

Health, Social Services and Housing Panel Telephone Mast Review

WEDNESDAY, 24th JANUARY 2007

Panel:

Deputy A. Breckon of St. Saviour (Chairman)

Deputy C.H. Egré of St. Peter

Senator B.E. Shenton

Connétable M.K. Jackson of St. Brelade

Witnesses:

Mr. C. Myers (Director, Health and Safety Inspectorate)

Deputy A. Breckon:

Welcome, Colin. We will go through the formalities first of why we are here and what this is about. My name is Alan Breckon and I am Chairman of the Health, Social Security and Housing Scrutiny Panel and under that we have set up a sub-panel and the members are, the Deputy Chairman is Deputy Collin Egré, Connétable Mike Jackson of St. Brelade and Senator Ben Shenton. I will just outline the terms of reference of this Scrutiny Review are to do with telephone masts and: "The sub-panel will consider the concerns of the public relating to perceived health implications as a result of the increase in applications for mobile phone mast installations following the recent expansion of the mobile telephony market. In undertaking this review the sub-panel will have regard to the advice provided by the Health Protection Department, international standards and best practice in respect of health precautions, health concerns raised by the public, and reporting its findings and recommendations to the States of Jersey." So that is really what we are about. Collin Egré will just outline the witness procedure.

The Deputy of St. Peter:

Excuse the formality at this stage, but this is one of the legal requirements as I am sure you are aware. So, I continue, it is important that you fully understand the conditions under which you are appearing at this hearing. You will now find a printed copy of the statement I am about to read to you on the table in front of you: "The proceedings of the panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers, privileges and immunities) (Scrutiny Panels, PAC and PPC) (Jersey) Regulations 2006 and witnesses are protected from being sued or prosecuted for anything said during hearings unless they say something that they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like

you to bear this in mind when answering your questions.” The proceedings are being recorded and transcriptions will be made available on the Scrutiny website. And in saying that, we appreciate if we could talk into the microphone, all talk into the microphone, so we can get a clear recording.

Deputy A. Breckon:

Thank you for that, Collin. Can I just go on and say, I am sure you have had the copy of the questions. They are not cast in stone. The idea was to give you some idea of our train of thought, as it were, but there might be something you say that we want further explanation on. This is part of a process, not the end of a process, so there might be something where we want further information, or you might want to ask something further of us, so that is really it. Collin mentioned the transcripts. What the procedure is, Colin, is that these get transcribed fairly quickly, you will be given a copy and the opportunity to comment on that. If there is something that is in there that is factually incorrect you can say something, if you said “30” when it should have been “50”, then you will be given the opportunity to correct that and then after a few more days they will become a matter of public record, because this is a public hearing, so the idea is that everybody has access to that. And having said that, it is fairly formal but informal, you are not on trial for anything, we are here to exchange questions and answers, so please do not feel uncomfortable by the process, it is not painful, others have told us that, so that is where we are coming from. So, what I would like to do is start and offer the floor to you. Should I say, as well, at the outset, that is there is something you wish to say at the end you will be given the opportunity, so it is not a case of you are restricted. If there is anything you wish to add at the end then please feel free to do so. Can I ask you just to, for the benefit of the record, say who you are and your job and qualifications?

Mr. C. Myers (Director, Health and Safety Inspectorate):

Yes, my name is Colin Myers. I am the Director of the Health and Safety Inspectorate. I have a Master of Arts degree in Occupational Health and Safety and Environmental Law. I also have a Professional Diploma in Management and I am also a Chartered Member of the Institute of Occupational Safety and Health. I have been working in the Inspectorate for some 26 years.

Deputy A. Breckon:

Thank you for that. And I will lead in with the first question really, which is to do with your role, is what duties does Health and Safety at Work (Jersey) Law 1989 place on employers to ensure the health and safety of its employees and others. Now, that could be in specific terms or in general terms, however you feel comfortable?

Mr. C. Myers:

Okay, if I can just refer to some notes I have made?

Deputy A. Breckon:

That is okay, yes.

