

1. The Scottish Government's submission

Yet again I have to record my dismay at the easy dismissal by the Scottish Government of straightforward measures to address the dangers attaching to Private Water Supplies consequent on its Policies.

For almost 2 decades, the Local Authority here has been notifying the community of serious failings in the quality of its spring supply - bacterial contamination occurred in March/April 1999, October 2001, August 2007, October 2009, September 2011 and October 2011, as analysed at different properties in Tullibardine. In 2001, the "disease causing bacterium E.Coli 0157 was also present" and cases of illness attributable to the supply were reported in 1999 and 2001. As lately as April 2015, the Council reported to the Director of Public Health, Tayside, in its "No Comment" reply, that the supply had again failed on microbiological grounds and that a Boil Water Notice remained in force. It has itself acknowledged that "the supply intermittently fails to meet the Drinking Water Supplies Scotland Regulations 2006".

How could water quality have remained unregulated for such a protracted period of time?

Could it be because the Regulator has "no locus in Planning or Building Control issues for Scotland and ...I have no powers that enable me to direct Perth and Kinross Council in matters pertaining to their enforcement of Private Water Supplies legislation"?

Given the reporting above, the Government's belief that the Local Authority's exercise of its present powers is "sufficient and effective" is clearly misplaced and its reasons for continuing to assign these powers to the Local Authority (geographic, variety, etc.) unconvincing. Diagnostic laboratories are likely to reside in cities where Council Offices themselves reside with the Regulator's Offices just as likely to be next door. And as far as the "small number of technical staff of the Drinking Water Quality Regulator for Scotland" is concerned, this is obviously amenable to increase by the Government itself. Its complacency in respect of "around 20,000" Private Water Supplies and presumably the tens of thousands of consumers affected is alarming. Especially in these days of Antibiotic shortages and shortcomings, and concerns about sepsis, Scotland needs a specialist unit devoted to the single entity of quality instead of an Authority which serves two masters and, in line with Scottish Government Policy, presumes in favour of developers.

Or could the reason be that the Local Authority had not listened to relevant information given it in the form of Objections? Information which could hardly have been more telling:-

- that despite having been Certified by Building Control, and paid for on that basis, "site services" had been abandoned by the developer, and the hillside collecting tank, the spring Source of the drinking water, left in a state of disrepair.
- that his attachment to the Private Water Supply owned by the Estate was conditional on his undertaking to implement exactly those essential repairs.
- that a copy of this contract had been included in his Offer of Sale to us.
- that consequently we had embarked on Legal Action against him.

By giving detailed permission for building on site to continue uninterrupted, the Planning Authority overlooked the Fraud perpetrated on us by the developer and obstructed our Action through the Courts.

Only when the ill-effects on Public Health became apparent did the Authority manifest an interest, when the following policies, also inimical to the Public, came into force:-

Accountability “for complying with planning control and remedying any breaches runs with the land and is the responsibility of the landowners. Similarly, remedial action in respect of private water supplies and sewerage systems is also the responsibility of the owners”.

and

“If a wholesome water supply is deemed not to be the case then the Council can serve a demolition order on the property...” (Private Water Supplies Regulations 2006)

And so the Authority denied Accountability for its Breach of Planning Control and Enforced on 35 households, including our own, the full costs of the replacement of the source tank, properly the responsibility of the Developer and which ought to have been Enforced on him.

The Planning Authorities’ dismissal of valid Objections was inconsistent with the fundamental principle that it should facilitate development in the Public Interest.

As for the proposed European Commission revisions to the Drinking Water Directive, given its refusal to comply with existing EU measures as already detailed in the Petition and my accompanying Statement, I have no confidence in the Scottish Government’s implementation of these.

I consider the Government’s rejection of my plea for an Equal Right of Appeal specious – to deny citizens the Right to Justice in the belief that the addition of such an Appeal would be “adversarial”, illogical. Should an Appeal be sought, it is self-evident that a dispute already exists, and may not be of Objectors’ making. As, for example, in a Council Memo of February 2015 regarding a Planning Application for a new development, where the Council Official, although stating that there were no letters of Objection, “it is my **contention** that the residential amenity of the proposed properties will not be adversely affected”, and continued with the condition that the Commercial Developer “**honour**, throughout and after completion of the development, existing wayleaves for maintenance or repair to the existing Private Water Supply or septic drainage infrastructure”. It is not at all unreasonable that the Rights of resident taxpayers in such situations are protected and a means of Appeal accessible.

2. The Evidence Session with Scottish Water

I am struck by the startling contrast this document demonstrates between the Accountability painstakingly and rigorously required of Scottish Water by the Parliamentary Committee and the wholly self-regulatory powers afforded to Local Authorities by the Government. What is particularly striking is that Scottish Water acknowledges the importance of having “an independent Drinking Water Quality Regulator who gives that assurance to people across Scotland that the water, not just in aggregate, but **area by area**, is safe to drink”.

And so our Pensions over this period of time have continued to be debited (to date by around £30,000 to £40,000) endlessly repurchasing “site services”.

During this struggle for justice we have been supported by:-

- our Local Councillor, who made a formal complaint about the conduct of the Planning Process.
- our Westminster MPs, both previous and present – **“It beggars belief that you have been unable to have anyone held to account for failures to construct a safe water supply and thereafter protect your water supply and with it your health”.**

- The European Commission, in response to our Petition to the European Petitions Committee – “The issues regarding access to the Scottish Courts and the apparent failure of the Local Authority Ombudsman fall rather beyond our specific competence, although it is appreciated that they are matters which are pertinent to the petition received. Regarding the acts or omissions of the Local Authority, however, the Committee would be able to pronounce itself based upon the considerations which the Commission itself must provide, because **if the relevant EU Directive has not been properly applied, there would be a case of infringement of EU Law to be answered**”.
- The Committee on Petitions of the European Parliament accepted the admissibility of our Petition (0971/2009) – “Members heard a representative of the European Commission who stated that the Petition concerned a **serious issue of potential risk stemming from drinking water which did not fulfil the standards of the Drinking Water Directive (98/83/EC)** which is applicable in this case. **Implementation of the Directive is the responsibility of the National and Local Authorities**”.
- Chairman of the Committee on Petitions of the European Parliament which asked for measures **“to bring about a pragmatic, equitable and definitive solution for the untenable and unnecessarily dangerous water situation”** in which we and our neighbours were living.
- Our MEP – “I am again contacting the Petitions Committee of the European Parliament and the Scottish Government to ask that a renewed effort be made to communicate so that the information required in order properly to judge the issues raised in the Petition can be provided”.
- Our Senior QC, who was unable to challenge the original Ombudsman’s decision through Judicial Review because of time restrictions on the production of evidence. “The Scottish Executive are considering whether or not there should be a third party ground of appeal in relation to planning matters and **this might be a case which highlights why there should be such an appeal.**”