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# **Environmentally unfriendly:** a report of a joint investigation by the Parliamentary Ombudsman and the Local Government Ombudsman

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# **Environmentally unfriendly:** a report of a joint investigation by the Parliamentary Ombudsman and the Local Government Ombudsman

Third report

Session 2009-2010

Presented to Parliament pursuant to

Section 10(4) of the Parliamentary Commissioner Act 1967

Ordered by

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# Foreword

## EMBARGOED COPY

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I am laying this report before Parliament under section 10(4) of the *Parliamentary Commissioner Act 1967*.

The report relates to an investigation which I have conducted as Parliamentary Ombudsman jointly with the Local Government Ombudsman, Anne Seex, in accordance with the powers conferred on us by amendments to our legislation due to the *Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007*.

The complaint, made by a woman and her son,<sup>\*</sup> was that the relevant authorities, namely the Environment Agency, Lancashire County Council and Rossendale Borough Council, had failed both individually and jointly over a seven-year period to take appropriate action to prevent their neighbour from using his land as an illegal landfill site. As a result, the woman and her son had found it impossible to live peacefully in their family home, yet had been unable to sell it. The neighbour's illegal activities had also made the landscape, which had been a local beauty spot, unrecognisable.

Our investigation found that the relevant authorities failed to take urgent or robust enforcement action, despite the very evident and unacceptable activities taking place on the neighbouring farm. They also failed to work together, despite the existence of a national protocol between the Environment Agency and the Local Government Association which clearly required a co-ordinated joint approach on waste enforcement. The consequence of that failing was a significant failure of all the safeguards introduced by Parliament to protect citizens and the environment from uncontrolled waste operations. Being able to undertake a joint investigation and issue a joint report with the Local Government Ombudsman has allowed us to consider maladministration and injustice in the round. We have been able to make joint recommendations which address individual remedy for the complainants. Moreover, we have made joint recommendations for the central and local government bodies to implement individually and jointly to prevent recurrence of their maladministration.



Ann Abraham  
**Parliamentary and Health Service Ombudsman**

January 2010

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<sup>\*</sup> Names of the complainants are not included in the report to protect their identity.



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# Summary

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## The complaint

Mrs D and her son complained that the Environment Agency (the Agency), Lancashire County Council (the County Council) and Rossendale Borough Council (the Borough Council) had failed to take appropriate action against their neighbour, Mr R, who was tipping, burying and burning large quantities of waste illegally, blocking public footpaths and intimidating anyone trying to use them. Mrs D said that the activities of her neighbour have made the landscape, which had been a local beauty spot, unrecognisable; made it impossible for her and her son to live peacefully in their family home; and may well have caused long-term damage by polluting the land and local water supplies.

## The Ombudsmen's remit, jurisdiction and powers

### General remit of the Parliamentary Ombudsman

The Parliamentary Ombudsman's remit is set out in the *Parliamentary Commissioner Act 1967*. Her role is to investigate complaints referred to her by a Member of Parliament that an individual has sustained an injustice in consequence of maladministration by a body within her remit. In this instance, that body is the Agency.

If the Parliamentary Ombudsman finds that maladministration has resulted in an injustice, she will uphold the complaint. If that injustice is unremedied, in line with her *Principles for Remedy* she may recommend redress to remedy any injustice that she has found.

### General remit of the Local Government Ombudsman

Under the *Local Government Act 1974* Part III the Local Government Ombudsman has discretion to investigate complaints of injustice arising from maladministration by local authorities and certain other public bodies. In this instance the local authorities concerned are the County Council and the Borough Council.

If the Local Government Ombudsman finds that maladministration has resulted in an injustice, she may recommend redress to remedy the injustice.

### Powers to investigate and report jointly

The *Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007* clarified the powers of the Parliamentary Ombudsman and the Local Government Ombudsman, with the consent of the complainant, to share information, carry out joint investigations and produce joint reports in respect of complaints which fell within the remit of both Ombudsmen.

In this case, the Parliamentary Ombudsman and the Local Government Ombudsman agreed to work together because the Agency and the two Councils have between them the powers to regulate and control waste operations and the use and development of land. The authorities are expected to co-operate in carrying out those functions. It therefore seemed to the Ombudsmen that a joint investigation, leading to the production of joint findings and conclusions, which could take a view about the relative responsibilities of each of the public bodies involved, was the most appropriate way forward.

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## **The decision**

We have fully upheld Mrs D's and her son's complaint and have found that maladministration by all three bodies complained about has caused Mrs D and her son considerable injustice over a very lengthy period. We consider that the agreement of those three bodies to our recommendations would provide an appropriate remedy for the injustice that they have suffered.

## **Findings**

We find that the failure of the three authorities to work together effectively allowed Mr R to break the law unchecked over a long period. Mr R's illegal activities took place virtually continuously for the first three to four years (when the majority of the tipping and burning took place), and then recurred regularly over several more years.

### **Findings of the Parliamentary Ombudsman in respect of the Environment Agency**

The Parliamentary Ombudsman finds that the Agency had monitored Mr R's illegal activities from July 2000 onwards and frequently warned him of the consequences if he continued to import controlled waste onto the site. However, it was only after seven years of illegal activity and after Mr R had stopped working at the site, that the Agency took him to court for the unlawful deposit, disposal and keeping of waste on the site.

The Parliamentary Ombudsman finds that the Agency's failure to take immediate, robust and continuing action to use their powers to stop Mr R's illegal tipping and burning was maladministration of the worst kind in the form of a clear breakdown of accountability on the Agency's part, which has had

significant consequences for Mrs D and her son and for this area of the countryside.

The Parliamentary Ombudsman is satisfied that, had the Agency investigated fully and appropriately what was happening on the farm and used the powers at their disposal to take action, they could and should have brought about a much earlier and successful conclusion to the problems experienced by Mrs D and her son. The Parliamentary Ombudsman finds that the significant delay in prosecution, the Agency's failure to consider Mrs D and her son's position, and their right to the peaceful enjoyment of their home, were serious failings that constituted clear maladministration.

### **Findings of the Local Government Ombudsman in respect of Lancashire County Council**

The Local Government Ombudsman finds that there is a significant amount of important and relevant information that is missing from the County Council's records and that it is not possible to determine whether the County Council's records are missing because they were never properly recorded, or whether they have since been lost or misplaced. Whatever the reason, the Local Government Ombudsman finds the failure to have that key information available constitutes maladministration.

The Local Government Ombudsman finds that the extent and nature of Mr R's activities clearly warranted attention at a senior level within the County Council and the lack of records means that we cannot know why the situation was not given that attention. However, the Local Government Ombudsman considers that it is reasonable to assume that there was inadequate supervision and management of the Enforcement Officer's

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functions which meant that the County Council failed, over a period of over three years, to reach a properly considered decision on whether it should take enforcement action. The Local Government Ombudsman finds this to constitute very serious maladministration.

The Local Government Ombudsman considers that, had the County Council given the matter proper attention, it would have used the full extent of its powers to prohibit Mr R's unlawful use and development of the land for the storage or disposal of waste. This failure contributed significantly to the distress, frustration and inconvenience suffered by Mrs D and her son over a number of years.

The Local Government Ombudsman finds that, on the balance of probabilities, the County Council was aware that a footpath on Mr R's land was being obstructed but it failed to take appropriate action. In the absence of any evidence that the County Council made a reasoned decision on this issue, the Local Government Ombudsman finds such a failure was maladministration.

## **Findings of the Local Government Ombudsman in respect of Rossendale Borough Council**

The Local Government Ombudsman finds that the Borough Council failed to keep appropriate records or retain important information. The Borough Council's files and records were in a considerable state of disorder – records of meetings were missing, photographs and other important documents were undated, documents were loose inside files and kept in no particular order, and records of referrals to, and early meetings with, the other bodies were not adequate. The Local Government Ombudsman finds this failure

to record and retain important information constitutes maladministration.

The Local Government Ombudsman accepts that the Borough Council cannot be held responsible for the failure of the County Council to respond to the issues on Mr R's land. However, the Borough Council cannot show that, prior to October 2003, it applied consistent and appropriate pressure on the County Council to take action. The Local Government Ombudsman finds that failure is maladministration.

The Local Government Ombudsman also finds that although the Borough Council attempted to take enforcement action against Mr R on the less significant issues that came within its powers, it did not do so effectively. Furthermore, the Borough Council failed to use other powers it had at its disposal effectively to take action against Mr R. It was within the Borough Council's power to prosecute Mr R for the burning of waste, which was a statutory nuisance and was likely to recur. The Borough Council failed to use its powers in a properly co-ordinated way and this failure constitutes maladministration.

The Local Government Ombudsman finds that, if there had been proper co-ordination and a considered decision, action on the rights of way issue might have continued following August 2002. The power to carry out that function was delegated to the Borough Council by the County Council. Initially the Borough Council dealt promptly and appropriately with the complaints that were made, however, the action being taken appears to have been halted when Mr R indicated that he would co-operate. When Mr R did not co-operate as he had indicated, no further action was taken by the Borough Council.

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## **Injustice**

We have no doubt that the failure of all three bodies concerned to work together effectively to prevent the activities on Mr R's land has had, and indeed continues to have, a devastating effect on both Mrs D and her son. Whilst the authorities in question cannot be held responsible for Mr R's aggressiveness and intimidation of Mrs D and her son, it is equally clear that Mr R's attitude towards them stemmed from the many complaints that they were compelled to make. Had the authorities acted as they should have done, there would have been no need for Mrs D and her son to complain, and therefore no reason for Mr R to seek to intimidate them, or be aggressive towards them. We are, therefore, satisfied that the maladministration we have identified on the part of all three public bodies has led to Mrs D and her son suffering extreme distress over a very lengthy period.

We accept that Mrs D and her son felt so distressed and unhappy by the horrendous situation that they found themselves in, living next to what was effectively an unauthorised waste site, that they tried to sell their home and move away during the course of these events but that potential purchasers were put off by the activities on Mr R's land. We commissioned a report on the value of Mrs D's and her son's property from the District Valuer to aid the identification of actual financial loss arising from the maladministration. The District Valuer's report shows a very clear and continuing impact on the value of Mrs D and her son's property caused by the existence of the neighbouring redundant waste site. The District Valuer assessed the difference between the actual current value of the property and its value if there were not an adjacent redundant waste site as £35,000.

## **Recommendations**

The Parliamentary Ombudsman and the Local Government Ombudsman have made five recommendations in relation to Mrs D's and her son's complaint so that the three public bodies involved in this complaint can remedy the injustice caused to Mrs D and her son as a consequence of their combined maladministration:

- (a) The bodies in question should all individually write to Mrs D and her son to apologise to them for the failings identified in this report.
- (b) The bodies should make good any financial loss to Mrs D and her son resulting from the maladministration. The financial loss is the difference between the actual current value of Mrs D's and her son's property and its value if there were not an adjacent redundant waste site, according to the District Valuer this is £35,000. The bodies should pay this amount to Mrs D and her son.
- (c) The bodies should also pay financial compensation for the considerable distress and inconvenience caused to Mrs D and her son. We consider that the public bodies should have been able to resolve the issues within about two years, but instead the disruption for Mrs D and her son went on for at least another five years. We consider that an appropriate sum would be £60,000.
- (d) In order to prevent a recurrence of such events in future, the County Council and the Agency should put in place a joint agreement on how they will work together to respond to illegal waste activities.

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- (e) The bodies should each determine whether any other action, individually or jointly, is required to prevent a recurrence of such events, not only on this site but elsewhere.

In recognition of the fact that the bodies have different levels of responsibility in these matters, and of the fact that the Borough Council did far more than the Agency or the County Council to try and fulfil its responsibilities, we recommend that the Agency and the County Council should each contribute 45 per cent of the overall sum of financial compensation (recommendations (b) and (c) above), and the Borough Council should meet the remaining 10 per cent.

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# Section 1:

## Introduction

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### The complaint

- 1 Mrs D and her son complained that the Environment Agency (the Agency), Lancashire County Council (the County Council) and Rossendale Borough Council (the Borough Council) had failed to take appropriate action against their neighbour, Mr R, who was tipping, burying and burning large quantities of waste illegally, blocking public footpaths and intimidating anyone trying to use them. Mrs D said that the activities of her neighbour have made the landscape, which had been a local beauty spot, unrecognisable; made it impossible for her and her son to live peacefully in their family home; and may well have caused long-term damage by polluting the land and local water supplies.
- 2 Mrs D and her son seek redress for the years of distress and aggravation they have suffered and the fact that they have been unable to sell their property due to the failure of those bodies to take appropriate action.

### The decision

- 3 We have fully upheld Mrs D's and her son's complaint and have found that maladministration by all three bodies complained about has caused Mrs D and her son considerable injustice over a very lengthy period. We consider that the agreement of those three bodies to our recommendations would provide an appropriate remedy for the injustice that Mrs D and her son suffered.

### Background

- 4 Mrs D and her son live on a remote farm on the Lancashire side of the Pennines. The site is marked as green belt on the local plan, as a biological heritage site on the structure plan, and is noted as being of archaeological interest because of the remains of early industrial developments.
- 5 In 2000 the property next to Mrs D and her son was sold to a man, Mr R, who owned a skip hire business and waste transfer station in a nearby town. Mrs D told us that about six months after he moved in, he began using large trucks to bring the skips to the land surrounding both his and her property and spreading waste across the landscape. She said that shortly after this, he began burning large piles of rubbish that sometimes included items such as fridges and freezers, and which gave off appalling fumes. She added that, in order to enable him to bring the waste to the site, Mr R had laid concrete without permission and torn out trees.
- 6 From 2000 onwards, in addition to complaints made by Mrs D and her son, there were numerous other complaints made by local residents and walkers to the Councils and to the Agency about Mr R's activities on the site and their effect on them and on the area itself. They reported that Mr R had removed stiles, blocked off footpaths, placed a large aggressive dog on the main track to the farm, and put up signs saying that the land was private and the public should keep out. The signs said that dogs that went onto the land would be shot and cars would be clamped and their owners charged £2,000 to remove the clamp. It would appear that Mr R did this so that he could carry out his activities undisturbed. Activities on the site began to come to an end when the Traffic



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Commissioner revoked Mr R's Heavy Goods Vehicle operator's licence in June 2007. In her findings, the Traffic Commissioner said that Mr R had driven a 'coach and horses' through the spirit and letter of the legislation, and took the rare step of revoking his licence immediately and indefinitely.

- 7 Mr R became insolvent and he and his wife were made personally bankrupt. The farm was then repossessed by the bank. Mr R and his family initially moved into a mobile home and Portakabin adjacent to the farm, but have since moved away. The Agency eventually prosecuted Mr R, and in 2008 he pleaded guilty to three charges under the *Environmental Protection Act 1990* (the 1990 Act) for depositing, disposing and keeping waste on the land. The judge asked the Agency to do a survey. It showed that some 7,613 cubic metres of waste had been dumped. That is enough to fill about three Olympic-sized swimming pools.

## The Ombudsmen's remit, jurisdiction and powers

### The Parliamentary Ombudsman's general remit

- 8 The Parliamentary Ombudsman's remit is set out in the *Parliamentary Commissioner Act 1967*. Her role is to investigate complaints referred to her by a Member of Parliament that an individual has sustained an injustice in consequence of maladministration by a body within her remit. In this instance, that body is the Agency.
- 9 If the Parliamentary Ombudsman finds that maladministration has resulted in an injustice,

she will uphold the complaint. If that injustice is unremedied, in line with her *Principles for Remedy* she may recommend redress to remedy any injustice that she has found.

### The Local Government Ombudsman's general remit

- 10 Under the *Local Government Act 1974* Part III the Local Government Ombudsman has discretion to investigate complaints of injustice arising from maladministration by local authorities and certain other public bodies. In this instance the local authorities concerned are the County Council and the Borough Council.
- 11 If the Local Government Ombudsman finds that maladministration has resulted in an injustice, she may recommend redress to remedy the injustice.

### Powers to investigate and report jointly

- 12 The *Regulatory Reform (Collaboration etc. between Ombudsmen) Order 2007* clarified the powers of the Parliamentary Ombudsman and the Local Government Ombudsman, with the consent of the complainant, to share information, carry out joint investigations and produce joint reports in respect of complaints which fell within the remit of both Ombudsmen.
- 13 In this case, the Parliamentary Ombudsman and the Local Government Ombudsman agreed to work together because the Agency and the two Councils have between them the powers to regulate and control waste operations and the use and development of land. The authorities are expected to co-operate in carrying out those functions. It therefore seemed to

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the Ombudsmen that a joint investigation, leading to the production of joint findings and conclusions, which could take a view about the relative responsibilities of each of the public bodies involved, was the most appropriate way forward.

