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Air pollution: the battle to save Britain from suffocation

As environmentalists turn to the courts to make the government clean up its act, we survey a week of victories for ClientEarth and its founder, James Thornton

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Robin McKie

Sunday 7 May 2017
09.30 BST

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Lord Nelson is seen wearing a mask in Trafalgar Square after a stunt by Greenpeace in April 2016. Photograph: Leon Neal/AFP/Getty Images

It has been a richly satisfying week for James Thornton, founder and chief executive of the environmental law group ClientEarth. On Tuesday the government admitted defeat in its lengthy battle with the firm over atmospheric pollution and pledged that it would publish its strategy to improve air quality in Britain - which it did on Friday.

Ministers have, for the past decade, resolutely refused to acknowledge their obligations in dealing with a problem that is believed to be shortening the lives of thousands of people in the UK. Their change of mind, enforced by Thornton and his team of young lawyers, was a major, humiliating climbdown for our leaders and a significant victory for ClientEarth.

And that was just a start. In a separate development, ClientEarth - whose central office is in London - was informed by the European Union that it had decided to back its call for the rightwing government of Poland to stop cutting down trees in Białowieża forest, one of Europe's most ancient woodlands, which sits across its border with Belarus.

"We have been told that the EU has warned Poland it must stop cutting down trees in the Białowieża forest or face an appearance before the European court and a substantial fine," says Thornton. "I don't know what it is about rightwing governments but they do seem to like chopping down trees all the time. However, in this case, this should stop Poland in its tracks."

Thornton is a man who makes things happen, it would seem. Or stop happening, in many cases. Now 63, he launched ClientEarth in London more than a decade ago having cut his teeth as a rookie environmental lawyer in the US. There he worked for the National Resources Defense Council and was involved in successfully suing the Reagan administration over its failure to enforce America's Clean Water Act. The Resources Defense Council was, and still is, funded by public and private donations and uses its legal might to hold governments to account over environmental issues. It is a model that Thornton decided to bring to Britain partly for personal reasons. His partner, and now husband, the English journalist and writer Martin Goodman, did not have a green card and so Thornton came to work in the UK.

"At the time, environmental organisations had only one or two lawyers, and they were used mainly to defend activists who had been arrested," he says. The green movement, he realised, needed more legal clout in Europe - a point demonstrated in Brussels where there were thousands of corporate lobbyists but only a handful of people on the side of the green movement.

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So Thornton set up Client Earth and has since amassed considerable backing from various trusts as well as support from music stars such as Brian Eno and Coldplay. Today the organisation has offices in Warsaw and Brussels and has also established strong connections with China and several African countries.

Air quality, loss of biodiversity, the destruction of forests, marine pollution… all are targets for the 60 or so lawyers now employed by ClientEarth from its glass-fronted HQ overlooking London Fields, Hackney, or in its European subsidiary offices, but atmospheric pollution is the issue that has brought it most attention. In 2010, ClientEarth took the government to court over its failure to reveal what plans it had to improve the quality of air in Britain. At the time, concerns were growing about the levels of nitrogen oxides and particles in the air. Some scientists estimated that around 40,000 premature deaths were being caused by these pollutants, which have been traced to the exhausts of diesel cars and lorries, the burning of wood in stoves, and other sources.

> They were putting off, for a generation, a law they had helped draft and which would help save lives

"The government had agreed EU regulations to improve air quality but then said it had no intention of acting upon them until 2025," says Thornton. "Effectively, they were putting off, for a generation, a law they had helped draft and that would help save lives." So ClientEarth stepped in and got an injunction from the supreme court - which was, Thornton says, only the second injunction it had ever delivered. "It ordered the government to come up with a plan to comply with air quality standards by the end of 2015.

"Well, they did publish a plan in time but it was such a bad one that we had to go back to the high court and complain. The court agreed. The plan was so bad it was illegal, it said, and so the government was ordered to redo it and publish in April 2017."

Then, last month, on the Friday before it was due to outline its revised air quality plan, the government announced - after the courts had closed - that because a general election was looming it would not now be publishing its proposals until September. Again the parties went back to court. And once again the government's argument was dismissed.

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"Essentially, the judge said he put a very low weight to the government's case that publishing the plan was inconvenient to ministers during a general election and a very high weight to the fact that this law is about protecting the health of the public," says Thornton. The government was ordered to publish its air quality plan and eventually complied on Friday when it revealed its plan, which included proposals to pay some drivers of older cars to move to electric vehicles and to consider setting up clean air zones in some cities and towns. Environmental campaigners attacked the plan as "half-baked", a view shared by Thornton. "The plan itself is shocking in its inadequacy and shows a distinct lack of urgency to tackle this public health emergency. The court ordered measures to tackle illegal and poisonous pollution as soon as possible, and yet this plan would leave us with dirty air for years to come."

The forcing of the government's hand is nevertheless a considerable victory for ClientEarth and Thornton. Their approach is summed up by the musician and producer Brian Eno, a trustee of ClientEarth, in his foreword to *Client Earth*, the book Thornton and Goodman are publishing this week. "Once something becomes law, it becomes actionable and enforceable," says Eno. "Shortly afterwards, it becomes 'common sense'. It becomes possible for a small group of people like ClientEarth to use existing legal structures to trigger big changes. The task is pretty daunting but the rewards are huge."

