



Mobuoy 'superdump' draining into the River Faughan, September 2017

The cross-cutting nature of a public inquiry into illegal waste disposal in Northern Ireland

A briefing for the Northern Ireland Executive

**EJN
BRIEFING
No.2
October
2020**

Dean Blackwood, Ciara Brennan,
Peter Doran, James Orr, Alison Hough, Laura Neal

EJN research has identified persistent concerns about the scale and handling of illegal dumping in Northern Ireland and on the island of Ireland. Stakeholders from across a range of backgrounds agree that a public inquiry is the most appropriate mechanism through which to establish the nature and extent of failures within the current system and identify ways of preventing recurrence of environmental disasters such as the 'superdump' at Mobuoy. This briefing paper sets out the reasons why the decision on whether or not to proceed with the public inquiry into illegal waste disposal in Northern Ireland is a 'cross-cutting' decision for the purposes of consideration by the Northern Ireland Executive and why the need for a public inquiry into serious waste crime and its links to planning enforcement remains today.



The background to calls for a public inquiry into illegal waste disposal

1. Illegal dumping is one of the most serious environmental challenges faced in Northern Ireland and across the island of Ireland. It is a category of highly damaging environmental crime which is extremely profitable, often linked to other criminal activities and cross-border crime, expensive to remedy and which remains pervasive. The scale of the problem was thrown into sharp resolution when in June 2013 local press reported that officials of Northern Ireland's environmental regulator (the Northern Ireland Environment Agency, NIEA) had discovered evidence of hundreds of thousands of tonnes of illegally dumped waste and recyclates adjacent to a licensed waste disposal facility at Mobuoy Road in Derry.¹ This discovery gave Northern Ireland the unwelcome honour of playing host to one of the most extensive illegal dump sites in Europe and provided evidence of widespread, organised offending on a commercial scale in the sphere of waste crime.

2. The regulatory response to illegal waste disposal has been fraught with difficulties and the failure to provide an effective response to illegal dumping undermines public trust in environmental regulation, the planning system and the justice system. The Mobuoy site was by no means the first large illegal waste deposit discovered in Northern Ireland. However, the extent of the criminality and the litany of ineffective regulatory interventions associated with this particular location seemed to represent not only a very clear example of significant failures in the regulation of waste, but also seemingly systemic failures across the whole spectrum of environmental controls.² In 2013, BBC Northern Ireland launched a *Spotlight* investigation into the NIEA's response to activities at the Mobuoy site, drawing even wider attention to the problem and for the first time linking local government tendering decisions to the criminality occurring at the site in question. In June 2013, the then Minister for the Environment Alex Attwood MLA commissioned Christopher Mills (former

Director of the Environment Agency in Wales) to review the handling of waste regulation by the NIEA with a particular focus on the nature and extent of the regulatory activity that had occurred in relation to the dump at Mobuoy. The Mills Review was published in 2013 and identified an extensive range of issues with the approach to waste enforcement taken by the NIEA and highlighted the role of failed planning enforcement in relation to unauthorised quarries as essentially providing the locations for illegal dumping to occur.³ Following the screening of the BBC *Spotlight* programme in February 2014, mounting public pressure eventually led to calls for a public inquiry into the regulation of waste and Sinn Féin tabled a motion in the Northern Ireland Assembly to that effect on 11th March 2014.

3. The NI Assembly passed a motion in favour of a public inquiry into illegal waste disposal in 2014. The motion calling for the public inquiry was agreed by Members on 11 March 2014. The motion stated: "That this Assembly recognises the issues raised in the recently broadcast BBC 'Spotlight' investigation into illegal waste disposal and other irregularities; and calls on the Minister of the Environment to establish an independent public inquiry into waste disposal in the north-west and the rest of Northern Ireland, **including the role unauthorised quarries and related planning enforcement issues played in facilitating environmental crime**, to ensure that public confidence is restored and to allay concerns that other illegal waste disposal sites remain undetected" [emphasis added].⁴ There were various attempts to initiate a public inquiry between 2014 and 2016, none of which came to fruition before the collapse of the Assembly in January 2017.⁵

Northern Ireland's efforts to deliver modern and effective waste regulation continue to remain tethered to its historical failures, wider issues associated with preserving the devolved government and a persistent culture of non-compliance with environmental law.