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## Section 2:

# The basis for the determination of the complaint

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- 14 In simple terms, when determining complaints that injustice or hardship has been sustained in consequence of maladministration, the Ombudsmen generally begin by comparing what actually happened with what should have happened.
- 15 This means that, in addition to establishing the facts that are relevant to the complaint, we also need to establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case, which applied at the time the events complained about occurred, and which governed the exercise of the administrative functions of those bodies whose actions are the subject of the complaint. We call this establishing the overall standard.
- 16 The overall standard has two components: the general standard which is derived from general principles of good administration and, where applicable, of public law; and the specific standards which are derived from the legal, policy and administrative framework and any professional standards relevant to the events in question.
- 17 Having established the overall standard, we then assess the facts of the case against that standard. Specifically, we assess whether or not an act or omission on the part of the body or individual complained about constitutes a departure from the applicable standard. If so, we then assess whether, in all the circumstances, that act or omission falls so far short of the applicable standard as to constitute maladministration. The overall standard which we have applied to this investigation is set out below.

## The general standard

### The Ombudsman's Principles

- 18 In February 2009 the Parliamentary Ombudsman republished her *Principles of Good Administration, Principles of Good Complaint Handling* and *Principles for Remedy*.<sup>1</sup> These are broad statements of what she considers public bodies should do to deliver good administration and customer service, and how to respond when things go wrong.
- 19 The same six key Principles apply to each of the three documents. These six Principles are:
  - Getting it right
  - Being customer focused
  - Being open and accountable
  - Acting fairly and proportionately
  - Putting things right, and
  - Seeking continuous improvement.
- 20 The Principles of good administration particularly relevant to this complaint are: '*Getting it right*', which means that public bodies should act in accordance with the law and with regard to the rights of those concerned, and with their policy and guidance (published and internal), and take reasonable decisions based on all relevant considerations; and '*Acting fairly and proportionately*', in particular ensuring that the decisions and actions taken by the public body are proportionate, appropriate and fair.

<sup>1</sup> The *Ombudsman's Principles* is available at [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

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- 21 The Principle for remedy that is particularly relevant to this complaint is 'Getting it right', which involves the public body quickly acknowledging and putting right cases of maladministration, or poor service, that have led to injustice or hardship, as well as considering all relevant factors when deciding the appropriate remedy, ensuring fairness for the complainant. The key aim of the remedy should be to return the complainants to the position they would have been in but for the maladministration, and where that is not possible, to compensate them appropriately.
- 24 The County Council is responsible for the control of use of land, or operations in or on land, for the deposit of refuse or waste materials, and for the erection of any building, plant or machinery designed to treat, store, process, or dispose of refuse or waste materials.
- 25 The Borough Council is responsible for the control of other uses of land, and other developments on land that require planning permission. It also has powers to take enforcement action to require statutory nuisance to be abated.

## The specific standards

### Legal and administrative framework

#### Control and management of waste

- 22 Between them, the Agency and the two Councils have various powers that could have been used to prevent what Mr R did on the land. These powers are set out in more detail in Annex A, but broadly the bodies' powers and responsibilities are as follows.
- 23 The Agency are responsible for the system of licenses for the transport, disposal, keeping or treatment of controlled waste which was introduced by the *Environmental Protection Act 1990* (the 1990 Act). The Agency are also responsible for prosecutions for the criminal offence of treating, keeping or disposing of controlled waste in a manner likely to cause pollution of the environment or harm to public health.
- 26 A series of protocols signed by the Agency and the Local Government Association set out how waste offences would be dealt with.<sup>2</sup> The purpose of the protocols was to ensure effective co-ordination between the waste control bodies. This was made clear by Sir John Harman, the then chairman of the Agency, who said: '*Action that is not coordinated and directed to a common purpose is unlikely to be of much value*'.<sup>3</sup>
- 27 The protocols set out how it should be decided which body should deal with different types of waste control problem. In general, the Agency should take responsibility for large-scale illegal tipping, and local councils deal with smaller, isolated incidents of fly tipping. The protocols also recommend that the Agency and local councils should form local agreements on how they should work together to respond to illegal waste activities.

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<sup>2</sup> *Working better together*, 2000, 2003 and 2005.

<sup>3</sup> *Working better together*, July 2000.

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## The role and responsibilities of the Agency

28 The Agency's main statutory powers to control waste on land are found in Part 2 of the 1990 Act. (The licensing provisions were recently changed by the *Environmental Permitting (England and Wales) Regulations 2007*, but what follows describes the provisions up until 8 April 2008.) Part 2 of the 1990 Act gives the Agency the powers to:

- licence 'fit and proper' persons involved in the deposit, disposal and keeping of controlled waste in or on land;<sup>4</sup>
- impose conditions and require the licensee to carry out works or do other things it deems necessary to protect the environment;<sup>5</sup> and
- prosecute someone for dealing with waste without a licence or for not meeting the conditions of a licence.<sup>6</sup>

29 Section 71 of the 1990 Act gives the waste regulation authority the power to issue a notice requiring people or authorities to provide such information as the regulation authority reasonably considers that it needs for the purpose of discharging its functions. It also sets out the potential consequences for those who fail, without reasonable excuse, to comply with such a requirement; or who, when complying, make any statement which they know to be false or misleading. These include a fine or imprisonment for a term not exceeding two years, or both.

## Waste management exemptions

30 A Waste Management Licence (WML) is not needed if the waste involved is exempt under the *Waste Management Licensing Regulations 1994* (WMLR 1994). In relation to this investigation at the time of the events complained about the most relevant exemptions were:

- spreading wastes for use in agriculture;<sup>7</sup>
- spreading of soil, rock, ash or sludge, or construction or demolition waste in connection with land reclamation or improvement in accordance with a planning permission;<sup>8</sup> and
- storage on a site of waste from demolition, construction, tunnelling or other excavations to be used on the site (within three months if the waste is brought to, rather than produced on, the site).<sup>9</sup>

## The Agency's Enforcement and Prosecution Policy

31 The Agency's *Enforcement and Prosecution Policy* (EAEPP) sets out their powers and how they will use them. The EAEPP also describes how the Agency should work with local government and other regulators.

32 The purpose of the Agency's enforcement function is to protect the environment and to secure compliance with the regulatory system. It says that, although the Agency expect full

<sup>4</sup> Section 35, the 1990 Act.

<sup>5</sup> Section 35, the 1990 Act.

<sup>6</sup> Sections 33(6) and 34, the 1990 Act. See Annex A for details of these prosecuting powers and the relevant penalties.

<sup>7</sup> Paragraph 7 of WMLR 1994.

<sup>8</sup> Paragraph 9 of WMLR 1994.

<sup>9</sup> Paragraph 19 of WMLR 1994.

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voluntary compliance with relevant legislative requirements and licence provisions, they will not hesitate to use their enforcement powers where necessary.<sup>10</sup>

33 The EAEPP sets out a presumption of prosecution where any of the following occur:<sup>11</sup>

- where there is a serious consequence to the environment;
- carrying out operations without a WML;
- excessive or persistent breaches of regulatory requirements;
- failure to comply with formal remedial requirements;
- failure to supply information without reasonable excuse or supplying misleading information; or
- obstruction of Agency staff.

34 The EAEPP says that, where the Agency and another enforcement body have the power to prosecute, the Agency will liaise with that other body to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings are instituted for the most appropriate offence.<sup>12</sup>

## The roles and responsibilities of the local authorities

### Planning enforcement

35 Planning permission is generally required to change the use of land and/or to develop on land. Some changes and developments specified in the *General Permitted Development Order* are 'permitted' without needing specific permissions. If development or change of use of land that is not covered by the *General Permitted Development Order* occurs without planning permission, planning authorities can take enforcement action.

36 The County Council is the planning authority for waste and minerals issues and, therefore, the only authority with the power to take enforcement action against use of the land for the storage or disposal of waste and/or against unauthorised development of the land for those purposes.<sup>13</sup>

37 The Borough Council has no planning enforcement powers in relation to use or development of the land for waste storage and disposal operations. It does have power to enforce against unauthorised change of use of the land and any development of the land not permitted under the *General Permitted Development Order* for the existing agricultural or residential use of the site.

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<sup>10</sup> Paragraph 6, EAEPP, Version 1 (01.11.98).

<sup>11</sup> Paragraph 28, EAEPP, Version 1 (01.11.98).

<sup>12</sup> Paragraph 33, EAEPP, Version 1 (01.11.98).

<sup>13</sup> *Town and Country Planning (Prescription of County Matters) Regulations 1980*, SI 2010.

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### *Town and Country Planning Act 1990*

38 The *Town and Country Planning Act 1990* (TCPA 1990) sets out what a planning authority should do if it becomes aware of a breach of planning control in its area.<sup>14</sup> The full details are included in Annex A.

39 Government guidance explains the approach a planning authority should take if an unauthorised development is unacceptable and relocation is not feasible.<sup>15</sup> It quotes from a Government White Paper, which says:

*'If people ignore or flout laws and regulations designed to protect the public from serious harm, they should be punished properly.'*<sup>16</sup>

40 Section 183 of the TCPA 1990 allows a local authority to serve a stop notice requiring activities that are subject to an enforcement notice to stop immediately. Failure to comply with a stop notice can result in summary conviction and fines of up to £20,000, or an unlimited fine if convicted on indictment. However, if the related enforcement notice is not upheld on appeal or is varied or withdrawn, a council may have to pay compensation for any financial loss arising from a stop notice.

### *The County Council's Planning Enforcement Policy*

41 The County Council's Development Control Group's *Enforcement Policy*<sup>17</sup> says:

*'We investigate all complaints about planning breaches at ... waste management ... sites. If no permission exists for a development ... we shall seek to rectify the matter.'*

The policy allows for discretion, as it says:

*'Immediate formal enforcement action would usually only be taken if the breach was likely to cause significant harm to the environment or local amenity ... We shall only use formal enforcement action where negotiation has failed, as a last resort.'*

The policy goes on to say:

*'If it [the County Council] chooses not to pursue enforcement action, the reasons for not doing so will be made clear and conveyed to the complainant.'*

42 The policy also sets out how the County Council will monitor progress if it decides to issue an enforcement notice to a landowner or developer:

*'We will visit the site regularly to monitor progress. If we find the rate of progress on site is unlikely to meet the requirements of the notice by the specified date, we will inform the landowner or developer of the problem and the likely consequences of the delay. If the developer fails to comply ... we will consider prosecution.'*

<sup>14</sup> Section 55(3) of the TCPA 1990.

<sup>15</sup> *Planning Policy Guidance PPG18*, (December 1991).

<sup>16</sup> CM 965 1990, *Crime, Justice and Protecting the Public*.

<sup>17</sup> Lancashire County Council, *Development Control Enforcement Policy*.



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### Highways

- 43 As the Highways Authority, the County Council has a duty to: *'assert and protect the rights of the public to the use and enjoyment of any highway'*, and *'to prevent as far as possible, the stopping up or obstruction of – (a) the highways for which they are the highway authority'*.<sup>18</sup>
- 44 Until autumn 2004 the County Council had appointed the Borough Council to act as its agent to carry out this duty. The County Council monitored the performance of the District Councils under agency agreements. Such monitoring was carried out three times a year and required the District Councils to report the number and category of complaints, and what proportion had been resolved in a particular time span.

### Environmental protection

- 45 The Borough Council is required under the 1990 Act to inspect its area for, and investigate complaints about, statutory nuisance, which can be (amongst other things) smoke, fumes, dust, steam or smell that is prejudicial to health, or a nuisance.<sup>19</sup>
- 46 If satisfied that a statutory nuisance exists, or is likely to occur or recur, the Borough Council is required to serve a notice requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence.<sup>20</sup>

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<sup>18</sup> *Highways Act 1980* section 130, as amended by section 63 of the *Countryside and Rights of Way Act 2000*.

<sup>19</sup> Section 79, the 1990 Act.

<sup>20</sup> Section 80, the 1990 Act.

## Section 3: Investigation

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- 47 During the investigation, our investigator examined the papers and records held by the Agency, the County Council and the Borough Council in relation to the events complained about. Interviews were also conducted with a number of officers from each of those bodies who had been involved at the time, and there have been many exchanges and discussions with Mrs D and her son. The Local Government Ombudsman visited the site with a police escort. Consideration has also been given to the comments made by the Agency's Chief Executive and both Councils in response to Mrs D's and her son's complaint, and in response to our specific enquiries. We have also taken account of comments received from all three parties complained about, and Mrs D and her son, in response to sight of our provisional report in coming to our decision.
- 48 We have not included in this report all of the information considered in the course of the investigation, but we are satisfied that nothing of significance to the complaint or our findings has been omitted.

### Key events

- 49 A detailed chronology of events is set out in Annex B. It is likely that this is not a complete record because the County Council no longer holds any records of its involvement prior to October 2003. Further, the Agency's records which predate the introduction of their computer record system would also appear not to be comprehensive. In addition, in a number of instances, even where it is evident that certain meetings took place, no record was made by any of those involved of either the discussion or the outcome.
- 50 For ease of understanding, a brief summary of the key events follows.
- 51 In May 2000, shortly after moving to the farm neighbouring Mrs D's and her son's property, Mr R began substantial excavation and engineering work on the site, bringing wagons, skips and containers on to the land. The Borough Council responded promptly and wrote to Mr R on 31 May 2000 warning him that he had to cease that work immediately as he did not have planning permission. In July 2000 the Borough Council's Planning Enforcement Officer visited the site and reiterated that the development should cease immediately and that Mr R should apply for planning permission, but told him that it was unlikely he would get it.
- 52 From the summer of 2000 Mr R was tipping and burning waste from the skips that he brought to the site. He used some waste as hard core for hard standings (some of which he concreted over) for the skips and wagons. He also cleared an area of land and created earth 'bunds' around it (subsequently referred to as 'the burning pit'). The Agency began to receive reports of illegal tipping and burning of waste on the site. Agency officers visited the site five times at the end of July and beginning of August 2000 and found evidence of tipping and of the culverting (covering over) of a stream. They gave Mr R until 28 August 2000 to remove the waste. However, nothing more seems to have happened until November 2000, when Agency officers visited the site twice in response to further complaints about tipping and burning. They spoke with Mr R and his solicitor; Mr R denied importing waste and asked for clarification of what waste he could legitimately bring on to the land and about WML exemptions.

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Photograph of excavation on neighbouring land (paragraph 51).

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53 Aware that Mr R had applied to the Traffic Commissioners for a licence to operate skip lorries from the site, in November 2000 the Borough Council's Planning Manager sent an objection to the Traffic Commissioners, saying:

*'The site, located as it is in a remote upland rural Green Belt location, along unadopted narrow, otherwise quiet lanes, is inappropriate for such a commercial use by reason of the noise, fumes, pollution, vibration and visual intrusion. The proposed operating centre is unsuitable ... [because of] ... heavy recreational use by walkers and horse riders.'*

54 The Borough Council, the County Council and the Agency met at the end of November 2000 to discuss their response to Mr R's activities. It seems that it was agreed that the Borough Council would take the lead.

55 In January 2001 the Borough Council served Mr R with four planning contravention notices, requiring him to remove all the skips and vehicles, and all imported and tipped material, and to re-seed the land. Mr R appealed against the notices to the Secretary of State, claiming the development was for agricultural use.<sup>21</sup> Over the next six months numerous incidents of tipping and burning at Mr R's site were reported to the Agency's National Incident Recording System (NIRS), and the Fire Brigade attended two fires on the site.

56 On 1 March 2001 a footpath closure order was introduced across the country following the outbreak of Foot and Mouth Disease.

57 In April 2001 the Borough Council's Environmental Health Officer completed a statement for the planning appeal saying:

*'From the far side of ... the lodge and between this building and ... farm approximately 75m away the smell of burning and the drifting of smoke was obvious. The burning smell was putrid in character and carried the odour of decaying refuse, reminiscent of a tip fire as opposed to wood, coal or building rubble ... On the left hand side to the rear of a storage shed an area of earth banking approximately 25m in length had been excavated to form a hearth for burning. This is where the smoke and odour described earlier originated. There was evidence of mixed refuse being burnt.'*

58 On 24 May 2001 a second meeting was held between the two Councils and the Agency, but again no note was made of the discussion or outcome. Agency officers visited the site again, but on 5 June 2001 told the Borough Council that they had no evidence that what Mr R was doing was illegal, but that they were monitoring the situation. The following day the Borough Council served Mr R with a fifth planning contravention notice requiring him to remove all skips, containers, skip wagons and other vehicles from the land. The Borough Council then employed a Consultant Planner to work on the enforcement action being taken against Mr R, and his appeals against those.

59 In June 2001 the Traffic Commissioners granted Mr R a restricted operator's licence (three vehicles only), allowing him to use the farm as an operating base for his haulage/skip business with

<sup>21</sup> And therefore permitted under paragraph A, Part 6, Schedule 2 to the *General Permitted Development Order 1995*.

