

Georgina Downs address to Lady Justice Arden, Lord Justice Keene and Lord Justice Sullivan in the Court of Appeal hearing – Tuesday 19th May 2009

Good morning my Lady and my Lords.

May I start by thanking you very much for giving me this opportunity to address you directly today, as I know it is again, as it was before Mr. Justice Collins in the court below, an exceptional situation. I know my representatives don't mind me saying, as I pointed it out also in my previous address, that the overall management for this case has been rather unique in itself due to my direct involvement with all preparations relating to it, as this case has always been based on a set of core arguments that I identified and have been presenting to the Government over the last 8 years.

Therefore as Mr. Fordham highlighted in his letter to you my Lady and my Lords, this hearing is again incredibly difficult for me as someone who has always argued my own arguments and presented my own case with meticulous accuracy and with great care and attention to detail.

As you will know I have produced 5 Witness Statements in this case, and I would just like to emphasise to my Lady and my Lords the importance of the second Witness Statement in particular, that sets out the very important factual detail and arguments that provides the critical basis of my case.

As you will know from the documentation before the court I have lived next to regularly sprayed fields for 25 years and have long-standing health problems. As a result of my own direct experience of this situation and lack of any assistance from the authorities, I decided in early 2001, to fully examine the Government's pesticides policy and regulatory approach, and it very quickly became apparent that there has been (and continues to be) an inherent fundamental failure at all levels to protect rural residents and communities from exposure to pesticides.

The Government's method of assessing the risks to public health from crop-spraying is based on the model of a '*bystander*', in which it assumes that there will only be occasional, short-term exposure to the spray cloud at the time of the application only, from a single pass of a sprayer, at 8 metres from the spray boom. It also assumes exposure will only be to one individual pesticide at any time.

Mr. Justice Collins agreed with my long-standing charge that this *bystander* model does not address residents like myself, who are repeatedly exposed, from various exposure factors and routes, to mixtures of pesticides and other chemicals, throughout every year, and in many cases, like my own situation, for decades. Obviously those living near pesticide sprayed fields will include vulnerable groups, such as babies, children, pregnant women, the elderly, people who are already ill and who may be taking medication, amongst other vulnerable groups where the health risks are increased.

Therefore it has always been *my* case that there is not, and never has been, *any* risk assessment of the specific pesticide exposure scenario for rural residents or others exposed over the longer term, (including young children attending schools near sprayed fields) as residents have a completely different exposure scenario compared to bystanders, as residents exposure is long-term, chronic and cumulative.

So this is of course not a terminological debate as the Government has often stated, this is about the actual failure of the Government to carry out any exposure or risk assessment specifically for residents, which, as Mr. Justice Collins rightly ruled, does not comply with the obligations imposed by the European Directive and UK equivalent legislation.

There is a clear mismatch and inconsistency with the legislative requirement for the protection of a worker and the lack of any protection for residents and other members of the public exposed to pesticides from crop-spraying. An operator is legally entitled to know what chemicals they are using, the risks and potential adverse health effects and will be required to wear appropriate protective equipment, whereas members of the public who are only inches away breathing in the very same airborne droplets, particles and vapours that workers are required to have protection from do not currently have any access to information on what chemicals they are being exposed to, nor are they entitled to any prior notification, nor are they likely of course, to use personal protective equipment while going about their business in their homes, gardens and elsewhere.

This is completely unacceptable, as members of the public have a fundamental right to know the information necessary to make informed and knowledgeable decisions to protect their health and the health of their family from any harm. **(Although obviously the fundamental point my Lady and my Lords is that people should have the right not to be exposed to these chemicals at all in the first place).**

The Government has continued to favour voluntary measures which have existed for decades, have not worked (as recognised by Mr. Justice Collins in his Judgment) and are completely unacceptable in this situation, aside from the critical fact that DEFRA has previously given an undertaking for mandatory not voluntary access to information and prior notification for residents, which was a stated commitment, that was never carried through; as well as the fact that DEFRA has previously made the clear and seemingly unequivocal statement that, “...voluntary measures can only be used where there is no health risk to residents and bystanders...”

