



Office for  
Environmental  
Protection

# Complaint Report

Office for Environmental Protection

1 October 2023 - 31 December 2023



# Introduction

This report provides a summary of all complaints received since January 2021, with a particular focus on the period between October 2023 and December 2023.

This is the eighth complaints report the Office for Environmental Protection (OEP) has published since it received its statutory powers on 24 January 2022. The OEP covers England, Northern Ireland and reserved matters. There are separate arrangements for devolved matters in Wales and Scotland.

The OEP's complaints function is based in [Section 32](#) of the Environment Act 2021, and it is this Act that provides the foundation for what we can and cannot do. As such, the OEP considers complaints about suspected failures by public authorities to comply with environmental law. Environmental law for the OEP's purposes is defined in [Section 46](#) of the Environment Act 2021. The two most common ways in which a public authority could fail to comply with environmental law are:

- Failing to take proper account of environmental law when carrying out its activities. For example, not carrying out an environmental impact assessment.
- Unlawfully exercising, or failing to exercise, any activities it has to carry out under environmental law. For example, not properly regulating environmentally harmful activities it is responsible for licensing.

The Environment Act also provides the OEP with powers to launch self-initiated investigations and act on intelligence that highlights areas of serious environmental harm. As part of this, we will act, where appropriate, based on intelligence provided to us by way of our complaints function and our enquiries mailbox.

Please visit our FAQ page on [www.theoep.org.uk/faqs](http://www.theoep.org.uk/faqs) for more details about our complaints function. For information about our mission and the powers and duties that we have, please visit: [What we do | Office for Environmental Protection \(theoep.org.uk\)](#)

# Our Approach

## Our complaints process

We process complaints through a staged procedure, working through the steps of receipt, eligibility check, and assessment. This method and any decisions that we make in relation to complaints, are based on the Strategy and Enforcement Policy of the Office for Environmental Protection, which was published in June 2022. The statutory underpinning for this strategy is rooted in the Environment Act 2021.

## Complaint eligibility

The OEP can only legally consider complaints that meet the six criteria stated in the Environment Act 2021, unless there is an exceptional reason to waive them. We refer to these criteria as our eligibility criteria. If any of these six criteria are not met in a complaint that we receive, we will communicate with the complainant to explain why we cannot progress their complaint. Members of the public can check our online eligibility checker prior to submitting a complaint and find more details on our processes on our website.

## Signposting

In many instances we signpost members of the public to the most appropriate public authority to either raise an initial complaint or exhaust their complaints procedure. We do this to ensure the relevant public authority is provided with the opportunity to assess and respond to matters in the first instance. We also signpost complainants to other organisations if the matter raised would be more appropriately dealt with elsewhere. To assist with this process, we provide a list of useful contacts on our website.