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Photograph of the 'burning pit' on neighbouring land (paragraph 52).

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- the condition that there should be no loading or unloading of unauthorised vehicles on the site.
- 60 In August 2001 the Borough Council's Planning Manager found the public footpath to be blocked by a guard dog on a chain. He took some photographs of a fire, various machines, skips and containers and was confronted by a man who threatened him and demanded his camera. The Planning Manager recorded in a statement at the time:
- 'After a period of exchanges I attempted to phone for assistance at which point he grabbed hold of my arm and snatched my mobile phone out of my hand, breaking the strap to my wrist. He said if I didn't give him the camera he would throw the phone into the reservoir to the north.'*
- The man did throw the mobile phone into the reservoir and then manoeuvred a skip lorry to block in the Planning Manager's car. Mr R then arrived and said he did not own the field where the fire was burning, and then told the other man to take the keys out of the lorry.
- 61 When the Agency subsequently telephoned the Planning Manager to discuss the activities on Mr R's land, which they said they were investigating, he told them that Mr R had largely complied with three of the first four planning contravention notices and that the only outstanding issue was the reinstatement of the burning pit area.
- 62 From August 2001 onwards the Borough Council received numerous complaints from neighbours and walkers that Mr R was obstructing footpaths and rights of way, and intimidating anyone who objected by aggressive, threatening and foul-mouthed behaviour.
- 63 A letter of complaint in 2001 from a visitor from Australia, returning to the area after 21 years, commented:
- '[To] my horror, the area has been desecrated. The area near the waterfall is a construction site, with burning rubbish, earth moving equipment, noise, mud, and from memory, trees removed. I was devastated when I saw the mess. What is happening? ... should be a conservation area, not a place where people are allowed to do what they want.'*
- 64 When Mr R failed to respond to a warning about obstructing the footpath, the Borough Council's Rights of Way Officer asked its solicitor to initiate legal proceedings against Mr R. Despite a reminder from the officer and numerous further complaints, no further action was taken.
- 65 The Land Registry records show that ten months after the Borough Council served the original enforcement notices, the land subject to two of the notices (the burning pit) was sold on 16 October 2001 to a Mr M of Eire, for £500. Only the most general of addresses is given for Mr M, which is 'Main Street' followed by the name of a village. Mr M's solicitors for the purchase were based in Bury, Lancashire.
- 66 The Borough Council's former Environmental Health Officer was warned by the Agency, during a telephone conversation in October 2001, that their officers only visited the site in fours – two to do surveillance and two to intervene if there was any threat of violence.
- 67 In November 2001 the Consultant Planner working for the Borough Council (see paragraph 58) told Mr R's representative that Mr R had stopped storing skips, wagons and

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- other containers and removed the culverting over the stream; more time would be given for him to remove material imported to the site and to return the land close to its original, natural state. He added that the Borough Council would be pursuing the notice requiring the land to be returned to its original condition. The next month the Borough Council issued Mr R with a further notice requiring him to restore the land to its original condition and a stop notice requiring him to stop removing top soil, cease excavations, and laying hard core, crushed stone and concrete.
- 68 The Agency, meanwhile, had continued to receive reports of tipping and burning, and continued to visit or observe Mr R's land, but recorded that they did not witness waste being imported and were unable to determine what was being burnt. On 22 January 2002 in response to a further complaint, two Agency officers visited the site and photographed the tipping of controlled waste. Mr R refused to let them leave the site unless they surrendered the camera film, which they did. Mr R told them that neither the lorry that was tipping the waste, nor the land on which it was being tipped, belonged to him, although he had used some hard core materials to create a hard standing for a silage store. The Agency subsequently prosecuted Mr R for obstructing the officers that day.
- 69 Following a third joint meeting between the Borough Council, the County Council and the Agency in February 2002 about Mr R's activities, the Agency conducted further surveillance. In April 2002 the Agency wrote to the Borough Council saying that, although there was evidence of unauthorised waste operations on the land, it was not possible to identify those responsible. They added that the material deposited by Mr R was for the maintenance of the access road, and therefore exempt from the requirement for a WML, and the other dumping and burning of waste was on land no longer owned by Mr R.
- 70 Mr R's appeal against one of the Borough Council's planning enforcement notices was heard by a Planning Inspector in May 2002. Mr R argued that the skips, containers and vehicles were for agricultural purposes.
- 71 The Planning Inspector's report notes that, at the time the original enforcement notices had been served, there had been no agricultural activity on the site but that, between serving the notices and the appeal, Mr R had brought some animals onto the farm albeit at that time '*at the scale of a hobby rather than a commercial operation*'. The Borough Council conceded that there was evidence of some current agricultural use.
- 72 The Planning Inspectorate dismissed Mr R's appeal but varied the enforcement notice so that it only enforced against using land for skips and vehicles and against the hard standings that were not '*reasonably required for agriculture*'. The Planning Inspector gave Mr R six months to comply and told him that he would have to justify how much of the hard standing could remain. Mr R had not appealed against the other enforcement notices and the stop notice.
- 73 In July 2002 the Consultant Planner working for the Borough Council concluded that it would only be feasible to prosecute Mr R for failing to comply with the planning enforcement notice that related to the burning pit restoration. He therefore proposed to Mr R's representative that Mr R should withdraw his outstanding appeals and restore the site. Mr R agreed, but did not restore the site.

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- 74 In November 2002 the Borough Council noted that the agricultural use of the land had ceased and that Mr R was again bringing skips and wagons loaded with waste onto the land in breach of the enforcement notices. It threatened legal action if he did not stop immediately.
- 75 In January 2003 Mr D wrote to the Borough Council saying that Mr R's illegal activities continued unabated, and complained about the Council's failure to take appropriate action. The Borough Council decided to seek injunctions to restrain Mr R.
- 76 The files show some frustration amongst planning officers. In June 2003 the Planning Manager sent an email to the Borough Council's legal department saying:
- 'Our failure to take action against Mr R as we have both promised and threatened exposes us to even more criticism than the other authorities who have been even less diligent in pursuing their powers against this serial breaker of any and every regulation in existence.'*
- 77 And again, a few days later:
- 'I feel that we are failing Mr D. As you will be aware from my previous calls, memos and emails I am extremely concerned that we have not yet taken any action against R. I understand that you have all the information you require to proceed with a prosecution. When will it occur?'*
- 78 The County Council's Land Agent was subsequently asked to advise on the extent of any agricultural use and a private solicitor was retained, but little progress was otherwise made before October 2003, when Counsel advised that more fresh evidence of frequent and persistent breaches of planning control was needed, and that joint action with the County Council and the Agency would improve the chances of a successful prosecution. In the intervening time Mr R's breaches had become ever more flagrant, including the tipping and burning of fridges and washing machines.
- 79 From then on there were intermittent attempts on the part of the three bodies to co-ordinate their action in order to gather sufficient evidence for a successful prosecution against Mr R. There were further meetings in November 2003 and February and April 2004, and the County Council agreed to join with the Borough Council in its legal action. However, there is no evidence that this proposed legal action progressed any further, and very little evidence, despite continuing complaints by Mrs D and her son and others, of attempts by either Council to try and prevent Mr R's activities.
- 80 As for the Agency, their records show that, although covert surveillance and visits to the farm by their officers led to their having 'good evidence' of waste tipping and burning, the Agency felt that they had insufficient evidence that that waste had been imported, and had not been generated on the farm. They also accepted that some of the other tipping by Mr R on the land was to maintain the access road and would therefore be exempt, were Mr R to apply for an exemption. As a result, for over two years from April 2004 onwards the Agency did little more than: keep reminding Mr R that he needed a WML or an exemption in order to tip waste; point out that he had not applied for an exemption; tell him how he could apply for one; and warn him of the consequences if his illegal



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action continued. Eventually, in July 2006, after witnessing on several occasions fresh deposits of controlled imported waste, the Agency asked Mr R to attend an interview under caution, which he refused to do. He was finally cautioned in February 2007 and prosecuted in June 2008. In the meantime, the Traffic Commissioners had revoked Mr R's Heavy Goods Vehicle operator's licence in June 2007, and a bankruptcy order had been issued which led to the land being taken over by his bank.

## The Agency's comments on the complaint

- 81 In her comments on the complaint the Agency's then Chief Executive said that Mr R had been a cause for concern to the Agency for a number of years. The Agency were aware of his activities and of his lack of respect for his neighbours and for the environment. The challenge that the Agency had faced was in gathering sufficient evidence to prosecute him for his alleged illegal activities without unduly jeopardising his neighbours.
- 82 The farm in question was remote and with a single access road which had affected the Agency's surveillance activities, and which had meant that Mr R had been aware of their monitoring activity and had modified his behaviour accordingly. The Agency had used considerable manpower and resources over several years to carry out surveillance and monitoring at the farm as set out in the chronology.
- 83 The Chief Executive said that the Agency recognised that, historically, they had been overly cautious in ensuring that their intelligence and evidence of offences committed was of a very high quality in order to achieve a significant result in terms of prosecution. They also accepted that this approach had not achieved the desired outcome, either in terms of environmental protection or individual prosecution. She said that the Agency's approach to enforcement had changed from 2007 onwards, and that that revised regulation approach would result in action being taken more quickly, as had been shown in this case.
- 84 The Chief Executive went on to say that, whilst there had been numerous incidents relating to Mr R's farm logged on their incident database (NIRS), it was important to note that none of them had been assessed as 'major' or 'significant'. In response to the report by the Fire Brigade on 23 August 2003 of their attendance at a fire on the site, when an estimated ten tons of waste, including refrigerators, had been burnt, an Agency officer had visited the fire a few days later and saw no evidence of illegal activity. Similarly, a covert surveillance operation carried out over the following month had witnessed no illegal activity.
- 85 Turning to Mr R's other activities at the farm, it was evident that a considerable amount of concreting had taken place there, and a brook adjacent to the farmhouse had been culverted. The concreting of the hard-standing area for the storage of commercial vehicles and the excavation of the trees from around the site fell outside the Agency's remit. However, the culverting of the brook was a matter for the Agency, and it had been agreed with the Borough Council on 30 November 2000 that the Borough Council would serve notice on Mr R to rectify the problem, which it had done, requesting re-instatement by 6 February 2001. The Agency officers had met Mr R in January 2001 when he had indicated he would

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comply, but expressed reservations about the timescale for doing so.

- 86 However, the outbreak of Foot and Mouth Disease had meant that countryside visits had not been undertaken for a number of months. The notice did not appear to have been complied with and the Borough Council had subsequently taken legal action.
- 87 Turning to the concerns Mrs D and her son had raised about the local water supplies (paragraph 1), the Agency's Chief Executive said that there were two water data monitoring points in the vicinity of the farm and that the recordings at those points in 1997 and 2007 had been of good quality, and had shown no significant trends. She was pleased, therefore, to be able to report that their concerns in that respect were unfounded.
- 88 The Agency's Chief Executive concluded by saying arrangements had been made for the local area manager to visit Mrs D and her son and apologise for not having taken swifter steps to remedy the situation.

## Further evidence from interviews with Agency officers

- 89 Our officers interviewed a number of Agency officers who had been involved at some point with the events in question, and in particular the field officers who visited the site. Those involved in the early stages told us that they believed that there had been covert Agency surveillance operations in relation to the site before those shown in our attached chronology, but that the records of those no longer existed. (It appears that a large number of relevant documents, including records of visits, officers'

notebooks and investigation forms and decisions, went missing when the area office closed in April 2002 and staff moved to the regional office.)

- 90 One of the then Special Enforcement Officers said that there had also subsequently been the problem over the ownership of the small plot of land on the site on which the main tipping and burning was taking place. Although the Agency had issued section 71 notices (paragraph 29) to Mr R and Mr M to try and get the evidence about ownership, Mr M's solicitors had told them that they had lost the relevant file relating to the purchase of the land. The officer said that section 71 notices were generally used to establish specific information which could then be used as the basis for an interview. However, if a person incriminated themselves in their response to such a notice, it could be ruled inadmissible by the court.
- 91 The officer went on to say that there had been a general assumption that the waste brought to the site had originated from Mr R's waste transfer site, but no surveillance- or records-based exercises had been carried out to confirm that suspicion. A key difficulty was that lots of activities on agricultural land were lawful, and the first stage was therefore to identify whether the waste would be exempt if an exemption had been applied for, and whether it was old or new waste. Further, they needed evidence about the waste being tipped 'from cradle to grave' in order to prosecute successfully. To do that they would have to inspect the site, calculate the level of waste, and accurately record all the waste going in and out in order to be able to say how much was being moved.

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- 92 As for why no legal action had been taken earlier, officers said that it had not been normal practice at the relevant time to use injunctions, although that practice had since changed. They gathered evidence for a prosecution instead. However, it had also been the practice to get evidence of each stage of the contravention, the vehicle going onto the land, seeing it on site, and witnessing the tipping. They said that the Agency had been reluctant to prosecute at that time unless they could prove that the keeper of the waste (the person on whose land the waste had been tipped) had been involved with the actual tipping. Further, because of previous experience of trying to take action against Mr R, they wanted to make sure that there was no possible defence that he could successfully put forward; they wanted to have an 'open and shut' case so that he would plead guilty. They considered that there was no point asking drivers for sight of the waste transfer notes to show where the waste had come from and was going to (Annex A, paragraphs 7 and 8), as these would simply have been produced after the event. But in any event, it was unheard of at that time to pursue such matters.
- 93 Another key problem, they said, had been the difficulty in mounting successful surveillance because of the limited access to the site, which meant that Mr R would generally know when they were around and were observing from a distance. They might see a lorry going on site, but the farm itself was not really visible. At the time agricultural waste was not controlled, and some of the other waste seen on site could be exempt if it was legitimately being used to build a hard standing or roads, for example. They were therefore looking for mixed waste which could not be exempt, as they did not want there to be any dispute in court. Although it was still an offence for Mr R to bring waste which could have been exempt onto the site without such an exemption, the fine for that was around £10 at the time and it was not therefore cost-effective to pursue. An additional problem, they said, was that the health and safety issue identified (the fact that Mr R and others on site could be aggressive) meant that they aimed always for there to be four officers carrying out surveillance.
- 94 The then team leader of the relevant Agency Enforcement Team said that the outbreak of Foot and Mouth Disease had caused the Agency access difficulties and that he believed that Mr R had used this as an opportunity to import as much waste as he could. He went on to say that in his view they had adopted a cautious approach based on experience. What was, and was not, waste was a greyish area, and they would therefore have only taken legal action if they or the Council officers had actually witnessed the depositing of the waste on site. It had to be remembered that this was happening on a farm, and that to all intents and purposes, agricultural waste was not at that time controlled, and the burning and depositing of it was not an offence. That did not mean that they thought Mr R's activities were legal, but that they 'stepped back' and made sure that they had considered every possible defence he might raise before taking legal action. The delay was therefore due to caution when dealing with someone who knew the legal system; this was all the more important because of the concerns of local residents about harassment by Mr R. The Enforcement Team had put the evidence on the obstruction case to the solicitors in early 2002 but they had not heard anything back from them by the time the team leader had moved to a new job on a different site in September 2002. He added, however, that it had been his intention to prosecute Mr R for depositing just

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as soon as the obstruction case had been heard, as he felt that they had sufficient evidence by then. He had been very surprised to learn that that had not happened.

95 Turning to the question of liaison with other bodies, Agency officers expressed a variety of views as to why there had apparently been little attempt to co-ordinate action to prohibit Mr R's activities. One officer gave the view that they did not want to duplicate or infringe upon the Councils' activities, and the Agency could have 'messed up' the Councils' own investigations. Another said that a difficulty with joint working was that there had been no formal agreement in place as to who would do what. The then Enforcement Team leader said that joint operations were simply not carried out at that time.

## The Borough Council's comments on the complaint

96 The Borough Council pointed out that:

- it had strenuously objected in 2001 to Mr R being granted a licence to operate HGVs from the farm, but the Traffic Commissioners had granted Mr R a licence;
- Mr R's appeal to the Planning Inspectorate against the enforcement notice regarding the change of use of the land from agriculture to storage of skips, containers etc had delayed enforcement action, and the subsequent variation made to the notice by the Planning Inspector made prosecution more difficult;
- the inaction of the Agency and the County Council left it with no choice but to try to deal with a situation for which it had the least

relevant and effective enforcement powers and the least resources;

- its difficulties at the time in achieving adequate standards in most areas of its responsibilities and activities were well documented and it has worked hard to achieve improvements;
- the Borough Council's officers had visited Mrs D and her son in late 2005 to explain why the Council thought that it had done all it could, why prosecution on their part was unlikely to be successful, and why the tipping and burning of refuse, and the failure to remove illegally tipped refuse, were matters for the County Council and the Agency; and
- the actions of the Borough Council in obtaining an injunction against Mr R (obtained in Blackpool County Court) led directly to him leaving the site.

