

Sir

Re: Letter from Dealga O'Callaghan (DOC), and agreed by Jeremy Barrell (JB), published in Newsletter No. 140.

There are very important matters in this letter regarding the landmark 'Poll' case that I would like to address. In relation to this, I should declare that having been asked to review the 'Poll' case I was provided with all the documentation and also have a transcript of the court proceedings. I wish to limit my response to technical matters only.

The specific issues I would like to address are taken from the published letter and cited below.

*"...both JB and I concluded that the subject tree with both an included bark union and the fungus present was 'high risk'. We arrived at that conclusion without recourse to any system of assessment..."*

*"...I point out forcefully that the calculations that both JB and I agreed upon for both M&C and QTRA were prepared by way of example of how the systems work. They were not presented as a final and/crucial piece of evidence in respect of the subject Ash tree."*

The chronology is important here.

DOC does not mention any level of risk associated with the tree in his expert report. JB mentions 'high risk' a number of times in his report, but there is no reference at all to 'medium risk'. In the First Joint Statement 'high risk' is not mentioned at all. In this Statement, the only level of risk attached to the 'subject tree' and agreed by the experts, is 'medium' (page. 3, no. 17).

Both experts submit their Reports and First Joint Statement. Evidently, the court regards the level of risk from the tree to be important to the case. With DOC not having assessed the risk from the tree in his Report, and JB having rated the risk as 'high' in his Report but downgrading it to 'medium', upon agreement with DOC, in the First Joint Statement, the court seeks clarification upon the matter. The experts are directed to produce a Second Joint Statement ('Answers') by the court and instructed thus:

*"In your reports the term 'high risk' appears and in the Joint Statement the term 'medium risk' appears. Can you provide an agreed definition as to what these terms mean with regard to: 1. What action should be taken? and 2. The appropriate time scale for taking that action?"*

In the 'Answers' the experts reply;

*"In answering the question the experts agreed that an explanation of what is generally understood by the terms 'High Risk' and Medium Risk' in relation to the subject tree should be set out first and they are agreed about the following explanation.*

*Within the Arboricultural Profession there are two generally accepted methods of assessment of trees for hazard, ie The International Society of Arboriculture (ISA) Hazard Evaluation System and the Quantified Tree Risk Assessment (QTRA) developed in the UK and based on the ISA system."*

In the 'Answers', only the ISA (referred to as 'M&C' in the DOC letter) and QTRA methods are used by the experts to determine the levels of risk with and without the decay fungus present. From the data entered, descriptions, and representation to the court in the 'Answers' the calculations are clearly not 'by way of example', or 'illustrative', but very specifically apply to the tree in question as detailed on page 182 of the court bundle:

*"Application of the Systems*

ISA

*Application of the ISA System to the subject tree...*

QTRA

*Application of the QTRA System to the subject tree..."*

Nowhere in the 'Answers' do the experts inform the court they have assessed the level of risk 'without recourse to any system of assessment'; agree the levels of risk 'without recourse to any system of assessment'; or detail how they went about assessing the risk 'without recourse to any system of assessment'. In the transcript of the court proceedings neither expert is questioned on their assessment of risk without 'recourse to any system of assessment' during examination in chief, cross examination, or re-examination. They are examined on the contents of the 'Answers'; ie the ISA and QTRA methods.

To demonstrate the importance of the 'Answers' in the case, and for reasons of brevity and being concise, I have reproduced the first occasion the 'Answers' are raised during examination in chief, in one of many examples from the court transcript of proceedings on Thursday 23rd March 2006.

Page 21, starting line 4. Q is Mr Stead (Barrister representing Poll) and A is JB. The 'last joint statement' is the 'Answers'.

*"Q. Can I ask you about your last joint statement, p 183? ....As I understand it, the conclusion of medium risk comes from an application of the risk assessment under the ISA or QTRA method?*

*A. Yes."*

As detailed in the letter published in issue 139 of the Newsletter, that both experts incorrectly calculated the levels of risk from the tree using the ISA and QTRA methods is a matter of recorded fact, not opinion. That the court relied on these calculations in determining the tree was 'high risk' with the decay fungus present is also a matter of recorded fact.

What the court does not know, because both experts agree and therefore make the same errors, is by their own defined scales of risk, with the correct calculations, the tree with the decay fungus would be classed as a 'medium risk' with the ISA method and a 'low risk' with the QTRA method.

Judge MacDuff is clear in the Judgment that had the risk from the tree with the decay fungus present been 'medium' or 'low' on the scale of 'high' to 'low' agreed by the experts, nothing more would have been required on the part of the defendant than to monitor the tree. The 'high' level of risk that was mistakenly calculated by the experts in the 'Answers' using the ISA and QTRA methods is therefore a crucial piece of evidence on which the case hinged.

A copy of the 'Answers', as well as other documents pertaining to the case, can be downloaded from [www.aie.org.uk](http://www.aie.org.uk)

Regards

David Evans