In this case not only is there a clear health risk, (which, in view of some of Mr. Jay’s comments yesterday, I must point out to my Lady and my Lords *has* actually been accepted by the ACP itself, as can be seen in the ACP’s response to written questions I submitted for the 2005 ACP open meeting, at High Court bundle 2, page 633, and also see paragraphs 152 and 209 of my second Witness Statement), but even further than there being a risk to health, there is, as Mr. Justice Collins found “*solid evidence*” (including in the Government’s *own* monitoring system) that residents have suffered harm to their health.

As you will be aware from the material before you my Lady and my Lords, I have continued to present considerable evidence to the Government, its agencies and scientific advisors regarding the lack of *any* protection for residents from pesticides. In 2003, I produced a video that featured individuals and families from all over the country reporting acute and chronic long-term illnesses and diseases in rural communities surrounded by sprayed fields. My Lady and my Lords hopefully you will have the opportunity over the course of the next few days to view the 2 videos on the DVD, as it is again a key material, and shows the real-life impacts on rural residents of pesticide spraying in their locality.

It is important to note that the acute effects (both local and systemic effects) that are recorded in the Government's very own monitoring system (the so-called FOD reports), as well as in the manufacturers adverse incident reports, such as rashes, itching, sore throats, burning eyes, nose, blistering, headaches, nausea, stomach pains, burnt vocal chords, amongst other symptoms and effects, are the same as those that are regularly reported to me by rural residents, and the second video just referred to included just a few examples of the many such reports that I have received.

Government officials and advisors have therefore been fully aware for years of the adverse effects that are being confirmed by its very own monitoring system, but the Government has continued to accept such effects as not being *serious*. Mr. Justice Collins again rightly ruled that it is unlawful for the Government to have added in a *qualification* to the standard of the European Directive which requires that pesticides are not approved for use until it has been established that there will be "*no harmful effect*" on human health. (Incidentally it is important to point out that the Government's monitoring system has been widely recognized, including by Mr. Justice Collins in paragraph 43 of the Judgment, to give rise to a substantial degree of under reporting).

It is very important to stress to my Lady and my Lords, that the consequence of the Government allowing acute effects to be considered acceptable, means that the Government is then *also* allowing the risk of chronic effects, illnesses and diseases, because the risk of chronic effects developing can increase when acute effects repeatedly occur as a result of long-term cumulative exposures. This has been recognised by the European Commission in important statements as detailed in paragraph 1 of my second Witness Statement. For example, the European Commission has clearly stated that "*Long term exposure to pesticides can lead to serious disturbances to the immune system, sexual disorders, cancers, sterility, birth defects, damage to the nervous system and genetic damage.*"

The most common chronic long-term illnesses and diseases reported to me by rural residents include various cancers, leukaemia, non-Hodgkin's lymphoma, neurological conditions, including Parkinson's disease, ME, asthma and many other medical conditions. Reports of this nature have gone on for decades.

In his Judgment, Mr. Justice Collins recognised the point relating to cumulative effects at paragraphs 28 and 34. In fact in paragraph 34, Mr. Justice Collins quotes from the

Appellant's predecessor, (the Ministry of Agriculture, Fisheries and Food (or MAFF for short)) in a 1975 document, where MAFF stated that, "*The repeated use of pesticides, even in small quantities, can have cumulative effects which may not be noticed until a dangerous amount has been absorbed.*" This clear statement from 34 years ago shows that the Government has always been well aware of the cumulative effects of pesticides, but *again* has not taken *any* action to prevent the exposure, risks and adverse impacts occurring for those exposed.

I would also like to point out that as set out in my second and third Witness Statements, the PSD's *limited* exposure estimates in the July 2003 PSD paper showed 82 examples of exceedances of the AOEL, in some cases an *order of magnitude* higher, which on the Appellant's own case, should have triggered prohibition. Yet no action was taken. No further estimates were carried out on all the other pesticides approved for use at that time, and nor has this been done subsequently; and no change was made to the bystander assessment model. Further still, Ministers do not appear to have been informed of these very serious AOEL exceedances (in some cases by 20 or 30 times).

