How could personal liability arise for a councillor?

You have been provided with information prepared by solicitor Jessica Learmond-Criqui about the harmful effects of electromagnetic radiation ("EMR") emitted from, among other things, mobile masts, antennae, small cells and the like. You are, therefore, aware of the harmful effects of EMR to your residents which could result in death to those most susceptible to the effects.

There are essentially two ways in which personal liability to you could arise if you disregard and do not act on this:

(a) You sit on committees and one of them has been:

(i) planning matters permitting masts and antennae to be approved; or
(ii) making decisions about health, safety and wellbeing matters;

(b) misfeasance or misconduct in public office which is a criminal offence.

Before commenting briefly on these, it may be helpful to note that whereas normally councillors would be indemnified by the local authority in relation to their acts, the following are relevant circumstances where an indemnity cannot be provided to a member:

- **Criminal acts (of which misfeasance in public office is one)**

- **Recklessness.**

A. Sitting on committees

1. All councillors sit on committees and you may have been involved with planning or health committees in your time as a councillor. Potential liabilities from knowledge of harm to health which are ignored include:

   (a) Prosecution for gross negligence manslaughter;
   (b) Corporate manslaughter.

2. These are explained in brief below.

3. The effect of electromagnetic radiation can interact with pacemakers or the electricity signals of the heart resulting in death. The long term exposure to EMR can result in chronic conditions leading to death.

4. There are essentially three drivers for effective health and safety management: moral imperative, business case and legal compliance. This note deals with legal compliance issues.

5. You have been informed that the advice on the safety of 5G from Public Health England (which incidentally is being disbanded next spring) and other government departments is misleading. You may think that you have to follow this misleading advice. However, this is not Public Health England's understanding. In a response to a letter from solicitors DLA Piper, Public Health England's stance is:

"A public body must determine how much weight to put on the PHE guidance. Equally that body must determine what other evidence from your client or other members of the public or interested parties to consider in making any decision. If it be alleged that a public body now or in the future acted unlawfully in placing reliance on the guidance, that cannot retrospectively taint the guidance with illegality."

6. It is for the local council to come to its own decision about matters put before it and to consider the health issues itself. It cannot avoid liability by saying that it followed PHE's guidance if that guidance is demonstrably shown to be misleading.

7. The Local Government Association counsels the following[1]:

"All councillors should challenge officers and fellow elected members on health and safety decisions if they appear out of proportion...., poor health and safety decisions will undermine the community's confidence in the ability of officers and councillors to effectively manage the real risks and their ability to effectively secure public safety. Sensible risk management on the other hand will enhance the council's reputation for pragmatic decision-making and protecting their community.

8. Your council has obligations to safeguard the health and safety of its residents under the following although there may be other duties elsewhere (bold is my highlight):

   (a) 2B of the National Health Service Act 2006:

2B Functions of local authorities and Secretary of State as to improvement of public health

(1) Each local authority must take such steps as it considers appropriate **for improving the health of the people in its area**.

(c) Heath and Safety at Work Act 1974

3 General duties of employers and self-employed to persons other than their employees.

(1) It shall be the duty of every employer to conduct his undertaking in such a way

as to ensure, so far as is reasonably practicable, **that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety**.

9. It must also promote the wellbeing of its residents under:

   (a) Care Act 2014

Promoting individual well-being

(1) The general duty of a local authority, in exercising a function under this Part in the case of an individual, **is to promote that individual's well-being.**

(2) "Well-being", in relation to an individual, means that individual's well-being so far as relating to any of the following—

(a) personal dignity (including treatment of the individual with respect);
(b) **physical and mental health and emotional well-being**;

10. While you are in the role of sitting on committees and making decisions on policy and planning, you are conducting the business of the council.

11. You will be familiar with your responsibilities but it may be helpful to set out the following extracts[2]:

"Responsibilities need to be understood

The principal duty holder under the Health and Safety at Work etc Act is the employer. However, the council through the leader and cabinet will set the direction for health and safety, through its strategy and policy, and allocate resources to make the strategy a reality."