## Working with others

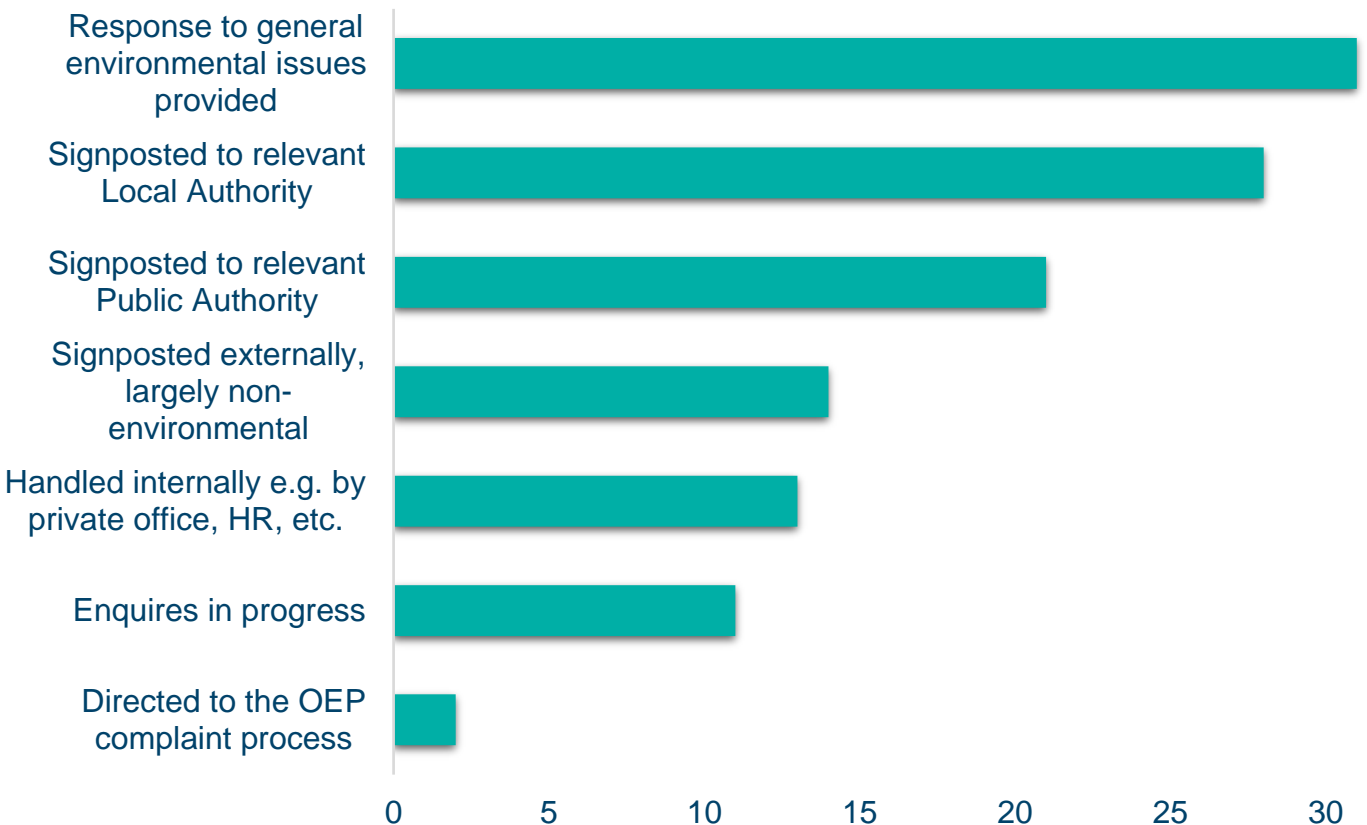
We recognise the importance of engaging with a variety of stakeholders. These include government bodies and non-departmental bodies alike. We also have channels of communications with NGOs, community groups, and industry practitioners. Meanwhile, we have Memorandums of Understanding (MOUs) with the Climate Change Committee, the Local Government and Social Care Ombudsman, the Parliamentary and Health Service Ombudsman, Environmental Standards Scotland and the Interim Environmental Protection Assessor for Wales.

# Enquiries

Between January 2021 and the end of December 2023, we had recorded 1,077 separate enquiries. From 1 October through 31 December 2023, we received 120 separate enquiries. These enquires have been handled as follows:

