

## Local Authority's Code of Compliance Certificate on drainage reasonable in circumstances

<b>Legislation</b>	Ombudsmen Act 1975, Building Act 1991, Building Act 2004
<b>Ombudsman</b>	Leo Donnelly
<b>Case number(s)</b>	434476 (previously unpublished)
<b>Date</b>	2017

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*Local Authority decision on detection of cross connection piping problem not unreasonable—Body Corporation of building forced to pay costs—question whether Code of Compliance Certificate should have been issued—Ombudsman concluded Council not aware of problem*

The Body Corp of a building (the complainants were members) had to pay the costs for rectifying a cross connection (sewage and storm water pipes were inadvertently connected together) outside its building. The problem was not found for more than ten years after the pipes had been laid. The complainant argued that the Council ought to have taken responsibility for the problem and in particular, that the Council should not have issued Code of Compliance Certificate (CCC) for the problematic work which had occurred 10 years earlier and that the Council did not investigate the problem soon enough when the odour was first identified.

The Ombudsman considered the administrative reasonableness of the decision to issue the CCC, having regard to the Council's processes, and what actions it undertook before the certificate was issued. The Ombudsman advised the complainant that it was his understanding that issuing a CCC did not guarantee that an acute problem such as the cross connection would have been identified and that a CCC's purpose was to provide confirmation that the completed work aligned with the initially approved plans. Unfortunately in this case, the Council followed its processes which still led to the cross connection not being discovered until over 10 years later. The cross-connection was not shown on the plans.

The Ombudsman noted that while there is a potential duty of care owed to the complaints by the Council and that it is arguable that the Council had a duty of care to have also undertaken an onsite inspection, outside its standard process of relying on site plans, the Council's legal liability can only be determined by the courts, not an Ombudsman.

However, the Ombudsman noted that the 10 year statutory limitation (the longstop provision), located in both Building Acts (1991 and 2004), means that whatever the legal position might have been, the successive Building Acts make it clear that liability, if there was any, had expired. An Ombudsman's investigation cannot determine whether there would have been any legal liability at the time. Further, the Courts recognise that inspectors cannot be expected to verify everything and whether it was incumbent on the inspector to verify that the certificate was correct is a matter that would seem to depend at least in part on whether the 2003 drainage work had already been covered and sealed at the time it was received. Given the passage of time from when the work was first done, the Ombudsman concluded that it is also difficult to establish the true facts of the matter, limiting an Ombudsman's ability to form an opinion on the legal liability issue.

The Ombudsman's final opinion was that the Council's actions were not unreasonable when it issued the Certificate in 2003; and that it had addressed the odour smell complaints in 2013. The complaint was not sustained.

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