



Office for Environmental Protection

The OEP Complaint Form

Who should use this form?

This form is for you to complain to the Office of Environmental Protection (OEP). You can complain about public authorities you believe have not complied with environmental law. The Office for Environmental Protection (OEP) has been established under the Environment Act 2021 to receive complaints about public authorities suspected of not complying with environmental law.

Please note the OEP is not obliged to open an investigation into every complaint it receives, even where it considers a breach may have occurred. It will prioritise investigations in accordance with its strategy and enforcement policy. In addition, if the OEP does formally follow up your complaint, its aim is a general one – to hold public authorities to account for failures to comply with environmental law. The OEP complaint process is therefore not appropriate for seeking personal redress, including compensation, from the public authority concerned. You may wish to consider alternative routes.

The role of the Office for Environmental Protection

We will assess complaints against the criteria set out in the Act. We will tell you if we think your complaint does not meet those criteria. We may also ask you to provide more information. This is so we can better assess your complaint against the criteria. Please note this assessment is to confirm whether your complaint will fall into the scope of a possible investigation by the OEP.

Data Privacy

By submitting this form you agree to our [Data Privacy Notice](#) which can be found on our website: www.theoep.org.uk The OEP will use the information you provide to contact the relevant public authority/ies to verify that you have finished their internal complaints procedure. You may tell us at any time if you wish to withdraw your complaint.

Completing this form

You should provide information about the breach of environmental law you believe has occurred, even if you cannot name the specific law. Please ensure that you enclose all documents that you believe are relevant to your complaint including any

additional sheets. Please include anything that you regard as evidence of suspected breach of environmental law.

You only need to answer the Mandatory Questions prefixed with an asterisk* to complete this form. If you can give specific and detailed answers to optional questions it will help us to better assess your complaint.

You should follow the OEP complaint procedure and may wish to read the information on our website before complaining. You should also refer to the guidance provided in Section B of this form.

Contact us if you need help using our service at enquiries@theoep.org.uk or by phone 03300 416581. If you have any specific needs with regard to completing this form please advise us of this. We will do our best to communicate with you in the way you have requested. Please see our [Accessibility Statement](#) which you can also find on our website.

***What is the title of your complaint?**

Please provide below a short title for your complaint, with a maximum 30 words that makes it easily identifiable. We will give your complaint a unique ID number which will be emailed or sent by post when we receive your complaint.

Ofwat's failure to comply with the law to further the purposes of National Parks and National Landscapes.

Submitted 10 December 2024
Complaint reference number CMS-572

The Environment Act sets out **criteria for complaining to the OEP**. You must be able to answer 'Yes' to the following questions:

1. ***Do you think there has there been a breach of an environmental law?**

See guidance in Section B2.

Yes

2. ***Does the breach relate to England, Northern Ireland or a *reserved matter*?** See guidance in Section B3.

Yes

3. ***Is your complaint about a *public authority*?** See guidance in Section B4.

Yes

4. ***Can you complain?** Public authorities cannot complain to the OEP. See guidance in Section B1.

Yes

5. ***Are you within the *time limit*?** You must normally complain within 1 year of the breach or else within 3 months of the *public authority's* internal complaints procedure finishing. See guidance in Section B5.

Yes

6. ***Have you complained to the *public authority* and received a final response?** This applies if the *public authority* has an internal complaint procedure. The OEP cannot consider a complaint unless you have first complained to the relevant *public authority* and exhausted its internal complaints procedure. You should have a letter or email confirming this.

Yes

We will tell you if we think your complaint doesn't meet these criteria and explain why. We will also tell you if we need more information.

[Section A1 – About you](#) (see guidance in Section B1 of this form)

Please provide contact details. We require your name and **at least an email OR postal address**. If we cannot contact you, we will still try to process your complaint but we may not have the information we need. We also won't be able to keep you informed about your complaint.

Title

Dr

***Full Name**

Rose O'Neill

Organisation
(if applicable)

Campaign for National Parks

Telephone number (optional)	<input type="text"/>
*Email address	<input type="text" value="rose@cnp.org.uk"/>
*Address Line 1	<input type="text" value="82 Tanner Street"/>
Address Line 2	<input type="text"/>
*Town	<input type="text" value="London"/>
*Post Code	<input type="text" value="SE1 3GN"/>
*Country	<input type="text" value="UK"/>

[Section A2 – About your complaint](#)

***Do you know which environmental laws have not been complied with?**

Yes

Please provide information about the breach of *environmental law* you believe has occurred even if you cannot name the specific law. Please be as detailed as possible and see section B2 of this form for guidance.