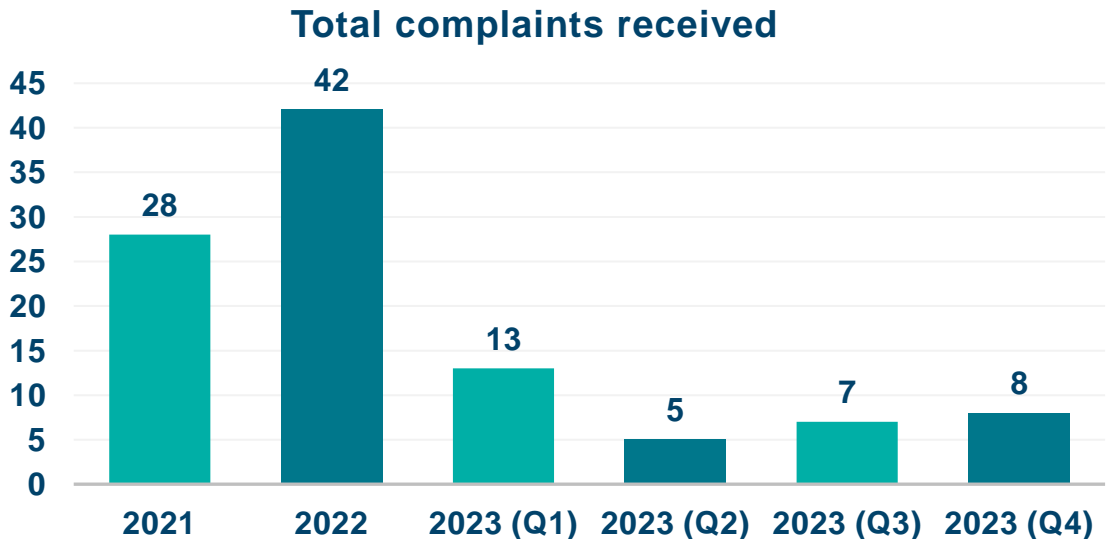
- Thirty-One (31) non-complaint specific emails were recorded. These include queries posing general questions of an environmental nature, invites to stakeholder events, etc.
- Twenty-eight (28) were signposted to the complaints process of the relevant local authority (e.g. the local county or borough council)
- Twenty-One (21) were signposted to the complaints process of the relevant Public Authority (e.g. Defra, the EA, etc.)
- Fourteen (14) were signposted externally, this includes to non-environmental bodies such as an Ombudsman, the Health and Safety Executive etc.
- Thirteen (13) were handled internally and include Freedom of Information requests and Environmental Information Requests.
- Eleven (11) enquires were in progress
- Two (2) enquires were directed to the OEP complaint process on the basis that they appeared likely to meet the eligibility criteria.

## Enquires by type of resolution: Oct to Dec 2023



# Complaint Summary

Between October and December 2023, the OEP received eight new complaints, bringing the total number received as of 31 December 2023 to 103. It is worth noting that we have already received nine new complaints in January 2024.



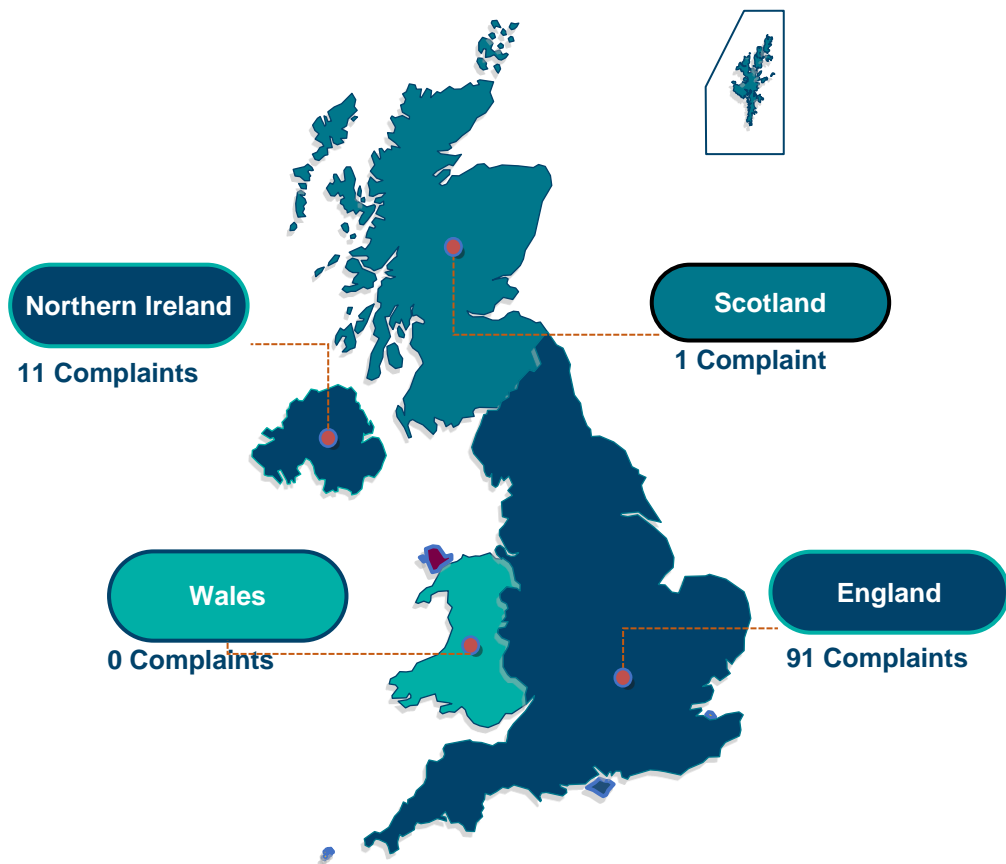
Complaints need to be submitted with a completed complaint form. They may be sent via post, email, or directly via our website. On receipt of a complaint, we send a confirmation email and check the complaint against the eligibility criteria listed in the Environment Act 2021. The Act makes clear that for the OEP to be able to consider a complaint, the information submitted must:

1. Relate to a suspected breach of environmental law by a public authority.
2. The relevant environmental law must relate to England, Northern Ireland, or a reserved matter (a matter on which only the UK Parliament in Westminster can make legislation).
3. Be submitted by an individual and not on behalf of a public authority.
4. Have already been subject to the public authority's internal complaints procedure.
5. Be submitted within the time limits.

To help establish that the above criteria have been met, we may contact the public authority in question and invite them to share any relevant information. Public authorities have a legal duty to co-operate with the OEP.

# Geographic Breakdown of Complaints

We cover breaches of environmental law by public authorities in England and Northern Ireland. Between January 2021 and the end of December 2023, We received 11 complaints about environmental law in Northern Ireland and 91 in England. We received one complaint about a devolved matter in Scotland. We signposted the complainant to [Environmental Standards Scotland](#) before closing the complaint.



We record each individual public authority being complained about. This is done with the intention of identifying authorities that may experience repeated compliance issues or have particular environmental sensitivities. We also understand that demographics are likely to influence where we receive complaints from, and we hope to be able to identify and report on trends in this area in future. However, at this relatively early stage, the information collected so far does not provide us with any noteworthy information.

# Method of Complaint Submission

Online Portal	Telephone	Email	Post
60	0	40	3

Understanding how the public interact with us and determining if we are providing an accessible means of submitting a complaint is important. Most of our complainants chose to submit their complaint via our [online complaint portal](#). By way of a breakdown, 60 complaints were received via our online complaint portal, 40 came via email, three were received by post and none were received by phone (an option to submit a complaint via telephone is offered if there are accessibility needs).