Mr. C. Myers:

In general terms the Health and Safety at Work (Jersey) Law 1989 is the main principal law for occupational health and safety in Jersey and under Part 2 of the law there are general duties placed on all those involved with work activities. In particular, Article 3 of the law places duties on employers: "To ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees." That extends to the provision of training, information, instructions and supervision for any work activities. The responsibility for employers to other people, including members of the public, is included under Article 5 of the law, which requires them to, again in general terms, safeguard, so far as is reasonably practicable, the health and safety of those people from risk arising from their work activities.

Deputy A. Breckon:

Leading on to that, is there any specific responsibility you say regarding the installation and the operation of mobile masts and base stations?

Mr. C. Myers:

As I mentioned, the requirements under the Health and Safety at Work (Jersey) Law 1989 are very general. It is to be expected that employers, or in this case, operators, would assess the risks to not only their employees, but other person's health and safety and put in place arrangements to ensure that risks were adequately controlled from those risks that have been identified. The process is commonly termed as "risk assessment", but that would be expected to be put in place by the operators. Health and Safety at Work (Jersey) Law 1989 is intended to be self-regulating, so the health and safety legislation sets out minimum standards to which employers should themselves have arrangements to meet.

Deputy A. Breckon:

And part of your role would be to examine that they were complying with minimum standards and industry codes and things like that?

Mr. C. Myers:

Well, the Inspectorate's work can be broadly defined into 2 different areas, a reactive role and a proactive role. Reactive work includes reacting to complaints, investigating accidents and incidents, which may result in reports being prepared for the Attorney General's consideration. We review work-related accidents and ill-health. We prepare work-related accidents and ill-health statistics. Process licenses for asbestos licenses for the Minister of Social Security and provide advice and guidance for anybody with health and safety work issues. The proactive work involves carrying out targeted inspections of workplaces, working with others such as the Building Federation to seek improvements in

relation to health and safety, producing guidance, taking proposals to the Minister on health and safety at work issues, including the amendments of legislation and approved codes of practice, and carrying out initiatives aimed at improving health and safety performance in specific areas of concern. We do not, and have not to date, carried out any proactive work in terms of looking at mobile phone base stations, but we would treat it as a reactive work if people had some concerns or some complaints. In terms of planning applications, I have an agreement with the head of Health Protection, Steve Smith, that the planning applications are reviewed by Health Protection, formerly known as the Environmental Health Officers, they have an opening back to us if there is any occupational health and safety issues, which they feel should be addressed. We have done this to make best use of our resources and avoid duplicity of effort on the same issue, because Health Protection obviously have a role in looking at the public health interest. In terms of the Inspectorate itself, it is quite small, there is myself and 2 other appointed inspectors, but we do have access to the UK Health and Safety Executive, specialists, advisors, for technical support and there is an agreement in place that allows us to ask for information from specialist people in this area. We also have contact, by the way, with our colleagues in Guernsey and the Isle of Mann, sharing information, and for mutual support. So, although we are quite small, we do have links through to relevant parties and other people who we can ask for assistance.

Deputy A. Breckon:

Could you say, to your knowledge, there has been any particular problems with the telephone industry in general terms in Jersey, or would it just be accepted as part of your normal workload and what you reviewed does not warrant any special attention?

Mr. C. Myers:

From the point of view of the telephone operators on the Island, the one that we have most knowledge of would be Jersey Telecom, because they have been around for some time. They, in my experience, have always adopted a very positive and proactive role to managing occupational health and safety. They have a fulltime Health and Safety Officer, for example, who is qualified. But even prior to that they had people working part-time with health and safety responsibilities. And part of this stems back from the time when they were part of British Telecom, and probably its predecessors, in the establishment of policies and procedures. So, my only experience is with Jersey Telecom as being a telephone operator. I have not had any contact yet with the new operator, Cable and Wireless, or indeed the third operator I understand is coming online, Airtel. But, again, we would be looking at them on occasion, but not as a matter of course. We would look at them if there were some particular concerns that were expressed.

The Deputy of St. Peter:

To date, have you had any involvement at all, either through Health Protection Unit here, or through your Ministry, with regard to electronic emissions specifically involved in the mobile phone industry?