Section(s) of Act(s)	<input type="text" value="Section 245 of the Levelling Up and Regeneration Act (LURA) 2023."/>
Regulation(s)	<input type="text"/>
Other Legal Provision(s)	<input type="text"/>
I Don't Know	<input type="checkbox"/>

Details of the environmental law(s) concerned.

Section 245 LURA 2023 amended s 11 of the National Parks and Access to the Countryside Act 1949, s.85 CRoW Act 2000 and s3 of the Norfolk and Suffolk Broads Act 1988 to create a new, pro-active duty which requires public bodies to “seek to further” the statutory purposes of National Parks, Areas of Outstanding Natural Beauty (“National Landscapes”), and the Broads.

Section 245 is a new duty and applies to thousands of public bodies. However, given the huge impact of Ofwat’s PR24 decision on Protected Landscapes (which cover 25% land in England), there is wide agreement within National Park Authorities, National Landscapes and NGOs that implementation of this law by water regulators and companies is highly significant.

The Glover Landscapes Review made the case for the strengthened duty, when it was published in 2019. The Government response to the review acknowledged that there was a need for legislative change to strengthen the wording of the “have regard” duty and was clear regarding its intentions:

“Public bodies have a huge influence on the protection and management of protected landscapes through their policies, programmes, projects, authorisations, and land management practices. It is therefore essential that they take account of the statutory purposes and the relevant management objectives when making decisions relating to protected landscapes, whilst carefully balancing this with the needs of other legitimate land uses such as forestry, agriculture or defence. [The Glover Review] highlighted that the existing duties for public bodies to ‘have regard’ to the statutory purposes are too weak. The vagueness of the duties can lead to disagreements about their interpretation and allow damaging practices to occur. We therefore propose strengthening the wording of these statutory duties so that they are given greater weight when exercising public functions. The current duties are also not clear that public bodies are expected to contribute to the delivery of management plans, which can lead to the underperformance of key partners and under-delivery of management plan objectives.”

The strengthened duty was made law through an amendment to the Levelling Up and Regeneration Act. Following Royal Assent of the Act, in November 2023, the Government emphasised the importance of Protected Landscapes to delivery of national commitments to halt and reverse the decline in species abundance and 30 by 30 and referred to ‘strengthened’ legislative duties to enable this:

“Through the Levelling Up and Regeneration Act, we will also require the management plans of Protected Landscapes to contribute to national environmental targets. In addition, we will require relevant authorities to help deliver these management plans, as well as the statutory purposes for Protected Landscapes. We believe this will improve the quality and consistency of decision making by relevant authorities and ensure that partners work together to deliver better outcomes for nature, climate, people and place. This will also help to ensure that Protected Landscapes are at the heart of our 30by30 commitment.”

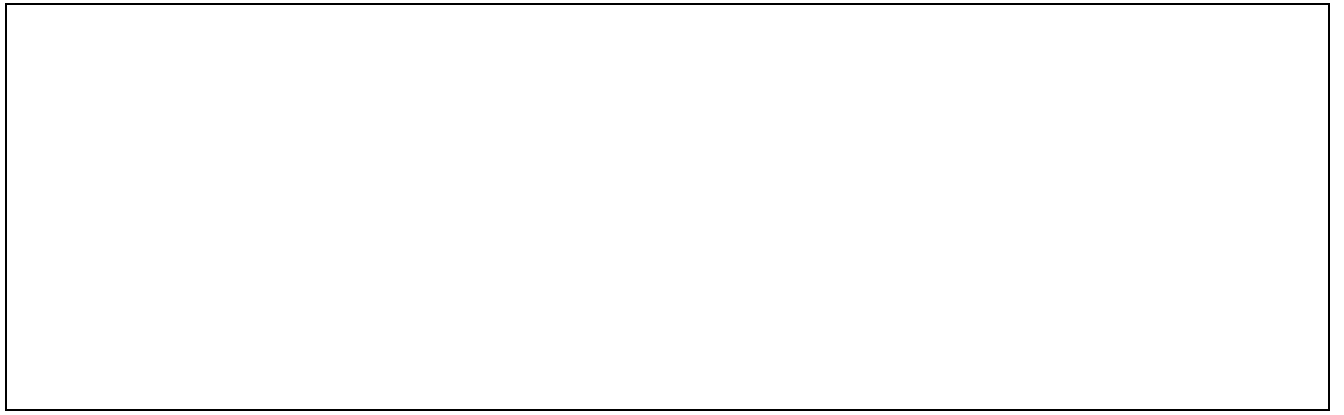
The new duties came into force on 26 December 2023.