## Complaint Category

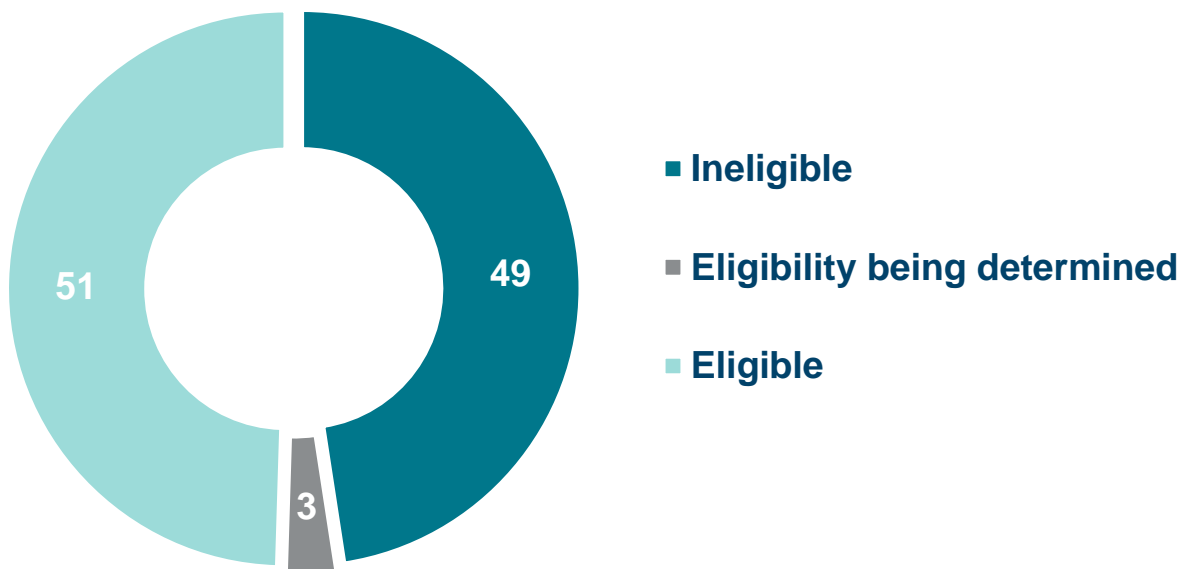
We have adopted an initial approach to grouping complaints under categories as per the below. While some of the categories might be self-explanatory, it may be worth explaining that the "Environmental governance" category covers the institutional framework for environmental protection, as well as cross-cutting measures such as environmental reporting. Meanwhile, the "Other" category includes things like development control. It should be noted that some complaints named more than one category and that our categorisation methodology is under review.

Environmental Category	% of complaints where category mentioned
Pollution control	38%
Nature conservation	25%
Environmental monitoring and assessment	18%
Environmental governance	2%
Other	4%
Waste and resources	7%
Not environmental law	6%

# Eligibility of complaints

By 31 December 2023, the OEP had received 103 complaints and it had been determined that 51 had met the eligibility criteria for complaining as outlined in the Environment Act 2021. Meanwhile, three complaints were still in progress and 49 complaints had been found not to be eligible. When it is determined that a complaint does not meet eligibility criteria, we explain the issues to the complainant, and we may also attempt to direct that individual (or group) to the relevant public authority or ombudsman who may be better placed to assist them. These numbers are dynamic and can fluctuate depending on whether a complainant provides additional detail to establish the basis of their complaint at a later date. This can, for example, mean a case that was once counted as ineligible and closed, is then reopened and counted as eligible.

## Eligibility status of complaints as of 31 December 2023



During the process of determining the eligibility of a complaint, one of the issues we must establish is whether the complainant has exhausted the complaint process of the relevant public authority prior bringing the matter to us. The requirement to do this stems from the Environment Act 2021 and is designed to provide the relevant body with the opportunity to review (and if necessary, rectify) any potential infractions at the earliest possible opportunity. We do appreciate that it is not always straightforward for members of the public to determine if a public authority has treated their issue as a complaint, or whether the internal complaints process of a public authority has been exhausted. We make efforts to assist in this process where we can.