Mr. C. Myers:

Prior to my hearing about the request for me to appear before the Scrutiny Panel, we had received some concerns a number of years ago about the position of some equipment, which was addressed satisfactorily. But I do not have any record of that, because the records would have been destroyed as part of our regular management of records. Since I understood I was coming to the Scrutiny Panel, I thought I had better just find out a bit of background information, so I have made contact with Jersey Telecom and reviewed the arrangements they have, and also visited some installations as well.

The Connétable of St. Brelade:

Can you just enlighten me as to the structure you have, do you come under the Department of Health?

Mr. C. Myers:

Sorry, I did nod there, but I did not mean it as a yes, I was just listening to your question. The Health and Safety Inspectorate is part of the Social Security Department. The reason for that is because historically it was considered that the Health and Safety Inspectorate would be best placed where they would have information about accidents at work, which is going through the benefit system, and they would then be able to target resources on identifying where there were particular problem areas. The Health and Safety Inspectorate working within Social Security also reflects other organisations around the world, other social security organisations around the world, which have a Labour Inspectorate attached to them.

The Connétable of St. Brelade:

Moving on to the fact now that we have 3 operators in the market, do you think there is a need for your Department to be more proactive than it was when there was only one operator?

Mr. C. Myers:

As I see it, with one operator, the legal duty is fairly and squarely placed on that one operator to assess the risk from their installation. There is also a legal duty on them to ensure that the installation is correct and that any radio waves that are being emitted are within the international guidelines in order to ensure they are meeting their legal requirements. As I see it, with 3 operators in a particular site, while you could ask each individual operator to check their own emissions, what I could not do, under the Health and Safety at Work (Jersey) Law 1989, would be to ask them to check other people's emissions. So, this is where there may be a need, although I do not believe we could request it under Health and Safety at Work (Jersey) Law 1989, for an independent assessment of the accumulation of radio waves emitting from the 3 locations. While saying that, the available information suggests that even when there are multiple users from one specific site, that the radio waves being emitted is well below the international guidelines, but there is a public perception, which needs to be addressed, I feel, which is not health and safety law, but it is about trying to seek and provide information to the public, which will possibly

alleviate their concerns, although there is still that issue about what are appropriate guidelines to be considered in any measurements that are taken.

The Connétable of St. Brelade:

Which agency do you think, in our Jersey situation, would be most appropriate to carry out that independent monitoring?

Mr. C. Myers:

I am not aware there is an agency in Jersey that will carry out that monitoring. I would suggest that, we look to the UK all the time, but in looking at the UK, part of the Health Protection Agency, they do have a unit that carries out measuring and monitoring, and perhaps it is a question of buying in their time on occasion, as it would be. In terms of the risk to the employees, I think that is something that can be addressed under Health and Safety at Work (Jersey) Law 1989. In terms of the public perception of risk, I do not think we can address that under Health and Safety at Work (Jersey) Law 1989, as it is at present, and it is more of a public protection issue and so therefore the agency that would be looking at the health of the public in its wider sense would be Health Protection, which is part of Health and Social Services.

The Connétable of St. Brelade:

Given that there is a move towards sharing several of the base station sites, would your department issue any directives regarding workers for any particular company working on a shared site, for instance, when people have to work on a particular aerial, the switching of it off by other operators or some such like, would you have a standard format that you would issue for these areas?

Mr. C. Myers:

There is not a standard format, but if we look at the situation where there is a number of operators using one mast, for example, we would expect the owner of that mast, and Health and Safety at Work (Jersey) Law 1989 would require it, of that owner to put in place arrangements so that only authorised and licensed people could access that mast and the owner would have to make sure that there are requirements in place, such as a permit to work system, which would detail exactly what was required before they could access the mast to be carried out and they would have to ensure it was carried out. That would depend upon the individual location. So, if there was just one mast I think that can be identified under Health and Safety at Work (Jersey) Law 1989 about who should be responsible. If you have a situation where you have got, in a close area, 3 separate masts, then there is a need for each operator to identify where the exclusion zone may be around their own mast and make that aware to the other operators so that nobody could inadvertently stray into the path of radio waves, which exceeded the guidelines, and therefore place their employees at risk.

The Connétable of St. Brelade:

Are you aware of the fourth system, if you like, which we have at present, the Tetra system in the Island?

Mr. C. Myers:

I am aware there is a Tetra system by virtue of its being used for emergency services, but I am not aware of any particular detail.

