



Beyond Dispute:
**Environmental litigation
& public opinion**

2024

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Beyond Dispute: Environmental Litigation & Public Opinion

Environmental litigation is making headlines.

Businesses and legal advisors are nervous about the risk. NGOs and activists are excited by the opportunity. All four are grappling with a powerful combination of legal action and public opinion.

Thorndon Partners works at the intersection of law and communications. To better understand the impact of corporate environmental litigation in the UK, we undertook a nationally representative poll. This revealed the high – and growing – reputational pressure that such legal action now exerts.

Key findings:

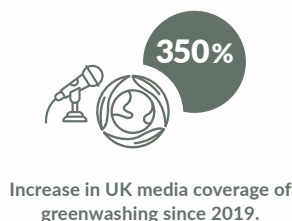
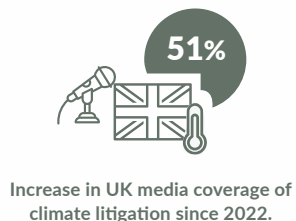
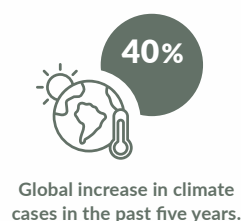
- 1. Public anger and support for legal action**
Even if not personally affected, individuals overwhelmingly support litigation against businesses that damage the environment. Businesses which pollute the rivers, seas or air, or destroy wildlife habitats, attract the greatest condemnation.
- 2. Guilty until proven innocent**
The public assume businesses are guilty even if they're only *accused* of environmental wrongdoing. This means consumers may vote with their wallets long before a regulator or court has reached a decision. This raises the stakes – especially for greenwashing.
- 3. Dirty water**
Water companies are in serious trouble for sewage pollution. Three quarters of the public would join legal actions against polluting water firms given the chance, and two thirds would consider not paying their bills in protest.

A publicly listed multinational is found guilty of greenwashing their sustainability credentials and their share price drops – so their shareholders sue them for fraud. A water company floods a river with sewage – so angry locals launch a class action. And an oil major fails to adopt a climate change strategy aligned with the Paris Agreement – so its directors are sued for breaching their duties under the UK Companies Act.

These are all examples of environmental litigation. It is a rapidly growing area. The number of climate change cases filed globally increased by nearly 40% between 2018 – 2023, with 230 cases filed just last year. The UK was second only to the US for most climate cases filed in 2023.ⁱ

Media coverage is also on the rise. Mentions of climate litigation in mainstream UK press more than doubled in the first eight months of 2024 compared to the whole of 2022. Mentions of greenwashing have also soared by 350% since 2019.ⁱⁱ

The impact of legal and public pressure together can be considerable. It will drive change. Environmental activists know this instinctively – as do the businesses they target. This Report attempts to understand and quantify this impact, and to set a baseline to track its progress.



**SPOTLIGHT
ON GREENWASHING
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1. Public anger and support for legal actions

Even if they weren't personally affected, individuals overwhelmingly support litigation against businesses that damage the environment.

62%

Sixty-two percent of the population say they would join a climate-related legal action if given the chance.

But what, exactly, is driving this?

- a. Neither personal loss nor gain. Rather, people are motivated by a sense of moral duty, or a sense that the environment affects us all.
- b. The who and what matters. Who's *accused*: oil majors? Water companies? And what have they done? Rivers, seas and wildlife habitats are the public's priorities.
- c. How big is the issue? This is important – but the public think that the first company to be caught shouldn't be the only one punished.

a. It's neither personal loss nor gain. People are motivated by a sense of what's right.

Class actions require a clear link between the public and the legal action. What would motivate someone to sign up to an environmental class action? Surprisingly – and perhaps uniquely – it's neither a personal grievance nor the chance for a payday.

