Select Committee on the Natural Environment and Rural Communities Act 2006

Corrected oral evidence: Natural Environment and Rural Communities Act 2006

Tuesday 31 October 2017
11.05 am

Watch the meeting

Members present: Lord Cameron of Dillington (The Chairman); Baroness Byford; The Earl of Caithness; Lord Cavendish of Furness; Viscount Chandos; Lord Faulkner of Worcester; The Countess of Mar; Baroness Scott of Needham Market; Baroness Whitaker.

Evidence Session No. 10 Heard in Public Questions 78 - 88

Witnesses

Examination of witnesses

Chris Corrigan, Stephen Trotter.

Q78 The Chairman: Good morning to you all and, in particular, to Mr Corrigan and Mr Trotter. Thank you very much for coming; it is very kind of you to spare us your time. You have in front of you a list of interests which have been declared by Members of the Committee. The meeting is being broadcast live via the parliamentary website. A transcript of the meeting will be published on the Committee website and you will have the opportunity to make corrections to that transcript where necessary. I do not know whether either of you want to introduce yourselves and make any introductory remarks or whether you would rather we just asked the questions. Perhaps a good start would be to say who you are.

Chris Corrigan: Thank you very much for giving us the opportunity to come along and give evidence, which is great and, hopefully, will be helpful. I am the director for England for the RSPB. I have worked for the RSPB since 1990 and have a long background in nature conservation.

Stephen Trotter: Could I echo those comments? Thank you very much indeed for inviting us. I am the director for England and living landscapes for the Wildlife Trusts, which is a network of 37 independent conservation bodies across England.

Q79 The Chairman: Thank you very much. Do you think that Natural England fulfils its core objectives? If there are objectives that it fails to meet, why do you think that is? Which of the objectives do you think are the most important and are its core objectives the right ones?

Stephen Trotter: It is important to state from the beginning that there are many good, dedicated members of staff in Natural England who do some very good work for wildlife and conservation. There are many areas that we have covered in our written evidence where Natural England does very good work for conservation, but there are also areas where the performance could be significantly improved.

On the question of some of the good work, I would quote the monitor of engagement with the natural environment and the NIA process that Natural England has delivered. Some of the agri-environment programmes that Natural England has delivered have been good, but there are some poor areas. We would highlight the lack of clarity of role that Natural England has over engagement in the planning system in defending nature and particularly key conservation sites, so in its role as regulator, in our view, there could be some improvements made. Over the last seven years in particular there has been a major reduction in the amount of good proactive work that Natural England has been doing, and there seems to be less value placed on species and habitats and conservation work in the organisation than perhaps we had previously.

The Chairman: How does the lack of focus on habitats show itself?
**Stephen Trotter:** For example, we are very concerned about a network of undesignated sites, which we now call local wildlife sites, of which there are many throughout England, but they are important because they are where most of our wildlife resides. We have many examples where, under the NERC Act duties that it has, we would expect Natural England to stand up and become more engaged in its management and protection, but because it is not designated as part of the SSSI network it seems to step back from taking them as significant parts of our natural fabric across England.

On the question of potential wider objectives, the NERC Act covers pretty much everything reasonably well, so the objectives and the goals are there. The key reasons that we have identified for the problems, issues and failures are mostly related to funding cuts in Natural England’s budget; it has less capacity to do and achieve things. It is not just down to funding cuts; there has also been a change in direction as a result of political pressure to become much more focused on promoting growth and economic development, which is good, but there has been less engagement with the process of negotiating a better deal and net gain for nature and development.

**Chris Corrigan:** I would echo many of Mr Trotter’s comments. Natural England is working well in partnership and collaboration with others. That aspect of its work is good, such as its “Action for Birds in England”, which has delivered real benefits. Cirl buntings in south-west England have directly benefited as a result of that programme. Those positive, collaborative areas of work are good and strong.

On the things that Natural England is struggling with, Natural England staff have the skills and the experience, albeit from a different perspective, that many in our sector have, so they are not different types of individuals. I observe, and our experience is, that the resource cuts that Mr Trotter alluded to have been the real issue that has hampered Natural England. There are surveys, such as the SCARABBBS surveys, which unfortunately Natural England has been unable to contribute to because of some of the resource cuts, which is impacting on its capability.

The other aspect is the move away from regulation that they have signalled. That is certainly a fear on our side. One of the important things for us is Natural England’s regulatory role. It is the only organisation that can perform that role. We cannot do it. That, in essence, is where Natural England is perhaps struggling.

