

MAST ACTION UK – LEGAL SERVICES

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MOBILE PHONES – MOBILE NETWORKS – WIFI – SAFETY

TELECOMS AND HEALTH – AN APPRAISAL

1. This is being written by a non-scientist who has been a trained High Court Litigation Lawyer of many years standing who has been involved over the years for clients in winning Court of Appeal Decisions, including also involvement and winning House of Lords Judgments, and latterly in obtaining Judicial Review Decisions in the Administrative Court against in 1993 the Secretary of State for Health in unlawfully closing Westminster Childrens Hospital without adequate reprovision of its world renowned services, and later in 1997 through Judicial Review proceedings saving from closure the 874 year old St Bartholomews Hospital.
2. As a trained litigation lawyer the training and practice requires the sifting of the evidence both favourable and unfavourable so as to be in a proper position to advise the client whether to embark on Court proceedings, and if so as to the probably chances of success. It is no part of the training to discard, and ignore unfavourable evidence.
3. As a litigation lawyer on 27 May 1997 I was instructed by my then client to oppose a telecoms planning application to erect a 2G telecoms mast in Oxted Quarry within 80 metres of an inhabited cottage occupied by a family with three very young children.

My client, the owner of Harrods, Mohamed Al Fayed, had appointed a scientific professor at Surrey University to produce health arguments to support the application to oppose the siting of the mast so close to an inhabited residential property.

4. The Local Authority Tandridge District Council deferred consideration of the planning application to enable advice to be obtained from the Health and Safety Executive (HSE). They replied by a very short letter saying that there were no known health effects but they wrote their letter explaining that their advice related to the statutory provisions relating to oil and gas pipelines. Based on this incorrect advice the planning application was approved.
5. I was instructed to seek a Judicial Review of the flawed decision. In December 1997 the Judge in the Administrative Court – a planning expert – declared the planning decision flawed but refused to exercise his

discretion to quash the planning approval due to the incorrect references in the HSE letter.

6. As a result my client decided it was so important to have this Judicial Discretion reversed that an Appeal against the Decision should be made to the Court of Appeal. That Appeal (R v Tandridge District Council ex parte Al Fayed) was unsuccessful in having the Judge's discretion reversed, although in the Court of Appeal Judgement it was stated "*that it was common ground that planning authorities could take health concerns into account, but how much weight was to be given to such public health concerns was a matter for the members of the Planning Committee*".
7. Throughout these two years of reported Court proceedings, I was instructed to assist at my client's sole expense groups or individuals opposing the siting of masts too close to peoples homes.

In the process I met many people who claimed that their lives had been affected by emissions from masts. Many had found that moving away from a 2G mast caused their symptoms to disappear, only to return when they moved back, or a new mast was erected close to their replacement home.

8. As a lawyer gathering evidence I had no means of knowing whether these instances were caused by the masts, or whether it was only in peoples minds. Personally I had no view or problem of my own, except that even then I knew that mobile phones were useful, and at the Government's instance Telecoms Rollout would move ahead without too much planning hindrance.
9. However, in July 1999 the Government Minister Tessa Jowell appointed an Expert Group of scientists under the former Chief Government Scientist Sir William Stewart to investigate whether there was any justification for the public's health concerns and fears. Wisely in his group of independent experts Sir William included two non scientists.

In its investigations the group travelled widely and held meetings in eight major cities across the UK. These meetings were organised for the group by its NRPB secretariat. Generally these meetings Sir William told me were very sparsely attended.

However, at the Queens University Belfast Public Meeting over 700 people attended and over three hours voiced their health concerns. The following day when Sir William asked me why the meeting had been attended by so many "good and reasonable folk". I explained that the local Northern Ireland Group NIFATT of which I was the Legal Adviser had heavily advertised the date and venue for the meeting. The secretariat NRPB had not done so prominently in Belfast, and maybe also perhaps had not done so elsewhere.