At pg 18 - *"There are serious consequences for both organisations and individuals when health and safety management falls below the required standard. Breaches of the Health and Safety at Work etc Act 1974 and associated regulations and noncompliance with enforcement notices can result in substantial fines and imprisonment. Cleary, the impact of trial and sentence on an individual, including elected members, would be enormous. Furthermore, where senior managers have failed to the extent that it amounts to gross breach of the duty of care and someone dies, the council could be prosecuted for corporate manslaughter. The fine upon conviction could run into millions of pounds together with other sanctions available to the court. Provisions exist for health and safety and corporate manslaughter charges to be tried in parallel. If the conduct of an individual employee or elected member amounted to gross negligence and caused a persons death, then they individually could be prosecuted for gross negligence manslaughter. The maximum punishment is life in prison."*

“Examples of prosecutions

• A city council was fined £125,000 plus £40,000 costs after a refuse lorry killed an 11-year-old girl.

• A county borough council was fined £60,000 plus £22,000 costs after a man died in a care home. Poor maintenance and training was blamed.

• A metropolitan borough council was fined £400,000 and over £30,000 costs following a death.”

Pg 19 – “A landmark case – Barrow Borough Council

In 2002, an outbreak of legionnaires’ disease at an arts and leisure centre run by Barrow Borough Council led to the deaths of seven people. Nearly 200 people were infected. A case against the council for corporate manslaughter was dismissed under previous law. The council pleaded guilty under the Health and Safety at Work Act.

Mr Justice Burnton said that he would normally have imposed a fine of more than £1 million, but he was reluctant as it would have had a direct impact on taxpayers and service provision. Even so, he fined the council £125,000 plus £90,000 costs.

“One of the purposes of a financial penalty is to demonstrate to those council taxpayers, to the electorate and to councillors the gravity of matters such as this”. In his summing up of the case, he stated: “The failings were not only at the lowest levels […] those failings went all the way, I am afraid to say, to the top of the council in terms of its serving officers. It is likely they went beyond the officers to the councillors, because there is no evidence that there was proper attention given to health and safety within the borough.”

Barrow Council leader Bill Joughin said: “*We had policies written on paper but [...] it was not part of the culture of the organisation, and there was no chain of command. We ticked all the boxes, but there was not a procedure which ensured it was all adhered to.”*

12. Electromagnetic radiation is the new legionnaires or asbestos scandal. You cannot see it or smell it but the effects are acutely felt by those who are more susceptible to harm from it.

13. From the above, you can see that by failing to take note of the health harms set out in Ms Learmond-Criqui’s note already sent to you which is being caused to residents from the way the Council interprets the National Planning Policy Framework (“NPPF”) when giving planning permission to masts and antennae, that it is failing in its duties and if you sit on the planning committee, you are involved in that breach of duty.

14. The NPPF states that a local authority cannot “set health safeguards different from” the International Commission guidelines when it is considering a planning application for a mast etc. Many councils have interpreted that to mean that they cannot take health concerns into account in relation to considering whether these antennae are permitted by them to be placed around the area.

15. But the council’s other planning policies have positive requirements to take account of health and wellbeing which are being ignores. And, given the positive statutory duties to safeguard and to promote the health and well being of residents as set out above there is a conflict with the NPPF and where there is a conflict, the health considerations must take precedence.

16. Given the demonstrable serious deleterious effect on the health of many residents with the roll out of 5G, it is negligent and reckless of the council and of councillors to fail to address this situation immediately knowing as you now do that that action is harmful to health.

17. That failure may lead to death of residents and to personal liability of councillors involved in committees setting policy and making decisions relating to these matters not simply in the common law of negligence but also potentially for corporate manslaughter.