**The Chairman:** Would you have made these comments a few years back before the resource cuts were made? In other words, was it a good organisation in 2011, doing all the things that you have been saying are where the weaknesses lie?

**Chris Corrigan:** One example of that collaborative and partnership working is the Nature Improvement Areas programme, which was a good programme that ran for three years and generated some good
collaborative partnerships in places such as the South Downs. We saw real benefits from different individuals coming together. That programme, unfortunately, has come to an end. The SCARABBS surveys are another area where it has not had the necessary resources to participate. The intent is there, but the difference with the organisation now is that it does not have the resource or the capability to deliver it. The regulatory signals that we have seen have only emerged in its recent strategy, and Conservation 21 is where that signal is.

**The Chairman:** You seem to be indicating that it is all to do with resources, basically.

**Chris Corrigan:** There are two things; one is in large part to do with resource, but there is also this move away from regulation, and behind that comes things such as its need to take economic activities into account.

**Lord Faulkner of Worcester:** Would you say, therefore, that there is an inherent contradiction between its role as a regulator and as a body that works with others to promote major conservation? If so, is there any way in which the conflict can be reconciled?

**Stephen Trotter:** I do not think there is necessarily a contradiction in those two roles. It depends on how Natural England approaches them. They can go well together and there are many things that good regulators can do. Clearly, being proactive, building relationships and collaborative working has to be the preferable way of working and approach. Carrots will only work if you also have sticks and regulation. In order to build a reputation and the respect among partners that an organisation needs to be a good regulator, you need to have both. You need to be prepared to have proportionate and appropriate regulation and the sticks, but you also need to work with the carrots and to work collaboratively on the big vision stuff and in helping people to find solutions. Natural England has a critical role to play in helping to facilitate and catalyse better ways of doing things. For us, conservation is not about saying no and it is not about no change, as none of us can stop change from taking place; it is about identifying the things that we need to look after and take with us into the future and to challenge everybody to find the best solutions for both nature and development.

**Chris Corrigan:** An example of where you can combine the two is, in my experience, the Environment Agency, which does this. The Environment Agency takes enforcement action. It is a regulator, particularly when it comes to the water environment, but it will also work in partnership in a collaborative way. I have sat on Environment Agency committees and seen how it has worked with anglers, for example, to get disabled fishermen out on to rivers, so it can do that positive stuff. It has done positive habitat work with us and local communities, but it can and does take enforcement action when needed.

**Lord Faulkner of Worcester:** What about the discretionary advice service for developers? If it is being starved of national funds, will there
not be a temptation for it to concentrate on being a planning consultant rather than a regulator?

**Chris Corrigan:** At the moment, because of the way it is approaching it, that discretionary advice service is about recouping, and I can understand that in the current climate it needs to go down that route. There is some move, as its grant in aid falls away further, towards looking for more innovative ways of generating income. If you start moving towards generating more innovative ways of raising income, you can lose mission; you can follow the money rather than your purpose. In the voluntary sector, that is a risk that we are acutely aware of; you can see pots of money, which provide opportunities to do things and recoup some core costs but are not necessarily the things that you were primarily set up to do. That is probably more of a risk for the future than a real issue at the moment. There are issues with the advice service, but at the moment that planning consultant issue is not necessarily one.

**Lord Cavendish of Furness:** I have to say that I read your written evidence as pursuing non-compliance, enforcement and punishment rather than collaboration. I have always remembered the Wildlife Trusts being on the side of people who want to collaborate rather more than your organisation. Do you think that level of enforcement, punishment and chasing the malefactor is possibly too exaggerated in this balance that you are trying to strike?

**Chris Corrigan:** No, because it is the ability and the preparedness to use that regulatory stick. For us, an independent regulator is an important part of the conservation toolkit. We know, for example, that biodiversity is in decline, and one thing for sure is that biodiversity is not declining because there has been too much regulation. That has not been an issue. Of course, we want that collaboration, and as we have described there are many examples of the positive working, but you have to have the stick to back that up when that approach fails.

**Baroness Byford:** I apologise to the Committee. I went to get the written evidence, which I left on my desk, because I would like to follow up on that. In your written evidence, one gets the feeling that Natural England is not able to do what it was set up to do, and your comments reflected that. Looking forward rather than where we are now, and reflecting on the Act as it is, do you think that the regulatory bit should be taken away from the advice that is being given? You mentioned the Environment Agency. If you had a clean bill of health and started from a blank sheet, would you put in what is there now?