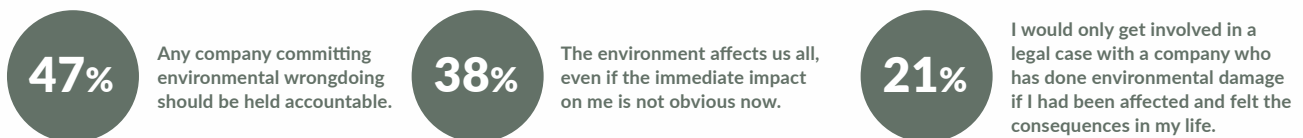
Despite 58% of people saying that neither they nor anyone they know had personally been affected by environmental issues, the majority still supported legal action on behalf of those affected.

Two-thirds of people (66%) also stated that they think it is important to support an environmental legal case, even if they are not personally affected by it.

Over one third of people (38% - see Graph 1) also view the environment as impacting them even if they are not currently aware how.

The public clearly do not need a demonstrable personal loss to be motivated to support or join an environmental legal action. And they may see themselves as affected by *any* issue which relates to environmental damage.

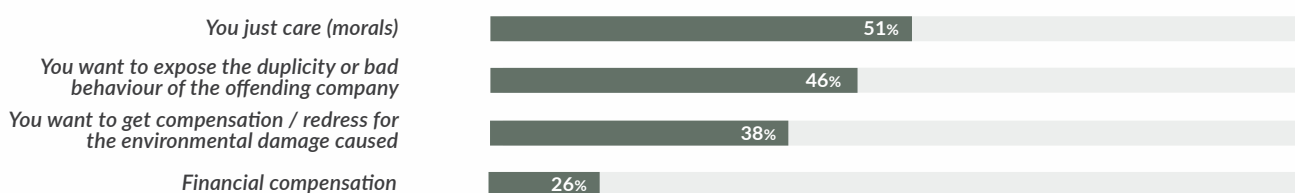
Figure 1: Do people need to be directly impacted by environmental wrongdoing to support legal action?



The public's motivation to join an environmental legal action is primarily about morality and a desire to expose the offending company. These motives outweigh money: personal "financial compensation" was ranked fourth overall. "Compensation" was instead seen as a way to redress environmental damage.

This conclusion is significant. It means that the typical tactic of dangling an attractive payday in class actions may not be as important – or impactful – for environmental litigation.

Graph 1: What motivates people to support environmental litigation?



b. Rivers, seas and wildlife habitats are the public's priorities

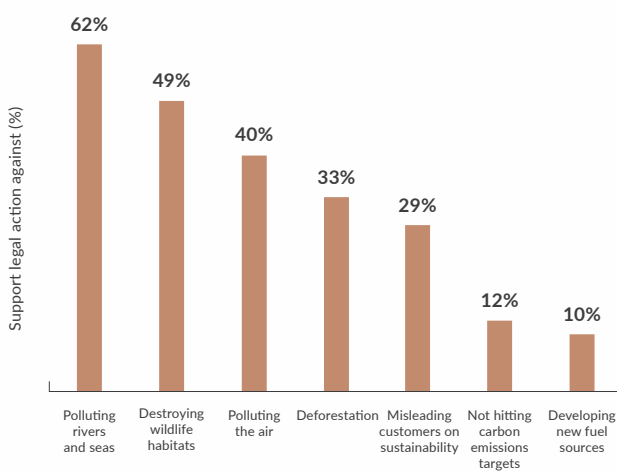
The level of anger against companies accused of environmental wrongdoing depends largely on their alleged activities and their sector.