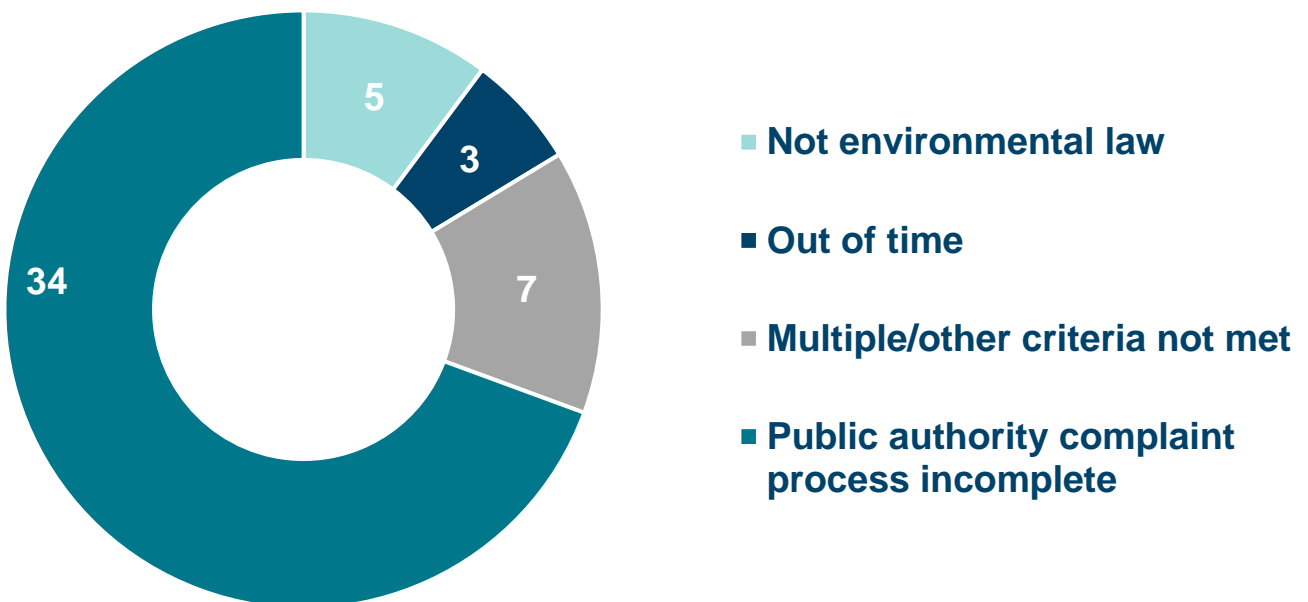
# Analysis of ineligible complaints

Complaints found to be ineligible are not progressed to assessment. Instead, we refer the complainant to the eligibility criteria and in so doing, explain if it might still be possible for them to have their issue raised with the OEP.

The most common reason complaints do not meet the eligibility criteria for complaining to the OEP is because the internal complaints procedure of the public authority being complained about had not been exhausted. The second most common eligibility issue is whether the matter being complained about relates to environmental law, as per the definition provided in [Section 46](#) of the Environment Act 2021.

Meanwhile, three complaints were found to have been submitted outside the statutory timeframe and eight complaints were deemed ineligible for a combination of reasons. For example, they were deemed not to be environmental law, they were outside of the statutory timeframe, and the complainant had not exhausted the relevant complaints process available to them.

**Reasons complaints were deemed ineligible for the OEP**



# Assessment of complaints

Complaints that meet the eligibility criteria for complaining to the OEP are assessed in accordance with our [enforcement policy and strategy](#).

During the assessment stage we review the information already received and where necessary, gather further information to determine whether a potential failure to comply with environmental law by a public authority had occurred, and if so, whether that failure would be serious. When determining if a failure to comply with environmental law is or may be serious, we consider the following factors:

- The harm or potential harm to the natural environment and/or human health
- The frequency of the conduct over time
- Whether the conduct complained of raises any points of law of general importance
- The behaviour of the public authority or authorities
- Any other relevant factors

When assessing a complaint will look beyond questions of legal compliance to cover the wider context and framework of implementation. Our approach will consider other relevant matters such as: design of the law and how different laws interact; the set-up of responsible institutions and their resourcing, skills, and capacity; coordination of delivery actions among different bodies; the role and use of guidance in implementing the law; identification of good practice; and approaches to enforcement and sanctioning by regulators.

