

The Ombudsman's final decision

Summary: Mr X complains the Council has failed to address noise nuisance and anti-social behaviour arising from a nearby business. Mr X also says the Council failed to communicate effectively with him about his complaints. We have found fault with the Council's actions, causing an injustice to Mr X. We have made recommendations to remedy the injustice caused.

The complaint

1. Mr X says the Council failed to address noise nuisance and anti-social behaviour arising from a nearby business.
2. Mr X says the Council appears willing to engage with the issue, but then does not take any action, or provide updates unless prompted. This has caused Mr X frustration and uncertainty.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. We cannot question whether an organisation's decision is right or wrong simply because the complainant disagrees with it. We must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3), as amended*)

How I considered this complaint

5. I considered the information provided by Mr X and spoke to him about the complaint.
6. I considered the information provided by the Council in response to my enquiries.
7. Both parties had the opportunity to comment on a draft version of this decision. I considered any comments received before making a final decision.

Relevant legislation, guidance and policy

Statutory nuisances

8. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential 'statutory nuisances'. Typical things which may be a statutory nuisance include:
 - noise from premises or vehicles, equipment or machinery in the street;
 - smoke from premises;
 - smells from industry, trade or business premises; and
 - artificial light from premises.
9. For the issue to count as a statutory nuisance, it must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and / or
 - injure health or be likely to injure health.
10. There is no fixed point at which something becomes a statutory nuisance. Councils will rely on suitably qualified officers (generally an environmental health officer, or EHO) to gather evidence. They may, for example, ask the complainant to complete diary sheets, fit noise-monitoring equipment, or undertake site visits. Councils will sometimes offer an 'out-of-hours' service for people to contact, if a nuisance occurs outside normal working time.
11. Once the evidence-gathering is complete, the environmental health officer(s) will assess the evidence. They will consider factors such as the timing, duration, and intensity of the alleged nuisance. The officer(s) will use their professional judgement to decide whether a statutory nuisance exists.
12. Councils can also decide to take informal action if the issue complained about is causing a nuisance, but is not a statutory nuisance. Examples of such action may include writing to the person causing the nuisance, or suggesting mediation

Anti-social behaviour

13. Councils have a general duty to take action to tackle anti-social behaviour (ASB). But ASB can take many different forms, and councils should make informed decisions about which of their powers is most appropriate to use.
14. The Anti-social Behaviour, Crime and Policing Act 2014 gave councils new powers to tackle ASB. These powers include:
 - the power to issue community protection notices (CPN);
 - the power to make a public spaces protection order (PSPO);
 - the power to close premises for a specified period of time; and
 - the power to apply to the courts for a civil injunction.

Principles of Good Administrative Practice

15. The Ombudsman published the Principles of Good Administrative Practice (the Practice) in 2018. The Practice sets out the Ombudsman's benchmark for the standards expected when investigating local authorities' actions.
16. The Practice stresses the importance of being open and accountable, explaining the reasons for decision making, and keeping proper, suitable records.

What I found

Background and previous issues

17. Mr X's property is near a supermarket and petrol garage. In 2016, Mr X contacted the Council to report noise disturbances coming from the site.
18. The Council investigated the reported disturbances in 2016 and 2017. It carried out noise monitoring exercises as part of its investigation, using recording equipment to help decide if the disturbances constituted a statutory nuisance. As a result of the Council's investigation, it was agreed that deliveries to the neighbouring supermarket would not be made before 07:00.

The complaint

19. In mid-2020, Mr X contacted the Council to report new disturbances. Mr X said that:
 - deliveries had started before 07:00 again, despite the change in schedules agreed previously;
 - these deliveries, and other activities such as refuse collection, were causing disturbances throughout the night and preventing him from getting any sleep; and
 - some of the customers were acting in an anti-social manner by urinating in an area that acted as a boundary between the site and Mr X's home.
20. In December 2021, Mr X complained to the Ombudsman about the Council's response to his reports. Mr X said:
 - despite reporting disturbances and anti-social behaviour to the Council for a year-and-a-half, the Council had taken no action to address the problem;
 - he had taken any action the Council had asked of him, including completing noise diaries and reporting new disturbances, but the Council had not returned this effort;
 - the Council conducted noise monitoring exercises in late 2020, but had not told Mr X the outcome almost a year later;
 - the Council had repeatedly failed to provide updates to him about its actions and findings, meaning he had to constantly chase for information; and
 - the Council had upheld his complaints about its response, but this had not resulted in any improvement in the service provided.
21. I have not produced an exhaustive chronology detailing every occurrence. What follows is an analysis of the key events identified in the evidence I have seen about this complaint.

