

## EVIDENCE TO THE REVIEW OF SPCB SUPPORTED BODIES COMMITTEE FROM M VESCO

### MALADMINISTRATION BY LOCAL AUTHORITIES – FAILURE TO APPLY REGULATIONS

The complaint was first made to Midlothian Council in November 1998 and refers to the location of a neighbour's flue terminal, the emissions from which discharge into my windows directly opposite across the boundary. The terminal is approx. 360mm from the boundary. There are statutory Regulations regarding the placement of flue terminals. The location of this flue terminal is in breach of these statutory Regulations.

After much correspondence with Midlothian Council, on 25 March 2002, I contacted the Ombudsman over concerns that the discharge from the flue entered my windows.

From Ombudsman 28.3.07

***"...It is unclear ... how you consider the Midlothian Council ... are at fault ..." ... the content of the current Building Standards Regulations as a statutory instrument is a matter for the Scottish Executive ... the local authority's role as building authority is to administer the Building (Scotland) Acts and the related statutory instruments ... if you wish the Commissioner to consider how Midlothian Council have handled the matter over the past two years he would need to have sight of your correspondence with the authority ... 5.04.02.***

Had the Ombudsman been aware of the content of the Regulations, he could have informed me that the local authority was giving advice that was both inaccurate and misleading. The matter should have been resolved at the outset. I did not know the content of the statutory instruments so I presumed that the Council was already following the statutory Regulations – which I thought were unfair. I then pursued what I thought were unjust Regulations through an MP.

This led me to research the Building Regulations, Technical Standards and British Standards at Central Library, George IV Bridge, Edinburgh; Scottish National Library; Advocates' Office, George IV Bridge, Edinburgh; Local Library; SBSA website, and the Internet.

To Ombudsman 9.07.04

***... the BSI Regulations clearly state that: "... The terminal should be positioned so that the combustion products do not cause a nuisance, for example, not onto a passageway, pathway or over adjoining property.***

**From Ombudsman 12.07.04**

***I advised you in my letter of 17 December that we would not acknowledge or reply to any further letters from you about this complaint unless you provided new evidence which would enable the Ombudsman to investigate it. Your letters do not provide any evidence of maladministration on the part of the Scottish Executive or Midlothian Council.***

**To Ombudsman 13.07.04**

***With reference to your letter of 12 July 2004, my letters of 8 and 9 July 2004 did in fact put forward new evidence (with referenced statutory sources) which would enable you to investigate the complaints of maladministration against the Scottish Executive and the Council. ... (Details of Regulations are attached.)***

**From Ombudsman 20.08.04**

***(re regulations governing flues) ... You say that you have new evidence about your complaint from British Standards ... However, my view is that this is not relevant evidence. ... while these are clearly important recommendations, the relevant regulations for the siting of the flue terminal remains the Building (Scotland) Regulations 1990. Because of this I can see no grounds for looking again at your complaint.***

**To Ombudsman 24.08.04**

***... the British Standards Regulations are an integral part of the Scottish Building Regulations.***

**From Ombudsman 3.09.04**

***... decided that your letter should be referred to a Deputy Ombudsmen for consideration. ...***

**From Deputy Ombudsman – 16.11.04**

***... my decision ... You state clearly in your letter dated 24 August 2004 ... that you are not complaining about the regulations governing the placement of flues, but the inaccurate and misleading information you were given as the regulations. ... I have read and considered all the correspondence relating to your complaint. ... there are no grounds for this Office to look again at your complaint. My reason for this decision is as follows. It is clear that you remain dissatisfied with the position of the flue pipe, however, I cannot see from your recent letters that you have submitted any new relevant evidence or arguments that would persuade me that the decision made in relation to your complaint, as stated, was wrong. Therefore, I confirm that our file on the matter remains closed ...***

**To Ombudsman – 17.11.04**

***... from the statutory Scottish Building Regulations – and the British Standards – ... the decision taken by the Scottish Executive regarding my complaint is most decisively wrong. So how can you possibly say that you can see no relevant evidence? Can you give me evidence to support your claim that the Scottish Executive complied with the statutory Building Regulations and the British Standards with regard to my complaint?***

**From Ombudsman 22.12.04**

***... The reasons relating to the decision in relation to your complaint have been set out in previous letters to you from this Office. It is clear that you have a continuing concern, but I remain of the view that there is no basis for the Ombudsman's further intervention in your complaint. I must, therefore, ask you to consider this correspondence closed.***

This complaint is still being pursued with the Scottish Building Standards Agency, who are equally evasive regarding the application of the statutory Regulations.

M Vesco  
15 December 2008

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**BUILDING REGULATIONS: TECHNICAL STANDARDS** (For compliance with the Building Standards (Scotland) Regulations 1990

F3.8 Protection from products of combustion: The requirements of F3.8 will be met where the *flue* system is installed in accordance with ... BS 5440 Part 1: 1990

BS 5440: Part 1: 1990 Termination:

The terminal shall be positioned so that combustion products can safely disperse at all times. ... The terminal should be positioned so that the combustion products do not cause a nuisance, for example, not onto a passageway, pathway **or over adjoining property.**

*Commentary and Recommendations on 6.1.2* (page 42 BS) ... the position of the terminal should be such as to minimize the risk of **re-entry of combustion products through openable windows**, vents etc. **of opposite or adjacent properties.** A plume of products of combustion may be readily observed, especially in cold weather or if a condensing appliance is involved.

It is recommended that a fanned flue terminal should be positioned ... so that the products of combustion **are not directed to discharge across a boundary.**

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**FLUE TERMINALS - THE GAS SAFETY (INSTALLATION AND USE)  
REGULATIONS 1998 The Health and Safety Executive / Local Authorities  
Enforcement Liaison Committee (HELA)**

**Regulation 27(5) – flues**

44 This new provision prohibits the installation of a flue, otherwise than in a safe position, and is linked to the change to reg 8(1). The ACoP commentary calls for flues to be sited so as to discharge at a safe distance from any boundary with adjoining premises, to avoid possible gas safety problems should later extensions or alterations be made to the adjoining premises. *The regulations are made under a general provision that is contained in an Act of Parliament, in this case, the Health and Safety at Work Act 1974. They are approved by Parliament and are generally absolute legal standards. Failure to comply with the requirements is a criminal offence that could result in prosecution...*"