

## **The Ombudsman's final decision**

Summary: Ms X complained about the Council's investigation of her reports of noise and vibration. There was no fault in its investigation and how it made its decision to close the case. It should have summarised the outcome of its investigation into her allegation about a member of staff. It agreed to apologise to Ms X for this fault.

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## **The complaint**

1. Ms X complains the Council failed to properly investigate and take action to prevent noise and vibration nuisance caused by her neighbour. She says it has not properly considered evidence she provided and removed noise monitoring equipment after only one attempt, despite promising to give several opportunities.
2. Ms X thinks the Council told her neighbour it was installing the monitoring equipment and therefore they stopped making the noise for two weeks. She says the Council has not properly investigated her complaint about an officer's behaviour. The noise and vibration continue to seriously affect Ms X's health and wellbeing.

## **The Ombudsman's role and powers**

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word 'fault' to refer to these. We cannot question whether a council'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*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

## **How I considered this complaint**

5. I spoke to Ms X about her complaint.
6. I asked the Council questions and considered its answers and case records.
7. I gave the Council and Ms X the opportunity to comment on my draft decision. I considered Ms X's comments before making my final decision.

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## What I found

### Background

8. Councils must investigate complaints about noise and vibration that could be a statutory nuisance. For something to count as a statutory nuisance it must:
  - Unreasonably and substantially interfere with the use of enjoyment of a home or other premises and/or,
  - Injure health or be likely to injury health.
9. Usually the statutory nuisance needs to be witnessed by the council's Environmental Health Officer. They will make an independent judgement which can be quite subjective. Councils should consider the level, length, timing and location of the disturbance to make this decision.
10. Councils may gather evidence about nuisances by asking people to fill out diary sheets and giving them recording equipment. Specialist equipment is designed to give councils robust evidence, taking account of recording levels.
11. If an officer, having considered the evidence, decides a statutory nuisance is happening, or will happen in future, councils must serve an abatement notice. This requires the person responsible to stop or restrict the nuisance.
12. Councils can decide to take informal action if the nuisance complained about is causing a nuisance but is not a statutory nuisance. They may write to the person causing the nuisance or suggest mediation.
13. This Council's policy for investigating noise nuisance complaints is to make a site visit, use diary sheets and a phone based noise recording app. If, having reviewed this evidence the Council decides they might indicate a potential statutory nuisance it may undertake a further site visit and install noise monitoring and/or recording equipment at the home (called MATRON).

### What happened

14. In January 2018 Ms X told the Council she was concerned about noise from her neighbour. She referred to disturbance affecting her, including a low frequency noise. Ms X's neighbour had an exercise machine that caused this noise and vibration. The Council took details and explained it could give Ms X diary sheets to complete and she could use a phone app to record what was happening. It gave her details of how to make recordings.
15. Ms X sent the Council records of noises and vibration and the effect these had on her. They record a range of household noises including doors slamming as well as vibration from the exercise machine. They cover January 2018 until January 2019 and are evidence of over 30 days of recordings. Ms X recorded most as having an intensity of 10/10. The Council says its case officer listened to all recordings in full. It says selected recordings were listened to by the Principal Environmental Health Officer. It decided none were evidence of statutory nuisance based on the level of noise, frequency, duration and time of day.
16. In February 2018 Ms X's neighbour contacted the Council as Ms X had written to them about the problem. The Council gave the neighbour advice about how it investigated noise complaints.
17. Council officers visited Ms X and the neighbour in February 2018. Notes of the visit say the officer could hear some noise and felt some vibration. The officer monitored in two parts of Ms X's house. Their notes record that the vibration was