DEFRA has previously stated that there is not supposed to be a trade off when it comes to the risks to health from pesticides with the benefits and that if there is scientific evidence that use of a pesticide *may* harm human health that is to be considered unacceptable, and that approval for use would be refused, whatever the benefits.

However, the Government has continued to adopt the improper approach of *balancing* harm to human health against the (supposed) benefits of pesticide use, in which it accepts a degree of damage to human health on the basis that it is outweighed by other benefits (eg cost/economic benefits for farmers), rather than on the absolute protective approach of the Directive, of ensuring that there is *no harmful effect* on human health *at all*.

As I said at the end of both my first and second Witness Statements, I have been astonished at the Government's complacency and absolute inaction over this issue since I first started presenting my arguments at the beginning of 2001. The Government, its agencies and scientific advisors have a legal duty to protect public health and, despite all my efforts over the past eight years, this is not happening with the existing Government policy on pesticides.

Therefore the Judgment of Mr. Justice Collins is of significant public importance, especially for all those residents throughout the country who, like myself, live in the locality to pesticide sprayed fields, as the recognised failure to protect public health, particularly residents, is a very serious public health issue.

In relation to my own personal health problems, as my Lady and my Lords may have seen from my first Witness Statement, I have received medical advice to the effect that "*the most important aspect is to avoid ongoing exposure*" to pesticides, which is obviously impossible in the kind of situation that myself and other rural residents are living in. For example, one year recently, my family and I experienced approximately 20 spraying applications near our home over a period of about three months, some of which were only one day apart.

Therefore aside from the inherent health risks and adverse health impacts, everyone has a right to enjoy their own home, but this is something I, and many other rural residents experiencing this situation, are simply not able to do.

The FOD reports contain many illustrations of the extent to which residents living near sprayed fields suffer interference with their enjoyment of their homes, gardens and other property (along with, in many cases, environmental damage). Therefore my case is arguing that crop-spraying near residents homes is in violation of residents' rights to respect for their private lives and their homes under the European Convention on Human Rights.

The final point my Lady and my Lords of this short address is in relation to the new material that Mr. Jay submitted yesterday. Considering I will only be receiving the actual Witness Statement today I am not sure whether I will be able to realistically get something to you by the end of this hearing. I shall do my best to do so, but if it is not before the end of the hearing, I can assure my Lady and my Lords that I shall submit a response as soon as possible thereafter.

However, in the meantime I would just like to make the following few comments.

As you know from the materials before the court, in particular various paragraphs of my first Witness Statement, as well as the medical report material in Tab F of Core Bundle 4, I have suffered acute effects following exposure to pesticides, such as regularly blistered throats so swollen that the sides almost touched each other leaving me with difficulties in swallowing; up to 20 or so blisters in my mouth (which again at the time made it difficult to eat anything but soup), amongst other acute effects as detailed in §4 of my first statement. These acute effects were not minor or mild and left me seriously affected, (even before considering the chronic long-term health problems that I have), as it led to me missing many weeks off school and college at the time as a result.

However, it should be pointed out to my Lady and my Lords, that *even* if I did not have any health problems, and was relatively healthy, it does not change the basis of any of the arguments that have been presented in this case, as the Government's policy is supposed to be based on the risk of harm and not that harm has to have already occurred. As I said at the beginning of this address, there has been (and continues to be) an inherent fundamental failure at all levels to protect rural residents and communities from exposure to pesticides. Therefore my family and I, along with other rural residents living in the locality to pesticide sprayed fields, should not be being put at risk of either acute or chronic harm, *irrespective* of any adverse health effects that have already been suffered.

I would like to thank you again my Lady and my Lords for giving me this opportunity to address you directly today, it is very much appreciated. Thank you very much.

Georgina Downs.