

PRESS RELEASE – For Immediate Release

Damning factual evidence that exposes the UK Government’s fundamental failure to protect the public from pesticides is published today for the first time

Award-winning environmental campaigner, Georgina Downs, will today publish for the first time on her campaign website (www.pesticidescampaign.co.uk) the damning factual evidence that fully exposes the true extent of the Government’s fundamental failure at all levels to protect the public from pesticides.

The factual evidence, which is based on the Government’s very own documents, findings and statements, confirms that the Government has fundamentally failed to:

- **protect public health from pesticides, particularly rural residents;**
- **undertake *any* exposure and risk assessment for the long-term exposure for those who live, work or go to school near pesticide sprayed fields**
- **act on the evidence of the risk of harm to human health, and further than that, act on the evidence of harm that is occurring, including in the Government’s *very own monitoring system*;**
- **act on its *own findings of exceedances of the safety limits set for exposure* (the so-called Acceptable Operator Exposure Level (AOEL)), in some cases an *order of magnitude higher, any* exceedance of which on the Government’s *own previously stated case*, would lead to immediate action of authorizations being refused (or trigger prohibition if already approved).**

The factual evidence clearly confirms that there has never been *any* evidence to support the Government position of safety to residents (or school children attending schools near sprayed fields), just the Government’s own continued assertions. The Government has not assessed residents exposure, and has continued to allow adverse effects to occur in residents and others exposed, which of course includes vulnerable groups, such as babies, children, pregnant women, people who are already ill and who may be taking medication, amongst others.

The critical detailed evidence produced by Ms. Downs in a number of Witness Statements, made up the case, factual evidence and arguments that led to her historic and landmark High Court victory over the Government in November 2008, as the High Court Judge, Mr. Justice Collins, recognized that the Witness Statements “*set out the factual basis for the arguments presented*” in Ms. Downs’ case, and that they sought to “*meet the contrary arguments put forward on behalf of the Government*”.

Having considered Ms. Downs' Witness Statements carefully, Mr. Justice Collins concluded that, "*The alleged inadequacies of the model and the approach to authorisation and conditions of use have been scientifically justified*" and that Ms. Downs had produced "*cogent arguments and evidence to indicate that the approach does not adequately protect residents and so is in breach of the Directive.*" He also concluded that Ms. Downs had produced "*solid evidence that residents have suffered harm to their health.*" The High Court Judgment ruled that DEFRA "*must take steps to produce an adequate assessment of the risks to residents.*" The High Court Judgment was obviously a very significant and landmark ruling for the potentially millions of residents throughout the country that live in the locality to pesticide sprayed fields.

Ms. Downs' evidence and arguments, as set out in her various Witness Statements, had actually won all 5 of the decisions that had taken place in her legal case against the Government since 2007. However, the Court of Appeal's ruling in July 2009, which was the first out of 6 to go in the Government's favour, did so as a result of very bizarrely substituting Ms. Downs' case, arguments and evidence with the conclusions of a Government requested and funded report 4 years earlier in 2005. This not only meant that the majority of the contents of Ms. Downs' Witness Statements were inexplicably ignored by the Court of Appeal, it also meant that the Court of Appeal judgment was not based on the same case, evidence and arguments that had led to Ms. Downs' victory in the High Court.

Ms. Downs' attempts to put this right in the UK Courts have been denied following the Supreme Court's decision to refuse her application for permission to appeal the Court of Appeal Judgment.

Ms. Downs states, "*The case I presented to the UK courts clearly involves arguable points of law of general public importance and if it didn't then I would not have won in the High Court or even have been granted permission to take the case to the High Court in the first place. Therefore the Supreme Court's decision to refuse permission to appeal is highly questionable considering how bizarre and inaccurate the Court of Appeal Judgment was, as anyone who reads my Witness Statements will see that it simply was not based on the cogent factual evidence and arguments I had presented, that were in support of the legal arguments and Grounds for challenge raised in my case.*"

Ms. Downs now intends to take the legal case to the European Courts. However, in the meantime she will today publish for the first time all 6 Witness Statements that she produced for her legal case and that fully exposes the true extent of the Government's shocking failure to protect the public from pesticides. The evidence clearly confirms that the Government's policy and approach on pesticides stands condemned as a matter of fact irrespective of the eventual outcome of the legal case (which in relation to Judicial Review is based on very narrow points of law).