## Further evidence from interviews with the Borough Council's officers

- 97 Our investigators interviewed several of the Borough Council's officers. One officer, who had been involved from the outset, said that the Borough Council had involved the Agency and the County Council in November 2000 because it was clear that there were major waste disposal and management issues on the site in question. He had felt disappointed that they had shown little interest in the matter at that meeting.
- 98 Another officer emphasised the difficulties posed by the Planning Inspector's report following the appeal, followed by the apparent sale of the piece of land to Mr M. Although officers had believed the sale to be a sham,

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they did not see how they could trace Mr M to be able to take planning enforcement action against him. As for taking further action in respect of the enforcement notices, Counsel had told them that their evidence was too old and suggested that the only way to ensure success was a joint approach with the Agency and the County Council. Neither had seemed keen to be involved, and the Agency in particular had seemed *'anxious not to be there'*. This made it very difficult for the Borough Council as tipping and burning waste was the key issue (rather than the hard standings and keeping skips, vehicles and containers on the land). Only the Agency and the County Council could deal with control of waste operations and planning enforcement on land used or developed for waste.

- 99 A private solicitor acting for the Borough Council explained why the evidence that had been gathered had been insufficient:

*'[We] needed evidence to act on such as dates and times, the worst event of all, the last time it happened etc. We didn't have this basic information. We just had an overview of what had gone on, but it was too vague to go to Court. They established a prima facie case, but they needed to beef it up and prepare for Court ... This didn't happen.'*

- 100 The Borough Council's Environmental Health Officer said that there was evidence of statutory nuisance but she had not served a notice (paragraphs 45 and 46) because the fumes were a transient by-product of the main problem, which was that the site was being used as an illegal waste station. She had been called out several times and she had recorded and photographed vehicle movements and offered

them to the Agency officers, who had said that they needed to collect their own evidence. She had tried to involve the Agency, for example calling them when there were fires burning, but they had always said that they could not attend.

- 101 The Borough Council's then Rights of Way Officer until August 2002 said that he had felt that there was a general reluctance at that time to take proceedings, and although notices were sometimes served, matters had never been taken to court. The Borough Council had almost got to the point of taking proceedings against Mr R when he had indicated that he would co-operate. He did not think that any formal decision had been taken to discontinue the court action, rather that the planning issues had taken over. The Rights of Way Officer said that he had asked the County Council to have a look at what was going on. Insofar as he could remember, the County Council had said that there was nothing it could do because the obstruction had not been serious enough.

## The County Council's comments on the complaint

- 102 The County Council initially said that it had few records because it had not been involved with the Borough Council's planning enforcement proceedings in 2001 and 2002, and had only become aware of the problems at the farm after it received an email from the Borough Council's then Planning Manager in October 2003.
- 103 The County Council went on to say that, once it had been made aware of the problems on the site, it had acted quickly and very proactively to address the matter of unauthorised importation and deposit of waste. It said that regular visits and meetings had subsequently taken place and

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the unauthorised activity had then diminished to the extent that planning enforcement action by the County Council had not been necessary. It added that its Environment Director had always responded to reports and complaints made by Mrs D's son and would continue to do so. It concluded that a programme of monitoring of the site, in conjunction with the Agency, would continue until it was no longer considered necessary.

<sup>104</sup> Our investigator found a letter in the back of the County Council's file marked '*Misc Documents from Rossendale*', dated February 2002 and confirming a meeting that month. The letter is headed with the name of the site and was not placed in date order on the file. It is stamped as being received by the County Council and being passed to the Enforcement Officer and Head of Planning. After our investigator showed the County Council the evidence he had found, it accepted that a former enforcement officer had been involved, possibly from 2000 onwards. It accepted that the paperwork detailing that officer's site visits, photographic evidence and records of any meetings with the Borough Council and the Agency should have been on file, and were not.

<sup>105</sup> As a result, the County Council could not say whether records had not been made, or had been made and subsequently lost. It said that an improved system for recording complaints and retaining records of investigations was now used and should ensure that information was retained on complaints and enforcement cases.

<sup>106</sup> The County Council went on to say that, in the absence of the relevant records, it was difficult to establish what had occurred in those early years from 2000 to 2003; and whether it had

not been proactive because it had relied on the Agency or the Borough Council. Mr R's activities had subsequently reduced significantly and the situation had improved from 2004 onwards; and since then the proactive approach adopted had led to improvements to the site, obviating the need for planning enforcement action. The County Council pointed out that Government guidance (*Planning Policy Guidance*, note 18 – PPG 18), encourages resolution through either enforcement notices or negotiation, without the need to resort to legal action.

<sup>107</sup> In respect of the rights of way issues when the Borough Council was acting on the County Council's behalf, the County Council said that the Rights of Way Officer had taken prompt action in response to the numerous complaints starting in August 2001. He had visited the site, and written to and visited Mr R in order to make clear what remedial action was required. The Rights of Way Officer had then at the end of September 2001 asked the Borough Council's solicitor to prosecute Mr R in the Magistrates' Court. Over the next months until April 2002 the Rights of Way Officer had continued to forward new evidence to the Borough Council's solicitor, but had then, in a letter dated 12 April 2002, appeared to indicate that a resolution to the problems might be achievable with the co-operation of Mr R. The County Council said that it could easily take a number of months to put a strong prosecution case together. Unfortunately, it was not clear from the papers whether or not the problems being experienced at that time had been resolved by the agreed action of the landowner or not.

<sup>108</sup> The County Council said that its monitoring of the Borough Council's performance, as agent for the County Council as Highways Authority, had not been designed to pick up

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individual cases, unless the Borough Council had specifically brought the matter to the County Council's attention. There had been a procedure whereby interest groups, such as the Ramblers' Association, could report dissatisfaction with a District Council's performance to the County, and this would be followed up. Neither of those instances had happened here. However, when the Rights of Way Officer left the Borough Council in 2002, there had been no permanent replacement. After some discussion, the Highways Agency agreement had ended in autumn 2004. At that stage the County Council had become aware of the continuing problems relating to the site, which had continued to 2008.

## Additional evidence from interviews with the County Council's staff

109 The Ombudsmen's investigators interviewed several of the County Council's officers. The original Planning Enforcement Officer involved, whose records were missing, said that his post had been new and intended to establish an enforcement function. He recalled that the problems at Mr R's site involved waste disposal and burning, and he thought that they had continued for about a year. He could only recall one significant meeting with both the Borough Council and the Agency, which he claimed had been set up at his request to try and sort out the problem and '*all the confusion*'.

110 The former Planning Enforcement Officer said that he had visited the site probably around 20 times over a year. He said that there was a lot of work in dealing with waste matters, because it involved different authorities. In some instances it was better if the Agency dealt with these matters, because the offences under their

legislation were more severe and carried greater penalties. He had met Mr R at the site in relation to complaints about Mr R having culverted a stream and completed some other excavation works. However, those were matters for the Borough Council – not the County Council. He added that there had been clear warning signs that the farm would become a skip storage/ industrial use site.

111 The former County Council Enforcement Officer went on to say that he had worked with the Agency to tackle the issue of burning on the site, because if they stopped the burning, they would stop the trips to the site. The Agency had set up observations, but because of the difficult access to the site, their presence was obvious and so every time they set those observations up activity on the site would cease. They would then leave the site, and the next day there would be more reports of tipping and burning. That had been very frustrating.

112 Asked why no enforcement notices had been issued, the former County Council Planning Enforcement Officer said that the objective was to solve the problem, and simply issuing notices would not have done that. The smoke was a matter for the Borough Council's Environmental Health Team, waste incineration was for the Agency, and the use of the land for depositing and incineration would be a planning matter for the County Council. Mr R was already committing an offence which was for the Agency to prosecute, and he had understood that the Agency were intending to pursue a prosecution when his involvement came to an end. However, only wood was being burnt, and that was not processing waste. There had been an allegation made by the Borough Council that inert waste had been tipped on the site. The County Council's advice was that the Borough

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Photograph of skips on neighbouring land (paragraph 110).

Council would be unable to enforce the notices it had issued, because it had no evidence of what the land had been like before. He had told the Borough Council that its notices were too imprecise and that the County Council could not therefore take the case from it. The former officer said that he had not returned to the site because, as far as he was concerned, the very narrow issue of burning was being tackled by the Agency. There would be no added value in the County Council just issuing another enforcement notice. He said that it was important for the different authorities not to duplicate the use of their powers, because

having too many different people involved would simply muddy the waters. As far as the County Council was concerned, therefore, the matter was at an end as the Agency were pursuing a prosecution for burning waste and the Borough Council would be gathering further evidence, including monitoring the changes to the land levels and the activity on site.

- 113 The Head of Planning said that he had only become aware of the problems on this site in October 2003. He said that there had been no reason for him to suspect that the Borough Council had contacted the County Council



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earlier because, had it done so, the County Council would have had no reason not to respond. When shown the records of the numerous complaints made by local residents and the notices issued by the Borough Council, he said that he found it bizarre that he had not known about these earlier, as it was clearly the County Council's responsibility to investigate waste planning control. He said that he also could not understand why the Borough Council had served notices on what was essentially a County Council matter. Had he known at the time, he added, he would have followed the guidance in PPG 18 (paragraph 106). When importation of waste was an issue he would have expected the County Council to monitor the position continuously, and for some time after the activity had ceased, to ensure that it did not recur.

114 The County Council's Land Agent said that he had originally been contacted by the Borough Council in April 2001 asking for his support with Mr R's appeal against a planning enforcement notice. Then in August 2001 the Borough Council had telephoned saying that it had reached agreement with Mr R and no longer required a statement. However, in April 2002 he was told that the appeal was going forward again. As Mr R had claimed the developments were for agriculture, he was asked to inspect the site to evaluate whether that was indeed the case.

115 The Land Agent said that he had seen around 15 cattle on site and Mr R had told him that he was going to expand the herd. The Land Agent explained that development for agricultural use could be justified on an intention, as well as on existing agricultural use. The Land Agent said that he had felt that the concrete area had been excessive, as there was no need for storage on that scale, but it was difficult to be categorical

and so his response to the Borough Council had been vague on this point. His statement about agricultural use for the planning appeal hearing had had to be similarly inconclusive. He had subsequently visited the site again in 2004 when it was evident that there had not been any agricultural use of the land for some time.

## Evidence from Mrs D and her son

116 Mrs D and her son told us that their lives had been made unbearable by these events. Mr D had had a nervous breakdown because of the stress of living next to what was, in fact, an unauthorised waste disposal operation and because of Mr R's aggressive and intimidating behaviour. The situation had become so desperate that during the course of this investigation, they had decided to put their home on the market and had even contemplated accepting an offer of around £100,000 less than the property's value in order to try and escape. However, that sale had fallen through. Once Mr R had left the property it was still difficult to sell their home because of the condition that the site had been left in – attracting further illegal activity, including arson and further waste tipping.

## Section 4:

# The findings of the Local Government Ombudsman and the Parliamentary Ombudsman

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### Overview

- 117 The lack of comprehensive and appropriate records makes it very difficult for us now to identify exactly why the relevant authorities failed to take urgent and robust enforcement action, despite the very evident unauthorised and unacceptable activities taking place on Mr R's farm. Each of the authorities concerned failed, to some extent, to keep adequate records of their involvement in these matters, including records of their dealings with each other. As a result, we have been unable to find any clear reason for their failure to work together in line with the protocol between the Agency and the Local Government Association (paragraph 26). That protocol, and the Agency's prosecution policy, clearly required a co-ordinated joint approach on waste enforcement. Because, as the former Chairman of the Agency recognised (paragraph 26), action that was not so co-ordinated and directed towards a common purpose was unlikely to be effective. In this instance, the consequence of that was a cataclysmic failure of all the safeguards introduced by Parliament to protect citizens and the environment from uncontrolled waste operations.
- 118 The failure of the three authorities to work together effectively allowed Mr R to continue to break the law unchecked over a long period. Anyone seeing the evidence of what happened on that land, and of the devastation wrought on this beauty spot, would be justifiably shocked and outraged that, despite all the legal safeguards in place, such events could actually happen. Mr R's illegal activities took place virtually continuously for the first three to four years (when the majority of the tipping and burning took place), and then recurred regularly over several more years.
- 119 The County Council disputes that illegal activities took place continuously and regularly during this early period. The County Council says it had seen no evidence to substantiate this allegation.
- 120 We have seen a great deal of persuasive evidence on the files of the Borough Council, the Agency and elsewhere, which includes dated photographs and accounts of large mounds of waste and smouldering fires from 2001 onwards. It would have assisted us and the County Council itself if it had not misplaced its own file for this period, which we understand included similar evidence. We therefore consider that that failure to work effectively together was a very serious one, and was clearly maladministration.
- 121 What the existing evidence (Annex B) does show is that various spasmodic efforts were made by the three authorities charged with the control of waste and the protection of the environment to share their intelligence of Mr R's activities and discuss a potential joint approach. The authorities met four times in the first four years. However, none of those meetings resulted in concerted, effective and united action. Furthermore, for some reason which cannot now be fathomed, they seem to have agreed at the first meeting that the Borough Council would take the lead. That was a quite extraordinary decision given that the key issue was that of Mr R bringing onto the land, and then burning or burying, large amounts of waste. The responsibility for tackling that issue fell squarely within the remit of the Agency as the strategic waste management body and the County Council as the Waste and Minerals Planning Authority. Of all of the authorities involved in these matters the Borough Council had the least relevant powers. We therefore

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consider that the failure of either the Agency or the County Council to take the lead in tackling Mr R's activities was maladministration.

- 122 We will now look at each of the public bodies individually.

## The Parliamentary Ombudsman's findings in respect of the Agency

- 123 The chronology at Annex B clearly shows that the Agency were fully aware from two months after Mr R moved to the farm (26 July 2000) that he was alleged to be tipping, and subsequently burning, controlled waste illegally on his land. They themselves saw the waste the next month and instructed Mr R to remove it. Over the following years the Agency's records (which are incomplete as apparently many relevant documents went missing when the staff moved to the regional office in August 2002) show that they received a large number of complaints about Mr R's activities and made numerous visits to the site (usually in teams of four officers). They conducted regular surveillance of the land, including, on at least one occasion, covert surveillance. Yet despite the fact that the Agency's enforcement policy includes guidance on the presumption of prosecution, the first time that they cautioned Mr R for importing and processing controlled waste was in February 2007, and the prosecution followed in June 2008. How could that possibly happen?

- 124 I note that in her response, the then Chief Executive said that the Agency recognised that, historically, they had been overly cautious in their approach (paragraph 83) in order to try and always achieve appropriate prosecutions. However, they also accepted that this approach had not achieved the desired outcome, either

in terms of environmental protection or individual prosecution. Having seen all the evidence (including the photographic evidence) of what happened here, I consider that to be a significant understatement of the position. I find the Agency's failure to take immediate, robust and continuing action to use their powers to stop Mr R's illegal tipping and burning was more than mere caution: it was maladministration of the worst kind in the form of a clear breakdown of accountability on the Agency's part, which has had significant consequences for Mrs D and her son and for this area of the countryside. I explain why that is in more detail below.

## A failure to properly investigate or take effective action

- 125 As I have indicated, in my view the Agency's response and reaction to Mr R's activities point to far more than mere caution. I note that the officers interviewed (paragraphs 89 to 95) identified a variety of reasons why it would have been difficult to get the evidence necessary to mount a successful prosecution. They also said that they would need clear evidence to support each stage of the offence (paragraphs 91 and 92) in order to ensure an 'open and shut' case.
- 126 To get that evidence, it is clear that they would have needed to ask for a waste transfer note for each lorry carrying waste visiting the farm, and check the lorries leaving. They would also have needed to take samples from the tipping area to identify the sort of waste being burnt or buried, as they said that they could not identify what was being burnt from a distance. They would also have needed to attend the site immediately when told that tipping and burning was actually happening. Yet they did none of these things. Indeed, I note that they said that there would be

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Photographic evidence of tipping on neighbouring land (paragraph 127).

little point in asking for the notes (paragraph 92) as they would simply be created after the event. Further, when they visited the farm, sometimes days after tipping had been reported, they said that they had not actually seen the waste being tipped and could not therefore verify that it had been imported. Even when Agency officers did eventually witness the tipping of controlled waste on two occasions, no prosecution for the deposit of waste followed (presumably because the 'other stages' of the offence had not been witnessed). It would appear, therefore, that the officers were not at all clear as to

what evidence they should have been looking for. The Agency's failure to act suggests to me that it is possible that the previous dealings they had had with Mr R had created a belief amongst some officers that they would never be able to prosecute Mr R successfully. As a consequence, it seems probable that they decided that the matter was not a priority for them, and failed to conduct the sort of robust and comprehensive investigation that might otherwise have been conducted. This certainly appears to have been the impression that the barrister advising the Borough Council reached

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(Annex B – 23 February 2004). As a result they seemed content simply to continue to monitor Mr R's blatant activities over several years and keep reminding him of the legal position and of the need to apply for exemptions – a situation which I find astonishing.

