

Digest of Cases 2007/08

Section D

Environmental health

	Introduction	
D1	Noise	1
D2	Condition of council property	2
D3-4	Abandoned vehicles	3
D5	Littering	5

Introduction

There was a 15 per cent reduction in the number of complaints we received about environmental health in 2007/08 (616) compared with 2006/07 (731). Many of the complaints where the Ombudsmen found fault over the past year involved poor communication, either between departments (planning and housing) or with the person making the complaint.

Three of the complaints we have included here involved an overenthusiastic application of the councils' powers regarding abandoned vehicles. In one case it appears that the council allowed itself to be drawn into what appeared to be a neighbour dispute about parking. The main lessons to be learned here were about proper checking and sharing of information before action is taken.



D1: Noise

Dog kennels – informal action – agreed action not followed up

The complaint

Mrs X complained to the council about noise nuisance from dog kennels close to her home.

What happened

The council carried out some investigation and concluded that it did not have sufficient evidence of statutory nuisance to take formal action. It sought to resolve the problem by informal means. However, the council did not follow this up to ensure that the agreed action (installation of some sound proofing) was taken. There was a delay of 10 months between the agreement and the work being done. The council had said that it would continue to monitor the situation and that, if Mrs X experienced a problem, she should ring the officer concerned so that it could be witnessed. When Mrs X did ring, either she had to leave messages or the officer was too busy to visit. As a result, the noise that she was complaining of was not witnessed by the council. There is no way of knowing whether, if it had been witnessed, the council's view about formal action would have altered, but Mrs X was given misleading information and the council did not follow up its own decisions to ensure an informal resolution and monitor the situation.

Outcome

The council agreed to the Ombudsman's recommendations that it should:

- review its procedures to ensure that attempts at informal resolution do not extend indefinitely and to the detriment of residents;
- review communication and keeping in touch policies and procedures in the environmental health department;
- apologise for not keeping Mrs X updated; and
- pay Mrs X £150 in recognition of her time and trouble in pursuing this complaint and for the delay in resolving the problem.

(Case reference confidential)



D2: Condition of council property

Filthy, verminous property – vulnerable tenant – ‘different lifestyles’

The complaint

Mr Y complained about the council’s failure to take action, despite complaints over a number of years, on the deteriorating condition of the neighbouring property, which was let by the council. For a long time the tenant refused to allow the council access to the property. When the council eventually did gain access, the property was described by the officer as verging on dirty, filthy and verminous. In its defence, the council said that much of the problem arose out of different lifestyles. It was also concerned about taking action against someone who it considered might be vulnerable.

The Ombudsman’s investigation

The Ombudsman’s investigator acknowledged that there were problems in balancing the needs of the tenant with those of Mr Y, but nevertheless concluded that, in circumstances where the ‘different lifestyle’ was adversely affecting the condition of the neighbouring property and the lives of the neighbours, the council should have done more to resolve the problem.

Although Mr Y raised concerns with the council over more than two years, he was not asked to complete a diary to record the problems until January 2007. If the council had asked for such systematic recording sooner it might have had sufficient evidence of the timing and nature of the problems to take more positive action.

The council had difficulties over an extended period in gaining access to the property in order to inspect it and carry out any necessary repairs. It did not use powers available to it as landlord to ensure that this was done. There was also no evidence that the council considered using its powers under the Environment Protection Act to deal with a possible statutory nuisance resulting from the condition of the property.

Outcome

The council accepted that there were failings in the way it dealt with Mr Y and his neighbour. The neighbour eventually moved and the council agreed to undertake any repairs to Mr Y’s property that had arisen as a result of the condition of the neighbouring property. The council also agreed to pay Mr Y £1,600 in recognition of the problems caused by the delay in taking action.

(Case reference confidential)



D3: Abandoned vehicles

Wrong decision that car was abandoned – failure to inform inspection officer – failure to inform DVLA

The complaint

Ms Z complained that a council wrongly decided that her car was abandoned and, without notice to her, removed it from the street where she lived and destroyed it. She also complained that the council did not immediately inform the Driving and Vehicle Licensing Agency (DVLA) that it had destroyed the vehicle.

What happened

Ms Z said that she had had some disputes with one of her neighbours about where she parked her car. The council received information that the car had been abandoned. An officer inspected the vehicle and, using a 13-point checklist, assessed whether it should be dealt with as having been abandoned. He concluded that it should. A different officer carried out administrative checks with the DVLA which revealed that the car was taxed and the registered owner lived next to where the car was parked. This information was not passed to the inspection officer, who arranged for the car to be removed and destroyed. The inspection officer told the Ombudsman's investigator that he would not have done this without contacting the registered owner if he had known she lived so close to where the car was parked.

The council informed the Ombudsman that it had a policy of destroying abandoned vehicles if they were valued at less than £1,000. However, it provided no evidence of this policy and it used inaccurate information when providing evidence of the value of the vehicle. Had accurate information been used, the car would have been valued at over £1,000 and would not have been destroyed.

