

# COMPLAINT UPHELD BY THE LOCAL GOVERNMENT & SOCIAL CARE OMBUDSMAN (LGO) RELATING TO A COMPLAINT ABOUT NOISE

**To:**

Councillor Rosy Moore, Executive Councillor for Climate Change, Environment & City Centre

Environment and Community Scrutiny Committee

**Report by:**

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**Wards affected:**

Abbey

Not a Key Decision

## 1. Executive Summary

- 1.1 The Local Government & Social Care Ombudsman (LGO) has found there was fault by the Council “but not causing injustice”, in relation to how the Council investigated a noise complaint from a large item of commercial equipment within the city.
- 1.2 The LGO found the Council at fault for how it initially investigated the noise complaint, which it determined to not be a statutory nuisance. However, this did not cause the complainant a personal injustice, as the Council subsequently acted without fault in its further noise investigation work relating to the commercial equipment; and which came to the same conclusion, ie. it was not a statutory noise nuisance.

- 1.3 There is no legal definition of a statutory noise nuisance, but further general information on this subject matter may be found in the footnote below.
- 1.4 The LGO has also formally accepted that all the identified service improvement actions, offered by the Council to the complainant, have been fully actioned by the Council..

## **2. Recommendations**

The Executive Councillor is recommended to:

Note the findings of the Local Government & Social Care Ombudsman in respect of this case and the actions taken by the Council in response to these findings.

## **3. Background**

- 3.1 The complainant will be anonymized for the purposes of this report and will be referred to as Ms X throughout.
- 3.2 Ms X complained to the Council about noise from a large item of commercial equipment, which shall be referred to as Machine A. Ms X said that Machine A was creating a loud constant noise which was audible in and around her home. The case officer carried out initial investigations to positively identify the source of the noise as coming from Machine A. This included several visits to the home of Ms X and other residents in the nearby area. By the time the case officer had positively identified the noise as coming from Machine A, the company had stopped using Machine A in a way that caused a loud and constant noise.
- 3.3 Some other noise remained, which the case officer assessed on several more visits. The case officer found that the remaining noise was coming from a different machine which shall be referred to as Machine B.
- 3.4 While Machine B produced a noise, the case officer who carried out the investigation did not consider it constituted a statutory noise nuisance. Nevertheless, the Council asked the business to find ways to mitigate

the remaining noise from Machine B as residents said it was affecting them. It kept the investigation into the noise open in the meantime

- 3.5 The business then decided to plan to move Machine B to another area of its site. It submitted a planning application to the Council for permission to move the machine. The business carried out an environmental impact assessment (EIA) as part of its planning application. These assessments include the impact of noise on the surrounding area. The Council reviewed the planning application and associated EIA, which it subsequently approved.
- 3.6 On 1st February 2021 the case officer carried out a further site visit on their own. A few days later, the case officer formally decided the noise was not a statutory noise nuisance. The case officer told the business it could continue using Machine B and informed Ms X it would not be taking further action. At this time, an independent acoustic report about the noise from Machine B had been sought by Ms X but it had not been completed yet.
- 3.7 Ms X complained to the Council in March 2021 as follows:
- before making the decision that Machine B could continue to operate, the case officer attended the site visit alone on 1st February 2021, when he should have attended in a pair;
  - the case officer made the decision before the outcome of the acoustic report was known;
  - the Council did not change its decision making in response to a noise assessment which residents paid for privately and which said the noise would amount to statutory nuisance; and
  - the case officer investigating the noise lacked integrity and was not impartial.

The complaint was considered using the Council's internal complaints process at Stage 1 and Stage 2.

- 3.8 The outcome of the Council's complaint investigation at Stage 1 is set out below. The Stage 2 outcome supported the findings made at Stage 1.
- 3.9 The Council did not agree that its officer lacked integrity. It also did not agree that Ms X's privately commissioned noise assessment meant it should change its finding regarding the noise nuisance. The Council said it appreciated that Ms X's noise consultant had reached a different conclusion, but the Council's decision was made by qualified officers

after several visits and assessments. It said that Ms X's own consultant's report did not mean that the Council's conclusion was wrong or unreliable. However, it upheld Ms X's complaint about the officer attending the 1st February 2021 visit on their own. It said the case officer should have judged that it would have been better for two officers to attend before making the decision that the noise was not a statutory nuisance and whether the machine could continue to operate. The Council also agreed that the case officer should have waited for the outcome of the acoustic report before making any formal decision about the continued operation of Machine B.