Statutory nuisance and the Council's conclusions

22. As outlined in paragraphs 8-12, councils have a duty to investigate potential statutory nuisances. It is a professional decision for the Council whether a nuisance is considered 'statutory'. The Ombudsman cannot decide if something is a statutory nuisance. While we may criticise failings in the investigation process, we cannot direct the Council to consider its decision again if there was no fault in how it decided.

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23. Between July and December 2020, the Council conducted a site visit and raised Mr X's concerns with the supermarket company. It also conducted a noise monitoring exercise from mid-November to late December 2020. In January 2021, the Council considered the evidence obtained through noise monitoring. It noted there was high background noise from traffic and that deliveries to the site did not always adhere to the 'quiet delivery protocol' put in place by the supermarket. The protocol consisted of practical measures to minimise the noise caused by deliveries, including turning engines off when possible and placing mats under the lorry tail lifts to reduce noise. The Council decided these disturbances did not amount to a statutory nuisance.
 24. The Council took appropriate actions to gather evidence, via the use of noise diaries and noise-recording equipment. It then made a professional decision based on this evidence. I have not therefore identified fault in how it investigated this matter. The Council is entitled to reach this conclusion as a matter of professional judgment, having acted without fault.

The Council's communication and record-keeping

25. The Council decided in January 2021 the disturbances reported by Mr X did not amount to a statutory nuisance. However, the Council did not tell Mr X about this conclusion in any further contact, even though there were several opportunities to do so. This was the case even though Mr X made a formal complaint about the lack of updates. The Council upheld Mr X's complaint at both stages of its complaints process and apologised for not providing the update, but did not tell him of its conclusions. This is fault.
26. In October 2020, the Council received an explanation for the change in delivery schedules. This was to ensure social distancing measures were adhered to, because deliveries during busier trading hours came with increased risks for staff and the public.
27. In March 2021, the Council received more clarification about this decision. The supermarket cited written ministerial statements about retail operations, issued by the Government in March and November 2020, which encouraged local authorities to adopt a flexible approach to deliveries. This was to help ensure access to essential goods. The supermarket intended to keep the amended delivery schedule until the 1 April 2021, the period covered by the written ministerial statements. After this time, it would revert to deliveries from 07:00, unless the Government issued any further advice.
28. The Council did not provide these explanations to Mr X at any point. In October 2020, it said the supermarket would not change its delivery schedule, but it did not say why. It also did not clarify whether it agreed with the supermarket's explanations. This is fault.
29. I consider these faults caused Mr X an injustice. In its response to my enquiries, the Council agreed it should have told Mr X in March 2021 it did not intend to take any formal action at the time. It believed the earlier deliveries, while not ideal, could be justified in the circumstances.
30. Mr X told me it was unclear throughout whether the Council agreed there was an issue it could deal with, or whether it intended to take any action. This caused continual frustration, which may have been mitigated or avoided if the Council had shared this information.

