b82\\_ebd600b26ce74ea287a8231232f18ac7.pdf](https://docs.wixstatic.com/ugd/0c3b82_ebd600b26ce74ea287a8231232f18ac7.pdf)

Link to Dale Judgement

<http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i2034/Natural%20England,%20EA-2014-0094,%200160,%200234,0311.pdf>

Natural England Standard Habitats Regulations  
Assessment (HRA) Standard

<http://publications.naturalengland.org.uk/file/5479463940259840>

Legal Team

Barrister Tim Nesbitt: Outer Temple Chambers

<http://www.outertemple.com/barristers/tim-nesbitt/#health-safety-and-environment-barristers>

Dominic Woodfield

<http://www.bioscanuk.com/default.aspx>

Links to fundraising appeals:

<https://www.justgiving.com/campaigns/charity/badgertrust/nomoresecrets>

<https://www.crowdjustice.com/case/help-stop-unlawful-badger-cull/>

### **Contact for further information.**

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