127 I find the former Chief Executive's comment (paragraph 84) that none of the incidents relating to Mr R's farm logged on their database were assessed as 'major' or 'significant' also somewhat alarming. It is clear that most others outside the Agency – including the Fire Brigade and the Environmental Health Officer – considered that incidents such as the burning of refrigerators and washing machines were major, and warranted the Agency's attention. Indeed, having seen the photographic evidence of some of the tipping, and indeed the results of the land survey carried out in 2008 at the judge's request, I fail to see how these incidents taking place where they were, could be considered anything other than major or significant.

128 Had the Agency investigated fully and appropriately what was happening on the farm and used the powers at their disposal, I am satisfied that that could and should have brought about a much earlier and successful conclusion. Most importantly, the Agency would then have acted while Mr R was the registered owner of all the land, including the burning pit. Indeed, if at the outset the Agency had acted with the clarity of purpose and conviction which they eventually did in 2007, I think it is quite clear that Mr R would have been held to account much sooner.

129 In summary, the Agency monitored Mr R's illegal activities from July 2000 onwards and frequently warned him of the consequences if he continued to import controlled waste

without the benefit of a WML or exemption. However, it was only after seven years of illegal activity, and after Mr R had stopped working at the site, that the Agency took him to court for the unlawful deposit, disposal and keeping of waste on the site. It is my view that the delay in taking action was not only a significant failure to 'Get it right' or 'Act fairly and proportionately' (paragraph 20), but also a very real failure to consider Mrs D and her son's position, and their right to the peaceful enjoyment of their home. Those were serious failings which constituted clear maladministration.

## The Local Government Ombudsman's findings in respect of the County Council

130 The County Council had significant powers to tackle Mr R's unauthorised use and development of his land for waste operations. As we have already indicated (paragraph 121), it should have considered taking the lead in these matters.

### Failures in record keeping

131 From the evidence provided by the former Planning Enforcement Officer (paragraphs 109 to 112) it is clear that a significant amount of important and relevant information about that officer's visits to Mr R's site, meetings with other agencies and photographs are missing from the County Council's records. The Officer said that he visited the site on at least 20 occasions in the year following his first involvement (which would have been around November 2000), and carried out relevant observations.

132 The County Council has questioned the evidence upon which its former Planning Enforcement Officer has based his comments.

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The County Council says that his comments are based upon a recollection of events which allegedly occurred many years ago. The County Council expresses concerns that this is not a sufficiently sound basis upon which to criticise it.

- 133 I do not agree. The Planning Enforcement Officer recalls visiting the site a large number of times and on one occasion was obstructed by Mr R's employees. His recollections are supported by other evidence provided by the Borough Council and the Agency. We cannot now determine whether the County Council's records are missing because they were never properly recorded, or whether they have since been lost or misplaced. Whatever the reason, the failure to have that key information available in the County Council's records is maladministration.

## Failure to act

- 134 There is no question that waste was being brought onto Mr R's land. Some of that waste might arguably have been legitimately used for permitted development – such as hardcore for the hard standings, which Mr R claimed was for agricultural purposes. Using the land for waste that was simply being tipped and burnt should have been pursued by the County Council as the Waste and Minerals Planning Authority. As soon as it became aware of the problem the County Council had a clear duty, as set out in the relevant legislation and government guidance (paragraphs 38 and 39), to investigate, to issue warning letters, to try to negotiate a settlement, to serve enforcement notices, and to monitor until the activities stopped and for some time afterwards. Over a period of several years the County Council failed to do any of these things.

- 135 The reasons that the former County Council Planning Enforcement Officer gave to our investigator for not taking action seem to me to be based on a flawed understanding of the legal definition of waste and also to lack credibility; they are contrary to the County Council's published policies (including the County Council's *Minerals and Waste Plan*) and to the evidence of the Head of Planning (paragraph 113).

- 136 The extent and nature of Mr R's activities warranted attention at a senior level within the County Council. The lack of records means that we cannot know why this did not happen, but it is reasonable to assume that there was inadequate supervision and management of the Planning Enforcement Officer's functions. This meant that the County Council failed, over a period of over three years, to reach a properly considered decision on whether it should take enforcement action. That was very serious maladministration.

- 137 It seems to me that, had the County Council given the matter proper consideration, it would have used the full extent of its powers to prohibit Mr R's unlawful use and development of the land for the storage or disposal of waste. Its failure to do so contributed significantly to the considerable distress, frustration and inconvenience suffered by Mrs D and her son over a number of years. Further, the County Council's failure to take effective action when Mr R's waste tipping and burning activities were at their highest might well have emboldened Mr R by giving him the impression that he could carry out those activities with impunity.

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## Highways enforcement

<sup>138</sup> There is a conflict between the County Council's claim that it would not have known about the complaints that Mr R was obstructing the footpath and the former Rights of Way Officer's statement that he specifically asked the County Council to take a look at what was happening on Mr R's land. I note that the Rights of Way Officer said that the County Council had refused, saying that the matter was not sufficiently serious for it to get involved. Given the County Council's failure in other areas to keep appropriate records, and the Rights of Way Officer's actions in response to the rights of way issues, I am inclined to accept the Rights of Way Officer's account. On the balance of probabilities I find that the County Council was aware that the footpath was being obstructed and failed to take action. The absence of any evidence that it reached a reasoned decision on the issue is maladministration.

## The Local Government Ombudsman's findings in respect of the Borough Council

<sup>139</sup> Our investigation has clearly shown that throughout the early period the Borough Council was the most active in trying to use its powers to tackle Mr R's activities. By November 2003 when the Development Control Committee was eventually asked to approve proceedings including seeking an injunction, much of the damage on the site had already been done. The Borough Council's powers were limited and, as confirmed in Counsel's advice of 23 February 2004, unlikely to succeed without the engagement of the County Council and the Agency. That does not, however, mean that the Borough Council was without fault.

## Failure to record and store information

<sup>140</sup> Our investigator found the Borough Council's files and records to be in a considerable state of disorder – records of meetings were missing, photographs and other important documents were undated, documents were loose inside files and kept in no particular order.

<sup>141</sup> From the outset it was clear to the Borough Council's former Planning Manager that there was a serious waste importation problem on the site that needed addressing. He involved the waste enforcement bodies at an early stage, but there are no adequate records of his referrals and no minutes of the early meetings between the three bodies.

<sup>142</sup> The failure to record and retain important information is maladministration.

## Failure to effectively engage the County Council

<sup>143</sup> The County Council is the planning authority with enforcement powers to prevent the unauthorised use and development of land for waste storage and disposal. The Borough Council's Planning Manager was aware of this and sought to involve the County Council and the Agency, but those attempts were not sufficiently persistent and rigorous. The issues should have been escalated to more senior officers in those other bodies to consider. Given the evidence from the County Council's officers in particular (paragraph 113), matters may then have turned out differently. The Borough Council cannot be held responsible for the County Council's lack of response and all that flowed from that. However, the Borough Council cannot show that prior to October 2003 it

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applied consistent and appropriate pressure on the County Council. That is maladministration.

## Failure to consider the alleged assault, abuse and obstruction of its officer

- <sup>144</sup> The Borough Council was aware that its Planning Manager made an allegation that one of Mr R's employees assaulted him, refused to allow him to remove his car and threw his mobile phone into a reservoir. This happened while the officer was carrying out an investigation using statutory powers. The Agency successfully prosecuted Mr R for similar acts of obstruction.
- <sup>145</sup> The Borough Council acted with maladministration in failing to take and record a properly considered decision about how to respond to the assault, abuse and obstruction of one of its officers in the discharge of its functions.

## Failure to take effective enforcement action

- <sup>146</sup> The County Council is the planning authority for use and development of land for storage and disposal of waste, and should have taken the lead in enforcement action. In the absence of any action or co-operation by the County Council, the Borough Council attempted to take planning enforcement action against Mr R on the less significant issues that came within its powers. However, in doing so it did not act effectively. Although the Borough Council did serve enforcement notices it did not properly consider serving stop notices.
- <sup>147</sup> No one can now know whether the sale of land upon which tipping and burning was occurring was genuine, or a sham to hinder

legal action. The Borough Council's failure to reach a considered decision on the extent to which it should investigate this matter was maladministration.

- <sup>148</sup> The Borough Council's attempt to deal with Mr R's activities was commendable, but its overall failure to act effectively is maladministration.

## Failure to tackle environmental health matters

- <sup>149</sup> The Borough Council had other powers to take action against Mr R. The Environmental Health Officer witnessed on several occasions that the burning waste on Mr R's land was causing a statutory nuisance and was likely to recur. The *Environmental Protection Act* requires an abatement notice to be served in such circumstances but this did not happen. The Environmental Health Officer decided that an abatement notice was not the most appropriate way to tackle Mr R's activities (paragraph 100). Such a decision should not have been taken in isolation. It seems to me that had the Borough Council used all its powers in a properly co-ordinated way, it might, at least, have discouraged Mr R from thinking that he could do much as he pleased without fear of any sanction.

## Failure to take highways enforcement action

- <sup>150</sup> The Borough Council had delegated power from the County Council to carry out its 'rights of way' function with the power (but not a duty) to assert and protect the rights of the public to the use and enjoyment of a highway. The Rights of Way Officer in the Borough initially



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dealt promptly and appropriately with the many complaints that began to be made from August 2001 onwards and asked the Borough solicitor to start proceedings. Legal action apparently halted when Mr R indicated that he would co-operate. When he did not co-operate, no further action was taken before the responsibility reverted to the County Council in 2004.

- 151 There is no record of any considered decision by the Borough Council about what action to take and no co-ordination of any of the possible enforcement actions. Mr R did not respond to the threats of enforcement that were made and any action merely fizzled out.
- 152 If there had been proper co-ordination and a considered decision, action on the rights of way issues might have continued after the Rights of Way Officer left in August 2002. The Borough Council's failure to reach a properly considered decision on how to respond to the complaints and the obstructions of the footpaths is maladministration, as is the failure to keep proper records.

## Injustice

- 153 Mrs D and her son have described the effect which these events have had on them (paragraph 116), which we fully accept. We have no doubt whatsoever that the failure of all the bodies concerned to work together effectively to prevent the activities on Mr R's land has had, and indeed continues to have, a devastating effect on both Mrs D and her son. Whilst it is clear that the authorities in question cannot be held responsible for Mr R's aggressiveness and intimidation of Mrs D and her son, it is equally clear that Mr R's attitude towards them

stemmed from the many complaints that Mrs D and her son were compelled to make to try to prod the authorities into tackling his unauthorised activities. It follows that, had the authorities acted as they should have done, there would have been no need for Mrs D and her son to complain, and therefore no reason for Mr R to seek to intimidate them, or be aggressive towards them. We are therefore satisfied that the maladministration we have identified earlier in this report on the part of all three public bodies has led to Mrs D and her son suffering extreme distress over a very lengthy period.

- 154 In addition to that, Mrs D and her son were made to feel so distressed and unhappy by the horrendous situation that they found themselves in, living next to what was effectively an unauthorised waste site, that they tried to sell their home and move away during the course of these events. They put their home on the market in June 2006, but potential purchasers were put off by the activities on Mr R's land, and by his aggressive behaviour. As a result, it is only very recently that they have found a potential buyer for their property.
- 155 We commissioned a report on the value of Mrs D's and her son's property from the District Valuer to aid the identification of financial loss arising from the maladministration. The District Valuer's report shows a very clear and continuing impact on the value of Mrs D's and her son's property caused by the existence of the neighbouring redundant waste site. In the District Valuer's view, this impact is gradually diminishing over time, but it is still significant. She assesses the difference between the actual current value of the property and its value if there were not an adjacent redundant waste site as £35,000. For comparative purposes, the

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District Valuer's view is that in June 2006 the difference in Mrs D and her son's property value caused by the existence of the neighbouring landfill site was £210,000 at that time. So the detrimental impact on the property value of the illegal landfill site has been decreasing over time. Having considered this new evidence carefully, we have reached the view that the current loss in value must be the result of maladministration we have identified in this report, namely the delay in appropriate action being taken to halt the illegal activities. This is because, had appropriate action been taken much earlier, the impact on the neighbouring land should have been considerably less. Also, there would have been opportunities to ensure that those involved in the illegal activity rectified the damage arising from their activities. Therefore, the time required for the value to recover should also have been less (and the impact would have been negligible by now). We are satisfied, therefore, that the District Valuer's report provides evidence of actual financial loss caused to Mrs D and her son. We consider that the Agency, the County Council and the Borough Council are responsible for the full loss in current value to Mrs D's and her son's property caused by the existence of the neighbouring illegal landfill site.

## Recommendations

- <sup>156</sup> The key question remaining is how the three bodies concerned can best remedy the above injustice suffered by Mrs D and her son. We make the following recommendations:
- (a) The bodies in question should all individually write to Mrs D and her son to apologise to them for the failings identified in this report.
  - (b) The bodies should make good any financial loss to Mrs D and her son resulting from the maladministration. The financial loss will be the difference between the actual current value of Mrs D's and her son's property and its value if there were not an adjacent redundant waste site. We commissioned an independent valuation report by a District Valuer who put the current difference in value at £35,000. The bodies should pay this amount to Mrs D and her son.
  - (c) The bodies should also pay financial compensation for the considerable distress and inconvenience caused to Mrs D and her son. We consider that the public bodies should have been able to resolve the issues within about two years, but instead the disruption for Mrs D and her son went on for at least another five years. We consider that an appropriate sum would be £60,000.
  - (d) In order to prevent a recurrence of such events in future, the County Council and the Agency should put in place a joint agreement on how they will work together to respond to illegal waste activities (as required by the national protocol – paragraph 27).
  - (e) The bodies should each determine whether any other action, individually or jointly, is

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required to prevent a recurrence of such events not only on this site but elsewhere.

- 157 In recognition of the fact that the bodies have different levels of responsibility in these matters, and of the fact that the Borough Council did far more than the Agency or the County Council to try and fulfil its responsibilities, we recommend that the Agency and the County Council should each contribute 45 per cent of the overall sum of financial compensation (recommendations (b) and (c) above), and the Borough Council should meet the remaining 10 per cent.
- 158 In response to sight of the provisional report, the Borough Council and the Agency accepted the findings and recommendations contained in this report and agreed to comply with them. The County Council did not accept the provisional report in full. Their more detailed responses are set out in Annex C.

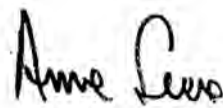
## Conclusion

- 159 We have found there was both shared and individual maladministration by the three authorities. They failed to work effectively together and failed to identify appropriately which body should take the lead, based on who had the most relevant powers to intervene in the illegal activities. The Agency's individual failings included the failure to properly investigate or take effective action against Mr R's activities. The County Council had failures in record keeping and failed to take effective action. The Borough Council also had failures in record keeping and failed to take effective action. As a consequence of these failures by the three authorities Mrs D and her son suffered extreme distress and experienced financial loss. This was considerable injustice for Mrs D and her son arising from maladministration. Therefore, we uphold the complaint.



Ann Abraham

**Parliamentary and Health Service Ombudsman**



Anne Seex

**Local Government Ombudsman**

January 2010

# Annex A

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## Legal framework for regulating and controlling waste operations

### The definition of 'Waste'

- 1 Controlled waste is defined by regulations<sup>22</sup> and European Union Waste Directives.<sup>23</sup> In addition to the specific categories of controlled waste set out in the regulations, controlled waste is defined simply as any substance or object which is discarded by the holder, which will remain waste until it is processed into a useable form. (At the relevant time, this effectively meant anything that was not deemed to be agricultural waste.)

### Waste management licensing

- 2 Those who intend to be involved in the deposit, disposal or keeping of controlled waste must obtain a licence from the Agency, which is the Agency's main tool for ensuring satisfactory environmental standards. The Agency may grant a licence to a fit and proper person involved in the deposit, disposal and keeping of controlled waste in or on land,<sup>24</sup> but not in respect of land for which planning permission is required under the *Town and Country Planning Act* unless such planning permission is already in force.<sup>25</sup>
- 3 When granting a waste management licence the Agency may impose conditions and require the licensee to carry out works or do other things it deems necessary to protect the environment. If those conditions are not met, or if waste is

handled without a licence or in a way that might harm the environment, then the Agency can prosecute under section 33 of the 1990 Act.<sup>26</sup>

### Section 33 waste management offences

- 4 Section 33 has three main elements, which it is important to distinguish. They are that a person shall not:
  - (a) deposit controlled waste, or knowingly cause or knowingly permit controlled waste to be deposited in or on any land unless a waste management licence authorising the deposit is in force and the deposit is in accordance with the licence;
  - (b) treat, keep or dispose of controlled waste, or knowingly cause or knowingly permit controlled waste to be treated, kept or disposed of:
    - (i) *in or on any land, or*
    - (ii) *by means of any mobile plant,*
    - (iii) *except under and in accordance with a waste management licence; and*
  - (c) treat, keep or dispose of controlled waste in a manner likely to cause pollution of the environment or harm to human health.