It’s clear that Government intends relevant authorities, such as Ofwat, to help deliver the purposes of these Protected Landscapes. This would help them play a much more significant role in halting biodiversity decline, tackling the climate emergency and helping deliver the international commitment to protect 30% of land for nature by 2030, as identified in the criteria for 30x30 recently published by the Government. The introduction of the s.245 duty is critical to this: indeed Defra reported its enactment as a major milestone in its Environment Improvement Plan (EIP) progress report under the apex objective thriving habitats and species. The [OEP’s report](#) on progress against the EIP made clear that it was largely off track to meet its environmental ambitions. If this strengthened duty is not implemented effectively it will fail to have the intended impact to support EIP progress and

the potential for Protected Landscapes to contribute towards EIP targets and tackling the climate and nature crisis will continue to be limited.

Unfortunately, a year on, there is little evidence to date that the new duty is being complied with by the relevant authorities which are required to take account of it, and we understand that many are watching and waiting for legal precedent that shows how they must proceed. This includes organisations such as the regulators Ofwat and Ofgem and the Planning Inspectorate whose decisions have significant implications for other organisations. In some cases, this failure is due to a lack of awareness, or misunderstanding, of the new duty, but in other cases, there appears to have been a decision not to apply the duty until the Government publishes regulations on it or the High Court makes a ruling. Even though the duty came into force on 26 December 2023, and applies in the absence of these regulations or rulings. There is an urgent need to ensure that the new duties are having the intended impact - which will only happen if it is made clear to relevant authorities that they must apply this new duty now, that it is a pro-active duty, and that they need to provide evidence of how they have taken it into account in all of their decisions which affect land in Protected Landscapes.

The duty has wide ranging implications which we hope the Office of Environmental Protection will look to follow as part of its horizon scanning, and more complaints are underway with public bodies by NGOs due to non-compliance. For example, a complaint has been made by Friends of the Dales, Friends of the Lake District and Campaign for National Parks against a Planning Inspectorate appeal decision in the Yorkshire Dales National Park. Our initial complaint was submitted in late April 2024 and, following an unsatisfactory response from the Planning Inspectorate in August 2024, we are now awaiting a response to the stage 2 complaint that we submitted in September 2024. In November 2024, Campaign for National Parks applied to intervene in a case in the High Court - R (on the application of the Dedham Vale Society) (Applicant) v Secretary of State for Housing, Communities and Local Government (Defendant) and Transport UK East Anglia Limited (Interested Party) (AC-2024-LON-002385). The case relates to planning and the extension of a car park in Dedham Vale National Landscape (Area of Outstanding Natural Beauty) on which a key decision was made without complying with the duty – our intervention is focused solely on highlighting the broader implications of the strengthened duty to ‘seek to further’ the purposes of Protected Landscapes.



***What step taken by the *public authority* do you believe fails to comply with *environmental law*?**

Please be as specific as possible. Please include details of the step itself and why it fails to comply with *environmental law*. Please also provide details of any harm to the natural environment or to human health that you believe has occurred or could occur as a result. Please note that the OEP will only be able to investigate those complaints that it considers *serious*.

(Please continue on additional sheet if necessary)

Ofwat failed to comply with Section 245(3) of the Levelling Up and Regeneration Act (LURA) 2023 which requires Ofwat and all water companies to “seek to further” the statutory purposes of National Parks, National Landscapes and the Broads in the 2024 price review.

Section 245 of the Levelling Up and Regeneration Act (LURA) 2023 came into force on 26 December 2023. It relates to the English National Parks, Areas of Outstanding Natural Beauty (AONBs) – now called National Landscapes - and the Norfolk and Suffolk Broads. Collectively referred to in this complaint as Protected Landscapes.

The law, as amended, is a significant change and now includes a series of important, proactive duties which require relevant authorities (which include Ofwat and all water companies as statutory undertakers) to “seek to further” the statutory purposes of National Parks, National Landscapes and the Broads. This includes a duty to conserve and enhance wildlife and natural beauty – clearly within the OEP’s remit of environmental law.