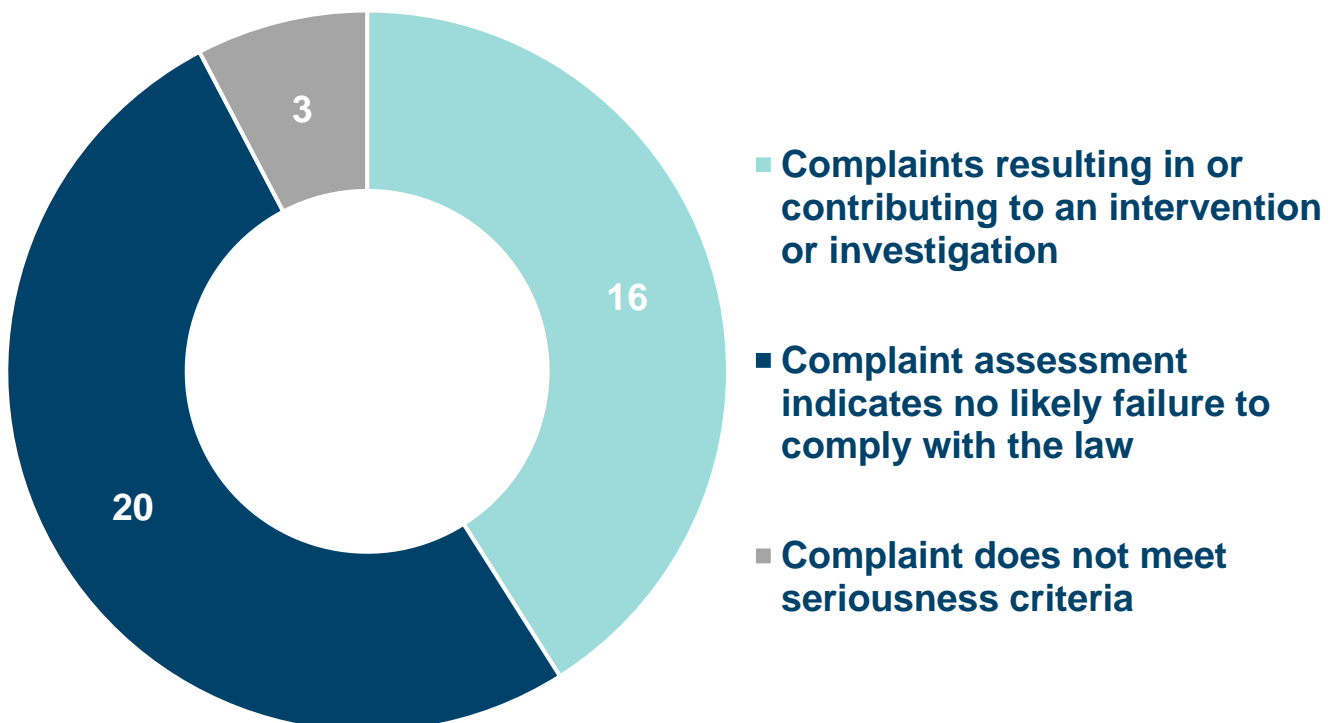
# Decisions and Actions

By the end of December 2023, we had made decisions on 39 out of the 49 eligible complaints that we had received.

Of the complaints where decisions had been made, 16 complaints either directly resulted in an investigation or intervention or will be addressed by OEP activity already in progress. The most up to date information on our ongoing investigations and interventions can be found here: [www.theoep.org.uk/our-casework](http://www.theoep.org.uk/our-casework)

Meanwhile, 20 complaints were closed with no further action as our assessment of the facts did not indicate a failure to comply with the law. We closed three complaints with no further action as they did not meet our seriousness criteria. As such, we are addressing over 80% of eligible complaints that presented evidence of a failure to comply with the law, either directly or indirectly.

## Outcomes of the 49 eligible complaints received as of Dec 31, 2023



# Interventions

Our priority is to find the most effective way to resolve an issue to best protect and improve the environment. When we believe that enforcement is our best available option to progress an issue, we have not hesitated to use it. This can be seen by our ongoing investigations into Combined Sewage Overflows in England and the Department of Agriculture, Environment and Rural Affairs' (DAERA's) ammonia guidance in Northern Ireland.

