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**From:** [REDACTED]@anglianwater.co.uk>

**Sent:** 23 October 2025 16:03

**To:** Five Estuaries OSWF <FiveEstuaries@planninginspectorate.gov.uk>

**Subject:** RE: Request for an update regarding protective provisions for Five Estuaries Offshore Windfarm - Anglian Water response 23/10/25

Dear [REDACTED],

I write in connection with your email of 14<sup>th</sup> October 2025, as set out below.

We would be grateful if you would please bring this email response to the attention of the Secretary of State as he is ultimately to decide whether the proposed development receives consent and its form.

We understand the advice set out in your email of 19 March 2025 (attached), that the legislation bars out submissions to the *examination* after its close. As I have alluded to in my email to you of that date, we at Anglian Water – like our colleagues at Affinity Water – are concerned by the conduct of the DCO undertaker in this matter with respect to settling protective provisions relating to water and sewerage networks.

As you are of course aware, the National Infrastructure Planning Guidance (“guidance”) has been published to provide detail on the content of a Development Consent Order (DCO) and Explanatory Memorandum (EM) to applicants involved in preparing an application for development consent. It also provides a context for all users of the Nationally Significant Infrastructure Project (NSIP) regime about how the DCO and EM fit into the overall process.

That guidance recommends that the form of the DCO is drafted to include, amongst many other things, provisions for the protection of statutory undertakers like Anglian Water (the emphases in bold being mine)...

*including apparatus **and the recovery of costs**.*

It continues:

*Protective provisions can be included as Schedules to the DCO where a NSIP may affect other assets. They are usually **agreed** with key statutory undertakers, such as utility companies, but may*

*also need to be agreed with other bodies.*

*Applicants should expect to **agree** the form of protective provisions with the relevant parties for inclusion in the draft DCO prior to submitting the application for development consent. Where agreement on protective provisions has not been reached during the pre-application stage, applicants should include their preferred drafting **taking into account the standard protective provisions commonly used by the relevant party (usually statutory undertakers)** and endorsed in recent DCO decisions. It is not acceptable to submit a draft DCO with blank schedules for protective provisions on the basis these will be supplied during the examination, and to do so means the application is highly unlikely to be accepted for examination by the Planning inspectorate under section 55 of the Planning Act.*

*Most statutory undertakers have now developed their own preferred form of protective provisions which is very helpful to the preparation of the draft DCO. However, these must be adapted as necessary so they accurately reflect the proposed development. They should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land.*

*Examining Authorities are expected to ensure that the final form of a recommended DCO contains protective provisions which are bespoke to the application under consideration.*

Our concern is that the undertaker has not just presented to the Examination a form of protective provisions that lacked Anglian Water agreement, but further than that, it has not been sufficiently transparent with Anglian Water as to the progress of its application that Anglian Water was alerted to bring to the attention of the Examining Officer any contentious issues that needed to be worked through.

Following a period of engagement over the form of protective provisions, Anglian Water submitted the travelling draft to the undertaker's representative on 3 March 2025, making it clear that one point in particular was not accepted. On 5 March, Anglian Water confirmed that two other outstanding points were agreeable, but there were further points that remained. The undertaker's representative had offered a meeting to discuss them, but Anglian Water questioned what the purpose of a discussion would be. On 18 March Anglian Water emailed again, asking for an update as to the status of the application and a copy of the draft protective provisions as they currently stood, but by that time the deadline had passed the day before. The undertaker's representative emailed back to say that the form of protective provisions would be supplied shortly after, but it was not.

Prior to the deadline passing, Anglian Water was not told whether or not the DCO undertaker had agreed the outstanding point or intended to present the protective provisions in an unagreed form. Those provisions, we see now, stand in a form that lacks the agreement of Anglian Water as a statutory undertaker recommended by the guidance.

The point at issue is the inclusion of the following by the DCO undertaker.

(6) The total amount which would be payable to Anglian Water arising out of or in connection with this Part of the Schedule in relation to any costs, compensation, expenses, losses, damages, penalties or any other liabilities is subject to the total liability cap of £30,000,000 (thirty million pounds).

This is clearly at odds with the principle that an undertaker should pay full compensation to those that suffer expense as a result of its project. A limitation like this would mean that if the liability cap is exceeded by the DCO undertaker's actions, the shortfall would be funded by Anglian Water's shareholders or customers (depending on whether or not it falls within a water company's regulated Price Control). This is obviously completely inappropriate.

I trust that this will be given due consideration.

Yours sincerely,



Chartered Town Planner - MRTPI

**Spatial and Strategic Planning Manager – Sustainable Growth  
Development Services**

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**From:** Five Estuaries OSWF <FiveEstuaries@planninginspectorate.gov.uk>

**Sent:** 14 October 2025 14:29

**To:** [REDACTED]@anglianwater.co.uk>

**Cc:** Five Estuaries OSWF <FiveEstuaries@planninginspectorate.gov.uk>

**Subject:** Request for an update regarding protective provisions for Five Estuaries Offshore Windfarm

You don't often get email from [fiveestuaries@planninginspectorate.gov.uk](mailto:fiveestuaries@planninginspectorate.gov.uk). [Learn why this is important](#)

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Dear [REDACTED],

The Secretary of State has asked whether there has been any progress regarding the protective provisions between yourselves and the applicant?

If you permit, I can pass your contact detail so they can ask you directly or you can respond to me and I'll forward the response to the Secretary of State.

Kind regards



Planning  
Inspectorate



**Case Manager – National Infrastructure (Environment)  
Planning Inspectorate**

T [REDACTED] | M [REDACTED]

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