**Chris Corrigan:** There are different ways in which you could approach this. You could, as you say, separate the two out so that you have a separate regulatory function, if I have understood that point correctly, or you could enshrine the two together. For us as an organisation, it is not how you assemble those things but the fact that the function is provided. My experience is that you can have the two functions combined in the same organisation, but in future and with Brexit, when we may have to have different institutions, you may find that it is better to set up a
separate regulatory body to deal with those regulatory issues. But we need that independent regulatory function somewhere.

**Stephen Trotter:** Of course, the regulatory framework is much broader than just Natural England. There is also the Environment Agency, the Forestry Commission and the Marine Management Organisation, which are all working in environmental regulation. It is a very complicated structure that has evolved rather than been designed.

**The Chairman:** So the phrase is, “We’re from Natural England and we’re here to help, but if you do not do what we say we will punish you”? It may work.

**Stephen Trotter:** Clearly, we need to go about it with some diplomacy, but there are other good examples. The example that we were very impressed by, which Natural England has overseen and delivered, was for an extension of Abberton reservoir in Essex, which has a long list of designations as a European site for birds. Because of the population pressure in the south, the water company was under pressure to increase the capacity of the reservoir, which it did in partnership with Natural England and Essex Wildlife Trust to create a solution. It was very hard work and a challenging process, but in the end an outcome was achieved whereby there was no need to go to public inquiry, there were no objections, and everybody is happy with the result. It was opened by Sir David Attenborough just a year or two ago. It is possible and you can achieve it. It is about negotiating a good deal for everybody, and if you do that you can get win-win solutions.

**The Earl of Caithness:** As a follow-on on Natural England, both your organisations have expressed concern about Section 108 of the Deregulation Act of 2015. Why should Natural England not take into account the economic situation to increase growth?

**Stephen Trotter:** As I indicated, that is fine, but Natural England’s role is to achieve the objectives of the NERC Act, so it is not necessarily about rolling over and saying that anything is okay but about striking the best possible deal. There are very few situations where there is an absolute red line. There are some very high-profile cases where it is hard to see how development can coexist with the value of a natural environment habitat, for example, but in the vast majority of cases negotiation is possible for seeking the best possible deal. In our view, Natural England’s role should be about striking the best deal within the trade-offs that any individual planning application will involve, so it is about getting the best for the natural environment and working hard to get net gain. It is not about saying, “Yes, any proposal is okay”, but saying, “What is the best way of dealing with this for society, for people, for the environment and for growth?” In that way, we will have more sustainable growth.

**Chris Corrigan:** Natural England’s general purpose is about ensuring that the natural environment is managed, sustained and enhanced for present and future generations. It then refers to sustainable development, which is a good purpose for it. We know that biodiversity is
in decline, and the only agency that makes the case for biodiversity in nature conservation is Natural England. Of course, as Mr Trotter says, there are occasions when you can get win-win situations, but, as we know, it will not always be possible to marry up economic interests and environmental interests. At times, political balances need to be struck and decisions made, but Natural England is the body that should hold true and keep to that nature conversation case, because that is its job, and nobody else does that.

**The Earl of Caithness:** Looking at the current situation for Natural England, what should its budget be? Looking ahead, assuming that the Secretary of State follows your advice, how much more should farmers get than they do under the current CAP arrangements in order to remain viable? Have you done that exercise?

**Chris Corrigan:** Are you asking how much Natural England should get?

**The Earl of Caithness:** Looking at Natural England’s duties now, what should be its budget? If you were the Secretary of State, how much would you give it to fulfil its duties to the standard that you would expect?

**Chris Corrigan:** Its budget now is half of what it was in 2010. If I were the Secretary of State and had a magic wand, if it needed that budget in 2010 it would need at least that budget now, but I suspect I will not be given that magic wand.

**Stephen Trotter:** On the wider question of farming and land management, it is vital that we retain the current budget that we have through the CAP. We may need to spend it in different ways, perhaps to enable the wider recovery of nature and sustainability issues, but it is quite critical for land management that we retain the current budget in the future. We appreciate the demands that come from other calls on the taxpayer, such as the NHS and social care, but the natural environment is the basis for our society and we need to invest in it to make sure that it keeps on providing the things that we need from it, whether that is wildlife, food, clean water, flood attenuation, tourism or recreation, which are all critical. UK plc and the devolved countries need to invest in the future if we are not to take our natural environment for granted, and there is a strong case for us spending a lot more. When you look at the problems we have with soils, pollinators and the cleanliness of water, there is a very strong case.