Asked which activities would lead to the most support for a legal action, the top responses from the public were:

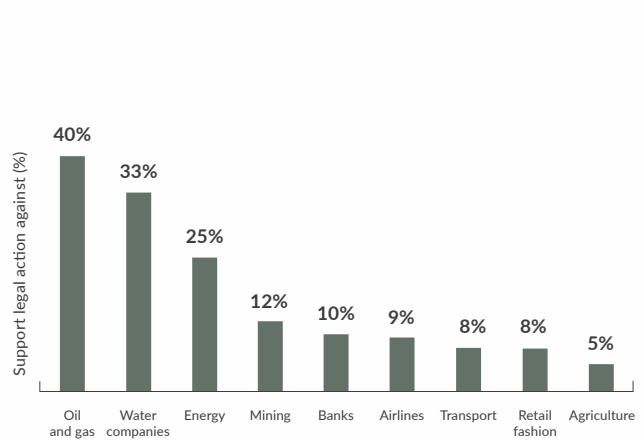
- i) polluting rivers and seas,
- ii) destroying wildlife habitats, and
- iii) polluting the air.

Perhaps unsurprisingly, the “oil and gas” sector is at the top of the public’s hit list. Water companies are, however, a close second – notably above both energy and mining. This is a reflection of how dented their reputation has been by scandals around sewage pollution. Detailed analysis of the water industry in particular can be found on page seven.

Graph 2: What activities would the public support legal action against?



Graph 3: What sectors would the public support legal action against?



“It is truly significant that the public support for legal action is highest in relation to visible impacts on nature – habitat destruction, deforestation and water pollution – rather than less visible (but by no means less severe) climate impacts.

Ordinary people relate much more easily to tangible nature through their day-to-day experience, rather than to the less tangible and much more nebulous concept of “climate”.

This fact is reflected in how fast nature cases seem to have been increasing over the past four years even without a legally binding international agreement on nature similar to the 2015 Paris Agreement on Climate Change.

The reputational risk involved in nature litigation could not have been articulated more clearly than in this report.”

Zaneta Sedilekova, qualified lawyer, CEO and founder of Planet Law Lab

c. The scale of the issue matters, but the first offender will not be the only one punished

The 'tallest tree' argument – that is, that the most prominent example is the only one to attract attention – will not fly for defendants in environmental litigation.

A majority of the UK public (51%) believe that action should be taken against any and all companies that have committed wrongdoing. This is compared to only 26% who think only the first identified defendant should be made an example of.

This will worry companies which face follow-on environmental litigation following the exposure of an issue within their industry. Coming second is no guarantee that the public will have tired of the issue. Think of the opioid crisis in the US: Purdue Pharma was the lightning rod for public and regulatory backlash, but sparked investigations into the industry more broadly. The likelihood of an environmental equivalent is high.

It does matter to the public, however, how widespread an issue is within a single company. Fifty-three percent of people are more likely join a class action against a company that has committed wrongdoing across all of its sites, compared to a company which has only done so at three.

The future of environmental litigation and public opinion

The UK public have strong feelings about environmental litigation. But the reality is, the issue remains relatively unknown, despite the increase in legal cases and media coverage.

Forty percent of the public say they have never heard of climate litigation, or of any companies being accused in court of environmental damage or greenwashing.

This was clearly illustrated in the months preceding this poll. Media coverage of the Manchester Ship Canal case (regarding sewage pollution) and Finch v Surrey (on climate concerns) soared. Despite this, 37% of the public had never heard of any of the high-profile cases put in front of them in Thorndon's poll (see Figure 2).

Businesses are, however, more likely to be worried than reassured by this when they look closely at the underlying numbers.

Awareness of environmental litigation is clearly generational. Nearly 73% of 18-to-34 year-olds know about the issue, dwarfing the 48% of those older than 55.

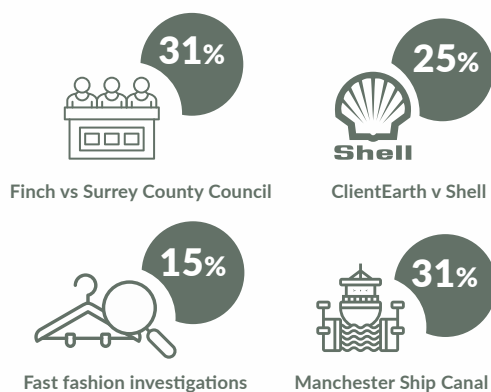
This younger generation of consumers will only grow in influence over time. They also have considerable spending power, particularly in technology, entertainment and fashion. Younger consumers are also far more likely to switch brands, often to ensure that what they buy is aligned with social or environmental causes they believe in.