Ms. Downs' crucial second Witness Statement exposes for the first time in a detailed analysis (prepared specifically for the purposes of the legal proceedings) how the

Government's very own documents and findings themselves flatly contradict the Government's assertion that its *bystander* model protects residents.

Ms. Downs' evidence reveals for the first time that when the regulators the Pesticides Safety Directorate¹ (PSD) did undertake estimates for just a *limited* number of other exposure factors², other than that already relied upon in the Government's *bystander* model (which is short-term exposure of just five minutes *or less*, at eight metres from the sprayer) it found 82 examples of exceedances of the safety limits set for exposure (the so-called Acceptable Operator Exposure Level (AOEL)), in some cases an *order of magnitude* higher, when *any* exceedance on the Government's *own previously stated case*, should have triggered prohibition.

Yet despite the results obtained, astonishingly no action was taken to revoke approvals of the pesticides that were shown in the PSD's very own estimates to exceed the AOEL; 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, evidence in Ms. Downs' second Witness Statement shows that it seems that Ministers were not even informed by officials of these very serious AOEL exceedances (in some cases by 20 or 30 times over).**³

Ms. Downs' evidence shows that these AOEL exceedances were based on each exposure factor *individually*, as the Government's advisors, the Advisory Committee on Pesticides (ACP), and the PSD, wrongly calculated each factor in *isolation* and has failed to ever calculate (sum) exposure factors together in the exposure calculations, which as Ms. Downs points out is obviously essential to do in relation to the overall exposure scenario for residents. Therefore on the results shown in the PSD's own findings the AOEL would have been exceeded even further when calculating exposure factors together.

Ms. Downs states, "*The PSD's estimated exceedances of the AOEL demonstrate that products have been in use in the UK which have led to residents being exposed to levels greatly in excess of the AOEL, on a regular basis, year after year. Farmers cannot control pesticides once they are airborne (either at the time of application or subsequently) and so the exposure that rural residents and others receive is as a result of the permitted use of pesticides. Therefore as exposure for residents cannot be controlled, then it must be prevented altogether by changes to existing policies to focus on eliminating exposure.*"

Ms. Downs' evidence points out that the ACP itself has previously said, "*If we thought that current margins of safety for a pesticide gave insufficient protection to neighbours, we would recommend that the use be banned rather than relying on a buffer zone to reduce exposures*".

For years the Government, the ACP, and the PSD, have continuously insisted that pesticides are "safe"; that there is "no health risk" from crop-spraying in residents' locality, and that this is merely a "social" issue. Yet official reports obtained by Ms. Downs for the purposes of her legal case and that do not appear to have ever been released previously to anyone outside of Government departments, officials, and

advisors, shows that the Government has continued to mislead and misinform residents and the wider public about the safety of pesticides, as the reports show that the Government has knowingly allowed residents to continue to suffer from adverse health effects, year in year out, without taking any action to protect public health.

The aforementioned reports entitled the *Field Operations Directorate* reports (“FOD Reports”), produced by HSE, are part of the Government’s very own monitoring system and confirm that the majority of people involved in reported incidents each year continue to be residents. (Ms. Downs’ points out in her evidence that the Government’s monitoring system has been widely recognized to give rise to a substantial degree of under reporting for a number of reasons and therefore the number of reports is underestimated).

The FOD reports also include a number of reports of adverse effects in children from crop spraying around schools. Reports of ill-health effects suffered by school children following pesticide spraying on the surrounding fields included, skin rashes, eye irritation, sore throats, nausea, vomiting and flu-type illnesses, amongst other things. However, as Ms. Downs’ evidence details, when the ACP previously considered the issue it did not initiate any steps for action to be taken (or even any investigation) in relation to the health risks and associated adverse health effects for schoolchildren in this country.

Ms. Downs’ evidence also details specific examples of the Government’s repeated inaction when faced with, as shown in its own monitoring system, evidence of harm to human health (as well as the risk of harm) as a result of pesticide exposure. This includes the failure to act on published studies regarding both acute and chronic adverse health effects. In relation to the latter, Ms. Downs’ evidence points out that DEFRA, the PSD and the ACP have on many occasions had their attention drawn to studies finding associations between pesticides and chronic illnesses and diseases, including various forms of cancer, (such as prostate cancer, leukaemia, and childhood cancers), Parkinson’s Disease, amongst others. Yet time and time again the conclusion by the ACP and PSD has been that these demonstrate ‘no need for any regulatory action’.