The company used by the council to carry out the destruction was responsible for informing the DVLA and for issuing certificates of destruction. Because of a minor error in the original registration of the vehicle (which meant that relevant numbering did not match), the DVLA did not record the destruction and no certificate of destruction was sent. This meant that, when the tax on the vehicle expired, the DVLA pursued Ms Z for unpaid tax/failure to make a statutory off road notification. Although she raised this with the council, the council failed to take action and Ms Z paid the fixed penalty to avoid further formal action by the DVLA.

The Ombudsman's view

The Ombudsman concluded that:

- the council's policy on abandoned vehicles at the time was inadequate and not fit for purpose;


- the council did not properly ascertain the value of the vehicle and wrongly decided that it was fit only for destruction; and
- the council did not take sufficient steps to ensure its contractor issued a certificate of destruction and failed to keep Ms Z advised of the situation – because of this she was penalised by the DVLA.

Outcome

During the investigation the council acknowledged its fault, brought forward a review of its policy on abandoned vehicles, and agreed to pay Ms Z £1,780 made up as follows:

- £1,380 for the value of the car at the time it was removed;
- £100 for the stress she was put under by DVLA;
- £100 for the penalty and costs paid to the DVLA; and
- £200 for her time and trouble.

(Report 06A15757)



D4: Abandoned vehicles

Cars deemed to be abandoned and destroyed – failure to contact keeper – failure to keep evidence of car’s condition

The complaints

The Ombudsman issued a report on two similar, but unconnected, complaints about destruction of vehicles. In the first case, the complainant had received the car as a Christmas present from her parents, and it was parked outside her home when it was deemed to be abandoned and removed by the council.

Guidance issued by the Department for Environment, Food and Rural Affairs states: *a vehicle should not be considered abandoned solely on the grounds that it is not displaying a valid tax disc. Local authorities should use the DVLA’s free on-line link to check keepership details and vehicle taxation status prior to taking action. This is available 24 hours-a-day, 365 days-a-year.*

The council established that the car was not taxed and that the registered keeper lived next to where it was parked. But the council failed to contact the keeper before removing and destroying the car, a failure that the Ombudsman described as “utterly incomprehensible”.

In the second case the car was parked in a garage that was rented by the complainant from the council. The Ombudsman was less critical of the decision to destroy the car because it had been removed from the garage and vandalised and it may have posed a risk to public safety if it had been left in the open. However, the Ombudsman was critical of the incorrect description of the condition of the vehicle as having been “burned out” and of the failure to provide photographic evidence of its condition.

The Ombudsman’s view

In commenting on both cases the Ombudsman said:

“The disrespect shown to the complainants and their property was little short of astonishing, and the council’s review must restore a proper balance between the rights of private owners on the one hand and the rights of the community to ensure its reasonable safety and amenity are protected.”

Outcome

The Ombudsman was pleased to note that the council had already commenced a review of its procedures. He also recommended that it should:

- pay the first complainant £850 to cover the lost value of her car; and
- pay each complainant £250 for their time and trouble in pursuing their complaints and for their sense of outrage.

(Report 07B00346 and 01442)

D5: Littering

Penalty notice for alleged littering – errors on notice – failure to consider properly through internal complaints procedure

The complaint

Mr A complained about a council’s issue of a fixed penalty notice to him for alleged littering.

The Ombudsman’s investigation

The notice that was served was faulty in several respects, namely:

- the officer’s name was not filled in, instead the officer had written “enforcement officer”;
- the date and time of the offence was not completed;

- the officer's signature was not clear;
- the date the officer signed the ticket was 8 September but the covering letter sent with the ticket was dated 8 August; and
- the covering letter stated that the offence took place on 7 August.

Mr A was interviewed under caution on 14 September regarding an alleged incident on 7 August. Following this interview the enforcement officer appears to have realised that the date that she had given must be incorrect, and, against the advice of the enforcement manager, issued a revised covering letter stating that the alleged incident took place on 7 September. She stated in her letter that there had been "an administration error" on the previous covering letter.

When Mr A complained to the council, the officer wrote to him saying the notice had been withdrawn because there was insufficient evidence. Mr A had asked for a copy of the tape of the interview held under caution. The council did not provide the copy until four months later, when it responded to his complaint. The council apologised for the administrative errors and implemented some changes to ensure monitoring of future notices but did not offer compensation for the time that Mr A spent attending the interview and the distress that this had caused him.

Outcome

In response to the Ombudsman's suggestion, the council agreed to pay Mr A £250 for the distress and inconvenience caused by being unnecessarily interviewed under caution, and £250 to take account of the time and trouble he took in pursuing the complaint.

In this case the council might have avoided a complaint to the Ombudsman had it either withdrawn the notice as soon as the error was spotted, or considered a suitable remedy for Mr A when he made his complaint through its internal procedures.

(Case reference confidential)