

Legal Challenge and its Implications

Tom Appleby
MA Dip Law Solicitor (non –practising)
Senior Lecturer in Law
UWE, Bristol



University of the
West of England

Two key points

- Legal and scientific certainty are very different
- Legal challenge is a sign of change not necessarily a bad thing



Scientific certainty

- I'm not a scientist
but



Jack Letouneau

Question

What level of certainty does a decision maker need to support their decision?



Christine and David Schmitt

Answer

- Traditionally the decision must not be **irrational**
- Creeping doctrine of **proportionality** from EU
 - Measure suitable to achieve objective
 - Measure necessary to achieve objective
 - Excessive burdens on the individual
- There are other legal challenges but these relate more to process



Why is legal challenge on the increase?

VW Passat 2000-2005



VW Passat 2005-2011



OSX

Legal challenges come out of change

- Client Earth / MCS legal challenge over implementation of Habitats Directive

Why should a port doing maintenance dredging be subject to the Habitats Directive and not a bottom trawling fishing boat?

- *Isle of Anglesey CC et al. v Welsh Ministers et al.*

The rights of private shellfisheries over the Crown needed to be crystallised

- *R v SoS Environment, Food and Rural Affairs (ex parte UK Association of Fish Producer Organisations)*

The public need to know who owns the UK fishing quota

Shape of things to come

- More legally trained lobbyists?
- Legal threats do not translate necessarily into action



What's needed?

- Don't panic
- Legal challenge can be a good thing
- Openness regarding legal threats to government bodies
 - Best practice MMO disclosure of MCS / CE correspondence
 - Compare MCZ process, rumours of legal threats but what's the substance?



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