18. Under the Corporate Manslaughter and Corporate Homicide Act 2007, an offence will be committed where failings by an organisation’s senior management are a substantial element in any gross breach of the duty of care owed to the organisation’s employees or members of the public, which results in death. https://www.hse.gov.uk/pubns/indg417.pdf

19. Do see the extract below [3]:

What do companies and organisations need to do to comply?
Companies and organisations that take their obligations under health and safety law seriously are not likely to be in breach of the new provisions. Nonetheless, companies and organisations should keep their health and safety management systems under review, in particular, the way in which their activities are managed or organised by senior management.

Where does health and safety legislation come in?

Under the Act, health and safety legislation means "any statutory provision dealing with health and safety matters" so it will include transport (road, rail, river, sea, air) food safety and workplace safety as enforced by HSE and local authorities.

Juries will be required to consider breaches of health and safety legislation in

determining liability of companies and other corporate bodies for corporate manslaughter/homicide. Juries may also consider whether a company or organisation has taken account of any appropriate health and safety guidance and the extent to which the evidence shows that there were attitudes, policies, systems or accepted practices within the organisation that were likely to have encouraged any such serious management failure or have produced tolerance of it.

20. Even if you are not concerned for yourself, you may be concerned for your local authority that they have put themselves in a position of potential liability.

21. You may also be interested to see the guidance as to civil and criminal liability for councillors of breach of responsibilities would apply also to breaches of duties relating to health set out above[4].

22. The health legislation must also be interpreted in accordance with the Human Rights Act 1998. Sections 1, 3 and 8 of the HRA need particular consideration. It is unlawful for a public body to act in a way that is incompatible with a Convention right.

Misfeasance or misconduct in public office

23. I have set out extracts of the criminal offence of misconduct in public office which has been taken from the Crown Prosecution Service: https://www.cps.gov.uk/legal-guidance/misconduct-public-office

24. Misconduct that breaches a code of conduct could also constitute the common law criminal offence of misconduct in a public office, which covers a wide range of conduct. It is a very serious, indictable-only offence carrying a maximum sentence of life imprisonment. The offence is reserved for cases of serious misconduct or deliberate failure to perform a duty that is likely to injure the public interest.

25. The elements of this offence were restated in: *Attorney-General's Reference (No 3 of 2003) [2004] EWCA Crim 868* as:

    - A public officer, acting in that capacity.

    - Wilfully neglecting to perform their duty (or wilfully misconducting themselves).

    - To such a degree as to amount to an abuse of the public's trust in the office holder.

    - Without reasonable excuse or justification.

26. To establish wilful neglect or misconduct by a member, there has to be:

- an awareness of the duty to act; or
- subjective recklessness about the existence of the duty.

27. As a councillor, you are a public officer. For the reasons set out in Section A, you are neglecting to perform your health duties to such a degree that it amounts to an abuse of the public's trust in you. Given that you have now been provided with information which demonstrates that the government's advice relating to radiation from mobile service equipment in particular is misleading, you have no reasonable excuse or justification for such neglect.

Conclusion

28. It is clearly blameworthy to take an obvious and significant risk of causing injury to another such as harm caused by EMR.

29. Apart from anything else, your primary role is to represent your ward or division and the people who live in it. You provide a bridge between the community and the council. You are an advocate for your local residents. They are telling you that they are being made ill from electromagnetic radiation and you are ignoring them.

30. Inspiring local communities, making a real difference and changing people's lives to help create a better future for the people and places you represent requires ambitious, bold leadership. Effective political leadership is the building block of a healthy and vibrant democracy[5]. In relation to health matters raised, I suggest that that leadership is lacking.

31. Preventing illness and empowering people to stay well requires action from all sections of the community. The broader determinants of health – people's local environment, housing, transport, employment and social interactions – can be significantly influenced by how councils deliver their core roles and functions.

32. The main body of the council as represented by a meeting of all members can set overriding policies, or review any delegated decisions. It is possible for the full council to make a decision which clarifies its role in safeguarding the health and safety of its residents.