“ Awareness of environmental harm cases among younger generations is staggering when compared to senior groups. Younger consumers are strategically an important audience for businesses and litigation, and will hold increasing influence in the coming decades. As such, mobilising public interest for on-going litigation is increasingly common.

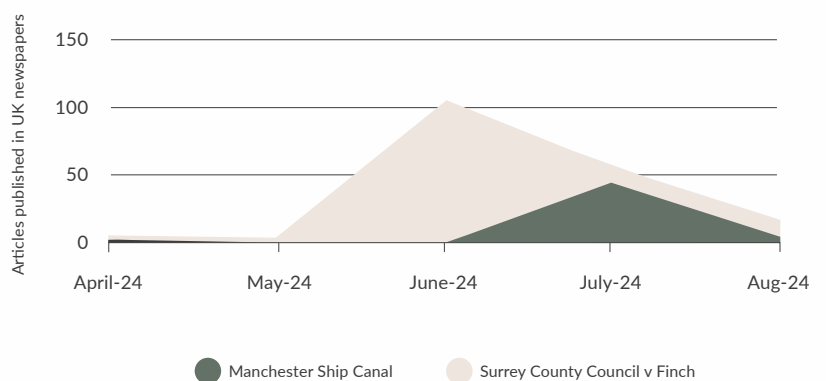
Where cases strategically and sensitively show localised impacts, they can really shift popular discourse, reduce misinformation and, to some extent, influence consumer behaviour.”

Bhargabi Bharadwaj, Research Associate, Chatham House

Figure 2: What environmental cases have cut through to the public?



Graph 4: Media coverage of two recent high-profile environmental cases



2. Guilty until proven innocent

The public assume businesses are guilty even if they're only accused of environmental wrongdoing.

62%

A shocking 62% of people would assume the guilt of a business that is only *accused* of environmental wrongdoing.

Just as shocking: People are almost as likely to take punitive action against a company *accused* of greenwashing when an investigation is *announced*, as when that same investigation reaches a finding of wrongdoing (see Graph 5). Such action could include refusing to buy a product or service.

Given this 'no smoke without fire' belief, it's perhaps unsurprising that 38% of the public support companies being named and shamed before any conclusion is reached.

This finding is particularly relevant for the Financial Conduct Authority (FCA). Their one confirmed ongoing environmental investigation was kept under wraps for nearly a year and the subject has still not been named.ⁱⁱⁱ

The Advertising Standards Authority (ASA), meanwhile, set out an interesting position in its August 2024 ruling against airline Virgin Atlantic. It noted that claiming something is "100% sustainable" is misleading.^{iv}