3.10 In response to the faults identified above at Stages 1 and 2, the Council said it would:

- review its noise assessment and decision-making processes.
- ensure consistency in future around officer attendance on visits and signing off on decision-making.
- organise relevant training for Environmental Health Officers to ensure they follow the correct processes.
- review and update the Councils' website to make it clear what customers can expect from this part of the service; and
- request that the business release the 'raw data' on noise from its own noise assessment and provide it to the Council.

The Council told Ms X as part of its Stage 2 response, that it requested the 'raw data' from the business's noise assessment, but the business did not provide it and it was under no legal obligation to do so.

It also noted that all visits to investigate the noise which took place subsequent to the one on 1st February 2021 were done in pairs.

It also advised Ms X, as part of its Stage 2 response, that it would be a consultant as part of the planning process following submission by the applicant of an EIA.

It also agreed to a request for Ms X to meet with the Chief Executive Officer, if still required following review of the response provided at Stage 2. Ms X has not subsequently asked for a meeting to take place

3.11 In mid-February 2022, following further noise assessments, the Council decided again that the noise from the nearby business did not amount to a statutory noise nuisance. It sent Ms X an email to explain its decision and advised that her noise complaint was now closed. In June

2022, the Council approved the business's planning application to relocate Machine B to another area of its site, subject to conditions. Among these conditions were a list of noise mitigation measures. These included noise insulation around the machine, restrictions on permitted sound levels and positioning of the machine in such a way that the noise is directed away from nearby residential dwellings.

#### **4. The Ombudsman's findings, orders, and recommendations**

- 4.1 The LGO noted the following in its assessment of the case:
- 4.2 "The Council carried out an appropriately thorough investigation into the reports it received of excessive noise from the business site.
- 4.3 Its actions included carrying out several visits to different nearby locations to investigate the noise. It considered several noise assessments, officer's professional judgement and measured the noise level.
- 4.4 However, the Council has accepted some fault in how it investigated Ms X's concerns. The Council agreed it would have been preferable for two officers to be present during one of the site visits. It also accepted the officer should have waited for the outcome of the acoustic report before deciding the noise was not a statutory nuisance.
- 4.5 The Council suggested appropriate improvements to its practice to prevent the fault occurring again. In any event, this fault did not lead to an injustice for Ms X.
- 4.6 The Council's decision in mid-February 2022 took account of the acoustic report and other noise assessments. Many subsequent visits were conducted in pairs, but the Council came to the same conclusion .
- 4.7 When councils decide a noise is not a statutory nuisance, they can decide to take informal action. The Council did this by asking the business to take steps to mitigate the noise. The Council can also manage noise through the planning process, which it did. It looked at the impact of the noise as part of its consideration and chose to place conditions on the business to minimise any noise.

- 4.8 The LGO ordered within one month of the date of the final decision, the Council should provide evidence that it has carried out the service improvements it set out in its complaint response:
- a review of its noise assessment and decision making processes;
  - measures to ensure consistency around officer attendance on visits and signing off on decision-making;
  - relevant training to be arranged for Environmental Health Officers to ensure processes are followed; and
  - review and update the Councils' website to make it clear what customers can expect from this part of the service.”

Paragraphs 4.2 to 4.8 inclusive, are taken direct from the LGO report.

## **5. The Council's response**

- 5.1 The Council has dealt with the LGO's order, as detailed in section 4.8 within the stipulated time frame.
- 5.2 The LGO has accepted the evidence provided that the service improvements ordered have been made.

## **6. Implications**

### **a) Financial Implications**

None

### **b) Staffing Implications**

Noise assessments are now made in pairs where deemed appropriate on a case by case basis.

### **c) Equality and Poverty Implications**

An EqIA is not required in this case as this report is for information with no decisions to be made.

### **d) Net Zero Carbon, Climate Change and Environmental Implications**

The report is for information with no decisions to be made, there are no climate change related implications therefore the overall rating is 'Nil'.

### **e) Procurement Implications**

None.

**f) Community Safety Implications**

None.

**7. Consultation and communication considerations**

None.

**8. Background papers**

None.

**9. Appendices**

None.

**10. Inspection of papers**

If you have a query on the report please contact Yvonne O'Donnell,  
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