Dr Ciara Brennan, 2016⁶

“

”

Not proceeding with a public inquiry is a 'cross-cutting' decision

4. In January 2020, the Minister for Agriculture Environment and Rural Affairs, Edwin Poots MLA, informed the Northern Ireland Assembly that he would not be proceeding with the public inquiry into illegal waste disposal in Northern Ireland. In response to a written question (AQW 746/17-22) from Rachel Woods MLA, Minister Poots justified this decision on the basis of 'significant improvements to the management and regulation of the waste sector following the Mills review' since 2014 and the need to 'focus resources on ensuring the improvements emanating from the Mills review are built upon'. On one hand, there remains a significant issue in the presumption that the investigation undertaken via the Mills Review could provide a substitute for the nature and scope of a public inquiry. The extent to which the Mills Review recommendations have been implemented also remains unclear. However, the most significant question surrounding the January 2020 decision not to hold a public inquiry centres on whether Minister Poots had the legal competence to make a unilateral decision or whether the issue was 'cross-cutting' in nature and therefore required recourse to the Executive Committee.

5. **The decision not to hold a public inquiry failed to take account of the aspects of the Assembly's 2014 motion which clearly identified the need to examine the connection between illegal dumping and planning enforcement, which falls under the remit of the Department for Infrastructure (DfI). Any decision not to proceed with the public inquiry is therefore cross-cutting in nature and should have been a matter brought before the Northern Ireland Executive.** The call (in the Assembly's motion) to examine how unauthorised quarries and related planning enforcement issues have facilitated environmental crime reflects the concerns raised in the Mills Review into the Mobuoy 'super-dump'. Mills was highly critical of the planning system, concluding that: "...the ability to dig sand and gravel pits without first obtaining planning permission means a ready supply of ideal sites for the illegal disposal of waste, as was the case at Mobuoy."⁷ Planning in Northern Ireland falls under the remit of DfI and is thus the responsibility of the Minister for Infrastructure, Nichola Mallon MLA. This calls into question Minister Poots' authority to take the unilateral decision not to proceed with a public inquiry which would include material considerations over which he has no remit or responsibility. In addition, it is Minister Mallon's responsibility to provide the European Commission (EC) with assurance that the systemic failure of the planning system which gave rise to breaches of European environmental law (including at Mobuoy) are being properly addressed. This is currently the subject of *Pilot Case 7640/15/ENVI: Environmental enforcement in Northern Ireland*. There is thus a direct correlation between the planning matters captured in the 2014 motion calling for a public inquiry and the planning failures to be addressed by the DfI's Planning Environmental Governance Work Programme (PEGWP). This is because the planning concerns expressed in the Assembly motion are the very issues which gave rise to the EC's Pilot 7640/15/ENVI which, in turn, required DfI to develop its PEGWP in response.

6. There are new rules on what constitutes a 'cross-cutting' issue but these were introduced after the decision made by Minister Poots and the question of whether the decision to hold a public inquiry is cross-cutting in nature satisfies the new requirements. The Executive Committee (Functions) Act (Northern Ireland) 2020 (introduced in the wake of the decision in *Buick's application as Chairperson of NOARC 21* [2018] NICA 26) redefines the nature of decisions which may be made by Ministers without recourse to the Executive Committee. The new legislation received Royal Assent on the 25th August 2020 and amends s20 of the Northern Ireland Act 1998 so that any non-planning decision made by a Minister of any Department is now only referable to the Executive where it is "significant or controversial" or "affects the exercise of the statutory responsibilities of one or more other Ministers more than incidentally". Minister Poots' decision (January 2020) was made prior to the commencement of the new rules (August 2020). Even if the decision had been made subsequent to the introduction of the 2020 Act, there are clear grounds to consider it both 'significant' and 'controversial' and the issue would thus satisfy the new requirements. These grounds include: the public outcry in response to the gravity and scale of illegal dumping in Northern Ireland; the loss of evaded landfill tax to the Treasury; the financial implications for tax payers in addressing the remediation of Mobuoy and other illegal dumps; and the systemic failures exemplified in both the planning enforcement which facilitated the dumping and the regulatory response to criminality itself. In addition, the decision not to hold a public inquiry may have significant implications for the exercise of the statutory responsibilities of the Minister for Infrastructure going forward given the extent of the planning enforcement failures which were fundamental to the motion to hold a public inquiry passed by the Assembly in 2014.