**The Earl of Caithness:** How much more should we spend?

**Stephen Trotter:** There is work going on at the moment, which has not yet been published but is about to be published in the near future, which goes to this very question, so I would not want to prejudge that work. Certainly, if you compare it to the NHS and to other big expenditure items, it is not a great deal of money. We might be talking about £3 billion, £4 billion, £5 billion per year, something of that order, but I cannot be precise about it.
Chris Corrigan: I would be very happy to come back to the Committee with more detail, if that would be helpful.

The Chairman: Yes, that would be helpful. Thank you.

Q82 The Countess of Mar: We have heard a lot of evidence that when planning proposals are sent to Natural England it tends to exercise a tick-box mentality, mainly because it does not have the feet on the ground or the local knowledge that is required. Are you finding that this is so?

Stephen Trotter: Yes, we do experience that issue. Natural England is focusing its interventions on planning around particularly protected sites and European protected species. Even though beyond that there may be some very important habitats or species, particularly locally and sometimes even nationally, it tends not to get involved because it does not have the capacity to do so, which can create problems. We respond to large numbers of planning applications a year across the country and regularly encounter the problem of Natural England submitting no comment to applications, which is interpreted by the planning authority and by its elders as being fine when it is not necessarily so. That has been an issue, and we would be very keen for Natural England to admit that it does not have the resources to engage properly in those cases and to say, “There is a bigger picture and you need to look to local and community organisations and individuals to give you the advice because we can’t”.

Lord Cavendish of Furness: Mr Trotter, you talked about the need for investment by public bodies in nature. Would you accept that an alternative to public bodies investing is for the land managers to invest? Is there not a case for helping them to make a framework under which they invest more?

Stephen Trotter: Yes, I agree absolutely, as do a lot of my managers. Certainly, the RSPB and the Wildlife Trusts are significant land managers, and we invest hugely in our places and sites. Yes, we have to help farmers, landowners and farm managers to invest in their own sites. I know that you have spoken to Dieter Helm of the Natural Capital Committee, and we need to explore some of the ideas which that committee has produced on how we can find new income streams for land management.

Q83 The Countess of Mar: This question is primarily for Mr Trotter. Both the Wildlife Trusts and Natural England have recommended that Natural England should be empowered to enter into “conservation covenants”. What are these and what positive impact could they have?

Stephen Trotter: Conservation covenants are a development of the current covenants that any landowner with an interest in an adjacent holding can take out on some land which they sell or pass on. It is a legal document that would go with the title of land, and would be specifically about making sure that the conservation interests of that land were protected and looked after. One of the key issues at the moment is that you have to have adjacent land or the land benefiting from the covenant
needs to be part of the legal process of establishing the covenant, so a separate organisation, apart from the Natural Trust on landscape grounds, is unable to have a long-term, in perpetuity monitoring role in that piece of land once it is disposed of or sold or passed on. Therefore, covenants will not solve all of nature conservation’s problems, but they are a useful tool in the armoury of Natural England and other bodies to establish long-term ongoing management of a site that is important for wildlife, if it starts off with recognising that that site is important.

I talked about local wildlife sites earlier, but they have no legal protection, except as material considerations in the planning process. These would give a landowner who loves their local wildlife site, as many of them do, the opportunity to say, "As a legacy, this site can be looked after for the common good or for private good, but the wildlife in trust will be looked after in perpetuity", once they have moved on. The covenant could rest with a public body, a local authority or a local conservation organisation that is approved. It is a way of securing the interests and wishes of a landowner when they leave. I have been involved in several. I was the chief exec of the Warwickshire Wildlife Trust, and we had several individuals approach us with land that they loved and cherished and wanted to look after and be secure in the knowledge that it was going to be looked after. We had problems in finding a mechanism to give them the security that their land will be looked after. This is one way of doing it. As I say, it will not solve everything, but it is useful.

The Countess of Mar: That is helpful. Do you trust that Natural England would have the will and the resources to enforce covenants, if granted?

Stephen Trotter: It depends who the covenant is with. If it were with a local authority or an NGO locally, the responsibility of monitoring would fall on whoever is holding the covenant, so it would not necessarily be Natural England, but there are circumstances. For example, if public money has been invested in a site to restore it or to look after it, it would only seem right that the public could be assured that their investment was going to be looked after in perpetuity.

The Countess of Mar: Do you think Natural England has the will and the money?

Stephen Trotter: That is a question for Natural England, but clearly it is under significant pressure. I would hope that it could. If it were set up right it could share it so that others might do it on their behalf.