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31. Mr X was allocated a new case officer in May 2021 and continued to report disturbances and anti-social behaviour to the Council. The Council contacted the supermarket sporadically, but did not regularly update Mr X on its actions, or make clear it would not be taking formal action at that point. Mr X occasionally went long periods without updates, unless he contacted the Council first. I consider the Council to be at fault for the way it communicated with Mr X at this time, given it had already upheld complaints about its communication. This fault caused Mr X avoidable frustration and inconvenience.
32. The Council held a meeting with the supermarket's compliance team in October 2021. The Council told Mr X in advance about this meeting. The Council has confirmed to me the meeting covered the following points:
- the supermarket confirmed deliveries were being made after 07:00.
 - petrol deliveries were made outside standard hours to minimise traffic congestion and the general disruption such deliveries could cause. This practice was described as common, but the supermarket would discuss Mr X's concerns with the company that managed the garage.
 - supermarket staff had been reminded to take care to avoid excessive noise when emptying the bins.
 - supermarket staff were not being sent to check on reports of anti-social behaviour at the time, due to safety concerns. The Council confirmed to me in other correspondence that the police had been notified of the matter.
33. The Council told me it should have told Mr X about the outcome of this meeting. It said it also should have advised Mr X it had concluded its investigation at that point, as it could take no further action. The Council has accepted it did not tell Mr X this at the time, nor on later occasions when Mr X raised similar concerns. This is fault by the Council.
34. I consider this fault caused Mr X an injustice. Mr X spent extra time and effort reporting new incidents to the Council and seeking updates on its actions, while being unaware the Council had already decided it could take no formal action. Had Mr X known of the Council's decision, some or all of this effort could have been avoided.
35. The Council's internal records show that some of the incident diaries Mr X returned in late 2020 were not uploaded to the Council's internal records system until August 2021, due to officer oversight. I consider this is fault; however, I cannot say this caused Mr X an injustice. While this information would not have been available to Mr X's new case officer in May 2021, new events had already superseded those reported in the previous year.

Reports of ASB

36. As well as the noise disturbances, Mr X reported ASB perpetrated by those using the garage. Mr X said individuals urinated in the boundary area between the garage and his home, and sometimes played loud music in their cars at unsocial hours.
37. Mr X told me he had suggested installing a new fence along the existing boundary line to mitigate against the impact of this ASB. I have seen evidence the Council raised this as a possibility with the supermarket and that it was due to be discussed with the company that owns the garage. Mr X and the Council also raised this concern with the police service.

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38. The Council could not compel the businesses in question to install a particular fence, although it did seek Mr X's chosen resolution. The evidence I have seen, however, suggests the Council did not seek regular, substantive updates from the businesses on how or if they would act and find a resolution.
39. Further, Councils have some legal responsibility in investigating allegations of ASB and have specific powers to reduce such conduct in their communities. I would expect the Council to assess whether it agreed the incidents reported by Mr X constituted ASB and what risk they posed. It is the case that both Mr X and the Council raised the incidents with the police. I would, however, still expect the Council to consider its responsibility, which is independent from the police, in reducing ASB in the community.
40. I have not seen evidence the Council has properly considered its legal responsibility and whether it could have used the specific powers it has in this case to address the ASB. I consider this is fault.

The Council's proposed actions

41. In its responses to my enquiries, the Council proactively identified many of the faults listed above and recognised the frustration caused to Mr X. It also advised it had received a planning application for redevelopment of the garage site. It understood that the works would include installing a new fence along the boundary line to mitigate the reported ASB and privacy issues for neighbouring residents. The associated Officer Report also notes these proposals.
42. The Council also proposed some steps it would take to address the faults identified in this investigation. It said it would:
- carry out a site visit to consider the implications of the planned changes to the site and seek confirmation from the supermarket of when these works are likely to commence;
 - contact the supermarket and Mr X to confirm deliveries were still being made after 07:00;
 - confirm with Mr X there have been no significant changes with the activities on site which could affect its statutory nuisance assessment; and
 - confirm to Mr X clearly the activities the Council can legally deal with, those it can try and deal with informally, and those he should report to partner organisations directly.
43. A draft version of this decision recommended the Council carry out the actions proposed in paragraph 42, if it had not already done so. In comments on the draft decision, the Council provided an update confirming it had carried out these actions and had written to Mr X.
44. I have therefore removed this recommendation from the final decision. However, I would expect the Council to ensure it communicates with Mr X about this matter in a timely and substantive way in future, given the faults identified in this investigation.

Agreed action

45. Within four weeks of the final decision being issued, the Council has agreed to:
- a) consider whether it can use its specific powers to help address the alleged ASB and confirm a course of action to Mr X;

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- b) pay £150 to Mr X to recognise his time and trouble in pursuing this complaint;
and
 - c) provide a written apology to Mr X for the failures in communication identified in this investigation.

Final decision

- 46. I have completed my investigation with a finding of fault by the Council, causing injustice to Mr X. I have made recommendations to remedy the injustice caused.

Investigator's decision on behalf of the Ombudsman