33. Paragraph 10 of the explanatory notes to the Localism Act 2011 says that:

Section 1 provides a general power of competence for local authorities. It gives local authorities the same power to act that an individual generally has and provides that the power may be used in innovative ways, that is, in doing things that are unlike anything

that a local authority - or any other public body - has done before, or may currently do. The section defines the meaning of an 'individual' so as to avoid referring to the reduced powers exercised by for example a child. Subsections (4), (5) and (6) further define the extent of the power. Where the authority can do something under the power, the starting point is that there are to be no limits as to how the power can be exercised.

34. You, as the councillor, can take the initiative to stop the harmful effects of EMR in your community. Doing so will comply with the Nolan principles of conduct in public office and your own council's code of conduct.

35. Taking a sensible approach to health and safety is important. This is all about practical steps to protect people from real harm and suffering; not creating bureaucratic steps to cover your back and avoid responsibility. If you believe some of the stories you hear, health and safety is all about stopping any activity that might possibly lead to harm. This is not what the law requires or what your council should be aiming for. The Health and Safety Executive (HSE) advocates seeking a balance between the unachievable aim of absolute safety and the kind of poor management of risk that damages lives and the economy[6].

36. As a councillor you can play an important role in promoting a sensible approach to health and safety. Failure to do so may open you to personal liability as set out above.

4.9.20

Schedule 1
Misfeasance in public office

Definition of the Offence

The elements of the offence are summarised in *Attorney General's Reference No 3 of 2003* [2004] EWCA Crim 868.

The offence is committed when:

· a public officer acting as such;

· wilfully neglects to perform his duty and/or wilfully misconducts himself;

· to such a degree as to amount to an abuse of the public's trust in the office holder;
· without reasonable excuse or justification.

· Nature of the neglect or misconduct

The wilful neglect or misconduct can be the result of a positive act or a failure to act. In the case of ***R v Dytham*** [1979] QB 722, for example, a police officer was held to have been correctly convicted when he made no move to intervene during a disturbance in which a man was kicked to death.

There must also be an element of knowledge or at least recklessness about the way in which the duty is carried out or neglected. The test is a subjective one and the public officer must be aware that his/her behaviour is capable of being misconduct.

· **Meaning of 'wilful' (also see 'Breach of Duty')**

In *Attorney General's Reference No 3 of 2003* the court approved the definition of 'wilful' as 'deliberately doing something which is wrong knowing it to be wrong or with reckless indifference as to whether it is wrong or not'.

In *R v G* [2003] UK HL 50 Lord Bingham said with respect to inadvertence:

"It is clearly blameworthy to take an obvious and significant risk of causing injury to another. But it is not clearly blameworthy to do something involving a risk of injury to another … if one genuinely does not perceive the risk. Such a person may fairly be accused of stupidity or lack of imagination, but neither of those failings should expose him to conviction of serious crime or the risk of punishment."

Lord Steyn added:

"… the stronger the objective indications of risk, the more difficult it will be for defendants to repel the conclusion that they must have known." (*R v G* [2003] UK HL 50)

· **Abuse of the public's trust**

Public officers carry out their duties for the benefit of the public as a whole. If they neglect or misconduct themselves in the course of those duties this may lead to a breach or abuse of the public's trust.

· **Seriousness of the neglect or misconduct**

The behaviour must be serious enough to amount to an abuse of the public's trust in the office holder. In *R v Dytham*, Lord Widgery said that the element of culpability:

"… must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment."
In *Attorney General's Reference No 3 of 2003* the court said that the misconduct must amount to:

"… an affront to the standing of the public office held. The threshold is a high one requiring conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder."

In *Chapman* [2015] 2 Cr App R 10, the Lord Chief Justice stated that the judge in summing up had to make clear that the necessary conduct was not simply a breach of duty or a breach of trust:

"It is not in our view sufficient simply to tell the jury that the conduct must be so serious as to amount to an abuse of the public's trust in the office holder, as such a direction gives them no assistance on how to determine that level of seriousness. There are, we consider, two ways that the jury might be assisted in determining whether the misconduct is so serious. The first is to refer the jury to the need for them to reach a judgment that the misconduct is worthy of condemnation and punishment. The second is to refer them to the requirement that the misconduct must be judged by them as having the effect of harming the public interest."