The Chairman: It is more likely to be a listing of a building, is it not, where the local authority gets involved?

Stephen Trotter: The thing to stress is that it is an agreement that is entered into voluntarily by the landowner rather than anything that is imposed, and it can be set up in a way that is flexible so that it can respond and adapt to changing needs.
Baroness Byford: I would like to ask both of you whether you think there is a halfway house between Lady Mar’s questioning of you on long-term legacy and the way in which the NFU and several farmers are coming together with cluster farms to help promote for the benefit of wildlife particularly, which you are both so interested in. This, surely, is yet another way in which Natural England might help to support such a scheme that gives valleys or areas joined together than individual farms spaced out over different areas. I would be grateful for your comments.

Chris Corrigan: Again, it is an excellent idea. If you think about the whole principle of landscapes, scale and conservation, it is the right thing to do. Very often it is farmers working with farmers where you can get many of the benefits. If Natural England is able to play that enabling or facilitative role, and there have been small pots of funding available to set these things up, you can get some real value. They are not—and I do not think it was suggested that they are—an alternative to covenants, but working with landowners is a different way of achieving outcomes for nature, which has to be a good thing.

Stephen Trotter: We would support the principle of farm clusters, and we see some emerging around the country which work very well. The principle is a great one. For far too long, agencies, government and to some extent NGOs have been too prescriptive in telling farmers and landowners what they should be doing, so the principle of farmers being set a problem by society and solving it is great, because in my experience farmers are incredibly creative and inventive if you give them the encouragement and the funding goes with that. In the future, post the CAP, if land management payments are linked to clear objectives that we need farmers to deliver, whether that is pollinators, trees or soil restoration, it is incredibly powerful to say, “Right, that’s the goal. You work out how you deliver it”. It could be really effective.

Chris Corrigan: The approaches can be very different and may be different from the way we would do things, but you will get more biodiversity. A good example in Sussex might be Charlie Burrell’s Knepp estate. He is taking a rewilding approach that is producing great benefits for biodiversity. Not far away on the South Downs you have a much more conventionally farmed approach by the Duke of Norfolk to generate a great partridge shoot, but again he is generating fantastic value for wildlife. It is a different value and they are going about it in different ways, but both are good examples of where you can get real wildlife benefits from working with landowners.

Baroness Scott of Needham Market: In a couple of replies, you have referred to the fact that biodiversity is declining, so that assumes that we are counting it and we know what we have. I have been very struck by the concerns that have been raised with us about Natural England’s decision to end its link with the local environmental record centres. I wonder if you could explain how you see it being possible to maintain the same standards so that you can say with certainty that something is in decline or not. Rather than focusing on whether it was a terrible decision,
are there some mitigations that could be made, or does it have to rethink it?

**Chris Corrigan:** Mr Trotter can probably talk about the record centres. If you look at the *State of Nature* report in 2016, for which about 50 organisations came together, you can see that a lot of the monitoring is done by organisations other than Natural England, for example bird and butterfly monitoring. The challenge comes with the access to some of that information and other survey information that is done through the record centre. The Wildlife Trusts have more experience of the record centre work.

**Stephen Trotter:** The big-picture issue is that all the decisions that we take in conservation and the natural environment are based on information and data, and we need good data, which is the point you make in your question. Traditionally, the vast majority of the data that we have in the UK has come from the efforts of volunteer recorders, who are people who go out on the weekend and record whatever it might be from very obscure species groups right the way through to relatively common and obvious things, such as birds, beetles, spiders and plants. The base of the conservation pyramid is reliant on the efforts of these volunteers. Volunteer data has been fed into local environmental record centres and into public policy-making, so breaking that link is a key concern for us, because it means that in the future certainly some short-term decisions and some medium to long-term decisions could be less well-informed with precise information, so the quality of decision-making could be at risk in the future.

**Baroness Scott of Needham Market:** You will have to help me, because I am trying to understand whether the problem is that the breaking of this relationship means that there is less funding so that the research will not take place. We all know that even with volunteers you need some infrastructure. Is it because the funding is not available locally or because the mechanisms for sharing the data have changed if there is not a contractual relationship?

