



## **PRIVATE WATER SUPPLIES – CASE STUDY 2012/1**

### **Conflict of interests in relation to a failing private supply located in a local authority's area where the relevant person (owner and manager) is the local authority**

This case study relates to a supply located in a rural area of England, which comprises a tenanted dairy farm and other separately owned domestic dwellings. The farm is owned by the local authority and managed by the council's estate department who, as landlord, is responsible for providing the water supply. However, the same local authority is the regulator of private water supplies in its area. The supply comprises a public mains supply to a water storage tank that feeds into a network of pipes.

In February, the farm tenant contacted the council complaining that the quality of the water supply was unsatisfactory based on the results of samples he had collected and had analysed privately. Unfortunately, due to the uncontrolled method of sampling and the laboratory not being accredited for drinking water testing, these samples were unreliable. In response, the environmental health department sampled from the farm kitchen tap, a tap in the dairy and the water storage tank, which at the time, had been bypassed with a pipe connection direct to the public mains supply at a point between the meter point and the tank. All the tap samples gave satisfactory results, however, the tank sample contained 15 coliform bacteria and four *E.coli* per 100ml. In March, the farmer again contacted the council to complain that the poor microbiological quality of the farm water supply was reducing the milk yield of his dairy herd, which in turn was having a detrimental effect on his income. A few weeks later, in April, the council were informed that the farmer intended to make a claim against the council for failing to maintain a wholesome water supply. The grounds cited for the claim was inadequate maintenance of the water supply, specifically an unhygienic repair of the distribution supply pipe during the previous winter. However, there was no evidence to confirm or refute that the supply had been contaminated during the repair because no samples were taken at that time and it was unclear who had carried out the work.

In June, the water company made a joint site visit with representatives of the council and at that time identified a number of contraventions of the fittings regulations (see Figure 9). The representative of the council's estate department was informed that these deficiencies had to be remedied. Also during the site visit, the council's environmental health department carried out an informal risk assessment of the supply, but this was not documented. The water company took samples from the farm tap, a nearby cottage on the same supply and from the inlet to the old storage tank. All these samples gave satisfactory results.

The tenant farmer subsequently informed the council that he was unable to pay his rent on account of lost income; the basis of his claim was the adverse impact of the water supply quality

on his herd and his milk supply contract. The council responded by serving an eviction order on the farmer for non-payment of rent in October. However, at this point in time the environmental health department of the council had not carried out a risk assessment of the supply. If the known deficiencies, such as the contraventions of the fittings regulations, had been documented, the council would have been under a duty to enforce improvements to the supply under the private supply regulations. However, the environmental health department was constrained by solicitors for the council who were of the view that case law (relating to the Environmental Protection Act 1990) prevented councils from enforcing on themselves. In the opinion of the council's solicitors, the courts would apply this case law as the test when judging any case. At the scheduled hearing for the eviction order the judge did not grant the council a possession order, instead he deferred the hearing to 2013 because he considered that the failure to make rental payments and the matters relating to the water supply should be heard together.

This case study highlights the need for local authorities to carry out, document and communicate timely risk assessments in response to consumer water quality complaints from users of a supply. It also illustrates the importance of involving water companies in such risk assessments and the need for water companies to document the findings of fittings inspections, communicating these in writing with a date by when any required remediation of defects must be carried out. The Inspectorate is aware that some, but not all, local authorities have a policy of non-enforcement of the private water supply regulations where their own local authority is the owner or manager (a relevant person) of a failing private supply. Usually, such a policy has been explained to the Inspectorate as being based on the principle that once notified of a failing supply by the environmental health department, the relevant person in the local authority (usually the estates or housing department) will act immediately to improve the supply making enforcement unnecessary. However, this case is of concern to the Inspectorate because the operation of the council's non-enforcement policy appears to have had another very different outcome. *The Inspectorate will be closely monitoring the progress of the legal proceedings between the council and the tenant farmer because any judgement by the courts may set an important precedent in relation to other similar water supplies owned and operated by local authorities.*

**Figure 9: Contraventions of fittings regulations in relation to pipes and animal troughs**

