

Section C: Environmental health

C1: Asbestos contamination

Failure to carry out testing for contamination – effect of the failure for local residents

1. A complaint was made on behalf of a campaign group of local residents about how a council dealt with asbestos contamination in an area of housing near to premises formerly used for processing asbestos.

proximity. Although the recollections of people involved at the time were inconsistent (not surprisingly in view of the passage of time), it seemed likely that this discovery did prompt discussion in the council of the possibility of a more widespread contamination problem.

Events of 1978

2. Having found asbestos in the former factory premises in 1978, the council then inspected adjoining residential premises which had been used by the factory. The evidence was conflicting, but the Ombudsman accepted on balance that the council did not at that time detect asbestos in the immediately adjoining houses. Even if contamination had been found at that stage, it was likely to have been attributed to the buildings' former connection with the factory. The Ombudsman did not see that the failure to investigate the possibility of a wider problem at that point could be attributed to any failings in the tests undertaken by the council. Decontamination work was carried out at the factory premises.

3. The contamination in the factory premises was reported to the relevant committee in a public document. This was discussed at a meeting at which members of the press were present. The Ombudsman said it was clear there was no attempt at a 'cover-up' and she did not regard the council's agreement to keep matters low key as an unreasonable response to the situation as the council saw it.

Events of 1979

4. However, in 1979 asbestos was found in a house which had no connection with the factory, other than its

5. The council did not decide to investigate more widely. It said that this decision was influenced by the belief that housing in the area had a short future life. However, the Ombudsman said that the area was not at that time a designated clearance area and there were no plans for the demolition of housing in the area in the foreseeable future. Also, the council continued to make improvement grants available, and in the light of the law and the council's policy at the time, it would not have given grants on properties whose expected life was less than ten years.

6. The council also said that, at the time, asbestos was thought to be a problem only in occupational or closely related settings. However, the evidence of Professor Hawk, an expert commissioned by the council, as well as articles in publications which were widely available at the time, indicated that living near an asbestos factory was recognised as potentially dangerous by this time. If council officers held the view described by the council, it was not founded on careful background research, which would have indicated grounds for greater concern. Nor did it explain why the council thought it necessary to arrange the decontamination of the house where asbestos was found, if it considered there was no risk to residents.

7. The expert opinion of Professor Hawk was that if proper testing had been

carried out more widely, a larger problem would have been revealed. The evidence persuaded the Ombudsman that in 1979 the council should have recognised the possibility of asbestos contamination of houses beyond the immediate vicinity of the former factory premises. The council's failure to carry out appropriate testing was maladministration. Had that testing been carried out, the Ombudsman was confident that the scale of the problem would have been indicated.

1988 and later

8. In 1988, a television programme drew attention to the high rate of asbestos related disease in the area and to the fact that this was not confined to people who had worked at the factory. The council tested a house which had no connection with the factory and found asbestos in the samples. The council wrote to residents to say that it was carrying out a survey and reassuring them that initial air tests in houses had been satisfactory. Residents were warned that dust containing asbestos fibres might be a problem and they were warned not to enter roof spaces and to consult the council before allowing any structural work. The council commissioned a survey of 290 houses, which was carried out in 1991/92, and asbestos was found in dust samples from the great majority.
9. The Ombudsman did not doubt that the guidance issued by the council contributed to a blight on the local property market. Although subsequent advice indicated a lower health risk than was thought at first, she thought the council was right to err on the side of caution. The council had had meetings with representatives of mortgage lenders to try to reassure them that houses in the area were safe to lend money on. The Ombudsman welcomed the fact that the council had

involved the campaign group in discussions about the technical specification for decontamination work. The council had already established the specification in relation to its own housing in the area and had made good progress on the decontamination programme. It was important, the Ombudsman said, that the discussions about the specification should be concluded as soon as possible as the adoption of an approved specification was an essential element in regaining the confidence of mortgage lenders.

10. In short, the Ombudsman had no criticism to make of the actions of the council in this subsequent period up to the time of her report. It was the failure in 1979 to establish the extent of contamination which was maladministration, and the question of what injustice flowed from that had to be considered.

Analysis of injustice

11. The evidence of an expert on the health hazards of asbestos, who had been invited by the residents to make an analysis, was that the likelihood of anyone suffering damage to health as a result of the council's maladministration was very slight.
12. There were, however, groups of residents who could have suffered injustice. First, there were residents who purchased houses in the area between 1979 and the public announcement of a possible wider problem in 1989. Secondly, there were residents who had bought contaminated homes prior to 1979, and who would not have known the houses were contaminated until the survey carried out in 1991/92. Some residents would have owned contaminated houses which had been significantly devalued, and the value of their homes was only likely to be restored by decontamination work.

By the time of the survey the law had changed. Grants to put the houses in good order were subject to a means test, which was not the case prior to July 1990.