10. In March 2000 I met Sir William again and provided him and his team with copies of the February 2000 EU Commission's Communication advocating "The Precautionary Approach" whilst also taking into account economic and commercial considerations. Sir William was not amused that the group's secretariat had not made copies available.

Between March and May 2000 Sir William and his group wrote the now world renowned report "Mobile Phones and Health" which he issued at a Press Conference on 11 May 2000. Apparently the group's NRPB Secretariat were excluded from the report's preparation.

Shortly afterwards the UK Government announced that it approved and supported all the group's many recommendations. The Planning Minister Nick Raynsford MP in both June 2000 and March 2001 instructed planning authorities not to investigate, or consider investigating health effects when considering planning applications for Telecoms masts and base stations.

Later on 23 August 2001 during the Parliamentary long vacation the Planning Minister issued Planning Policy Guidance Circular PPG8 which went even further in its paragraphs 29 and 30 stating that Planning Committees should in addition not consider or take "health concerns" of the public into account. This was contrary to the earlier Court of Appeal Judgment, and as a subsequent Planning Minister admitted the circular was never certified to be Human Rights Act and ECHR compliant as required from 2 October 2000.

11. All this meant that both the Telecoms Code in the Schedule to the 1984 Communications Act, and appeals heard by the Government's Independent Planning Inspectorate, were effectively ineffectual, and were heavily tilted in favour of the Telecoms industry, despite accumulating independent scientific evidence that maybe long term exposure to non-ionising radiation emissions might have some adverse health effects on some people and some species.
12. In applications to local Planning Authorities for either full planning consent or prior approval for masts less than 15 metres in height if properly measured, the telecoms operator in its application relied on the PPG8 Guidance and the fact that the emissions from the proposed base station would be well below the ICNIRP Guidelines.

As a result of the Planning Minister's 2000 and 2001 letters to the leaders of the local authorities as followed up by the issue of the 23 August Planning Guidance Circular Planning Officers were led to believe that "health effects and concerns" were not permitted to be taken into account because the Government Guidance was sacrosanct. But this legally was never so.

In two Judgments relating to Guidance Circulars issued by the Secretary of State for Education in R v Brent Borough Council and in R v Oxfordshire

County Council on 17 May 2002 the Court of Appeal clearly and succinctly stated as follows: -

“Guidance issued by the Secretary of State had to be kept in mind, but it was not direction and did not lay down rules to be strictly adhered to. The Guidance had to promote the statutory purposes and, since 2 October 2000 had to be Convention compliant”.

PPG8 was never certified as convention compliant, and was not legally a set of rules for planners slavishly to follow, as Planners and the Planning Inspectorate imposed.

Fortunately concurrently on 23 June 2010 the Court of Appeal in allowing five immigration Appeals against the Secretary of State for the Home Department stated: -

“By a combination of legislative recognition and executive practice, the rules made by the Home Secretaries for regulating immigration had ceased to be policy, and had acquired status akin to that of law”.

“The immigration rules could not incorporate provisions in another document which had not been laid before Parliament. Such rules could not lawfully incorporate provisions contained in a Policy Guidance Circular issued in June 2008 and then later in November 2008 reorganised, so as to introduce further criterion, which did not form part of the rules laid before Parliament”.

This situation and Judgments mirrors exactly what happened when Planning Policy Guidance Circular PPG8 was issued by the Planning Minister during the long Parliamentary vacation on 23 August 2001. Its content was never lawful rules, as previously made clear by the previous Court of Appeal Educational Guidance Circular Judgments of 17 May 2002, set out in this appraisal paragraph 12.