The duties are in force now and have been for almost a year. They impose new and more onerous requirements for the natural environment with respect to previous duties. They must be complied with as part of any decision or course of action that has implications for Protected Landscapes: in exercising or performing any functions in relation to, or so as to affect, any National Park, the Broads or AONB, relevant authorities must seek to further the purpose of the landscape designation.

For National Parks and the Broads¹, the purpose is: (a) conserving and enhancing the natural beauty, wildlife and cultural heritage of the areas; and (b) of promoting opportunities for the understanding and enjoyment of the special qualities of those areas by the public. For AONBs, relevant authorities must seek to further the purpose of conserving and enhancing natural beauty. (The term ‘natural beauty’ is legally defined as “flora, fauna and geological and physiographical features”.)

The new duties are very broad in scope, applying to “any functions” in relation to, or so as to affect, land (and by legal definition this includes waterways) within the Protected Landscapes. This means that Ofwat and companies would do well to assume that if their decision touches in any way upon land or water within an AONB, National Park or the Broads, the duty is engaged. This year, Ofwat concludes its Price Review (PR24) to determine prices and investment for the period 2025-2030. As part of this process all companies produce a business plan for 2025-2030 setting out what they intend to deliver for customers and the environment. Given that 25% land in England is also a Protected Landscape, decisions made

within PR24 significantly affect land and water within these landscapes, and so the duty therefore clearly applies.

In April 2024, we published a [National Parks Health Check](#), which included, for the first time, analysis of the state of waterways within National Parks. Despite these being protected landscapes under UK law, internationally recognised as ‘Protected Areas for Nature’, and central to achievement of statutory targets to halt biodiversity decline and commitments to protect 30% of land for nature by 2030 (“30x30”), National Park water bodies are no better than elsewhere. We found many cases where they were, in fact, worse. In England, our analysis found that in 2022, 39% of rivers and 15% of lakes within National Parks achieved good ecological status or higher, with the situation declining over the last decade. The water industry is a significant Reason for Not Achieving Good (RNAG). A [recent study](#) conducted by the University of York found “alarming” levels of pharmaceuticals from sewage pollution in England’s National Parks, posing threats to wildlife and human health. Alarmingly, some small streams in the Peak District and Exmoor were found to have concentrations higher than seen in major cities such as London.

Because National Parks are rural landscapes, there are few areas that meet the minimum threshold of 10,000 residential population equivalent requiring secondary treatment of sewage (indeed there are few that meet the requirement of 2000 resident equivalent requiring any sewage treatment). However, the National Park population soars in summer months with millions of tourists meaning that rudimentary treatment works (designed for resident population capacities) are overwhelmed. For example, analysis by Professor Peter Hammond for Save Windermere found that between 2018-2023, there were over 500 days with illegal sewage spilling in the Lake Windermere catchment in the Lake District, reflecting a lack of capacity due to inadequate investment. The result is a perverse effect where our designated landscapes typically have older and less advanced treatment than non-designated areas, resulting in significant sewage outfalls into sensitive headwater streams, rivers and lakes and regular ‘emergency’ overflows related to significant seasonal population surges. Given this poor state of affairs, amidst the backdrop of clear Government intentions for Protected Landscapes to be the backbone of 30x30, PR24 is a vital opportunity to turn this around.

For years water regulators and companies have pointed to a lack of regulatory drivers requiring them to take action within Protected Landscapes (beyond those few water bodies also designated as SSSIs and Bathing Waters).

The new LURA duties are **the** key regulatory driver to address this. It was specifically tabled to ensure that public bodies take action – and reference to the difference that this would make to waterways by changing behaviour of water companies and water regulators was explicitly mentioned in the Parliamentary debate. There is a huge challenge and necessary work required to address water quality and meet environment objectives set out in the Water Framework Directive regulations, as highlighted by the [OEP’s Water Report](#). This strengthened legal duty should ensure that these iconic and protected landscapes are prioritised in the wider effort to clean-up the nation’s water – this is absolutely essential to deliver 30x30. Despite this:

1. **The new LURA duties for Protected Landscapes were entirely absent from Ofwat’s draft determination.** It was therefore impossible to see how Ofwat (and also,

therefore, how the companies) are seeking to further Protected Landscape purposes, and the difference this will make to waterbodies and land owned by the companies within Protected Landscapes by the end of the AMP.