**Stephen Trotter:** It is a bit of both and it is about the relationships. Clearly, most of these record centres run on a shoestring, so their business model is quite tricky and they need all the income they can get. That said, it is not really the lack of funding from Natural England that has caused the real concern but the breaking of the volunteer flow of information that is the bigger issue. The centres collate, bring together and interpret the data that the volunteers produce so that it is in a usable format, which is the key area where, without the validation that those groups can bring, the quality of the data going forward is at risk. Certainly it feels, through the 11 or so LERCs that we are involved in, as though Natural England has snubbed the volunteers and is not interested in this data and that it is moving on to the internet of things, new technology and IT, which is fantastic. We are not Luddites, and it is exciting and important for the future, but we still need that basic flow of information about species and habitats, because you cannot, at least currently, get that from remote sensing or any other way. We need to
work together to find new business models and ways of getting the best possible data to inform conservation decision-making. The fear is that the disruption has been such that flow of information and the willingness to find better solutions are not quite as good as we would like, so we are very focused on trying to bring some of the centres together with Natural England to find a better way forward, and we are still hopeful that that can be achieved.

**Baroness Scott of Needham Market:** If some of your worst fears are recognised and this new open sourcing is not producing the results that in your mind lead to properly informed decisions by Natural England, what sort of redress do you have under current governance systems if you think that Natural England is making decisions on the basis of either erroneous or partial information?

**Chris Corrigan:** The only redress that we have at the moment is things like judicial review, depending on how significant the issue is. We would have no redress otherwise. Natural England has a science advisory committee, about which I know a little, but that group could be one way of helping Natural England with things like data and monitoring, and I hope it will.

**Stephen Trotter:** Obviously, judicial review is a potential down the line, but there are many things that you would want to try to do before you got to that stage, and that would happen only in extreme cases. We have spent a lot of time working to highlight some of the discrepancies and inconsistencies in decisions that might be apparent, so we try to provide the information and highlight it in decision-making as and when it goes on. For example, in the targeting of stewardship a year or two ago, national datasets were used that did not use local data. We had some very bizarre recommendations about what should be done with certain local wildlife sites, such as important grasslands being recommended for tree planting. The most bizarre example I remember was a proposal for tree planting on the top of Helvellyn, which might be appropriate in the long term with rewilding, but not given the rock and lack of soil that is there at the moment. The national datasets are important, but they need to be informed from local data. It is about finding a way of matching the two.

Q85 **Baroness Byford:** Both your written statements, for which I thank you—they were very full statements and it was good to have so many answers to the questions we posed—were about the decline in biodiversity, and you have both highlighted the duty as weak. Are there any specific areas of weakness that you would like to raise with the Committee?

**Stephen Trotter:** In terms of the biodiversity duty?

**Baroness Byford:** The decline under the biodiversity duty.

**Stephen Trotter:** In terms of the duty on all public authorities, our view is that it is a weak duty. It is quite hard to assess how many local authorities, for example, are conscious of their duty or are actively
pursuing it, but we suspect that it is largely seen as being weak and put to one side in respect of other decisions that local authorities have to take. We would be very keen to see a tightening of the words used in the legislation to make it more effective, and in Wales and Scotland some of that has happened in their own legislation. It would be good to see the wording tightened. The weakness of the duty and how easily it is sidestepped reveals that we probably need more visionary and ambitious legislation for the natural environment than we currently have. We need to make sure that decision-makers at all levels in government, whether national Governments, departments or at the local level, are taking into account the value of nature in their decision-making. We have to deliver the net gain for wildlife that the Government have outlined in their policies, saying, “We are very supportive of the ambition to leave the natural environment in a better state than we found it”, but it has to become a statutory proactive duty that local authorities have to deliver.

Baroness Byford: Mr Corrigan, do you think that local authorities do not understand or appreciate or that there is not enough money for them to be able to do what they are supposed to be doing?

Chris Corrigan: That is part of the key. We would look at the duty and say that, yes, it is weak. You could make the wording stronger, and the Welsh and Scottish examples are good examples of that. I would say that is necessary but not enough. Buglife took a legal case on the West Thurrock Marshes against the developer, who had taken a decision. Their challenge was that the developer had not taken account of this duty. One of the comments of the judge in the case was that this is a very weak duty and Buglife’s case failed, which is probably indicative of that weakness.

On the question of the local authorities and other public bodies, looking at local authorities in particular, some of their challenges are the capabilities and understanding. Some of that comes from their own budget cuts, which mean that they do not have the in-house expertise to advise them on some of these ecological matters. It is not that they are willfully not taking account of it; it is, as you say, that they do not know or do not have the capability. Our view is that you need to strengthen the wording. You would also need to ensure that the local authorities have the capabilities. That includes looking at the mechanisms for how you report against the biodiversity duty and the financial incentives or penalties—mechanisms—that you can put in place to enable this to be used. It has the potential to be another very powerful tool in the toolkit to arrest some of the biodiversity decline we are seeing.