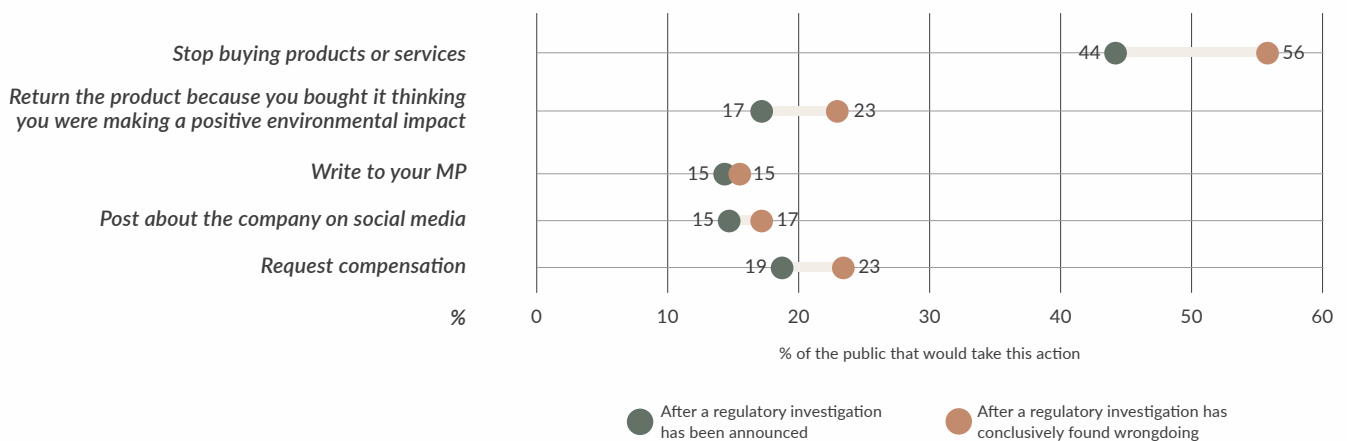
However, over 14% of those polled by Thorndon did not know what 'sustainable' meant in the context of advertising.^v And, when presented with definitions of sustainability, no consensus existed. If 'misleading' relies on people's susceptibility to being misled, this result is of considerable concern for advertisers.

Once lost, the public's trust is hard to earn back. A huge 75% of those polled wouldn't trust sustainability claims or credentials from a company that had been found guilty of misleading its customers through greenwashing.

The risk to greenwashers is greater than just reputation, however.

An overwhelming 77% of the public believe that companies found to have greenwashed should face legal consequences. Such so-called follow-on litigation can include professional negligence, breach of fiduciary duties, shareholder claims and derivative actions.

Graph 5: What actions are consumers likely to take against companies being investigated by regulators for environmental wrongdoing, and how does that change if the investigation confirms wrongdoing?



Perhaps most concerning for businesses accused of greenwashing is the public's appetite to stop buying products or services (see Graph 5 on the previous page). Forty-four percent would stop when an investigation is announced. This jumps to 56% if the regulator concludes that the company has broken the law.

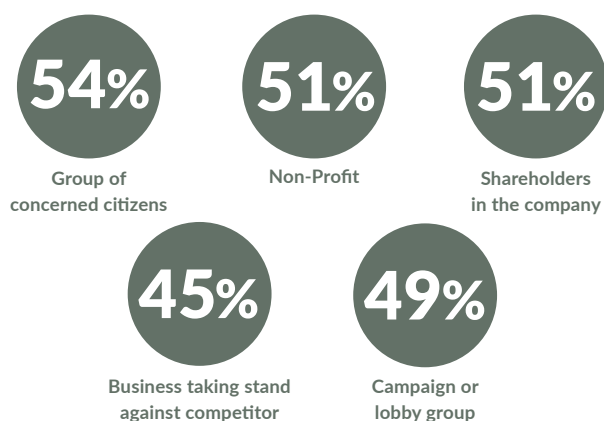
Consumers are also, to an extent, self-centred in what they want to see punished by regulators. Graph 6 sets out the disciplinary action they would be comfortable with for both environmental damage, and misleading customers. Misleading customers warrants stronger action in almost every instance.

Graph 6: What punishments would the public support against those who damage the environment or greenwash?



For follow-on litigation, it is interesting to note that the public are almost as supportive of shareholders taking action as groups of concerned citizens doing so – and both groups are level with non-profits acting (see Figure 3). Businesses bringing litigation against competitors also enjoy the support of nearly half of those polled.

Figure 3: Who would the public support if they brought environmental legal action?



Shareholders and private businesses may also consider legal action. They will be reassured to know that twice as many people support, rather than oppose, shareholders or competitors bringing lawsuits, even if either party stand to gain financially.

Finally, 34% of the public would support litigation supported by third-party litigation funders, even if they knew the funder stood to turn a profit if the case was successful.