The evidence set out in Ms. Downs’ evidence clearly shows that the Government has continued to base its decisions in relation to this issue on the protection of industry interests as opposed to what is absolutely required as the number one priority of pesticide policy and regulation – to protect public health. For example, it is revealed for the first time in Ms. Downs’ second Witness Statement that DEFRA officials advised Ministers in 2006 to introduce mandatory requirements for both prior notification and access to information, but Ministers did not follow their *own* advisors advice and instead preferred to rely merely on the industry led preference of voluntary action. This shows just how determined Ministers are to maintain the status quo. Ms. Downs’ second Witness Statement also reveals for the first time that DEFRA officials had advised Ministers in June 2006 that voluntary measures can only be used where there is no health risk to residents and bystanders. **Therefore DEFRA Ministers and officials were well aware that in the situation where the health risks and adverse effects are already accepted,**

(including in the Government's own monitoring system), then voluntary measures were not an option.

Ms. Downs states, "The crucial factual evidence I produced for my case in 6 very detailed Witness Statements, shows quite clearly that the Government has knowingly failed to act, has continued to shift the goalposts, cherry picked the science to suit the desired outcome, and has misled the public, especially rural residents over the safety of agricultural pesticides sprayed on crop fields throughout the country. The Government's continued line that there is no evidence of harm from pesticides, as well as no risk of harm is just untenable and inexcusable. The evidence is there and has been there for a considerable time, the Government is just determined not to act on it. The Government's response to this issue has been of the utmost complacency, is completely irresponsible and is definitely not "evidence-based policy-making."

Fellow rural resident Barbara Robinson, from Suffolk, who attended every day of both the High Court and Court of Appeal hearing's states, "*Georgina completely demolishes the Government in these Witness Statements. Nothing else can possibly expose the failings of the Government's regulatory system, policy, approach, risk assessment, monitoring system and the entire approvals process quite like this. They are an extraordinary piece of work and as a rural resident I am indebted to Georgina for her dedication, commitment and determination to expose this scandal and how we the public have been lied to and deceived by this Government. Anyone can now see this for themselves with the publication of Georgina's evidence.*"

The Government is currently reviewing its policy and approach to pesticides as a result of the evidence and arguments presented by Ms. Downs in her legal challenge. It has been reported that DEFRA has clearly indicated that changes *would be made* to its policy. Ms. Downs' evidence is also expected to lead to changes to the approach to risk assessment.

The Government is due to launch a consultation later this month. It is expected to include a number of the issues raised by Ms. Downs regarding residents exposure and consider measures for both prior notification and access to information.

Ms. Downs states, "I would urge residents to see the evidence I have published today on my website ahead of the forthcoming Government Consultation so that people are fully aware of exactly what has happened on this issue. The only solution to this problem is if the Government actually finally stands up to the industry and takes the necessary and urgent action to protect public health. The Government has conditions of use for the protection of animals, wildlife and the environment, but absolutely nothing for the protection of residents and communities. This has to now change. How many more people have to suffer at the hands of this Government's failure to protect its citizens?"

Ms. Downs' evidence argues that there is currently a clear mismatch and inconsistency between the Government's long-standing failure to protect people from passive exposure

to pesticides and the Government's approach in other comparable policy areas that ended in a ban for public health protection.

Ms. Downs states, "*Mandatory measures must be introduced to finally protect the health of residents and other members of the public from exposure to pesticides. These measures have to be at Governmental level from changes to its policy so that it is consistent for all rural residents across the country. The most important action that must be taken is a ban on crop-spraying around homes, schools, children's playgrounds and other public areas. Considering studies have shown that pesticides can travel in the air for miles then the distance of the no-spray area would need to be substantial.*"

References:-

¹ Recently changed to the Chemicals Regulation Directorate (CRD), but referred to in this press release as the PSD, as that was the name of the agency at the time the witness statements that are referred to in this press release were produced.

² Such as 24 hour inhalation to vapour, and exposure of children to residues via skin contact and hand-and-object-to-mouth activities in neighbouring gardens after spraying.

³ It should be noted that these very serious and *illegal* AOEL exceedances were completely ignored by the Court of Appeal in its Judgment last year as a result of having *substituted* Ms. Downs' evidence with that of 2005 Government requested and funded report that had not identified them and therefore had no reference to them.