Lord Cavendish of Furness: Before we leave that, for the sake of clarity is there any hard evidence yet that the stronger wording as applied to Scotland and Wales is having an effect?

Chris Corrigan: My understanding is that it is limited at the moment. That probably reflects the other point that the wording in itself is necessary but is not enough if you do not have the capabilities and knowledge to deliver it.
Lord Cavendish of Furness: How might it be possible to raise awareness, unless or until you get a stronger duty, of the biodiversity duty and its importance across the public sector more broadly?

Stephen Trotter: In the interim, until there is any strengthening, it is about encouraging Natural England and all those with an interest in the natural environment to remind local authorities and others of their duties at every opportunity, which we certainly try to do. Defra produced some guidance in 2007, which I think was withdrawn in 2015, which helped. Defra had been advocating that each local authority should have a biodiversity ambassador, for example. I am not sure to what extent that has been adopted; to very little extent, I think. We could go back to some of those very good ideas about how we ratchet up the level of awareness and enthusiasm.

Lord Cavendish of Furness: There is nothing to stop you two pointing it out, is there?

Stephen Trotter: No, absolutely, and we do, constantly.

Chris Corrigan: That policy and guidance point is a really good one. I do not know why that was later withdrawn. That is the sort of thing that would be very helpful. If I was in a local authority, I would see my resources and expertise cut in the form of my ecologists. Of course, in the statutory sector, people such as Natural England are also undergoing cuts, so there are fewer available resources for the advice and expertise that they need and in many cases, I am sure, want.

Baroness Whitaker: Your evidence gives some indication of your approach to when we leave the jurisdiction of the European Court of Justice. Mr Corrigan says that further action should be taken, and Mr Trotter would like a framework environment Act. I would be interested if you could both flesh these out. For instance, what body would enforce any legislation that we have, and what kinds of sanctions? You have both touched on the kind of regime that you would like to see, but can we have the full utopian picture?

Chris Corrigan: Goodness me. Some things are clear post Brexit and a lot of things are not. Two things are clear. It is about much more than just the ECJ. That is one dimension of the governance that we will need to address post Brexit. At the moment, if you look at what we have in place, we see and our analysis suggests that there will be a governance gap post Brexit if we do not do anything. There are existing mechanisms which will be lost. We have talked about judicial review, for example, which clearly has a role in some post-Brexit matters, but judicial review in itself is limited in scope. Generally—and you probably know this much more than I—it tends to focus on due process, for example. That constrains how valuable it is. It does have a role but, again, it is not enough. You need to look at what the institution will be. How will we reflect what we currently have at a European level in the UK and with the devolved countries? The latter is an added complication. England
certainly needs some mechanism, some institution, that can do some or all of the things that we see coming from Europe at the moment.

**Baroness Whitaker:** Are you talking about an independent, arm’s-length body that would nevertheless have powers of sanction and prosecution?

**Chris Corrigan:** It would have to be independent. That is self-evident. If you think about some of the functions that we have, clearly there is an ECJ function. How would we reflect that? What would that look like, coming down? Equally, there are things like the overseer of governance. At the moment, the Commission performs a role in overseeing how directives, for example, are being applied. What will the mechanism be for that? We will need something that can perform that type of role.

**The Chairman:** Are we talking about a new organisation, or are we talking about an enhanced Natural England/Environment Agency? How do you see this?

**Chris Corrigan:** You could go about it either way. To an extent, the scale of the change seems very significant. Whether you can do it by evolving what you have now I do not know. Clearly, those will be the two options. Do we set something new or do we evolve and grow what we have at the moment? The thing we would always say is that there are existing functions which need to be replicated somehow. We need to make sure we have those arrangements in place. We will not be saying, “And here is the model that is needed”.

**Baroness Whitaker:** Mr Trotter, how about your framework environment Act? How is that going to work?

**Stephen Trotter:** From our perspective, an independent, impartial, adequately-resourced monitoring and enforcement authority is needed to undertake this role. We must not forget that while the European Commission has not been perfect, it has been vital in safeguarding some European standards and approaches that we have in the UK. To add to what Mr Corrigan said, there are gaps in our administrative capability at the moment. As well as the lack of an independent watchdog, the UK is also subject to a wide range of reporting obligations to the Commission, which we need to replace so that we can assess progress and analyse how we are performing on the environment. It is unclear how the UK would still participate in such reporting when we leave the European Union.