Set against the backdrop of institutional investors' £100 million Financial Services and Markets Act case against Boohoo on ESG-related labour rights disclosures, there may well be a route for shareholders, investors and even competing businesses to bring litigation against greenwashers without denting the public's opinion of them.^{vi}



Spotlight on Greenwashing

The UK has set a tough regulatory environment to clamp down on so-called greenwashing; that is, a company making misleading or false statements about the environmental impact of a product or service.

The Competition and Markets Authority (CMA) has the power to fine global businesses a tenth of their turnover for greenwashing. And in the six months to May 2024, the Advertising Standards Authority (ASA) issued 15 rulings about environmental claims in advertisements.^{vii}

The Financial Conduct Authority's (FCA) new rules on greenwashing also recently came into force. Under a Freedom of Information Request from campaigning legal group ClientEarth, the FCA revealed it had opened its first enforcement investigation into a company over climate-related issues, though did not confirm if this related to greenwashing.^{viii}

These investigations have cut through to public awareness more than other forms of climate-related disputes. This is perhaps because of their overlap with consumer spending. The public was more aware of the CMA's investigation into fast fashion brands like Boohoo and Asos than any other environmental litigation or regulatory action.

What repercussions would greenwashers face from the public?



of people would stop buying products or services.



of people wouldn't trust any future sustainability claims.



of people support follow-on legal action.

“Thorndon’s snapshot gives a fascinating insight into changing consumer attitudes to greenwashing and related litigation. Consumers are keen for regulators to take the lead. But the rise in regulatory activity in recent years (including decisions this summer by the ASA against Virgin Atlantic and Ofgem against Drax) may boost consumer confidence in bringing follow-on claims.

The courts have shown increased willingness to consider and rule on environmental issues, the Supreme Court’s ruling in *Finch v Surrey County Council* being a marker of this trend. There is clearly growing support for shareholders or groups of concerned citizens to take action.

We anticipate increasing investor and consumer litigation targeting businesses making unsubstantiated or misleading green or sustainability claims. Businesses beware.”

Adam Culy, Partner; Sue Millar, Partner; Siân Whitby, Associate
 – Greenwashing Risk team at Stephenson Harwood

3. Dirty water

Water companies are in serious trouble for sewage pollution.

The UK public want to punish water companies. Newspaper mentions of pollution by Britain's top 10 water providers soared by more than 3,600% between 2019 and 2023.* As sewage pollution seeped into waterways, mistrust of the businesses managing water supply seeped further into the general public – resulting in the lowest levels of trust in water companies in over a decade.x