For us to use our enforcement powers there is a legal requirement that we need to suspect a 'serious' breach of environmental law. When this test is met, where appropriate, we seek to resolve the issue through dialogue, cooperation and agreement with those bodies suspected of breaching the law. We have found that used effectively, this approach has been shown to achieve many of the same outcomes as a formal investigation, but in a much shorter timeframe.

We typically refer to our actions in this space as "interventions". These interventions can be informed by information that we receive by way of our complaints process, although that is not exclusively the case. Interventions can take the form of advice and guidance letters to public authorities, or requests for action plans to remedy perceived poor practice or non-compliance. This list is not exhaustive, and we will consider the best course of action on a case-by-case basis to meet our strategic aim of protecting and improving the natural environment.

As such, while enforcement powers help us address some issues to protect and improve the environment, they are not always the best solution for every situation. During the first two years of our operation, we have used these other options, as the most effective means to have impact. These can be seen in our advice to Government on nutrient neutrality, scrutinising the Government's EIP via our monitoring reports and ensuring Government publishes statutory environment targets. We monitor the actions we have taken related to these interventions to ensure a satisfactory outcome. However, when an agreement cannot be reached, we will not hold back from exercising our stricter enforcement powers including, if necessary, through court proceedings.



# Investigations

An investigation may be launched in response to a complaint raised with us (via our published complaints procedure), or via a self-initiated investigation. In deciding whether to investigate a matter, or pursue any other action, we follow the decision-making framework set out in [Part 4 of our Enforcement Policy](#). Where we commence an investigation, the complainant and the public authority will be notified. Public bodies have a statutory duty to cooperate with the OEP. The commencement of an investigation does not prevent us from using non-statutory tools, such as advice and guidance, if we consider that this is appropriate. Further details of this process are available on our website: <https://www.theoep.org.uk/how-we-enforce>. We have now launched two separate investigations.

## **Regulation of combined sewer overflows (CSOs)**

Our first investigation was launched in June 2022, and focuses on the roles of Ofwat, the Environment Agency and the Defra Secretary of State in the regulation of combined sewer overflows (CSOs) in England. In September 2023, we announced that we had identified possible failures to comply with environmental law and moved to the next stage of our enforcement process. This involved serving statutory information notices on each of the three public authorities. We are currently considering the responses to those Information Notices. For more details, please visit: [www.theoep.org.uk/news/oep-identifies-possible-failures](http://www.theoep.org.uk/news/oep-identifies-possible-failures)

## **DAERA Standing Advice on Livestock Installations and Ammonia**

Our second investigation was launched in May 2023 and focuses on the Department of Agriculture, Environment and Rural Affairs' (DAERA) Standing Advice on Livestock Installations and Ammonia, commonly referred to as 'the Operational Protocol'. In December 2023, we welcomed DAERA's confirmation that the Northern Ireland Environment Agency (NIEA) would no longer rely on this advice after information came to light during our information which caused concern about its compliance with environmental law. This announcement followed the OEP's decision to send a Judicial Review Pre-Action letter to DAERA and the NIEA, requesting that they immediately cease relying on the Operational Protocol to provide advice to planning authorities. For more details, please visit: [www.theoep.org.uk/news/daeras-advice-ammonia-emissions](http://www.theoep.org.uk/news/daeras-advice-ammonia-emissions)

## More Information

For more information about our complaint procedure and definitions, please visit our website: [www.theoep.org.uk](http://www.theoep.org.uk)

To watch a video overview of our complaints process, please visit: <https://www.youtube.com/watch?v=brtssXuTN3o>

If you cannot find an answer on the website, please email or call us: [enquiries@theoep.org.uk](mailto:enquiries@theoep.org.uk) or call 03300 416 581.

To follow us on social media, please visit: <https://twitter.com/OfficeforEP>