The other issue is that currently European policy provides continuity across parliamentary cycles in the UK. If Government are challenged, they could simply avoid some of the requirements of international legislation by changing UK legislation. We need to find some mechanism for having continuity across five-year parliamentary terms and having longer-term stability for the environment. The key elements are that there has to be transparency around this, there has to be an independent monitoring and enforcement mechanism, and we need access to justice
for individuals and other organisations. There are key concerns not only about the breadth but about the cost.

**Baroness Whitaker:** Are you suggesting that we would need a new body to enforce legislation?

**Stephen Trotter:** Yes, I think so.

**Baroness Whitaker:** Do you think we have the right range of sanctions now? Do you think we could have better ones?

**Stephen Trotter:** We can have better ones. There is a need for a powerful, independent, science-led body; something along the lines of an office for environmental responsibility, perhaps, or something akin to the climate change committee. Perhaps a natural capital committee could perform this function, which essentially helps government to set targets and keep to them, and to take effective action at all levels.

On the wider question about what we would like to see, we think there is an absolute need for a bold and visionary new piece of legislation that provides the drivers for the recovery of nature in our country. We have to restore the natural environment. There is the massive issue of loss of biodiversity and the things that our environment provides. As we leave the European Union we need an ambitious piece of legislation that provides that drive and the mechanisms to make recovery a possibility. That has to speak to the UK’s place in the world. It has to link into international agreements that we are still signed up to, even though we are leaving Europe. In our view it has to be expressed spatially and locally. In our terms, we need to have mapped plans at a local level that show where we need our green infrastructure and habitats in the future, and where we can restore the natural environment.

We have not talked about it this morning, but there is a massive need to reconnect society with the natural environment. People, particularly in urban areas, have lost touch with nature. We need to put that back. People need to understand where their food comes from. They need to understand what wildlife does for them and the role that it plays in their lives. It needs to cover ambitions for air, water, chemicals and pesticides across the board, because as we leave Europe we will lose a lot of those things. We need this high-level framework legislation that puts the drivers and mechanisms in place to recover our natural environment and, importantly, help us to get over the issue of five-year parliamentary cycles. We need cross-party, long-term ambition that provides a driver for departments to work together in delivering consistent policy and the natural environment.

**Lord Cavendish of Furness:** Is there a suggestion here that because so much environmental legislation has come from Europe, much of it very good indeed, our courts would not be capable of handling it once we have repatriated?
Chris Corrigan: That is correct, because the judicial review process is much narrower than it may be in the ECJ, for example. I do not know what the mechanism will be, but they are the functions and there are differences that we need to bring down. For example, we risk losing the precautionary principle as we move to a post-Brexit age. There is a whole raft of things like that. In all my career in nature conservation, the European directives and some the regulations that stem from those have been some of the most important tools in the conservation toolbox for protecting wildlife, and we need to make sure that we can transpose those effectively. Something that has the kind of remit and capabilities of the ECJ has to be part of that post-Brexit arrangement.

Q88 Viscount Chandos: You talked about governance post Brexit and you flagged some of the issues that concern you. How concerned are you about the vulnerability of key environmental protections, and what other examples would you give?

Stephen Trotter: The first issue is making sure that we bring the existing environmental legislation across from Europe, and that we do that to the spirit of that legislation. We welcome the Government’s commitment to leaving the environment in a better state than we found it. The withdrawal Bill has to be the first step in achieving that. The key is that we transfer it properly. Everybody accepts that a number of technical amendments are required, but anything of substance or of a non-technical nature needs to have proper scrutiny so that we do not, inadvertently or deliberately, lose elements of the environmental protections that have stood us in such good stead for several decades.

Chris Corrigan: There are perhaps three areas where there is risk. The first one is making sure that the principles enshrined in European legislation are transposed. That includes things like the polluter pays and the precautionary principle. They are, at the moment, at risk of being lost. That is the first area.

The second area is that the withdrawal Bill is framed in a way that gives the Executive wide powers to make some changes when it lands on day one of a post-Brexit world. It will be important to make sure that the only changes made are those that are necessary to keep the legislation alive and viable, and that those powers are not abused to make wider-ranging changes.

The final area where I think there is a risk is if the environmental legislation is transposed via secondary legislation rather than primary legislation. That, again, makes it easier to change some of the environmental legislation without, perhaps, the same sort of scrutiny and rigour as there would be if it was primary legislation. That is one of the areas where, post Brexit, we would like to see environmental regulations properly enshrined in primary legislation.

The Chairman: Thank you both very much. You have done over an hour’s work here this morning. Thank you very much for that very good evidence session.