Notes to Editors:-

- The 6 Witness Statements that will be published later today (6th January 2010) for the first time on Georgina Downs' campaign website at www.pesticidescampaign.co.uk include:-

Witness Statement 1 – this provided the personal background, and history of the issue and Ms. Downs investigations, that led to her application for Judicial Review;

Witness Statement 2 – this 149 page statement detailed the critical factual evidence and arguments that provided the basis of Ms. Downs' legal challenge;

Witness Statement 3 – this statement was in response to points made in the second Witness Statement of Paul Hamey on behalf of DEFRA

Witness Statement 4 – this statement was in response to points made in the first Witness Statement of Kerr Wilson on behalf of DEFRA, regarding DEFRA's application for a stay of the Judgment of Collins J dated 14th November 2008, and for expedition in relation to the listing of the appeal hearing in the Court of Appeal.

Witness Statement 5 – this statement was in response to points made in the second Witness Statement of Kerr Wilson on behalf of DEFRA, regarding DEFRA's renewed application for a stay of the Judgment and Order of Collins J. Both Mr. Wilson's Witness Statements, cited various reasons for *preserving the status quo* all notably related to *alleged* financial and economic impacts on pesticide manufacturers, farmers and distributors, or the impact on

agricultural productivity, if there are any changes to the current policy and approach for pesticides and the related approvals system

Witness Statement 6 - this statement (which Georgina had to put together in just 8 days) provided further information in relation to Georgina's own personal health problems, pesticide exposure, and blood and fat test results etc. and was specifically submitted in response to points made in the third Witness Statement of Paul Hamey on behalf of DEFRA. This statement also provided further evidence of the devastating health impacts that pesticides can cause, including both individually and in mixtures, particularly in relation to neurotoxicity and related neurological damage/injury, as well as various cancers, impacts on bones resulting in bone diseases such as osteoporosis, effects on the immune system, organ damage, genetic damage, mutagenic effects, reproductive effects, birth defects, cardiovascular effects, respiratory effects, hormone disrupting effects, effects on the skin and eyes, and effects on cell proliferation, cell cycle, and cell communication

- **An Executive Summary of the Critical Evidence contained in the second Witness Statement will also be published later today on Ms. Downs website at www.pesticidescampaign.co.uk and is also being circulated as a media briefing and is therefore available upon request**

NB. Please note that important information is also contained in the various footnotes, as well as the main text of the various Witness Statements, and the Executive Summary

- Witness Statements 1, 2 and 3 were relied upon in the High Court hearing (and were also before the Court of Appeal). Witness Statements 4, 5 and 6 were submitted as part of the Court of Appeal proceedings only, as they were subsequent to the High Court proceedings
- In November 2008 Ms. Downs won a historic and landmark High Court victory against the Government over its fundamental failure to protect people in the countryside from pesticides. Ms. Downs' case was the first known legal case of its kind to reach the High court to directly challenge the Government's pesticide policy and approach regarding crop-spraying in rural areas and Ms. Downs won the case. The Judgment of Mr. Justice Collins in the Judicial Review High Court case *Georgina Downs v Secretary of State for DEFRA* is available at:- [http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2008/2666.html&query=title+\(+downs+\)&method=boolean](http://www.bailii.org/cgi-bin/markup.cgi?doc=/ew/cases/EWHC/Admin/2008/2666.html&query=title+(+downs+)&method=boolean) Georgina Downs made a statement outside the High Court following the hand down on 14th November 2008. The statement in full and the accompanying press release dated 14th November 2008 are available on her website at: http://www.pesticidescampaign.co.uk/georgia_high_court_victory.htm
- The Government applied to appeal the High Court decision and in July 2009 the Court of Appeal overturned the High Court Judgment. The majority of the contents of Ms. Downs' 6 Witness Statements were inexplicably completely ignored by the Court of Appeal in its Judgment, as the Court of Appeal Judges very bizarrely *substituted* Ms. Downs' case, arguments and evidence with the conclusions of a Government requested and funded report by the Royal Commission on Environmental Pollution (RCEP) 4 years earlier in 2005. The Court of Appeal Judges were Lord Justice Sullivan, Lady Justice Arden and

Lord Justice Keene. Georgina Downs made a statement outside the Royal Courts of Justice following the hand down of the Court of Appeal Judgment which is available at: http://www.pesticidescampaign.co.uk/documents/press_release_7july2009.doc