However, subsection (a) above does not apply in relation to household waste from a domestic property which is treated, kept or disposed of

<sup>22</sup> *The Controlled Waste Regulations 1992.*

<sup>23</sup> Council Directive 75/442/EEC on waste.

<sup>24</sup> Section 35, the *Environmental Protection Act (1990)*.

<sup>25</sup> Section 36, the *Environmental Protection Act (1990)*.

<sup>26</sup> Section 33(6), the *Environmental Protection Act (1990)*.

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- within the curtilage of the dwelling by, or with the permission of, the occupier of the dwelling.
- 5 Where controlled waste is carried in and deposited from a motor vehicle, the person who controls, or is in a position to control, the use of the vehicle shall be treated as knowingly causing the waste to be deposited whether or not he or she gave any instructions for this to be done.<sup>27</sup>
  - 6 Those found guilty of a section 33 offence can be fined up to £40,000 and/or imprisoned for up to six months upon summary conviction, or upon indictment, an unlimited fine and/or imprisoned for up to two years. In 2000 the maximum fine was £20,000.<sup>28</sup>
  - 9 Any authorised person in the chain of waste management, from its production to eventual deposit/use, must take reasonable measures to prevent other persons from unlawfully depositing, keeping or treating controlled waste in breach of section 33 of the 1990 Act.<sup>29</sup>
  - 10 Section 71 of the 1990 Act gives the waste regulation authority the power to issue a notice requiring people or authorities to provide such information as the regulation authority reasonably considers that it needs for the purpose of discharging its functions. It also sets out the potential consequences for those who fail, without reasonable excuse, to comply with such a requirement or who, when complying, make any statement which they know to be false or misleading. These include a fine or imprisonment for a term not exceeding two years, or both.

## The section 34 duty of care

- 7 A duty of care was created by section 34 of the 1990 Act. Only 'authorised persons' as defined by the Act are allowed to manage or move waste, and in doing so they are required to follow regulations and guidance issued by the Secretary of State. A breach of the duty of care is an offence.
- 8 Amongst other things, the duty of care regulations require authorised persons who move waste to produce and keep Waste Transfer Notes. A Waste Transfer Note should describe the waste and show its origin and destination to a legitimate place, such as a landfill site or recycling centre. The duty of care is supposed to ensure that a complete and auditable history of controlled waste is available to waste management enforcement bodies.
- 11 Under section 79 of the 1990 Act the Borough Council is required to inspect its area for, and investigate complaints about, statutory nuisance, which can be (amongst other things) smoke, fumes, dust, steam or smell that is prejudicial to health or a nuisance.
- 12 Under section 80 of the 1990 Act, if satisfied that a statutory nuisance exists, or is likely to occur or recur, the Borough Council is required to serve a notice requiring the abatement of

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<sup>27</sup> Section 33(5), the 1990 Act.

<sup>28</sup> Section 33(8), the 1990 Act.

<sup>29</sup> Section 34(1), the 1990 Act.

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the nuisance or prohibiting or restricting its occurrence or recurrence.

## The Town and Country Planning Act 1990

- 13 The *Town and Country Planning Act 1990* (TCPA 1990) sets out what a planning authority should do if it suspects a breach of planning control in its area.<sup>30</sup> In such circumstances it may issue a planning contravention notice to require information about the use of the land from its owners or others who may use or have an interest in the land.<sup>31</sup>
- 14 If a local planning authority is of the opinion that a breach of planning control has occurred, it may serve an enforcement notice if it appears that it is expedient to do so after considering the provisions of the local development plan.<sup>32</sup> Such notices may be served on anyone who has an interest in the land to prohibit the breach.<sup>33</sup> Amongst other things, the notice must specify the breach and any steps required to remedy it. This notice may require action be taken to restore the land.
- 15 If the local planning authority suspects that the breach of planning control will continue despite the notice, it may serve a stop notice.<sup>34</sup> The stop notice would normally set a short time limit beyond which the prohibited use should not continue. Failure to comply with a stop notice can result in summary conviction and fines of up to £20,000, or an unlimited fine if the person is convicted on indictment. However, if the related enforcement notice is not upheld on appeal or is varied or withdrawn, the planning authority may have to pay compensation for any financial loss arising from a stop notice.
- 16 There are time limits within which enforcement action can be taken. These are:
- Four years for operational development which has been substantially completed and for changes of use of any building to a single dwelling house (including flats).
  - Ten years for all other breaches including changes of use and non-compliance with conditions.
- Once these time limits have passed, the development is lawful and immune from enforcement action.<sup>35</sup>
- 17 Planning enforcement notices can be registered as a charge on the Local Land Register.<sup>36</sup>
- 18 If enforcement notices are not complied with, the local planning authority may enter onto the land to put into effect the steps set out in the notice and can recover its costs in doing so. Expenses incurred can be registered as a charge on the land.<sup>37</sup>
- 19 The local planning authority may also prosecute either in the Magistrates' Court where a fine of

<sup>30</sup> Section 55(3), TCPA 1990.

<sup>31</sup> Section 33(8), TCPA 1990.

<sup>32</sup> Sections 171A(1) and (2)(a), TCPA 1990.

<sup>33</sup> Section 173, TCPA 1990.

<sup>34</sup> Section 183, TCPA 1990.

<sup>35</sup> Sections 171B(1) and (3), TCPA 1990.

<sup>36</sup> *Local Land Charge (Amendment) Rules 1966*.

<sup>37</sup> Sections 178(1)(b) and (5), TCPA 1990.

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up to £20,000 may be imposed, or in the Crown Court where fines are unlimited.<sup>38</sup>

20 As an alternative to action in the criminal courts, a local planning authority may seek an injunction in the County or High Courts. An injunction can prohibit acts (such as the importation and processing of waste), or order mandatory action (such as the removal of waste and the restoration of land). If an injunction is granted and then broken, contempt of court will have occurred and a judge can order an unlimited fine or imprisonment.<sup>39</sup>

21 A local planning authority may require land owners to tidy land.<sup>40</sup>

## Other enforcement matters

### Suspected sham land transfers

22 Where it is suspected that a transfer of land was a sham designed to avoid waste control enforcement action, the court may order the rectification of the Land Register to reflect more accurately who actually owns and controls the land.<sup>41</sup>

### Regulation of Investigatory Powers Act 2000

23 Any officer wishing to carry out covert surveillance for the purposes of a specific investigation or operation has to apply for authorisation from an officer with designated powers to grant such authorisation. The Act specifies that such powers must be used exceptionally, and only be used with just cause.

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<sup>38</sup> Sections 179(8) and (9), *Criminal Justice Act 1987*.

<sup>39</sup> Section 187B, TCPA 1990.

<sup>40</sup> Section 215, TCPA 1990.

<sup>41</sup> *Buckinghamshire County Council v Sarbjit Singh* [2002] EWHC 2821 (Ch).

# Annex B

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## Chronology

This is a chronology of the main events referred to in the report. As indicated in the body of the main report (paragraph 49), it is not comprehensive because a significant number of records are missing. Further, for the sake of brevity, we have not included details of all visits and documents that still exist.

### 14 Jun 1977

Rossendale Borough Council refused planning permission to the former owner of Mr R's farm for a barn conversion to a residential dwelling because:

1. the site is in green belt;
2. the development was contrary to 'Dwellings in Countryside' policy and was not in the interests of agriculture; and
3. the access was unsuitable for additional vehicles.

### May 1999

Lancashire County Council Heritage Site Report.

The report stated that:

*'The site comprises mosaic of habitats. Lodges support a rich and diverse assemblage of aquatic invertebrates.'*

### May 2000

Mr R and his family move to the farm. The registered office for Mr R's company was in Bury. The company operated a groundwork, grab hire and skip hire business. Mr R had a Waste Management Licence (WML) to operate a waste transfer station in Bury and a 'registration of waste carriers certificate' allowing him to transport waste for profit.

Mr R began substantial development work on the farm site.

### 31 May 2000

Rossendale Borough Council wrote to Mr R warning him that the excavation and engineering work he was carrying out at the rear and front of his home should cease as it required planning permission. It said that he could apply for planning permission, but that unless the development was suitable for a green belt site it was very unlikely to be approved.

### 25 Jul 2000

Rossendale Borough Council's Planning Enforcement Officer visited the site. Mr R was again advised not to continue work and to apply for planning permission.

### 26 Jul 2000

Two Environment Agency staff visited the farm in response to reports of tipping. They saw no evidence of tipping on the day, but could see from a distance that development work was being carried out.

### 2 Aug 2000

Rossendale Borough Council sent the Environment Agency a fax about Mr R's infilling and culverting of an open stream. It said that it was intending to serve an abatement notice but that the Environment Agency's view would be helpful to them in drafting the notice.

It appears that the Environment Agency telephoned Rossendale Borough Council in response, but it is not clear whether direct contact was made.

### 2-14 Aug 2000

Environment Agency staff visited the farm on four occasions. They were originally unable to access the farm because of slate and brick tipped on the road,



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and then were told by a neighbour of Mr R that that was to fill in the holes and would be levelled shortly. Environment Agency officers were also told that the smell of burning was because wood burners were used to heat the farm houses. They subsequently witnessed some evidence of tipping of soil and brick, and the culverting of the stream, and noted 30 empty skips on site. On the final visit they saw Mr R who said he intended to reinstate the farm as a working farm and that the imported waste had been hard core and used for farm renovation, to create a hard standing, and in the garden area. Mr R was given until 28 August 2000 to remove the waste.

### 24 Nov 2000

The Planning Manager at Rossendale Borough Council wrote to the Traffic Commissioners to object to Mr R's application for a Heavy Goods Vehicle operator's licence for the farm (Mr R wanted to operate skip lorries from the site). The Planning Manager said:

*'The site, located as it is in a remote upland rural Green Belt location, along unadopted narrow, otherwise quiet lanes, is inappropriate for such a commercial use by reason of the noise, Fumes, pollution, vibration and visual intrusion. The proposed operating centre is unsuitable ... [because of ] ... heavy recreational use by walkers and horse riders.'*

The same day two Environment Agency officers visited the farm in response to complaints of tipping and burning. They noted that they had seen a small fire, but no lumber waste. The soil and brick noted previously appeared to have been removed.

### 27 Nov 2000

The two Environment Agency officers returned to Mr R's farm and met Mr R and his solicitor. The solicitor asked when the level of complaints to

the Environment Agency from Mr R's neighbours would count as harassment. Mr R said the fire had been the remains of a children's bonfire. Mr R denied importing waste onto the site and asked for clarification of what waste he could bring on site and of WML exemptions.

### 30 Nov 2000

The Borough's Planning Manager arranged a meeting at Rossendale Borough Council, together with Lancashire County Council and Environment Agency officers, to discuss Mr R's activities. (There are no records of this meeting other than a note in an Environment Agency officer's notebook which said that Rossendale Borough Council was to take the lead, and to serve a notice on Mr R to cease development work and restore the land and stream.)

### 3 Jan 2001

Rossendale Borough Council served four planning contravention notices regarding development without planning permission for:

- the change of use of the land from agriculture to the storage of skips, containers, skip wagons and other vehicles;
- the culverting of an open stream and raising the level of the land by depositing and infilling with earth, stone and soil;
- removal of vegetation and top soil to provide a level area infilled with rubble, hard core and other waste material, surrounded by earth banks on three sides; and
- excavation behind the farm to level the area.

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Mr R was required to remove all the skips etc, to remove all the imported and tipped materials and re-seed the land.

(Rossendale Borough Council subsequently forwarded copies of the notices to the Environment Agency on 6 February, saying that as they had been appealed (to the Secretary of State), it would be unable to take any further action until the appeals had been determined.)

### **Jan–Jun 2001**

The unauthorised use of the site continued unabated. There were 23 telephone calls recorded during this period on the Environment Agency's National Incident Recording System (NIRS) reporting the tipping, burning and burial of waste on Mr R's land.

On two occasions (15 and 22 February 2001) the Fire Brigade had to attend the farm to put out the fires.

### **1 Mar 2001**

A footpath closure order was introduced in the county because of Foot and Mouth Disease.

### **24 Apr 2001**

The Environmental Health Officer for Rossendale Borough Council provided a statement in respect of a planning appeal by Mr R. In that he described there as being clear evidence of mixed refuse being burnt on the site in an area which had been deliberately excavated to form a hearth for burning. The officer described the burning smell as 'putrid in character and carried the odour of decaying refuse, reminiscent of a tip fire as opposed to wood, coal or building rubble'.

### **24 May 2001**

There was a second meeting at Rossendale Borough Council attended by Lancashire County Council

and Environment Agency officers. (There is again no record of what was said or agreed.)

### **31 May 2001**

Two Environment Agency officers visited the farm but could see no activity. Mr R telephoned one of the officers later that day, asking if the Environment Agency would be visiting again. He said he had won his operator's licence on appeal, and did not want bother from the Environment Agency. The Environment Agency officer recorded that he told Mr R that he had already told him that he would need an exemption to take soil, hard core or any other waste to the farm, but that the Environment Agency would definitely prosecute if he burnt waste at the farm. Mr R asked what would happen if the land on which tipping and burning was taking place was sold to another person. The officer said that they would find the owner and prosecute them.

### **5 Jun 2001**

Rossendale Borough Council telephoned the Environment Agency about the activity at Mr R's farm. It recorded that the Environment Agency had said that they currently had no evidence that what Mr R was doing was illegal, but that they were monitoring the situation. They asked if Rossendale Borough Council should 'not try health'.

The same day the Traffic Commissioners granted Mr R a restricted HGV operator's licence (three vehicles only) to use the farm as an operating base for his haulage/skip business with the condition that there should be no loading or unloading of unauthorised vehicles on the site.

### **6 Jun 2001**

Rossendale Borough Council served a further planning contravention notice on Mr R regarding development without planning permission for the change of use of the land from agriculture to the

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storage of skips, containers, skip wagons and other heavy goods vehicles, and requiring their removal.

### **Summer 2001 onwards**

There were various contacts between Rossendale Borough Council and Mr R's representative about the enforcement action and appeals. Rossendale Borough Council employed a Consultant Planner to work on the case.

Environment Agency officers visited the farm five times in June 2001 but recorded no evidence of tipping or burning on the first three occasions; and on the fourth, no evidence that the small fire they could see burning was of material that had been tipped.

### **20 Jul 2001**

The Foot and Mouth Disease footpath closure order was rescinded, and the footpaths re-opened.

### **29 Aug 2001**

Rossendale Borough Council's former Planning Manager made a statement that he had been obstructed in the course of his duty and assaulted by one of Mr R's employees. The Planning Manager said that when he had arrived on the site he had found the public footpath to be blocked by a guard dog on a chain. He had walked up the hill on another footpath to see the site of the fire, from which he could see smoke and flames rising from the ground. He had taken photographs of the fire and of various machines, skips and containers. He had then been confronted by a man who shouted at him to stop taking photographs, threatened him and demanded his camera. He said that when he had tried to telephone for assistance the man had taken his mobile phone and thrown it in a reservoir; the man had then blocked his path with a lorry so he could not leave in his car.

The Planning Manager went on to say that Mr R had then arrived and said he did not own the field where the fire was burning and that the man who had taken the Planning Manager's mobile phone was a contractor. Mr R had then gone back to his house after calling to the other man to take the keys out of the lorry.

The Planning Manager had walked to the nearest farm and used their telephone to call the police. The Planning Manager got his car back with police support.

(There is no record of any action being taken by Rossendale Borough Council following this incident.)

### **1 Sep 2001**

NIRS showed that a caller had telephoned to say that Mr R was burning more waste than ever, and that while the caller had been on the line, the Fire Brigade had arrived to extinguish the fire.

### **7 Sep 2001**

The Environment Agency wrote to Rossendale Borough Council saying that they were investigating the activities at Mr R's farm. They had been told by a local resident that Rossendale Borough Council had taken photographs of the work on the site, and asked if they would confirm that and 'discuss it to determine points of mutual interest'.

### **10 Sep 2001**

Rossendale Borough Council called the Environment Agency and told them about the incident on 29 August 2001. However, the Council officer had gone on to say that Mr R had gone a long way to complying with the planning enforcement notices and the only outstanding issue was the reinstatement of the burning pit area. He added that a planning enforcement notice

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relating to the raising of the site for business purposes was currently under way.