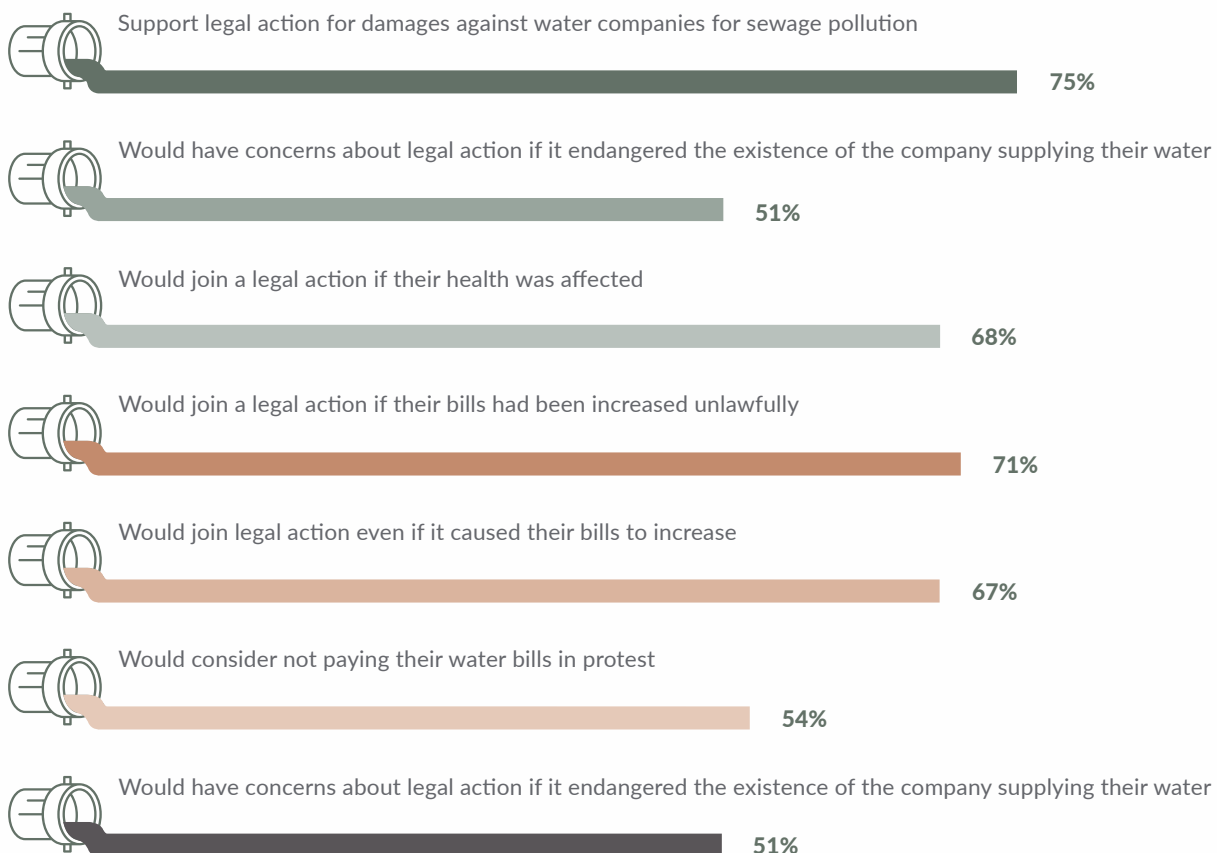
The reputational risk is now matched by legal risk. The UK Supreme Court decision in July 2024 against United Utilities, who provide water services to the Northwest of England, set a new precedent: water companies can be sued for financial damages for sewage pollution.

Thorndon's polling results will further alarm water executives: the public has an undeniable appetite for legal action.

75%

An overwhelming 75% of the public support legal action for financial damages against water companies that have caused sewage pollution.

Graph 7: Percentage of the public supporting actions against, or having concerns about, water companies in the UK



Polluting rivers and seas was the top environmentally damaging activity that the public want to see legal action against (see Section 3, above). Water was also second only to oil and gas in the industries the public would support lawsuits against.

The pollution of rivers and seas caused the most public anger against water companies. In second-equal place was increased water bills, and water firms paying their executives huge dividends and bonuses.

Little wonder, then, that a staggering 75% of the public support legal action pushing for damages against water companies. Only 8% disagreed.



2nd highest place industry

Water firms are the second highest placed industry that the public supports legal action against.



3,600%

Increase in UK media coverage of sewage pollution from 2019 – 2023.



62%

Percentage of the public which supports legal action against those polluting rivers and seas – the highest of any environmentally damaging activity.

The appetite of the public to join a legal action against water companies is also startling. Sixty-eight percent of the public would sign up to a class action if sewage pollution affected their personal health. This is the same argument that wild swimmer Jo Bateman has put to South West Water for dumping sewage into the sea near her home.^{xi}

Thames Water’s Chief Executive said in August 2024 that, without hiking bills by over 50%, the company is “neither financeable nor investible.”^{xii} Against that context, it is notable that the public prioritise their bills over health. A whopping 71% of those polled would join a legal action if they discovered their bills had been increased unlawfully, an argument not dissimilar to that recently put to six water companies in the Competition Appeal Tribunal by Professor Carolyn Roberts.

Such is the appetite to punish the water companies that an overwhelming majority of those polled (68%) would join a legal action even if that action caused their bills to increase.