- Following receipt of the draft Judgment, (which both parties received prior to hand down of the final Judgment in order to carry out corrections), Ms. Downs wrote to the Court of Appeal Judges on 2nd July 2009 to inform them that by *substituting* her evidence with that of the conclusions of the RCEP report, the Judges had fundamentally misrepresented her case, evidence and arguments, including in relation to her own personal health problems. Despite this, the Court of Appeal Judges did not change the serious and important factual errors contained within the Judgment. **Considering the significant public interest and importance of this case, especially to residents throughout the country living near pesticide sprayed fields, Ms. Downs has today also published her letter to the Court of Appeal Judges on her campaign website at: www.pesticidescampaign.co.uk**
- Ms. Downs' evidence and arguments, as set out in her various Witness Statements, had actually won all 5 of the decisions that had taken place in her legal case against the Government since 2007. These included the original permission granted by Mr. Justice Mitting in January 2007 for an application for Judicial Review; the High Court ruling from Mr. Justice Collins in Ms. Downs' favour in November 2008; Mr. Justice Collins refused the Government's first application for a "stay" of the Judgment and Order of Collins J in December 2008; Court of Appeal Judge Lord Justice Laws refused the Government's second application for a "stay" in February 2009; Court of Appeal Judge Lord Justice Sullivan refused the Government's third application for a "stay" in March 2009 following an oral hearing and ordered that the Government should get on with its review following the High Court ruling in November 2008 and as a result this review is currently underway
- Ms. Downs now intends to take the legal case to the European Courts following the Supreme Court's decision to refuse her application for permission to appeal the Court of Appeal Judgment on the basis that it "*did not raise an arguable point of law of general public importance which ought to be considered by the Supreme Court at this time, bearing in mind that the case has already been the subject of judicial decision and reviewed on appeal.*" The Supreme Court Judges were Lord Phillips, Lord Rodger and Lord Kerr
- A number of Ms. Downs' Witness Statements, including the critical second Witness Statement, have recently been considered by key scientific panels in the UK, and have also been seen by a key policy advisor to Gordon Brown at Number 10, Secretary of State for DEFRA, Hilary Benn, and DEFRA Minister Dan Norris. The second Witness Statement and its accompanying Executive Summary have also recently been considered by the European Food Safety Authority and its main scientific committee on pesticides, as well as the European Commission's Health and Consumer Directorate-General, because of the standard of the content
- There have been a number of recent and important European Commission statements that clearly acknowledged the chronic long term impacts of pesticides, including for those living in the locality to sprayed fields. For example, the EC 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.”(Source:<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/06/278&format=HTML&aged=0&language=EN&guiLanguage=en>)

- Georgina Downs runs the UK Pesticides Campaign (www.pesticidescampaign.co.uk) to highlight the risks and adverse health and environmental effects of pesticides, especially on rural residents and communities. Ms. Downs has lived next to regularly sprayed fields for over 24 years and has long-standing health problems. She was the first to identify serious fundamental flaws regarding the Government’s so-called “*bystander risk assessment*” and has continued to argue since early 2001 that residents and bystanders are 2 separate exposure groups and need to have separate exposure and risk assessments
- In January 2009 Ms. Downs met with the key policy advisor to Gordon Brown at Number 10 and has recently met with the Secretary of State for DEFRA, Hilary Benn and DEFRA Minister Dan Norris, to call on the Government to introduce mandatory measures to protect rural residents. Ms. Downs, is calling on the Government to introduce the following measures for the protection of rural residents and communities:-

*prohibition of pesticide use in substantial no spray-zones around homes, schools, children’s playgrounds, and other buildings where people may be situated (eg. hospitals etc.)

*a new legal obligation to give rural residents prior notification before any pesticide spraying in their locality (this needs to be 48 hours’ notice, the same as is required for the protection of bees, as Mr. Justice Collins recognised in the High Court Judgment that, “*It is difficult to see why residents should be in a worse position*”).

*a new legal obligation for farmers and other pesticide users to provide information on the pesticides used directly to residents (as third party access is inadequate, especially in the event of an immediate poisoning when getting that information is critical and going through a third party would only add unnecessary and in some cases extremely dangerous time delays)

****Please note that the Witness Statement material referred to above is related to the legal case *Georgina Downs v DEFRA* and does not involve any other group or organization. Therefore the only contact for enquiries about the actual evidence and arguments presented in this case is Georgina Downs.**

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