### **28 Sep 2001**

From August 2001 onwards, Rossendale Borough Council had received numerous complaints that Mr R was obstructing footpaths, removing stiles, had an aggressive dog which was chained but blocking access, and putting up signs indicating that there was no right of way. Rossendale Borough Council's Rights of Way Officer had sent Mr R a warning letter, requiring him to rectify matters, but in the absence of a response, the Rights of Way Officer wrote to Rossendale Borough Council's solicitor asking him to initiate proceedings in the Magistrates' Court.

### **2 Oct 2001**

As part of their investigation, an Environment Agency officer carried out observations of the farm. He recorded, and took photographs of, what appeared to be an excavation pit containing mixed demolition waste, including timber, tree cuttings and white boarding (described as 'formica-type'), but saw no vehicle activity or burning.

### **3 Oct 2001**

The Environment Agency officer returned to the site; he observed no change in the waste level and no vehicle activity.

### **16 Oct 2001**

The land on Mr R's farm on which the tipping and burning took place was transferred to Mr M, a person living in Eire, for £500.

### **17 Oct 2001**

An Environment Agency officer observed the remnants of a pit fire, but was unable to determine what had been burnt.

### **18 Oct 2001**

The Rights of Way Officer wrote to the solicitor again saying '*I am still receiving complaints of obstruction and intimidation. I would be obliged if you could initiate proceedings*'. (There appears to have been some further exchange of correspondence at a later date, although the content of that is unknown, and no court action was taken.)

### **18 Oct-14 Nov 2001**

During this period five calls were made to NIRS to report extensive tipping and burning on the farm, causing much smoke.

### **29 Nov 2001**

The Consultant Planner employed by Rossendale Borough Council wrote to Mr R's representative saying that Mr R had complied with the first two enforcement notices issued on 3 January 2001, and would be given extra time (until May 2002) to comply with the other two issued that same day. However, Rossendale Borough Council intended to continue with action in respect of the notice issued on 6 June 2001.

### **1 Dec 2001**

A call to NIRS reported continuous burning of waste on the farm all day.

### **4 Dec 2001**

An Environment Agency officer observed burning of what appeared to be wood, paper and other domestic waste in the excavated pit on the farm. He also recorded numerous people and vehicles on the site, including an empty bulk container from Mr R's waste business, but that he had not witnessed anything being put on the fire.

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### **5 Dec 2001**

Another Environment Agency officer witnessed tipping of controlled waste whilst conducting site surveillance.

### **19 Dec 2001**

Rossendale Borough Council served a further planning contravention notice on Mr R together with a stop notice requiring him to immediately cease unauthorised engineering operations on the land, to remove all hard core, crushed stone, concrete and building material and to restore the land to its condition before the breach had occurred.

### **15 Jan 2002**

A caller reported to NIRS that wood was being burnt on the farm and that there were also intermittent explosions, with three further loads of waste waiting to be burnt.

### **22 Jan 2002**

A further report of tipping and burning was made to NIRS. The caller said that over the previous 6 months around 15 to 20 loads of around 20 tons of waste each per day had been delivered, with 3 loads delivered that morning.

Two Environment Agency officers went to the farm and witnessed tipping of controlled waste and took photographs as evidence. The officers were then obstructed by Mr R, who refused to let them leave the site unless they surrendered the film from the camera. Mr R denied that he was the owner of the lorry (although it was marked '[R] Bros' on the side) which had been seen tipping waste, or of the land upon which it had been tipped. He told them that he was using some hard core materials to create a hard standing for silage.

Mr R was recorded as saying that he felt Rossendale Borough Council was dragging the

Environment Agency into his argument with it, and that if the Environment Agency 'pushed their investigations' he would take action against them. The Environment Agency told Mr R they believed an offence had been committed and would need to caution him, but he said he would not accept a caution. The Environment Agency recorded that Mr R's attitude had changed once they had handed over the film. He had said he wanted to co-operate and work with them, but that in future they should call him and make an appointment.

Later the same day, Mr R telephoned the Environment Agency and said that all he was trying to do was to build a silage store and that he was moving hard core materials for that purpose. The officer explained that the Environment Agency officers had the legal powers to go onto Mr R's land and investigate potential breaches of the law. The incident the officers had witnessed had involved other types of material.

### **24 Jan 2002**

The same day the Environment Agency wrote to Mr R saying that their officers had witnessed the depositing of controlled waste and asking for details of the new owners both of the land, and of the vehicle which Mr R had also said that he had sold.

The Environment Agency also wrote to the DVLA requesting details of the lorry seen tipping waste on 22 January 2002. DVLA responded the same day with the details and Environment Agency officers visited the registered owner, who denied owning the vehicle or having bought it from Mr R. He said that he had received the log book for the vehicle through the post a few weeks previously but had returned it to DVLA.

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### **31 Jan 2002**

The Environment Agency sent Mr R a section 71 notice which required him to provide information about ownership of each of the buildings on the farm and of the land.

### **7 Feb 2002**

A further report was made to NIRS of large-scale tipping and burning at the farm.

### **8 Feb 2002**

Rossendale Borough Council wrote to Lancashire County Council's Planning Enforcement Officer about a proposed meeting on 21 February to discuss enforcement issues at Mr R's farm. The letter said that the purpose of the meeting was:

*'to enable each party to be kept informed of the current position in respect of their own dealings with Mr [R] and to try and ensure that any appropriate evidence is mutually available. It is expected that appropriate Officers will attend from Rossendale Borough Council, Lancashire County Council and the EA.'*

That same day, the Environment Agency wrote to Mr R saying that he had failed to comply fully with the section 71 notice and giving him seven further days to respond.

### **21 Feb 2002**

Rossendale Borough Council held a third meeting with Lancashire County Council and Environment Agency officers to discuss Mr R's activities. No record was made of the meeting.

That day Environment Agency officers carried out further observations at the farm, but witnessed no burning.

### **22 Feb 2002**

The Environment Agency sent a letter to the registered owner of land (Mr M) on which tipping and burning had taken place. The letter said that there had been deposit, disposal and keeping of controlled waste on the land and asked the owner to contact them.

(There is no record of a response to this letter.)

### **27 Feb 2002**

The Environment Agency wrote to Mr M, and his solicitors, saying that controlled waste was being deposited, treated and kept on the land.

### **April 2002**

Large numbers of complaints were made to Rossendale Borough Council about Mr R's activities by local residents, and visitors to the area, who also complained that Mr R was aggressive and threatening. The Greater Manchester Archaeological Unit wrote saying:

*'Landfill within the valley is damaging the historic character of this relic industrial landscape. The integrity of the landscape is diminishing and the valley's future potential for archaeological research and recording, recreation, education and presentation is being compromised.'*

During this period local residents again complained that 15 to 20 bulk tipper trucks were visiting the site each day.

### **5 Apr 2002**

The Environment Agency wrote to Rossendale Borough Council saying that there was evidence of unauthorised waste management on the land, but that it was insufficient to identify those responsible. They added that the material deposited by Mr R was for the maintenance

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of roads and was therefore exempt. The other dumping and burning was on land not owned by Mr R, but the identity of those responsible had not been established.

### 8 May 2002

Mr R's appeal against the enforcement notice that was issued on 6 June 2001 was heard by the Planning Inspector by way of a public enquiry. Mr R contended that the containers and vehicles were for agricultural purposes.

The Inspector dismissed the appeals, but varied the notices to say to allow development insofar as it was necessary for agricultural purposes. The Inspector's report noted that, at the time the original enforcement notices had been served, there had been no agricultural activity on the site but that, between serving the notices and the appeal, Mr R had brought some animals onto the farm albeit at that time *'at the scale of a hobby rather than a commercial operation'*. The Council had conceded that there was evidence of some current agriculture use. The notices were accordingly amended to say:

*'What you are required to do:*

- 1. Cease using land for the storage of skips, containers, and the keeping or parking of skip wagons and other vehicles other than for the purposes of agriculture within the unit.*
- 2. Remove from the land all skips, containers, skip wagons and other vehicles other than those reasonably required for the purposes of agriculture within the unit.*
- 3. Remove the concrete hard standing where not reasonably required for the purposes of agriculture within the unit, replace with top-soil and seed with grass.'*

The Inspector gave Mr R six months to comply, and told him that he would have to justify how much of the hard standing could remain.

### 11 Jul 2002

The Consultant Planner employed by Rossendale Borough Council visited the site to assess progress on the various notices. He reported his findings back to the Development Control Officer. He found that:

- The tipped field was no longer used for storing skips, containers or wagons.
- The notice regarding the culverted stream had been complied with.
- *'Prosecution in respect of tipped field is possible, desirable, necessary and likely to attract severe penalties.'*
- No action had been taken to alter the embankment that had been created near the farmhouse and prosecution was possible, but a large fine would be unlikely as vegetation was returning.
- *'No doubt that R is having a laugh at our expense. The appeal decision says he must stop storing and remove concrete, except to the extent that they are reasonably required for purposes of agriculture. Much as it grieves me, I can see no prospect of successful prosecution where the standard of proof will be "beyond reasonable doubt" and Mr [R] has containers filled with straw bales placed strategically over the whole area.'*
- Rossendale Borough Council should ask if Mr R is willing to withdraw his appeal and agree to grass over the middle third of hard

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standing, as it was unlikely to achieve much more on appeal.

### 26 Jul 2002

Mr R's representative accepted Rossendale Borough Council's proposals in respect of the enforcement notices and agreed to restore the site as required if given more time to do so.

### 31 Jul 2002

Lancashire County Council's Land Agent provided an opinion on whether the hard standing at Mr R's farm was necessary for the agricultural use of the site, which at the time he estimated to be approximately 12 to 15 head of cattle. He advised Rossendale Borough Council that the unit could support 25 head of cattle and that the concrete hard standing could have an agricultural use for storing winter feed. On this basis, he estimated that the unit needed about 450m<sup>2</sup> of hard standing, and that Mr R had laid down about 8 times that amount.

### Aug 2002

There was a major re-organisation of the Environment Agency in the North West. The local Environment Agency office in Sale closed and staff moved to the regional office in Warrington.

### 4 Nov 2002

Mr R was found guilty of obstructing Environment Agency officers on 22 January 2002. He received a conditional discharge for 12 months, was fined and an award of costs was made against him.

That same day Rossendale Borough Council wrote to Mr R's representative telling him that it had reached the view that any agricultural use that Mr R had introduced on the farm had ceased. It asked for details of agricultural use to be confirmed. It also noted that Mr R was again bringing skips

and loaded wagons onto the site in breach of the Planning Inspector's enforcement notices, and that:

*'cessation of these activities is immediately required. I shall without further notice commence proceedings upon these breaches of the enforcement notices unless he desists.'*

### 9 Jan 2003

Mr D complained to Rossendale Borough Council about the lack of action against Mr R. He said that after the appeal Mr R had been given varying amounts of time to resolve several matters, but that all of the deadlines had come and gone and yet the activities continued. Mr D said that he had spoken to one of its officers on several occasions informing him of these facts, but time kept passing and nothing seemed to be happening. He said that Mr R was still:

- using green belt land to dump skips full of industrial waste and other materials;
- erecting signs to discourage people from using several footpaths in the area;
- keeping skip wagons, skips and larger containers permanently on site;
- using the site as overnight and weekend parking for additional skip wagons;
- not digging up the mass of concrete as he was supposed to; and
- not returning the land to its original green state. He said that Mr R had destroyed even more of the green belt land since the enquiry.



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Mr D went on to say:

*'I have been led to believe it is the council's duty to enforce the decisions of the public inquiry without having to resort to media or other means. No one at the council seems to want to tell me why all of these activities are still going on this site and out of desperation I am writing to you in the hope of an answer.'*

### **21 Jan 2003**

Rossendale Borough Council's planning and legal officers met to decide a way forward and made a list of the breaches of the enforcement notices. It was agreed that action was needed: either a prosecution or injunction. It was decided to re-check the land ownership position with the land registry, to visit the site as soon as possible and to arrange for outside solicitors to deal with the case.

### **30 Jan 2003**

An email from Rossendale Borough Council's planning department to its legal department indicated that it was its intention to take out injunctions against Mr R to ensure compliance with the enforcement notices.

### **13 Jun 2003**

Rossendale Borough Council's Planning Manager sent an email to the Borough's legal department, saying:

*'Our failure to take action against Mr [R] as we have both promised and threatened exposes us to even more criticism than the other authorities who have been even less diligent in pursuing their powers against this serial breaker of any and every regulation in existence.'*

### **16 Jun 2003**

Rossendale Borough Council's Planning Manager sent a further email to the Borough's legal department saying:

*'I feel that we are failing Mr D. As you will be aware from my previous calls, memos and emails I am extremely concerned that we have not yet taken any action against [R]. I understand that you have all the information you require to proceed with a prosecution. When will it occur?'*

### **18 Jun 2003**

Rossendale Borough Council's Environmental Health Officer called NIRS to report tipping and burning at the farm.

### **27 Jun 2003**

Rossendale Borough Council's Planning Manager sent an email to a colleague saying that the matter was getting out of hand and *'beyond just critical ... I think we need to have a meeting of all possibly involved with [Mr R] to try and ensure that we co-ordinate our actions as soon as possible. But we must **not** delay in any way in taking the agreed action against him which must be instituted as soon as possible'*.

Rossendale Borough Council called the Environment Agency asking for an update on Mr R's activities.

That same day Rossendale Borough Council's Environmental Health Officer sent a report to the Environment Agency saying that the Fire Brigade had attended a large fire in a burning pit on Mr R's land on 6 June 2003. There had been evidence of waste, such as fridges, on site.

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### **3 Jul 2003**

The Fire Brigade sent a report to NIRS that they were attending a large fire in the burning pit on the farm and that fridges were within the waste that was being burnt.

### **11 Jul 2003**

Rossendale Borough Council's Planning Manager sent a memorandum to his Chief Executive.

The memorandum said:

*'the Inspector held up the enforcement notices. We then negotiated with a series of professional agents as to what we would accept to comply with the now by valid enf notices. He [Mr R] has not done any of the works, which after negotiating with his neighbours, we would have accepted.*

*'Eventually we prepared evidence for an injunction. There has been some delay whilst there has been confusion about who has sent/received what necessary evidence but I understand that [xx] now has all the evidence he needs ... and ... intends to initiate action next week.*

*'We have at the beginning and recently tried to involve the County Council ... and the EA ... and have singularly failed with any co-ordinated action.*

*'Compared to problems that he [Mr R] causes and the wide range of illegal activities that he indulges in, what we are doing to attempt to control him is very minor and I share the locals' perception that "they" have failed to provide the public with the protection that they have every right to expect.'*

### **Aug 2003**

Rossendale Borough Council instructed a private firm of solicitors to take enforcement action against Mr R.

### **24 Aug 2003**

Rossendale Borough Council's Environmental Health Officer reported to NIRS that the Fire Brigade was still attending (and had been since 11.00pm the previous night) a large fire in the burning pit on the farm. He assessed that about ten tons of waste had been burnt, including fridges and washing machines.

### **28 Aug 2003**

Two Environment Agency officers visited the site but saw no activity.

### **26 Sep 2003**

The Environment Agency applied for permission to be able to carry out covert surveillance operation at the farm, which was agreed.

### **1 Oct 2003**

At the suggestion of the appointed solicitor, Rossendale Borough Council sent a new warning letter to Mr R saying that the breach of the enforcement notice issued on 6 June 2001 continued as he was keeping containers on site, and the concrete hard standing next to the stream had not been removed. Mr R was given four weeks to comply or Rossendale Borough Council intended to prosecute without further notice.

### **Oct 2003**

Rossendale Borough Council's Development Control Committee authorised the Director of Corporate Services to 'take action in the County or High Court to secure by injunction or otherwise compliance with the outstanding enforcement notices and resolution of the remaining breaches of planning control at the land'.

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### **9 Oct 2003**

Rossendale Borough Council's officers and the appointed solicitor met with an external barrister, who recommended that Rossendale Borough Council's chances of success would be greatly enhanced if it could get Lancashire County Council, as Waste and Minerals Planning Authority, and the Environment Agency, to act with it in a joint action. The barrister advised collecting fresh evidence for an injunction.

### **17 Oct 2003**

Rossendale Borough Council invited Lancashire County Council to join it in action.

### **21 Oct 2003**

Rossendale Borough Council's Development Control Committee passed a resolution that its officers were authorised to take proceedings against Mr R in the County or High Court regarding breaches of planning controls and failure to comply with the enforcement notices.