This is an approach on which we will probably have to become increasingly reliant, adds Thornton. "In the case of air quality legislation, the government was saying, essentially, that it had no intention of complying with the law until it felt like doing so. The Treasury was saying it was too expensive to implement, even though lives were being harmed. It was a remarkable intrusion by the Treasury into public interest. The court decided to overrule that effort, however."

'An unusual radical': James Thornton of ClientEarth at the Royal Courts of Justice last month. Photograph: Martin Godwin for the Observer

The crucial point, says Thornton, is that the Treasury was saying we should not act on air pollution until it got so bad that the EU would be forced to intercede and threaten to fine us. Then, eventually, Britain would have acted. However, when Britain leaves the EU, then there will be no European enforcer looking over ministers' shoulders. The role of organisations like ClientEarth will become ever more important.

"What happens after Brexit becomes an open question," says Thornton. "I am worried that the government may introduce a lot of environmental, health and consumer laws - to replace EU legislation - in a way that renders them ineffective. For instance, they might do it in a way that would give ministers far greater powers to change pollution limits.

> We are going to have to oblige the government to do things, not ask them

"If you have a government that does not want to comply with a law, who is going to make them comply if there is no EU? In the UK, it is going to be us.

"Some other organisations do litigation but not in the systematic way that ClientEarth does. A lot of environmental organisations are going to have to become tougher in their tactics in the next few years. We are going to have to oblige the government to do things, not ask them."

Thornton makes for an unusual radical. The third son of a US law professor who was trained from childhood in the arts of debate, he is also a Zen priest, and maintains that meditation has been crucial to his work. "You get a certain calming from meditation and an ability to problem-solve," he says. "From that, creative solutions emerge." Thornton has even held meditation classes for his teams of young lawyers and claims that these have increased the effectiveness and quality of their output.

Had he not been a lawyer, Thornton says he would have been a biologist. (he is an avid birdwatcher). "However, I decided not to study what I love and then watch it disappear but to become a lawyer to fight to save it."

This work is now taking Thornton across the globe. ClientEarth has started work, supported by the Department for International Development, to help indigenous people living in threatened forest lands in Ghana, Gabon, the Ivory Coast, Liberia and the Republic of Congo. It is also helping China with the introduction and implementation of new environmental laws, which - among many things -will allow NGOs to sue firms that pollute. "The Chinese really want to do the right thing," he says. "It is such a contrast to the UK, which is trying to close down the courts to stop citizens and NGOs bringing cases over issues such as air pollution. In China they are flinging open the doors. But not here. It is very depressing. There has been a real backlash against protecting the environment."

There may well be a swing back by ministers to a more favourable view of environmental issues, of course, but in the meantime it is clear that far greater individual vigilance over green concerns will have to be practised by environment groups and citizens. The example set by ClientEarth over the past year suggests that a great deal of hard graft lies ahead. "We are facing some very challenging times over issues such as air quality, marine protection and loss of biodiversity," says Thornton. "We should take nothing that the government does for granted."

- *Client Earth* is published by Scribe (£20). To order a copy for £17 go to bookshop.theguardian.com or call 0330 333 6846. Free UK p&p over £10, online orders only. Phone orders min p&p of £1.99

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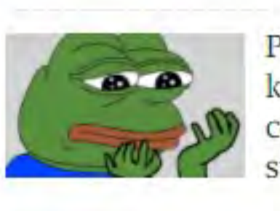

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GiantRobot 1d ago 21

Capitalism is the problem. Fans of global capitalism and its detractors such as the the EU leavers, will all agree that money is more important than people and solving a problem like this is nowadays deemed impossible.

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gribouille → GiantRobot 1d ago 29

Feel free not to purchase any of the products of Capitalism.

You can wait until the progressive Socialist smartphones, aeroplanes and cars become available.

You know, the not-for-profit non-polluting ones.

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Flatulentus → gribouille 1d ago 8

Ugh, smartphones. I am generally in favour of capitalism but that's one thing we could do without. Bring back he old indestructable Nokia.

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andantino 1d ago 29

People in Britain " I am just too busy to care about that one " when the sorry state of her air is mentioned. Incomprehensible. Living near a school is horror - not because of noisy children, but of cars idling endlessly, keeping motors running instead of just switching off - the belching noxious petrol/gas paradise.. Laziness, comfortableness comes first, deeply uncaring. London suffocating, the South sticky with traffic, car obsession, disinterest everywhere. I fear at least the South of Britain will just sink under a black stinking thick cloud... happy breathing !

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GiantRobot → andantino 1d ago 9

When Londoners wake up every morning to a smog that they know is killing them you might imagine an overwhelming political will to solve the problem, but that will be unlikely. The voices saying that another Clean Air Act would hurt the economy will be louder than they were in the '50s and they will win this time. Capitalism is evolving, it doesn't stand still.

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Matthew2012 → GiantRobot 22h ago 5

> When Londoners wake up every morning to a smog that they know is killing them you might imagine an overwhelming political will to solve the problem,

No, you'd expect political will to scapegoat the problem and put the problem to bed.

The problem is that the problems are not in any way new. It is difficult to see how either Tory, Lib Dem or Labour could win with a fully informed public.

I don't see the Greens winning with their campaign ability.

But luckily for them most of the poisonous gases are not visible at harmful concentrations. So misinformation and a police state is the direction of travel.

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