13. The Ombudsman therefore recommended that the council should identify residents who would have been eligible for improvement grants for the removal of asbestos if they had known about the contamination of

their homes, but who were now disadvantaged financially by the means test for renovation grants. The council should compensate such residents, because of the difference between the improvement grant they would have received and the grant they would now receive.

(Report 95/C/649 et al)

C2: Inspection of kennels

The need for officers to avoid conflicts of interest

1. Miss Trent complained:
 - that a council failed to inspect and control the operation of a boarding kennels business properly; and
 - in particular, that inspections were carried out by an officer who was a friend of the proprietor of the business.
2. Miss Trent said that she complained to the council as she was concerned at conditions at the kennels and distressed at the condition of animals that had been there.
3. Officer A was a senior officer in the housing and health department, with delegated authority to sign and issue licences for animal boarding establishments. He said that inspections were carried out by his staff who recommended the issue or renewal of licences with appropriate conditions and took action to ensure compliance.
4. The council's records indicated that regular inspections were made to ensure licence conditions were being met. Necessary work to the kennels was undertaken to the council's satisfaction. Complaints made about the condition of the kennels and animals being boarded there were investigated and action taken. The records showed that Miss Trent's complaints about animal welfare at the kennels were followed up. The majority of inspections and complaint investigations were undertaken by officer B.
5. Officer A said officer B was involved in the licensing and complaint procedure for all kennels in the district as he had considerable knowledge of dogs and dog welfare which it was considered made him a particularly appropriate officer to undertake such inspection work.
6. Officer B said he had been a friend of the proprietor of the kennels for some years. During the time he was responsible for inspecting the kennels, he was concerned at a possible conflict of interest between his private and professional involvement. He discussed

this matter with his senior officers on several occasions. He said that on each occasion he was instructed to continue his duties.

influenced by this interest and that this would call into question the propriety of the council in discharging its licensing function."

7. Officer A said that he considered officer B to be a professional officer who would not allow any conflict of interest to occur, and that he did not believe that the interest discussed with officer B was such as to compromise the council.
8. Officer A said that, after three years had passed, officer B said that he had recently entered into joint ownership of a bitch with the proprietor of the kennels. He was directed not to undertake the licensing inspection for the next licence, but was told he could still advise the inspecting officer and visit the kennels, if so requested, because of his valuable expert knowledge.
9. In the next year officer B kept a number of his own dogs at the kennels and paid for food for the dogs but not boarding fees. He went regularly to the kennels to attend to his dogs, and on occasions he dealt with members of the public in the absence of kennel staff.
10. The Ombudsman said that an examination of the council's records revealed no evidence to suggest that it had failed to take action to enforce licence conditions. Complaints about conditions affecting the welfare of animals at the kennels were investigated and action taken. However, she expressed concern that much of the monitoring and inspection was done by officer B and commented:

"In my view officer B's friendship with the proprietor of the kennels and his involvement at the kennels constituted an interest which may have influenced him in any professional consideration of matters concerning the kennels. I consider that members of the public, knowing the facts of his involvement, would reasonably think that he might be
11. In the Ombudsman's opinion officer B's senior officers did not respond properly when he disclosed his friendship with the proprietor of the kennels and his private involvement there. In the light of his declaration, he should not have been asked to continue inspecting the kennels. There were other officers who were qualified to do so. The Ombudsman believed that senior officers placed too much reliance and emphasis on officer B's expertise.
12. The Ombudsman was satisfied that when officer B told his senior officers of his financial involvement with the proprietor (see paragraph 8), he was instructed not to undertake further inspections in connection with the issue of the next licence. But the Ombudsman was concerned that he was told that he could still advise the inspecting officer and visit the kennels if requested to do so.
13. The Ombudsman pointed out that councillors are advised that it is not enough to avoid impropriety but they should also avoid any occasion for suspicion and any appearance of improper conduct. She considered that officers should also follow this advice and that officer B should have been told to have no further involvement of any kind with inspections of the kennels.
14. The Ombudsman found no evidence that any other officer, including officer A, had any interest in the kennels; no evidence of any impropriety on the part of officer A, nor evidence to substantiate Miss Trent's allegations against him; and no evidence that other officers colluded with officer B, or any evidence to suggest any attempt was made deliberately to conceal the facts. The Ombudsman

was satisfied that the council's investigation was properly conducted and that a considered judgement was made on the information available at the time.

15. In the light of its own investigation and the Ombudsman's investigation, the council agreed to take the following action which the Ombudsman agreed would adequately redress the failings:

- re-inspection of the kennels, involving independent veterinary advice;
- a payment to Miss Trent of £250 in recognition of the time and trouble she expended in pursuing her complaint;
- the immediate issue of clear guidance to staff on the declaration of interests by council officers;
- an immediate review of policy and procedure for the licensing of animal boarding and breeding establishments; and
- continuation of its investigation into the substance of Miss Trent's complaint about the kennels.

(Report 94/C/4251)