### **31 Oct 2003**

The Environment Agency discontinued the covert surveillance of Mr R's farm on the grounds that:

*'Although good evidence was obtained on this occasion Officers need to be able to prove that the waste being burnt and buried on the site is imported and does not arise on the farm.'*

### **11 Nov 2003**

Lancashire County Council agreed to join Rossendale Borough Council in any legal action it might take in respect of Mr R's activities.

### **22 Nov 2003**

There was a fourth meeting at Rossendale Borough Council attended by Lancashire County Council and Environment Agency officers. (Following this meeting more complaints were received

about Mr R's activities and fresh statements were taken from Mr D, Rossendale Borough Council's Enforcement Officer, the Planning Manager and the local Fire Brigade.)

### **30 Jan 2004**

Rossendale Borough Council was advised by its Counsel that the ownership of the burning pit area, allegedly sold to Mr M in October 2001, needed further investigation.

Rossendale Borough Council's files show that around this time it found case summaries on the internet that described another planning authority successfully showing that a land sale of an area used for tipping was a sham designed to avoid prosecution, and successfully taking action against the true owner and his solicitor.

Rossendale Borough Council also received information about animal livestock movements on the farm. This showed that there had been some pig breeding (fewer than 25) in 2002 and that 12 head of cattle had moved off the site in July 2002.

### **17 Feb 2004**

Rossendale Borough Council again met with Environment Agency and Lancashire County Council officers to co-ordinate action to deal with Mr R. This meeting was also attended by Rossendale Borough Council's solicitor and barrister. It was not clear from the brief note of the meeting what action had been agreed.

### **23 Feb 2004**

The barrister sent Rossendale Borough Council his opinion in writing. This said that:

- the evidence it had was insufficient for an injunction, partly due to its nature and partly due to its age;

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- the breaches of Rossendale Borough Council's enforcement notices were old and provable only for a short duration;
- the evidence of harm was not strong, especially so because, in his opinion, what was happening at Mr R's farm was a waste transfer or disposal operation and needed to be dealt with by both Lancashire County and Rossendale Borough Councils: *'At the conference, I did not think it appropriate to inquire too deeply into why LCC have not taken action. Rather, we focused on where things stand now'*; and
- Rossendale Borough Council should work with the other bodies to prepare evidence to show frequent and persistent breaches of planning control that required the intervention of the court or else they were likely to continue.

The barrister added that, in his view, the best tactic was to unite the various agencies in bringing to bear co-ordinated, but legitimate, pressure on Mr R to bring the site into line with the various legal requirements upon him. He said that a disjointed response would, in the light of past experience, cause Mr R to *'play one agency off against the other'*. The barrister said that it was his impression from the meeting that Lancashire County Council was going to try and get things moving from its viewpoint, but that he had not got the same impression from the Environment Agency, who had described the site as *'a low priority'*, and had given the impression that the site was not of major concern to them.

### 20 Apr 2004

Lancashire County Council's Land Agent wrote to Rossendale Borough Council saying that although Mr R claimed to own over 100 head of cattle, none

had been present on site in February 2002. In his view, there was sufficient evidence to show that Mr R had not been involved in agriculture in the previous 12 months, but that the land on the site had been farmed by others.

### 22 Apr 2004

Environment Agency, Lancashire County Council and Rossendale Borough Council staff, together with two of the Borough's legal team met to decide a way forward in dealing with Mr R's activities. According to the note made by Lancashire County Council, they decided that a multi-agency approach was needed. They would visit the site together to *'make [their] presence known'*, and would then make follow-up visits to monitor activities.

### 29 Apr 2004

Environment Agency and Lancashire County Council officers visited Mr R's farm. They advised Mr R that if he was tipping waste at the farm he would require a licence.

### 6 May 2004

The Environment Agency wrote to Mr R warning him that controlled waste had been found on the site which did not have a WML and no exemptions had been applied for. Mr R was warned of the consequences if the illegal activity continued.

### 10 May 2004

Mrs D wrote again to Rossendale Borough Council complaining about the lack of action. She attached two photographs: one showing a large tipper lorry dumping waste onto a large pile close to her house, and the other showing waste being burnt.

The same day, the external solicitor wrote to Rossendale Borough Council saying that she would be happy to act for it against Mr R when it was ready to proceed.

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### **19 May 2004**

The Environment Agency wrote to Mr R saying that he had told them he intended to apply for a WML exemption for the resurfacing of a number of local access roads. They reminded him that he would need to be able to demonstrate that he had the permission of the relevant landowners before an exemption could be considered.

### **28 May 2004**

Lancashire County Council wrote to Mr R outlining its requirements and pointing out that any new importation of waste would result in enforcement action.

### **13 Jul 2004**

Mr R wrote to Lancashire County Council outlining his proposed plans for re-instatement of the land and also to drain the adjoining field to deal with flooding problems.

### **15 Jul 2004**

The Environment Agency again wrote to Mr R telling him how to apply for WML exemptions.

### **4 Aug 2004**

Mr R contacted the Environment Agency to say that rain had washed the road away and that he wanted to import material to repair it. He was told that an exemption would be allowed if he first agreed the materials to be used.

### **6 Aug 2004**

The Environment Agency wrote to Rossendale Borough Council saying that they were allowing Mr R an exemption in order to repair the road.

### **9 Sep 2004**

A complaint was made that Mr R was burning rubbish again.

### **10 Sep 2004**

A Lancashire County Council officer visited the site and noted that the road had now been re-surfaced and was passable, that there had been no new waste importations and that the burning had been of household rubbish due to the road having previously been impassable.

### **Oct/Nov 2004**

Lancashire County Council staff carried out three site visits and recorded that the re-instatement was progressing well, the site was much improved, and that the work would cease until the spring.

### **17 Mar 2005**

The Environment Agency wrote to Mr R warning him that there was controlled waste on the site without a WML and that no exemptions had been applied for. Mr R was warned of the consequences if illegal activity continued.

### **26 Aug 2005**

Mr D reported to Lancashire County Council that Mr R was tipping waste again.

### **31 Aug 2005**

Lancashire County Council and Environment Agency staff made an unannounced site visit and were satisfied that there had been no fresh tipping, but that materials had been drawn together into a mound as part of the re-instatement programme.

### **14 Dec 2005**

Following a further site visit with Lancashire County Council on 9 December, when Mr R was told to remove some recent waste, the Environment Agency again wrote to Mr R telling him how to apply for exemptions.

### **29 Apr 2006**

Environment Agency officers visited the farm and observed remains of burnt commercial waste.

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They told Mr R that he would need a licence if he was tipping on the farm. He was again told that an exemption could be granted for road creation.

### **23 May 2006**

The new Environment Agency Regional Environmental Crime Team Leader asked for enquiries to be made in response to a report from Rossendale Borough Council of further allegations of unlawful waste activity on the farm.

### **31 May 2006**

The Environment Agency met with Environmental Health Officers at Rossendale Borough Council and together visited Mr R's farm, but found no sign of activity.

### **6 Jun 2006**

Mrs D telephoned the Environment Agency and complained that Mr R was depositing waste in a large hole on his land. Arrangements were made for the Environment Agency officers to visit Mrs D the following day as she had volunteered that Mr R's activities could be seen from her property.

### **7 Jun 2006**

Two Environment Agency officers visited the farm, but did not observe any activity. They received a message from a neighbour of Mrs D's who expressed concern that if the Environment Agency were going to visit Mrs D, she might face repercussions from Mr R. Having spoken to colleagues, who said that in order to visit Mrs D they would have to drive past Mr R's farm, the officers decided not to visit her.

### **19 Jun 2006**

Lancashire County Council's Development Control Planning Officer and the Environment Agency met to discuss Mr R's activities. The Council Officer reported that Mr R had allegedly been raising land levels, but no planning permission had been given

for that. The Council Officer said that he had made frequent visits to the farm but had not seen evidence of unlawful activities.

### **29 Jun 2006**

Another Environment Agency officer visited Mr R's farm and noted that there was controlled waste on site without a WML and that no exemptions had been applied for. Mr R told him that he wanted to raise the level of the land to prevent flooding and intended to import inert materials to carry out the work. The Environment Agency officer told him that he might be able to apply for an exemption for that, but he would first need to demonstrate that he had planning consents. Mr R was again warned of the consequences if the illegal activity continued.

### **30 Jun 2006**

The Environment Agency wrote to Mr R reinforcing what they had told him the previous day and enclosing application forms for an exemption.

### **19 Jul 2006**

Mrs D telephoned to say that Mr R was bringing soils onto the land. She was told the Environment Agency would visit as soon as possible.

### **27 Jul 2006**

Following two further reports to NIRS of tipping and burning on the farm, an Environment Agency officer visited the site and witnessed fresh deposits of controlled waste (including household, construction and demolition waste) imported without a WML or exemption.

Photographs were taken and the same day, a letter was sent to Mr R informing him of what had been observed and asking him to contact the Environment Agency to arrange an interview under caution.

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### **7 Aug 2006**

Having heard nothing further from Mr R, the Environment Agency sent out a repeat request for him to contact them.

### **31 Aug 2006**

After a further three NIRS reports about tipping on Mr R's farm (including one from Rossendale Borough Council), an Environment Agency officer visited the site and again witnessed fresh deposits of controlled waste imported without a WML or exemption.

Mr R was told that he would be invited to Warrington for an interview under caution, but he replied that he would be unavailable as he was working away from home.

### **7 Sep 2006**

An Environment Agency officer telephoned Mr R to try and arrange an interview but was told that he was working away from home during the next two weeks.

### **28 Sep 2006**

A letter was sent to Mr R inviting him to an interview with the Environment Agency on 6 October 2006. (Mr R did not respond or attend.)

### **23 Oct 2006**

Lancashire County Council and Environment Agency staff carried out a joint site visit and noted that there had been no further waste imported, and that the inert waste material noted previously had been removed. Lancashire County Council noted that the Environment Agency were to continue with their investigation, but that this was not a matter relevant to Lancashire County Council.

### **3 Nov 2006**

Four Environment Agency officers visited the site and witnessed fresh deposits of controlled waste imported without a WML or exemption.

### **4 Nov 2006**

Two Environment Agency officers visited the site yet again and witnessed fresh deposits of controlled waste imported without a WML or exemption.

### **16 Nov 2006**

The Environment Agency telephoned Mr R who said that he would not attend an interview. He was warned that proceedings would now begin.

At some point in November reports were received that Mr R was tipping waste at another site. According to the Environment Agency's account it was decided that, as it was possible that offences were being committed there, and there might therefore be a requirement to interview him about other matters, they would monitor this and not start proceedings in relation to the farm at this point.

### **28 Feb 2007**

Three Environment Agency officers visited the site and witnessed fresh deposits of controlled waste imported without a WML or exemption. Mr R was cautioned for offences under section 33 of the 1990 Act, and was told that the evidence would be submitted to the Environment Agency's legal department for consideration for prosecution.

### **12 Jun 2007**

The Traffic Commissioners revoked Mr R's Heavy Goods licence to operate from the farm.

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**6 Jun 2008**

Mr R pleaded guilty to three offences of depositing, disposing and keeping controlled waste without a WML on his farm.

The judge asked the Environment Agency to prepare a survey of the farm in order to determine the nature and amount of the waste on the farm.

The outcome of this was that it was estimated that 7,613m<sup>3</sup> of controlled waste remained on the land. This included metal, brick, ceramic tile, wood, plastic, glass, felt, copper tubing, fence wire, roof tiles, plastic guttering, clothing, fluorescent tubing, soil, stone, carpet, plastic bags, bonded rubber, foam pipe, MDF board, polypropylene rope, a fridge door, a UPVC window frame and cement-bonded fibrous material.



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# Annex C

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## **The responses of the Environment Agency, Rossendale Borough Council and Lancashire County Council to the provisional report**

### The Environment Agency

- 1 The Chief Executive of the Environment Agency said that the Agency accepted that, regardless of the classification of any specific individual incidents concerning Mr R's premises, the persistent and prolonged nature of the activities complained about should have resulted in the Agency, in consultation with Lancashire County Council and Rossendale Borough Council, identifying the need for prompt action to carry out a focused, robust and comprehensive investigation. With regret, they also accepted that with hindsight the investigations which the Agency had carried out, and the enforcement action taken in relation to Mr R's activities, had been inadequate in the circumstances.
- 2 The Agency had been aware that Mr R's activities would have a significant impact on Mrs D and her son. They had also been aware that Mr R's activities had the potential to have a detrimental impact on the local environment. They accepted that they had failed to give sufficient weight to those considerations when determining the appropriate, proportionate action to take and the degree of urgency required to stop Mr R's illegal tipping and burning activities.
- 3 The Agency went on to say that the joint protocol referred to in the report did provide a framework within which appropriate co-ordinated action could, depending on the circumstances, be agreed and taken by the relevant public bodies. Again, with hindsight, they acknowledged that they could have taken the lead in any investigation or any enforcement action required.
- 4 The Chief Executive went on to say that the Agency had considerable sympathy for the distress which Mrs D and her son had suffered as a result of Mr R's activities and his behaviour towards them. They regretted and accepted that that distress had been compounded by the failure to take the necessary, proportionate action. They also accepted that Mrs D and her son had suffered injustice as a result of the failings referred to in the report. The Agency accordingly accepted the report's recommendations. They would therefore write to Mrs D and her son to apologise to them for the Agency's failings identified in this report once the joint report had been issued, and would pay the recommended financial compensation. They would also be in contact with the County Council and the Borough Council to discuss a tripartite approach to tackling illegal waste in the area.
- 5 As for what other action might be required to prevent a recurrence of such events, the Chief Executive said that the Agency generally and increasingly had a good record of working with local authorities, the police and HM Revenue & Customs in tackling illegal waste activity but they acknowledged that there were lessons to be learnt from this case. He said that as an organisation the Agency recognised that tackling serious, organised, illegal activity required specialist skills and they had therefore established dedicated Area and National Environmental Crime teams since 2006. Those teams now used an intelligence and a risk-based approach to waste crime, and routinely shared information with other regulatory bodies to

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maximise their effectiveness in dealing with illegal sites.

- 6 In addition, the Agency had established Area Enforcement Panels in all their Areas, which brought together local management teams, enforcement officers and legal advisers to review ongoing cases on a monthly basis. They were developing and sharing good practice in how to close illegal waste sites more quickly, recognising the impact that these could have on people and the environment. However, the Chief Executive went on to say that, even with the establishment of dedicated teams and improved partnership working, illegal waste sites remained very difficult to resolve. Operators were often highly organised, aggressive, mixed legal and illegal activities on the same site, and deliberately made evidence difficult to obtain.
- 7 The Agency were continuing to see where they could learn from other regulators in dealing with this organised crime. They were further developing effective working relationships and joint operations with the police, local authorities, HM Revenue & Customs and the Department for Work and Pensions; and dealing effectively with high-risk illegal waste sites was now a key performance indicator for the Agency. Since April 2008 they had closed down 995 sites in England and Wales. However, due to the complexity and volume of the crime, an additional 981 illegal waste sites had come to their attention over the same period.
- 8 The Agency's Chief Executive concluded that the Agency would also be considering carefully what further improvements could be made to reduce the likelihood of such an event occurring elsewhere, and to strengthen their working arrangements with local authorities and other agencies.

## Rossendale Borough Council

- 9 The Borough Council suggested some corrections to the text, but otherwise confirmed that it accepted the findings and recommendations as set out in the draft report, and had no further comments.
- 10 The Borough Council also said that it has made great strides in improving provision of all its services since the matters referred to in this report occurred. It is now confident that the errors it made in the past are unlikely to reoccur. The Borough Council has since met with the Agency and the County Council to discuss the detail of a proposed joint agreement on working together.

## Lancashire County Council

- 11 The County Council accepted that it failed to adequately address the problems experienced by Mrs D and her son in that there were further actions that could and probably should have been taken to prevent illegal activities carried out by Mr R. The County Council accepts that, while it can only speculate whether any such action would have been successful, there is clearly no excuse for not having used the full range of statutory powers at its disposal.
- 12 The County Council accepted that its record keeping at the time was inadequate, so that it is now not possible to see the full picture and in particular the interaction between the agencies involved. However, the County Council argued that what may now seem to be perceived as a failure to act might well have resulted from a conscious decision not to do so.

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- 13 The County Council questions the extent of the scale of the illegal activities on the site, both in terms of the time it occurred and the evidence of what occurred. The County Council said that the number of complaints it had received and that it still has copies of having received after the initial two years do not evidence activity that would be permitted development.
- 14 The County Council went on to say that it did not dispute the need for an apology to Mrs D and her son and that it was willing to work with the Agency to put in place a local joint agreement on how that should be done in future. This joint agreement would then be spread out across the area to be adopted by other Councils.
- 15 Finally, the County Council said that the substantive matters referred to in the report occurred eight to nine years ago, since when there have been significant improvements in practice and changes in staff.

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