The Connétable of St. Brelade:

Has your department been involved with the safety of workers involved with this particular system?

Mr. C. Myers:

Not to my knowledge, no.

The Deputy of St. Peter:

Would it be fair to say, your role specifically is more to look after the sort of people who would be working within the environment, say, as engineers in servicing and putting up and establishing the network by physical engineering, rather than the concerns of the general public in utilising a system when they are away from the actual sites themselves?

Mr. C. Myers:

Our prime focus certainly is on employees' health and safety, but, for example, if an organisation, an employer, was carrying out work, which it could be shown without any doubt was causing a risk to the health and safety of others, and that could include other employees and members of the public, then the health and safety legislation would cover that area. So, for example, and to put a very visual indication, if you walk down the street and somebody is working on a scaffold and they dropped a concrete block on your head, they would have responsibility for doing that. The difficulty, I think, in this sort of area, is where the guidelines, which are recognised as being the standard, are being complied with, but there is still a public perception that there might be a risk, and that is where Health and Safety at Work (Jersey) Law 1989, as it is at the moment, just would not and could not have any impact.

Senator B.E. Shenton:

There are a number of masts on the top of commercial buildings. Now, you mentioned that risk assessments should be done before you put a mast up to judge the risk to the workforce. Whose job would that be? Would that be the landlord or the tenant?

Mr. C. Myers:

The Health and Safety Law is always based on identifying the person who created the risk to carry out

the work needed to deal with it, so in terms of the mast, it certainly would be the operator's responsibility to carry out the risk assessment for the radio wave emissions. But it would also be the landlord's responsibility in terms of making sure that nobody could access the mast, because there are dangers from climbing the mast. So there would be a dual responsibility, but primarily in terms of the radio waves that would be the operator. In terms of the access to the mast, there would be a shared responsibility.

Senator B.E. Shenton:

But, surely, in a lot of circumstances the landlord would be compromised by the fact that he is receiving quite a nice payment for having the masts and also you said no one checks to see whether anyone does the risk assessments anyway.

Mr. C. Myers:

It is true to say that Health and Safety at Work (Jersey) Law 1989, being self-regulating, and that is the philosophy behind it, is that the duty is on employers, or other persons with duties under the law, to comply with the law. If we were to have a situation where you had checking carried out of every risk assessment, we would have to have an army of inspectors to be able to do that work. Yes, there will always be this question of balance of somebody saying: "I can accept a lot of money for doing this and it does not comply with the law", but I would suggest that probably occurs in many situations.

The Deputy of St. Peter:

Going back to the point you made earlier about your role being a reactive one, should an incident occur as a result of the negligence on the part of the landlord, then in the law you would be in a position to take the landlord to court.

Mr. C. Myers:

Well, the landlord could be taken to court; we would prepare the report. Correctly speaking, it would be the Attorney General that makes the final decision.

The Deputy of St. Peter:

But he could be taken to court under the law?

Mr. C. Myers:

Yes. If, for example, somebody accessed a mast and the landlord had not taken steps to ensure that, "so far as is reasonably practicable" is the term used in law, which again is this cost-risk equation, to take steps to ensure that people could not gain access to the mast, then he would be held to task. In addition, the operator would also be taken to task if the person could access the mast easier because they should also be taking steps. So it is a dual responsibility in that respect.

Senator B.E. Shenton:

But, what about if in 10 years time it was proven that wireless masts cause cancer, could the landlord then be taken to court?

Mr. C. Myers:

Health and safety standards are a moving feast in many ways, and certainly if there was a change in standards, then the operators would have to adhere to those new standards. I do not believe, and certainly court cases would defend the point at present, that if an operator was acting to the best intention in the light of current knowledge, he could be taken to task for something that is happening now, which was only known about in 10 years' time. There are sort of analogies with asbestos, which one might like to draw, but the knowledge of asbestos has been around with us for many, many years, it is just that people did not carry out and put in place the correct safeguards. So when you look at claims being made on asbestos, because of people being exposed 40 years ago, the knowledge was there then.

It is not the same thing with telephones.

