

Council has responsibility to ensure drainage work completed to required standard

Legislation	Ombudsmen Act 1975, Drainage and Plumbing Regulations 1978
Agency	Local authority
Ombudsman	Nadja Tollemache
Case number(s)	A2942
Date	1992

Compensation—adequacy of inspection carried out by council under Drainage and Plumbing Regulations 1978

The complainant in this case represented owners of four adjacent townhouses which had been constructed in 1985. In February 1986 the Council inspected the drainage works at the completed properties and recorded that all works complied at that time. However, in 1989 a Council Infiltration Inspector inspected the same works and found that the gully traps for each of the four dwellings did not comply with the provisions of the *Drainage and Plumbing Regulations 1978*, being not of a sufficient height. The owners of the townhouses were accordingly issued with notices instructing them to raise the heights of the gully traps. This work was completed at a cost to the owners of \$216.

The complainant complained that, at the time of construction, the Council had failed to ensure that the gully traps for the townhouses complied with the provisions of the *Drainage and Plumbing Regulations*. He pointed out that the physical surroundings of the buildings had not been altered and that therefore the gully traps cannot have complied with the regulations at the time of their installation. He considered that the Drainage and Plumbing Inspector should have detected the incorrect heights at the time and therefore the Council should have borne the costs of correction.

The complaint was notified to the Council who stated it would be impractical to expect a Drainage and Plumbing Inspector to inspect every aspect of drainage work undertaken in accordance with the Regulations. Further to this the Council contended that because the

Regulations permitted it to serve a compliance notice on the owner of the building this exempted the Council from any liability.

From the information provided, it seemed to the Ombudsman that the gully traps did not comply with the Drainage and Plumbing Regulations at the time of their installation. Therefore the questions asked in this investigation were whether it would be reasonable to expect the Drainage and Plumbing Inspector to have detected faults in the gully traps at the time of the original inspection and, if so, whether the Council could be considered liable for such an omission.

The Ombudsman formed the view that it would be reasonable to have expected Council staff to have detected the faults at the time of the original inspection. In forming this view, the Ombudsman took into account the following factors:

(i) a council fee for a permit is intended to include its charges for making inspections in the course of construction;

(ii) the gully traps were visible to the eye and it would have been a relatively simple matter to have checked their heights; and

(iii) even if it is not possible for an inspector to check every piece of work it could reasonably be expected that samples of the various types of work should be checked. In this case if even one of the gully traps had been checked it would have led to a detection of the faults.

In considering the issue of liability the Ombudsman noted that although the Regulations place an obligation on the owner of a property to initially remedy any defect, this does not limit the liability of any other party. It seemed clear that, under the Regulations, the Council has a responsibility to ensure that drainage work was completed to a required standard. As it failed to do so in this case the Ombudsman considered that it had some liability for the costs incurred by the owners of the townhouses. However, as it was also clear that the person to whom a permit is issued under the Regulations has a responsibility to ensure the work is completed satisfactorily, the Ombudsman formed the preliminary view that the Council should pay only half the costs involved.

The Chief Executive agreed with the Ombudsman's preliminary view and arranged for payment of \$108 to be made to the complainant and his neighbours. As this effectively resolved the complaint the investigation was discontinued.

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