· **Consequences**

Although the offence is not a 'results crime', the likely consequences of any wilful neglect or misconduct are relevant when deciding whether the conduct falls below the standard expected:

"It will normally be necessary to consider the likely consequences of the breach in deciding whether the conduct falls so far below the standard of conduct to be expected of the officer as to constitute the offence. The conduct cannot be considered in a vacuum: the consequences likely to follow from it, viewed subjectively … will often influence the decision as to whether the conduct amounted to an abuse of the public's trust in the officer. (Attorney General's Reference No 3 of 2003)."

Whilst there is no need to prove any particular consequences flowing from the misconduct, it must be proved that the defendant was reckless not just as to the legality of his behaviour, but also as to its likely consequences.

The consequences must be likely ones, as viewed subjectively by the defendant. Although the authorities do not say so, likely can probably be taken to mean at the very least 'reasonably foreseeable'; it is arguable that likely may mean 'probable' in this context.

· **Motive**

In order to establish whether the behaviour is sufficiently serious to amount to the offence, the officer's motive is also relevant:
"… the question has always been, not whether the act done might, upon full and mature investigation, be found strictly right, but from what motive it had proceeded;

whether from a dishonest, oppressive, or corrupt motive, under which description, fear and favour may generally be included, or from mistake or error …

"To punish as a criminal any person who, in the gratuitous exercise of a public trust, may have fallen into error or mistake belongs only to the despotic ruler of an enslaved people, and is wholly abhorrent from the jurisprudence of this kingdom." (*R v Borron* [1820] 3 B&Ald 432: Abbott CJ, at page 434.)

At its highest the motive may be malice or bad faith but they are not prerequisites. Reckless indifference would be sufficient.

Without reasonable excuse or justification

It is not necessary for the prosecution to prove the absence of a reasonable excuse or justification, although the nature of the prosecution evidence should in practice negate any such element.;

The defendant may advance evidence of a reasonable excuse or justification. It is for the jury to determine whether the evidence reveals the necessary culpability.

Level of misconduct required

The offence is, in essence, one of abuse of the power or responsibilities of the office held. Misconduct in public office should be used for serious examples of misconduct when there is no appropriate statutory offence that would adequately describe the nature of the misconduct or give the court adequate sentencing powers.

The third element of the definition of the offence provides an important test when deciding whether to proceed with an offence of misconduct in public office. Unless the misconduct in question amounts to such an abuse of trust, a prosecution for misconduct in public office should not be considered.

The culpability '… must be of such a degree that the misconduct impugned is calculated to injure the public interest so as to call for condemnation and punishment' (*R v Dytham 1979* QB 722).

The fact that a public officer has acted in a way that is in breach of his or her duties, or which might expose him/her to disciplinary proceedings, is not in itself enough to constitute the offence.

Examples of behaviour that have in the past fallen within the offence include:

- wilful excesses of official authority;
- 'malicious' exercises of official authority;

· **wilful neglect of a public duty;**

· intentional infliction of bodily harm, imprisonment, or other injury upon a person;

· frauds and deceits.

Breaches of duty

Some of the most difficult cases involve breaches of public duty that do not involve dishonesty or corruption.
In all cases involving breach of duty, the following matters should be considered:

Was there a breach of a duty owed to the public (not merely an employment duty or a general duty of care)?

· Was the breach more than merely negligent or attributable to incompetence or a mistake (even a serious one)?

· Regard must be had to motive.

In considering whether the neglect or misconduct was wilful, the following issues should be addressed:

· Did the defendant have a subjective awareness of a duty to act or subjective recklessness as to the existence of a duty?

· Did the defendant have a subjective awareness that the action or omission might be unlawful?

· Did the defendant have a subjective awareness of the likely consequences of the action or omission?

· Did the officer realise (subjective test) that there was a risk not only that his or her conduct was unlawful but also a risk that the consequences of that behaviour would occur?