I would like to clarify that the landlord would only be taken to Court in respect of a failure to comply with health and safety law if they had duties under the law, for example if they were a commercial undertaking of the type referred to in the question put to me by Senator Shenton. If the mast was sited on a domestic property, the owner of the property would not have duties under the Law.

(Additional point of clarification received on 25.01.07 from Mr. C. Myers and approved for inclusion)

Senator B.E. Shenton:

Although, if it was proven in 10 years, they could look back and find research now that says that it was here, so you are in the same boat to a certain extent.

Mr. C. Myers:

To a certain extent, it is a question of the standing of that research, I would say, and with the bodies such as World Health Organisation and the International Commission on Non-Ionising Radiation Protection, I can see why they call it ICNIRP, setting out standards, I think it would be difficult for somebody to show that an employer or operator had not taken steps that were reasonably practicable at the time when those guidelines were in place. This is similar to other situations as well where, in the light of knowledge, standards are improved or limits of exposure to certain substances are reduced. There is, in the working environment, a level of limits for toxic substances called Workplace Exposure Limits and they are continually reviewed by advisory scientific committees and if there is found to be a higher risk they are then reduced.

The Deputy of St. Peter:

Is it fair to say that in the current situations that we are in that the precautionary approach tends to be taken, rather than the going right up to the levels of what you are allowed to do?

Mr. C. Myers:

I mean, certainly, although there are levels set out for all sorts of issues, the prime issue is to take all reasonable steps that you can do to go to the lowest level possible.

The Connétable of St. Brelade:

Given that we have mandatory employer's liability insurance, would you, from the point of view of the phone operators, would you expect the phone companies to indemnify workers, or anybody else in the environment of the base stations, against any future claims?

Mr. C. Myers:

In terms of employer's liability, it is based on proving, to make a successful claim, that the employer has been negligent. Certainly, if an employer was exposing his workers to levels above the guidelines, then I would suggest that if the employee then developed an illness as a result; they could make a successful claim. If they are operating within the guidelines, the guidelines that are now accepted, I think it might be difficult for an employee to make a successful claim, because they would find it difficult to prove the employer had been negligent. Employer's liability is not just a question of saying: "I have developed an illness, I can claim", it is that additional factor, which requires them to prove that somebody has been negligent. That is not always the case, by the way, in other countries there is a "no fault" liability insurance, in Australia for example, but that is not the case within the United Kingdom or Jersey.

Deputy A. Breckon:

On the monitoring, Colin, do you have the resource, or would you use somebody with a specific expertise if you had to monitor situations?

Mr. C. Myers:

Primarily, in terms of employee exposure, the situation is that you should not get anywhere near it and you switch it off before you go there. Employees who are expected to work on masts or other installations, I would expect that their employer would provide them with a personal monitor or alarm, which if, for some reason, there was a breakdown in the permit to work and the system was not shut off, that would alarm as soon as they entered into any area where the levels of radio waves exceeded guidelines. I am aware that that is what Jersey Telecom do, but I do not know what Cable and Wireless do. So, that would be the first stage. If we were to be asked to carry out monitoring of emissions from radio waves, there are 2 issues really. One, we would need to train somebody up to do it; we would not be able to cope with that work from within our existing staff. And there is a continuing development as

well, a continuing need to refresh and train. So, if the Health and Safety Inspectorate were asked to carry out the monitoring, then I would be looking to bring somebody in, quite honestly. I think that would be the most, in terms of having a contract with an external body to be able to do this, an external recognised body should I say, who would keep themselves up to date, make sure their equipment was calibrated and all the rest of it.

The Connétable of St. Brelade:

In terms of recognised bodies, you get your advice, if you like, from Steve Smith's department, or who would you look to as being a recognised body? Would it go to the World Health Organisation? Who do you see as the supreme body?

Mr. C. Myers:

Okay. As I mentioned before, although we are a small inspectorate we do have links with other inspectorates, in particular, the UK Health and Safety Executive. So, in terms of workplace health and safety, I will be contacting one of the specialist inspectors who specialises in this area within the Health and Safety Executive and asking for their advice. They may then point me in the direction of another organisation or individuals in other organisations such as the Health Protection Agency or WHO, for that matter.

