



Section D

Environmental health

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D1: Noise nuisance

Hotel ballroom – statutory nuisance

The occupants of two flats complained that a council unreasonably failed to take appropriate and timely action in relation to their complaints of noise nuisance from an adjacent hotel, which caused them disturbance and distress.

What happened

1. A ballroom was opened in the hotel. Music, dancing and other activities took place. Complaints were immediately made to the council about noise.
2. An environmental health officer measured the noise in the flats and found that it was likely to constitute a statutory noise nuisance. The hoteliers offered to carry out soundproofing to the wall between the ballroom and the adjoining property where the flats were situated.
3. A few months later the hoteliers advised the council that the soundproofing was complete. However, the complainants continued to experience noise nuisance and to complain to the council. When council officers contacted the hoteliers they were assured that more soundproofing work would be done.
4. Despite continuing to receive complaints, the council made no assessment of the efficacy of the work that had been carried out. An officer visited again and measured the noise levels in the complainants' flats. He noted that the level of noise would prevent sleep and, having regard to the lateness of the hour and duration, if occurring on a regular basis it would constitute a statutory noise nuisance.
5. Over the next six months the complainants noted noise nuisance on more than 20 occasions. Nine of those incidents were reported to the council. A further visit was made by an officer. He noted that the noise was obtrusive and required further investigation.

The Ombudsman's view

6. The Ombudsman recognised that this was a difficult matter for the council to deal with effectively. However, he thought the council should have taken a much more rigorous approach. Some work had been done at the hotel yet the noise was still obtrusive and probably a statutory nuisance. There was no council appraisal of the adequacy of the noise insulation scheme. The failure to make a proper assessment was maladministration.
7. The Ombudsman considered that the complainants suffered obtrusive noise, likely to amount on occasions to a statutory nuisance, for at least 18 months longer than necessary.

Remedy

8. The Ombudsman recommended that the council should pay £1,000 to each of the two households; and that it should commission a professional assessment of the adequacy of the soundproofing works and use its best endeavours to secure any necessary improvements.

(Report 99/B/132 et al)

D2: Waste disposal

Business and household waste – lack of guidance – warning before prosecution

Mrs Lall complained that a council was unreasonable in pursuing action against her when she disposed of two bank statements relating to her business with her household waste.

What happened

1. Mrs Lall ran a small shop from a room at the front of her house. She had done so for 12 years. She said the business did not generate much waste but that what it did she took to a licensed amenity depot.
2. Mrs Lall said that she discussed her waste with the refuse collection team. They said she was allowed two bags for her household waste each week. They told her she could not dispose of any boxes through her household waste but that letters were not a problem. She then disposed of some of her business letters through her household waste.
3. Mrs Lall's wheeled bin was stolen. She reported the theft to the council. She said the council told her to secure her rubbish inside black bin liners and leave the bags for collection in the alleyway behind her property until the council had replaced her bin.
4. Two enforcement officers from the council went to the alleyway after a report about bin bags being seen in the street. They were unaware of the reported theft. They opened one of the sealed bags and removed four documents (two related to her business and two did not).
5. The officers concluded that the letters amounted to trade waste. They summoned Mrs Lall to an interview and then commenced legal proceedings against her for disposing of trade waste with her domestic waste.
6. On advice from her solicitor, Mrs Lall accepted a caution and paid the costs incurred by the council up to that point.
7. Mrs Lall then read a newspaper report about a local trader who had left bags of trade waste outside her premises but made the defence that she had not received any warning notices from the council. That trader had been conditionally discharged. Mrs Lall then complained to the council about her treatment.

Proposed prosecution

8. The Ombudsman observed that, under the relevant regulations, the council could have made an arrangement for charging for collecting household waste from mixed use premises. As it did not have such an arrangement, it had to determine the nature of waste by reference to the likely part of the premises from which the waste came.
9. Mrs Lall disposed of her business paperwork with her household waste. There was nothing in law to say that she could not do so. The letters which the council recovered from her bins were household waste. The council's practice of determining the nature of waste by its character rather than its origin had, in the Ombudsman's view, no basis in law. The council's position that it was unlawful to dispose of business letters with household waste was untenable.
10. There was no evidence that the council's officers, in considering whether action should be taken against Mrs Lall and if so for what, had any policy or guidelines to assist them.

11. The council had no basis for representing to Mrs Lall's solicitor that prosecution would result in a conviction, fine and costs. And it had no right to represent that it had successfully pursued cases similar to hers. The council failed to produce any evidence to substantiate these claims.
12. The Ombudsman considered that the council's actions in relation to the proposed prosecution of Mrs Lall amounted to maladministration.
15. The records produced by the council showed that warnings preceded prosecutions in far more serious cases. The council had no policy, and officers had no guidance, about when to issue warnings. It was likely that this led to inconsistencies and injustice in the council's dealings with members of the public.
16. The Ombudsman said that Mrs Lall should have had the benefit of a warning.

Warning

13. Mrs Lall was given no warning before prosecution. The Ombudsman commented:

"It is sensible, and conducive to good public relations, for councils to try to help members of the public, including those in business, to meet their legal obligations without undue expense and, wherever possible, without recourse to the law."

14. The alleged offence was very trivial. Mrs Lall had caused no trouble before, and on this occasion her bin bags were tidy and secure. She said she had acted entirely in accordance with advice given by the council previously about what she could dispose of with her household waste and what she should do after her bin was stolen. The council had a duty to take account of what she had to say. There was no evidence that it did.

Records

17. The Ombudsman was also critical of the council's records, for example, the record of the interview between Mrs Lall and a council officer was not adequate or accurate. Both Mrs Lall and the officer claimed things were said to which the record bore no testimony.

Outcome

18. The council agreed to:
 - apologise to Mrs Lall for its actions, including the search of her bin bags, and make a payment to her of £1,000;
 - review its waste disposal responsibilities and provide guidance to staff;
 - establish criteria to determine when warnings were appropriate; and
 - introduce a more formal system of record keeping.

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