· Were those consequences ‘likely’ as viewed subjectively by the defendant?

· Did the officer realise that those consequences were ‘likely’ and yet went on to take the risk?

Best Regards,

Jessica

[1] https://www.local.gov.uk/sites/default/files/documents/health-and-safety-council-be3.pdf at pg 21

[2] https://www.local.gov.uk/sites/default/files/documents/health-and-safety-council-be3.pdf at pg 11

[3] https://www.hse.gov.uk/corpmanslaughter/faqs.htm#hs

[4] https://onthewight.com/councils-legal-present-justification-for-criminal-liability-claim-over-budget/

[5] https://local.gov.uk/sites/default/files/documents/11.101%20Councillors%27%20Guide%202018_v10_WEB.pdf

[6] https://www.local.gov.uk/sites/default/files/documents/health-and-safety-council-be3.pdf

Primer for Councillors and Planners

Telco applications concerning 4G LTE, 5G, small cell networks

Here in the UK there has been an almost universal acceptance by national and local government that in relation to microwave in air technology (2g,3g,4g,5g wifi, bluetooth and smart meters) the thermal effects matter, and non-thermal effects do not.

HSPA (PHE) guidelines are out of date and still refer back to the ICNIRP. This anachronism is putting the Public in tremendous danger and is subject of the Judicial Review 'actionagainst5G'.

The absurdity of excluding non-thermal effects is also borne out by a large body of credible peer reviewed independent science that is disregarded by the telecoms industry in favour of science that it commissions itself, to reinforce the thermal harm dogma. However:

- Local Planning Authorities (LPA's) are **competent authorities** under the European Electronic Communications Code (EECC), and must also under the National Planning Policy Framework (NPPF) consider siting and health effects as material considerations

- In considering environmental and public health impacts, LPAs need to **risk assess** Radio-Frequency Radiation (RFR) exposures which PHE confirm are regulated under planning policy (including planning law and planning procedures). Telecoms applicants are self-mandated to risk assess RFR emitting equipment and services using International Standards Organisation (ISO) procedures. As competent authorities under the EECC, LPA's should require risk assessments on evidence of non-thermal risk/harm to be made available to make a precautionary planning determination if the applicant cannot prove that RFR exposures are entirely safe against the weight of evidence of risk/harm. The LPA will have to be receptive to reliable evidence and be proactive in obtaining necessary risk assessments from the applicants.

- Regarding **Prior Approval** of Telco applications: LPA duties still apply, notwithstanding the presumption in favour of development under Part 16 of the Town and Country Planning (General Permitted Development) Order 2015.

Local planning applications in this field have been governed until now by a narrow interpretation of "siting and appearance" aspects and all others have been excluded on the basis of, inter alia, NPPF paragraph 116:

"116. Local planning authorities must determine applications on planning grounds only. They should not seek to prevent competition between different operators, question the need for an electronic communications system, or set health safeguards different from the International Commission guidelines for public exposure"

However, sentence 1 of paragraph 180 of the NPPF which has been ignored until now, states:

"180. Planning policies and decisions should also ensure that new development is appropriate for its location taking into account the likely effects (including cumulative effects) of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or the wider area to impacts that could arise from the development".

This advisory ties in with UK law as in **The Pollution Prevention and Control Act 1999** which defines 'pollution' as including noise, heat, vibrations or any other kind of release of energy and

79(1) of the **Environmental Protection Act 1990** of which Paragraph 1(a) would apply for 'any premises in such a state as to be prejudicial to health or a nuisance'. The term 'premises' includes land which can also include radio masts. Paragraph 1(d) of this second Act applies to “any dust, steam, smell or other effluvia arising on industrial, trade, or business premises and being prejudicial to health or a nuisance”.

The word effluvia has been used in connection with a discharge – and microwave radiation is a discharge from the relevant transmitter.

The discharge is commonly referred to as RFR (radiofrequency radiation) and it is a pollutant that constitutes a **“material planning consideration”** which gives rise to **“unacceptable and incompatible use of land”** and this is a basis of legitimate rejection of such RFR polluting equipment planning applications.