The Deputy of St. Peter:

Would it be fair to say that from your perspective, in regard to health and safety, the sort of people you would be talking to in the UK would be people who are responsible for all the similar electromagnetic transmissions, vis-à-vis radio masts, telephone masts, radars and general EM (electromagnetic) emitters, that they will be doing their job rather than specifically involved in mobile phones?

Mr. C. Myers:

The way the Health and Safety Executive is structured is in a number of tiers. They have general inspectors, similar to myself in many ways, but they also have specialists and they have specialists who can focus in on very specific areas. So, the person that I would be seeking advice from on this specific issue is the person who focuses purely on radiation issues, but he does cover other areas of radiation as well, he covers the whole area.

The Connétable of St. Brelade:

Would it be appropriate for us as a sub-panel perhaps to communicate with these people? Would you think there would be a benefit in that from the point of view of Jersey?

Mr. C. Myers:

If the panel felt that it wanted to request the individual who I would talk to come over and speak to them

then I could try and see if I can arrange that. But I am not quite sure what the benefit would be to you in view of the number of people you have had before you. I think the message that you would get would be mainly the same about there being lots of different views but there is one international standard and guidelines which are similar.

The Deputy of St. Peter:

In Jersey, where we are, who would you see as the lead agency in ensuring that we protected our general public from the possibility of being exposed to extra energy levels over and above that that is suggested by ICNIRP?

Mr. C. Myers:

In Jersey, and this reflects the agreement that I have with Health Protection, I would say, in terms of wide public health issues, I would see Health Protection being the lead body. Although there will be lots of overlapping areas, and we do talk quite regularly about those areas and about who should take forward issues in respect of that.

Deputy A. Breckon:

In your professional opinion, Colin, what would the levels of exposure -- you would use the agencies that you mentioned before, ICNIRP and World Health as the authorities on, so you would tend to draw on that to get safe levels of exposure for employees, if that is the case?

Mr. C. Myers:

The Health and Safety Law is very general and just sets out the statement that employers are required to ensure, so far as is reasonably practicable, the health, safety and welfare of their employees. Without any detailed regulations which then sets out what specific measures should be taken in respect of specific risks, I would be expecting the employer to refer to accredited national or international guidelines and that can be British standards, Europeans standards. In this particular case it would be the ICNIRP standards which would be the ones which would be referred to; which I will be referring to in terms of both employee exposure and also public exposure.

The Deputy of St. Peter:

So we do not get confused when we are talking about the ICNIRP standard, there are other standards associated with working on radio masts other than ICNIRP and normally it is a function of switching off the system before work is carried out. That again is one of the things that would be ensured as part of the health and safety plan by the operators before they allow them to work on the system, because there is a perception sometimes that engineers go and work on these masts while they are still operating.

Mr. C. Myers:

Well, certainly I can only comment on my own personal discussions that I have had with Jersey Telecom and the principle would be you switch it off before you get anywhere near it and that would be part of the “permit to work” system which would allow you to work in the area. The use of the personal monitors is a failsafe system, if you like, to make sure that people switch the right button off, if you like, because these things happen where people inadvertently do something as simple as that, put the wrong switch off.

The Connétable of St. Brelade:

Given that the mobile telephony market here has been stimulated by the Jersey Competition Regulatory Authority through public demand into bringing more operators over, which inevitably puts pressure on systems, if you like, have Jersey Competition Regulatory Authority at any stage of the processes of allocating licences, been in touch with you for comment or input into their licence agreements?

Mr. C. Myers:

I have not personally been contacted. I am not quite sure how we would be expected to be contacted because they would be looking at possibly slightly different issues. But, no, I have not been.

Deputy A. Breckon:

Anything else? Colin, I did say at the start if there is anything you would like to say to us that we have not covered that you think is relevant or of note then now is the hour.

Mr. C. Myers:

No. I think you have covered the issues that I was going to talk about. So, thank you very much.

Deputy A. Breckon:

Thanks for that because I did say this is part of a process not the end of it so there might be something that you have referred to there that we might get back to you and say could we have a copy of that or there is something that you might find that you now think is of interest to us and you have got the contacts, please feel free to use that. Again, thanks for your time. We will now adjourn until 3.00 p.m.

Mr. C. Myers:

Thank you.