7. **The issue of illegal waste disposal in Northern Ireland and the call for a public inquiry continue to generate significant cross-party interest and public concern.** The issue has been the subject of BBC Spotlight and RTÉ investigations and multiple media reports in recent years. MLAs from the Alliance Party (AP), Social Democratic and Labour Party (SDLP), Sinn Féin (SF), Green Party in Northern Ireland (GPNI) and Traditional Unionist Voice (TUV) have all raised questions relating to waste crime and illegal dumping in the Assembly sessions 2019-2020 and 2020-2021. In addition, People Before Profit (PBP), the Ulster Unionist Party (UUP) and the Democratic Unionist Party (DUP) continue to raise their concerns about Mobuoy at local government level. Derry City and Strabane District Council's Environment and Regeneration Committee has added Mobuoy as a standing item on its agenda. Community interest groups (e.g. the Environmental Gathering and Zero Waste North West) have been highly active in pursuing environmental justice in the context of Mobuoy Road and other illegal dumping activities in Northern Ireland and on the island of Ireland, and public consultations have repeatedly highlighted illegal dumping as a priority environmental concern.⁸ The problem continues to undermine the rule of law, environmental regulation, the planning system and the transparency, accountability and effectiveness of political decision-making at local council and national levels.

3. A public inquiry into illegal waste disposal is urgently required

8. A public inquiry into illegal disposal of waste in Northern Ireland should be established within the Northern Ireland Assembly's current mandate and be firmly rooted in prevention of further illegal activity and governance failures. In addition to examining the performance of the NIEA and local authorities in relation to waste regulation, the inquiry should include investigation of the role of unauthorised quarries and related planning enforcement issues in facilitating illegal dumping, how this occurred and how those failures of planning regulation have been addressed. Given international obligations to prevent transboundary pollution and the potential costs of repatriating waste, any inquiry should also focus on the handling of cross-border dumping and explicitly explore ways in which cooperation with the Republic of Ireland on waste could be enhanced. The identification of drivers for illegal waste crime, deficiencies in the current planning and environmental regulation systems which facilitate or fail to prevent waste crime and ways in which reoccurrence of ecological disasters like the dump at Mobuoy can be avoided in the future should be central to the terms of reference. The cost of a public inquiry in response to illegal waste disposal can be justified by the need to understand and address such wide-ranging and endemic problems spanning multiple governance structures and processes. Investment in a public inquiry has the potential to help manage the ultimate cost of remediation of Mobuoy and minimise future public spending required to deal with this widespread and extremely expensive environmental problem.

”

Nothing has changed the necessity for a full and proper scrutiny of the facts and circumstances in the past six years. All the gaps still remain – gaps in facts and evidence, gaps in lessons, and accountability gaps, underpinned by a lack of public confidence. We need answers. Appropriate remediation cannot be properly addressed in the absence of a full fact-finding exercise.

Cllr Mary Durkan, 2020⁹

“

References

¹ BBC, 'Immense illegal waste dump found outside Londonderry' (5 June 2013) available [here](#).

² Ciara Brennan, 'The Enforcement of Waste Regulation in Northern Ireland: Deterrence, Dumping and the Dynamics of Devolution' (2016) *Journal of Environmental Law* (28)3, 471-496. A peer-reviewed academic article chronicling the problems associated with the enforcement of waste law and regulation in Northern Ireland: available [here](#).

³ Christopher Mills, 'A review of waste disposal at the Mobuoy site and the lessons learnt for the future regulation of the waste industry in Northern Ireland' (DOE, 2013).

⁴ NI Assembly (2014) Official Report (Hansard) Vol.93, No.2. *Waste Disposal: BBC "Spotlight" Programme*, p55-70, available [here](#).

⁵ e.g. Martina Purdy, 'Durkan wants public inquiry into waste management in NI' (BBC, 8 April 2014) available [here](#).

⁶ Brennan n 2, p 42.

⁷ Mills n 3, p 2.

⁸ e.g. DAERA, '11th Annual Environmental Statistic Report (2019)', available [here](#).

⁹ Mary Durkan, Newswire (January 2020), available [here](#).

Environmental Justice Network Ireland

The Environmental Justice Network Ireland was established in June 2019. EJNI is an all-island network which seeks to build collaboration between groups and individuals involved in the delivery or pursuit of environmental justice. Its goal is to connect academics, lawyers, NGOs, decisionmakers and community activists and in doing so help equip people with the knowledge and tools they need to enhance the quality of environmental justice on the island of Ireland.

Please cite this document as: Dean Blackwood, Ciara Brennan, Peter Doran, James Orr, Alison Hough, and Laura Neal, 'The cross-cutting nature of a public inquiry into illegal waste disposal in Northern Ireland: A briefing for the NI Executive' (2020) EJNI Briefing Paper Series, No. 02.

For more information on EJNI, visit our website: www.ejni.net or email admin@ejni.net



Research at
Newcastle Law School



QUEEN'S
UNIVERSITY
BELFAST



friends of
the earth
Northern Ireland