Furthermore and this is critical – the UK government subsumed **the European Electronic Communications Code (EECC)** into UK law in December 2020 (days before Brexit took effect), so as to allow British telecom companies such as Vodafone and EE permission to supply into the EU telecom market as equal competitors.

'The European Electronic Communications Code (EECC) provides a 'legal framework' to ensure 'freedom to provide communications networks and services' subject to restrictions including public health through requirements placed on EU Member States (i.e. the UK Government) to take the necessary steps to implement the various provisions of the EECC into domestic law including Recital 106:

'Where mobile operators are required to share towers or masts for environmental reasons, such mandated sharing could lead to a reduction in the maximum transmitted power levels allowed for each operator for reasons of public health, and this in turn could require operators to install more transmission sites to ensure national coverage. Competent authorities should seek to reconcile the environmental and public health considerations in question, taking due account of the precautionary approach set out in Council Recommendation 1999/519/EC

The first sentence of Recital 110 reads, *'the need to ensure that citizens are not exposed to electromagnetic fields at a level harmful to public health is imperative'.*

In addition, the EECC states:

ARTICLE 45. 2 requires participating nation states to *‘promote the harmonisation of use of radio spectrum by electronic communications networks and services' ... (pursuing objectives including) ... (h) consistency and predictability throughout the Union regarding the way the use of radio spectrum is authorised in protecting public health taking into account Recommendation 1999/519/E'.*

EECC RECITALS 106 AND 110, AND ARTICLE 45.2 h) on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) requires under Recommendation (19) that:

*'Member States should take note of progress made in scientific knowledge and technology with respect to **non-ionising** radiation protection, taking into account the aspect of **precaution**, and should provide for regular scrutiny and review with an assessment being made at regular intervals in the light of guidance issued by competent international organisations, such as the International Commission on Non-Ionising Radiation Protection'*

DLA Piper (Public Health England's solicitors) have already warned any “body” relying on ICNIRP without undertaking a proper investigation of the available scientific evidence would be liable themselves (not the government liable) if ICNIRP turns out to be wrong – as the BERINIS body of scientists in Switzerland seem to be implying now.

This technology is uninsurable and so “competent authorities” expose themselves to potential unlimited liability in the face of potential personal injury claims justified on the evidence of a huge body of independent science – if they do not apply their 'competency' appropriately, when making decisions that impact on the public health consequences of RFR exposure.

The UK government have named Ofcom as the national competent authority. From 2014, Local Planning Authorities were endowed with 'competent authority' re: their planning functions, as Recital 26 of Directive 2014/61/EU acknowledges that:

“a number of different permits (permissions) concerning the deployment of electronic communications networks or new network elements may be necessary, including building, town planning, environmental and other permits, in order to protect national and Union general interests. The Directive preserves the right of each competent authority to be involved and maintain its decision-making prerogatives in accordance with the subsidiarity principle, and in accordance with Article 2 Definitions – as set out in the Directive.”

Taking paragraph 180 of the National Planning Policy Framework (NPPF) and aggregating the above law, UK national and local government must by law now reassess their approach to the way they assess and approve planning requests in the field of microwave in air technological apparatus.

If they do not and continue paying sole attention to NPPF para 116, as they have until now, there would be multiple breaches of the international treaty, the EECC – with serious legal implications as well as serious commercial implications for the relevant telecom enterprises.

On top of all that Matt Warman’s draft proposal from the DCMS **to remove** such localized planning authority and make such permission automatic – would constitute a clear and serious breach of the international treaty – the EECC.

In this case Mr Warman could jeopardize sales by UK telecom companies. These companies could then be disqualified from the single European telecom market since they would be benefitting from an unfair competitive advantage arising from the UK Government's clear breach of the EECC in emasculating the approved and identified competent authorities from fulfilling their public health obligations as defined in the Code, and as required by UK planning law and policy.

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