2. **Ofwat has not shown how the determination methodology and process has been updated in light of the new duty.** The Ofwat methodology referenced in the Draft Determination was developed before the new LURA duty was in place. Compliance with the duty is required now – and it certainly cannot wait until the next Amp simply due to timing of Ofwat’s process. Ofwat did not demonstrate any recognition and awareness of the new duty, that it applies to Ofwat and to companies now, nor the scale and significant of implications for the Price Review given the far reaching nature of the duty and the scale of area (and therefore plans) it applies to.
3. **Ofwat’s response to a formal complaint and Freedom of Information Request in Autumn 2024 did not demonstrate or describe any work underway by the regulator to seek to further Protected Landscapes ahead of the final determination.** The replies (attached) suggest that rather than working to apply the duty, Ofwat is communicating with legal advisors to test whether it needs to apply the law. The only item shared with us as part of a FOI request asking for all documents that refer to how it is complying with the duty was a heavily redacted email chain from a Defra official to Ofwat with Defra asking: *“We wanted to confirm whether you are aware of this duty and whether your legal teams have considered how this will impact Ofwat’s operations, in particular the Price Review”* and no response shared from Ofwat.

With no evidence forthcoming from Ofwat to demonstrate ongoing compliance, we can only speculate based on confidential discussions with various contacts which suggests that the failure to comply with the duty is still happening. When Ofwat publishes its Final Determination (on 19 December), we will again begin the process of reviewing the documentation, requesting environmental information and making a complaint to Ofwat to demonstrate their (most likely lack of) compliance with the duty. However, given that this process takes 4 months or more, we are keen to log this issue with you now, based on their failure to apply the law to date. We are deeply concerned that by delaying this issue, Ofwat are kicking compliance into a future price review period (i.e. from immediate compliance as the law demands, to only seeking compliance from 2029 onwards). This squarely undermines delivery of Government legal targets on water and biodiversity, as well as delivery of 30x30.

The LURA duty is highly relevant to the OEP’s ongoing investigations into compliance with the Water Framework Directive, as highlighted in its Water Report. Compliance with the LURA duty is another example of how strengthened and improved law simply not being implemented not delivering as intended and, as a consequence, the rivers, lakes and streams within our most important landscapes are likely to remain in a poor state in the years ahead.

When did the failure to comply with *environmental law* happen?

Start date

Jan 2024

End date

Ongoing

If you do not know the exact dates you can provide an estimate.

You should normally make a complaint by the later of:

- one year from when the breach of *environmental law* last occurred; or
- three months from when the *public authority's* internal complaints procedure (if it has one) finished.

Please see Section B5 for further guidance.

If you are making a complaint outside these time limits, please explain why.

Please provide any further information or evidence you believe is relevant to your complaint. (Optional).

Please continue on additional sheets if necessary

With no evidence forthcoming from Ofwat to demonstrate ongoing compliance, we can only speculate based on confidential discussions with various contacts which suggests that the failure to comply with the duty is still happening. When Ofwat publishes its Final Determination (on 19 December), we will again begin the process of reviewing the documentation, requesting environmental information and making a complaint to Ofwat to demonstrate their (most likely lack of) compliance with the duty. However, given that this process takes 4 months or more, we are keen to log this issue with you now, based on their failure to apply the law to date. We are deeply concerned that by delaying this issue, Ofwat are kicking compliance into a future price review period (i.e. from immediate compliance as the law demands, to only seeking compliance from

2029 onwards). This squarely undermines delivery of Government legal targets on water and biodiversity, as well as delivery of 30x30.

Please enclose or attach any further information or evidence you believe is relevant. You may be able to provide additional evidence if the OEP considers your complaint further once it is operational.

Section A3 – About the Public Authority Complaint Process

The OEP will only be able to consider complaints after a *public authority's* internal complaints procedure has finished. If there is no internal complaints procedure please explain how you've tried to resolve your complaint with the relevant public authority before submitting it to us.

***Which *public authority* are you complaining against?** Please see Section B4 for guidance on the meaning of a *public authority*.

Ofwat

***Have you complained about this matter to the European Commission, an ombudsman or anyone else apart from the public authority?**

No

If yes, please provide details or enclose copies of any relevant correspondence.

***Does the *public authority* have an internal complaints procedure?**

Yes

***Has the *public authority's* internal complaints procedure finished?**

Yes

If "yes", please provide any evidence from the *public authority* that its internal complaints procedure has finished. This should include the final decision letter or any reference numbers. You can also supply a paper copy of this evidence by enclosing it with your submission.