13. In my involvements as initially Legal Director of NIFATT in Northern Ireland, and subsequently as Legal Director of Mast Action UK, I came across many independent scientists who were not funded by industry or reliant on research projects and grants at well known universities, who produced reports indicating possible differing views and assessments of the type of emissions produced by transmitting telecoms antennae and dishes. I also came across Government Scientists and civil servants as a result of serving on Sir William’s Health Protection Agency’s EMF Discussion Group composed of NRPB/HPA members, some independent scientists, and some lay people with concerns about Telecoms rollout, driven by financial and economic factors largely regardless of anything else.
14. From the outset of Telecoms Rollout it was transparently clear due solely to cost considerations that masts and base stations sites were selected for ease of access, and proximity to existing electricity supplies. Where there

was a choice of an alternative site less likely to cause local concern the Telecoms companies argued in favour of the least costly site to them.

This was made clear in the High Court Judgment of Mr Justice Richards on 22 October 2003 in the Hutchinson 3G (UK) Limited Judgment paragraph 41. In that paragraph the Judge set out his view of the Law, as set out below, but Planning Inspectorate decisions subsequently more often than not reversed a sensible local Planning Committee decision. More incorrectly the Planning Inspectorate awarded sometimes swingeing costs to the winning Telecoms operator against the Local Authority, to warn others off from making similar sensible decisions against Telecoms Operators wrong site choice when alternative available sites would cause less local concern.

“It seems to me to follow, again a matter of principle, that if there were two alternative sites each of which was otherwise acceptable in environmental terms, it would be open to a decision-maker to refuse approval for one of those sites if the location of a mast on that site would give rise to substantially greater public concerns than its location on the alternative site. To take an example close to the facts of the present case: if one of the sites were close to a nursery school and residential properties, whereas the other was in an industrial estate some distance away from the school and residential properties, the greater public concern about the former might tip the balance against the grant of approval for it. I am not saying that that is how a particular application would be decided or ought to be decided, but only that it would be lawful for a decision-maker to approach the matter in that way”.

Finally on this aspect of the Planning Inspectorate approach in its internal July 2002 revision document giving instructions to its Planning Inspectors in paragraph 5J21 made it clear that any Planning Inspector who stepped out of line on the grounds of public fear would need to be particularly well reasoned in any decision to dismiss the appeal.

15. Over these many years of legal involvement, my main concern from the viewpoint of a lawyer has been that the most obvious important evidence has been critically ignored worldwide, in favour of the vital economic telecoms rollout, and nowadays its many vital and important applications.

I can see the Governmental need to be at the leading edge of technological advance, and the need not to ignore the wealth the Treasury enjoys by way of taxation returns from Telecoms. But I cannot see long term it is feasible or possible perhaps to ignore the major possible downsides or risks. Generally I put some of it down to downright ignorance, and some of it down to not wanting to know, and also politically knowing it will not happen now but only perhaps in the future when someone else will have to pick up the pieces.

16. The main stumbling block to doing things properly, and more realistically has without any doubt been the so-called ICNIRP 1998 Guidelines over the years. Recently the ICNIRP Chairman Paulo del Vecchio stated “These are not Safety limits, only Guidelines”. However the Telecoms/Industry has held them out to be safety limits, and chosen to hide behind them.

However as the industry well knows, more importantly these Guidelines relate only to the properties of Thermal Heating by mobile phones and transmitting antennae. That means heat from a phone held next to the head of the mobile phone user, or within 4 or 5 feet from a transmitting antennae. That is all these Guidelines attempted to address.

17. The concern is that the ICNIRP Guidelines are being misused by the Industry to claim that all masts and base station emissions are many times hugely below the recommended limit. The independent scientists concerns are not focussed on Thermal Heating but upon possible biological effects from long term exposure to emissions from mainly phones, but also for some members of the general population from the EMF emissions from Masts and Base Stations. There are now after ten years an abundance of peer reviewed scientific studies and reports identifying biological issues and effects.
18. After years of concern about these issues the European Parliament in September 2008 passed a Resolution by 522 votes to 16 stating that the ICNIRP Guidelines were obsolete and urging EU Government Ministers to follow the precautionary approach bearing in mind possible non-thermal biological effects not covered by the ICNIRP Guidelines.

