

Communication to the Aarhus Convention Compliance Committee concerning compliance by the United Kingdom regarding access to justice in connection with waste management (ACCC/C/2016/142)

Observer Statement from Peter Silverman MA MSc

I founded the Clean Highways campaign (www.cleanhighways.co.uk) in February 2010 to hold to account public bodies with a statutory duty to keep land and highways clear of litter under S89(1) of the Environmental Protection Act 1990. I have met with three different Roads Ministers.

I have made six complaints to the Magistrates Court under EPA S91 – *Summary proceedings by persons aggrieved by litter*. They are summarised at the bottom of this note.

I have concluded that in practice EPA 91 does not provide a fair and effective remedy.

A recalcitrant duty body can always avoid an Abatement Order by clearing the land the day before the final hearing. They can then revert to their old non-compliant practices.

The proceeding can take an inordinate amount of time. Case 6, below, took 10 months to complete and involved 3 visits to court.

In four of the cases I was awarded costs of around £300 each time. However, in the last two I incurred combined costs of £15,466. One is effectively entering a casino where you either win small or lose big time. When I explain these risks to potential complainants they invariably decide not to proceed.

I was never made aware of any procedure to limit costs.

Mr Hemmings case is therefore not an isolated one. I am only aware of two other S91 cases ever getting to court. One was instigated by Kip Waistell against Hereford Council in 2009 and one by George Niblock against Aberdeenshire Council in 2018.

1. M40 between junctions 1 and 4 – Warning Notice sent on 19/02/2010 to the Secretary of State for Transport – Complaint to High Wycombe Magistrates Court on 24/03/10 - Case heard on 07/06/2010. The motorway had been cleaned by then and I explained that a Litter Abatement Order was therefore not required. I was awarded costs. I later established via a request under the Environmental Information Regulations that shortly after receiving the Warning Notice the Highways Agency increased its cleansing activities on this section by 6 times.

2. 2010 -A355 in Beaconsfield – Warning Notice sent on 22/07/2010 to South Buckinghamshire District Council (SBDC) – Complaint sent to Wycombe & Beaconsfield Magistrates Court 31/08/2010 – Summons delivered 20/09/2010 – Highway cleaned on 27/09/2010 – Court hearing had been set for 13/10/2010 – Two days beforehand, SBDC agreed to pay my costs of £242. I wrote to the court withdrawing my complaint.

3. 2010 - M40 Junction 1 slip roads – Warning Notice sent to the Secretary of State for Transport 14/03/2011 - Complaint sent to Wycombe & Beaconsfield Magistrates Court

21/03/2011 – Summons delivered to Treasury Solicitor’s Office 12/04/2011 – Court hearing on 09/05/2011 was adjourned to 08/06/2011- I was told that if I wished to press for an Abatement Order the hearing would have to be further postponed to October. On the morning of hearing I received a letter from the Under-secretary of State for Transport offering a meeting with senior officials to discuss my “Our Littered Motorways” report once the court case had been resolved. At the hearing I therefore withdrew my complaint. I was awarded costs.

4. 2011 - Rail embankments Ruislip Manor - Warning Notice sent to London Underground Ltd (LUL) 05/08/2011 – Complaint to Uxbridge Magistrates Court 15/08/2011 – Informal hearing 31/08/2011 – Final hearing 01/11/2011 – I was awarded costs.

5. 2012 - M40 J1 slip roads and roundabout - Warning Notice sent to Under-secretary of State for Transport 29/02/2012 - Complaint sent to Wycombe & Beaconsfield Magistrates Court 20/03/2012 – Summons 13/04/2012 – Initial hearing 09/05/2012 – Final hearing 27/07/2012 – Litter Abatement Order not issued. Judge ruled that there was no defacement at the time of my complaint. I was therefore not awarded costs and would have been obliged to pay those of the Secretary of State which amounted to £8,100. However, the Judge ruled that I should only pay £2,000 on the grounds that I had acted responsibly and, to do otherwise, would put decent people off from using the legislation. My own costs were £8,811 as, for the first time, I had employed a Barrister. Total cost incurred by me were therefore £10,821.

6. 2012 - Rail embankments Ruislip Manor - Warning Notice sent to London Underground Ltd (LUL) 26/03/2012 - Complaint to Uxbridge Magistrates Court 03/03/2012 – Initial hearing 17/07/2012 – Trial hearing set for 06/11/2012 however after waiting all day in court it was postponed to 30/01/2013. Magistrates decided the land was not defaced by litter at the time of my complaint. I was ordered to pay LUL’s costs of £4,645.

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5th November 2020