Date Complaint Submitted:

30 September 2024

Reference (if known):

OFW-048430 CMS:0122669

Public Authority Address

Public Authority Contact Email

mailbox@ofwat.gov.uk

If "no", please explain why in the box below.

Section B – Guidance (Please also refer to the Customer Charter and our Frequently Asked Questions on our website)

Section B1 – Who may complain?

Any person may make a complaint, whether in a personal capacity or on behalf of an organisation. We will assume that you are complaining as a private individual unless you provide details of your organisation. The only exception is that a *public authority* may not complain to the OEP (see Section B4 for further guidance on the meaning of a *public authority*).

If you need assistance to complete this form, please contact us at enquiries@theoep.org.uk

Section B2 – Environmental law

You should use this form to complain about a *public authority's* failure to comply with *environmental law*.

The Environment Act sets out what we mean by *environmental law*. It means any legislative provision (other than devolved provisions – see Section B3) to the extent that it is mainly concerned with environmental protection.

Environmental protection means any of the following:

- a) protecting the natural environment from the effects of human activity
- b) protecting people from the effects of human activity on the natural environment
- c) maintaining, restoring or enhancing the natural environment
- d) monitoring, assessing, considering, advising or reporting on anything under points (a) to (c).

The natural environment means any of the following:

- a) plants, wild animals and other living organisms
- b) their habitats
- c) land (except buildings or other structures), air, water and the natural systems, cycles and processes through which they interact.

The Environment Act specifically excludes certain subjects from the definition of *environmental law*. These are any of the following:

- a) disclosure of or access to information
- b) the armed forces or national security
- c) taxation, spending or the allocation of resources within government.

Examples of environmental law include laws covering:

- air pollution
- water pollution
- contaminated land
- nature conservation
- waste and resource use
- climate change
- environmental assessment and monitoring

We will not consider complaints that don't relate to *environmental law*. We may, though, be able to advise whether you could complain to a different body.

Section B3 – What are reserved matters?

Devolution in the UK means that certain laws which were previously made by the UK Parliament can now be made by the Scottish Parliament, Welsh Parliament or Northern Ireland Assembly for their respective nations. Reserved matters are those topics for which the UK Parliament continues to make laws that affect the devolved nations.

The devolution settlements for Scotland, Wales and Northern Ireland establish which matters are reserved and which devolved. Generally, the environment is a devolved matter but some environmental topics are reserved matters. For example, the Government of Wales Act 2006 reserves to the UK Parliament the right to create laws in Wales concerning water and sewage, nuclear energy and energy conservation.

There is no exhaustive list of reserved matters. We will need to consider whether a particular legal provision is a reserved matter on a case-by-case basis. If you are unsure, please refer the matter to us and we can look into it for you.

Section B4 – Public authorities

The Environment Act sets out what is meant by a *public authority*. This is a person carrying out any function of a public nature save for certain excluded functions. Excluded functions are devolved functions, parliamentary functions and functions of any of the following:

- a) the OEP
- b) a court or tribunal
- c) either House of Parliament
- d) a devolved legislature

- e) the Scottish Ministers, the Welsh Ministers or a Northern Ireland department or Minister.

Examples of *public authorities* include:

- Government Departments (e.g. the Department for the Environment, Food and Rural Affairs, the Department for Transport)
- Government Ministers (e.g. the Secretary of State for the Environment, Food and Rural Affairs)
- Regulators (e.g. the Environment Agency, Natural England)
- Local Authorities
- Private bodies such as water companies – but only in respect of their public powers and duties.

You must first exhaust the internal complaints procedure of the *public authority* before complaining to us.

Section B5 – Time limits

The Environment Act sets out *time limits* for making a complaint. You should normally make a complaint no later than one year after the failure to comply with *environmental law* or else three months after finishing the relevant *public authority's* internal complaints procedure. In practice this means that:

- If the *public authority* has no applicable internal complaints procedure, you must make a complaint within a year of the failure, or last failure, to comply with *environmental law*.
- If the *public authority* does have an internal complaints procedure and this finishes within 9 months of the failure, the *time limit* for making a complaint is still a year.
- If you complain to the *public authority* within a year of a failure, the *time limit* for making a complaint will be 3 months from when the *public authority's* internal complaints procedure finishes.

The OEP will be able to waive these *time limits*, but only in exceptional circumstances.

Feedback

We welcome feedback to help improve how we handle complaints. If you have any comments on this form or on the complaints process, please send them to enquiries@theoep.org.uk