Later on 2 April 2009 the European Parliament adopted a Resolution by 559 votes in favour with 22 against raising concerns over the “*continued uncertainties about possible health risks*” and suggested that antennae and mobile phone masts and other electromagnetic emitting devices should be set a specified minimum distance from schools and health institutions.

19. For me, as a lawyer, nothing has moved me away from some early cases which came to my attention in investigating the then available few examples of well conducted investigations.

19.1 Switzerland – 1996 – 1998

The well researched University of Bern Study and Report into the local populations health concerns arising from a shortwave radio transmitted located into the midst of the Bern suburb of Schwarzenberg. The health concerns disappeared for a few days during a four month study of 4000 residents for no known reason, until eventually it was discovered that the transmitter had broken down for those few days. The Government then ordered the close down of the shortwave transmitter.

19.2 Bavaria

The extraordinary behaviour of some cows after a 2G mast was erected close to their barn – aborted and damaged calves – 30% milk yield drop. Loscher & Kas 1998 – when reported in the journal of German Veterinary Medicine 38 other farmers

reported similar experiences. When the herd was moved to another farm the milk yield was restored within weeks, only to drop back when the herd returned to its original location. In my legal experience unlike humans cows do not read scare stories in the media or watch television.

19.3 Australia - 1993

Telstra commissioned an expert team led by the Radiation Expert Doctor Bruce Hocking to investigate digital emissions from the three North Sydney Television Towers to see if they at their vast emission power produced any adverse health effects, which might arise from the much lower emissions envisaged from 2G digital emissions of a mobile phone network.

After three months of the teams investigations in a first draft report the team identified significantly high incidence of childhood Leukaemia, and generally members of the local population died 10-15 years younger than the norm.

Immediately the team were disbanded and there was no final report – although subsequently Doctor Hocking et al published a number of peer reviewed papers.

19.4 2005 Onwards Worldwide Concern about Bee Population

Apparently for unexplained reasons there is currently a disintegration of bee populations in many areas in both UK and other countries. A number of scientific studies have indicated that a cause may be disorientation from EMF emissions from Telecoms Base Stations.

Should this really turn out to be the cause, and bee populations diminish in a widespread way, this may lead to non-pollination of food crops resulting in food shortages. If this happened Governments might have to choose between feeding people and their families in priority to allowing them to continue to have increasing applications on their mobile phones.

19.5 1998-2008

In Milford Haven in Wales in 1998 a 2G mast was erected on the local fire station 60 metres from the home of a two year old girl, Nicola P. Nicola had suffered from birth with epilepsy. By the age of two medication had controlled the fits to about two to three a week. Once the 2G mast became operational the fitting increased to about 270 fits a month.

When she was moved away from home and the mast over a period the fits returned nearer to the previous weekly normality, until she came home again. The family home had to be moved.

Some ten years later there was a Press Report of the decision of a Cardiff High Court Judge ordering the Local Education Authority to provide tuition at home for a 12 year old epileptic girl, Nicola P.

Nicola had been taught until then at a Mid Wales special needs school. When she and the school returned in the Autumn after the Summer holiday break Nicola started having six fits a morning at school, when previously that did not happen. It was discovered that during the Summer a Telecoms Operator had installed a 3G Base Station nearby, and it was the cause of the problem, although until Nicola's fits began that term, no one knew of the existence of the new mast.

Appraisal Conclusion:

The above evidence from these example cases seems to show that non thermal emissions from masts and Base Stations can effect 'some people', and also 'some animals and other species', and are not protected by the ICNIRP Guidelines on thermal heating.

The duties of Governments and Regulators is not to deny such possibilities, but to try to follow a proper "precautionary approach". There can be no doubt that Telecoms is an important part of daily life, but it is possible to achieve its aims and objectives without unnecessary adversely affecting some peoples health and lives, due to trying to roll out networks in the least expensive and economic way, regardless of possible downsides.

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