Half of the public, however, would have concerns about legal action being brought against water companies that supply the area in which they live, if it meant that the amount the company had to spend on legal fees and compensation endangered its existence.

Of greatest concern for water firms in the short term is probably customers voting with their wallets. Fifty-four percent of those polled said they would consider not paying their bills in protest. Some billpayers have already stopped.^{xiii}

For an embattled Thames Water, in desperate need of cash, the reputational damage could prove existential. And, at the risk of using an obvious cliché, the United Utilities Supreme Court decision could open the legal floodgates.

About Thorndon Partners

Thorndon Partners works with the world's leading law firms to reinforce their legal strategy.

We solve complex communications challenges for organisations, governments, investors, foundations, and family offices around the world. With unrivalled experience and expertise in our fields, we focus on results not process.

Our senior team are recognised leaders in specialist litigation communications. They have advised on many of the highest-value and highest-profile disputes of the past ten years. As a litigation boutique, we are conflict-free, can move swiftly, and provide dedicated senior advice and support.

Research is at the heart of our work. We compile evidence and data from bespoke polling, focus groups and online analysis to inform our **strategy**. This means our advice is always based on what will achieve results, not just what has been done before.

We draw on the full suite of **communications** services to solve your specific problem. This includes traditional media and social media management; digital campaigns; profile and reputation management; and stakeholder engagement.

We would be delighted to discuss with you the findings of this report, or communications for complex legal disputes more broadly. Please email team@thorndonpartners.com to get in touch.



Chambers and Partners
Top Individual Ranking 2018 - 2024



Spear's 500
Top Flight Reputation Manager 2020 - 2024

Methodology

Thorndon Partners, in partnership with a leading research agency accredited by the British Polling Council and the Market Research Society, polled a nationally representative sample of 1,000 people in the UK. The results were then analysed by Thorndon's co-founders – [Philip Hall](#), [Tara Flores](#) and [Charles McKeon](#) – to produce this report.

Our thanks go to the external contributors to this report: Adam Culy, Sue Millar, and Siân Whitby from Stephenson Harwood's Greenwashing Risk team; Bhargabi Bharadwaj of Chatham House; and Zaneta Sedilekova, qualified lawyer, CEO and founder of Planet Law Lab.

- ⁱ [Global trends in climate change litigation: 2024 snapshot](#), *LSE Grantham Research Institute on Climate Change and the Environment*, June 2024.
- ⁱⁱ Thorndon Partners' primary research on mentions of 'climate litigation' and 'greenwashing' in national UK newspapers.
- ⁱⁱⁱ [UK financial regulator opens one climate investigation, lawyer-led FOI reveals](#), *Client Earth*, 20 June 2024.
- ^{iv} [ASA Ruling on Virgin Atlantic Airways Ltd t/a Virgin Atlantic, ASA](#), 7 August 2024.
- ^v [Over 14% of those polled did not know what 'sustainable', 'green' or 'clean' meant in the context of advertising](#).
- ^{vi} [Boohoo investors seek £100m in damages after minimum wage row](#), *The Guardian*, 6 June 2024.
- ^{vii} [How the UK's ASA is leading the way on tackling greenwashing](#), *Business Green*, 10 May 2024.
- ^{viii} [UK financial regulator opens one climate investigation, lawyer-led FOI reveals](#), *Client Earth*, 20 June 2024.
- ^{ix} Thorndon Partners' primary research on mentions of 'sewage pollution' and UK water providers in national UK newspapers.
- ^x [Trust in water companies reaches a 13-year low amid falling customer satisfaction](#), *CCW*, 22 May 2024.
- ^{xi} [Exmouth sea swimmer sues water firm over sewage spills](#), *BBC News*, 1 February 2024.
- ^{xii} [Thames Water says it needs 59% bill rise to survive](#), *BBC News*, 28 August 2024.
- ^{xiii} [Boycott Water Bills](#).