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- not at a level that was a statutory nuisance. The neighbour then installed mats to reduce vibration.
18. Ms X wrote to the Council later in February complaining about the conduct of officers at the visit. The Council wrote back in March to apologise if it had not previously explained officers visited in pairs. It explained it had spoken to Ms X's neighbour to try to mediate after Ms X sent the neighbour the letter in February. It had given the neighbour advice about reducing the vibration. It said its offer to keep monitoring and use the phone app was still open. It had not so far witnessed or had evidence of a statutory nuisance.
  19. Because of continued concerns from Ms X, the Council decided, in April, to install its own noise monitoring equipment (called MATRON) in Ms X's house. It says Ms X advised it the problem had reduced recently. The Council advised Ms X to report if this situation changed. It wrote to the neighbours to inform them it was continuing to investigate.
  20. It called her in May to check on the situation. Ms X said the exercise equipment was outside during the summer so less of a problem. Ms X continued to submit recordings using the App over this period. The Council case notes say it considered the recordings and decided they were not evidence of a statutory nuisance.
  21. In November 2018 the Council and Ms X agreed to install the MATRON equipment. It sent Ms X's neighbour a letter in late November, as it was required to by the law. It installed MATRON in early December. The equipment works by the person pressing "record" when they hear a noise. Ms X told the Council she was concerned the neighbour had seen delivery of the equipment. It rearranged bookings to allow the equipment to remain for a second week.
  22. After one week, the Council visited Ms X's property to check the MATRON equipment was working properly and change its memory card. The Council then took the equipment away after two weeks of operating in Ms X's home.
  23. Ms X completed log sheets for the period the equipment was installed referring to vibration from the exercise equipment and banging in the kitchen.
  24. The Council noise log for the MATRON installation records five instances over the two weeks where whirring was recorded at a moderate to low level. It also recorded thudding which the officer considered was the result of normal living noise. The officer decided the recordings were not evidence of a statutory nuisance. The Council decided to close the complaint based on insufficient evidence of statutory nuisance based on frequency, duration, noise and time of day.
  25. The Council wrote to Ms X in early January 2019 to say it had reviewed evidence including the diary sheets she had completed, phone app records she had provided and recordings from MATRON. This was not evidence of a statutory noise nuisance. It closed the case. The Council told Ms X if there was a change in circumstances such as the noise becoming more frequent, it might be able to look again. It said she had a right to take private action through the courts.
  26. Ms X wrote to the Council complaining about the decision to close her case. She said she was still submitting noise recordings so it should not have closed it. She thought officers had not behaved professionally with her and had tipped off her neighbours about the installation by calling them from outside her home, immediately before installing the equipment. That meant they stopped the noises while the MATRON equipment was there. The two weeks it had been installed

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were the first peaceful period she had had for years. The noise and vibration had restarted as soon as the equipment had been taken away. Officers had previously said she could have the MATRON equipment on several occasions yet this had been withdrawn.

27. The Chief Executive replied to say they had passed the complaint about staff conduct to a Director to investigate, checking Ms X gave permission for this.
28. The Council replied to Ms X's complaint in February. It confirmed it had considered the evidence from its on-site observation, diary sheets and recordings. It was satisfied, based on consideration of this evidence, there was not a statutory nuisance. It had carried out a comprehensive investigation. It did not refer to the staff conduct complaint. It referred Ms X to the Ombudsman.
29. Ms X told me the vibration and noise was continuing causing her to have to leave home or suffer for most days. She said there was no other plausible explanation why the noise had stopped for the two weeks the MATRON equipment had been installed. She wanted an independent organisation to do more monitoring. She wanted the Council to install specialist equipment to monitor vibrations. She is sure the Council informed her neighbour it had installed the monitoring equipment.
30. In response to my enquiries the Council said it had considered Ms X's evidence and its own recordings. It did not consider there was any evidence of noise or vibration that met the threshold for statutory noise nuisance. It had given Ms X's neighbour advice on ways to reduce noise including new equipment and mats.
31. It had investigated Ms X's allegation about the member of staff tipping off the neighbour. It had found that the officer had, at the time in question, called a phone number not associated with the case. It had not disclosed this to Ms X because it considered it was personal and sensitive information.

### **My findings**

32. The Council investigated Ms X's reports of nuisance by making officer visits, and by considering recordings made by Ms X on the phone app and from its noise recording equipment. The officer visits considered whether noise or vibration was a statutory nuisance. Council officers then used their professional judgment to decide this did not provide evidence of statutory nuisance. There was no fault in how the Council made this decision and so I cannot question that decision.
33. The Council told Ms X its investigation of her noise complaints was closed but it said if the noise increased or became more frequent it might be able to carry out a further investigation. It was entitled to decide, having considered Ms X's evidence for the past year that it could close the case. It correctly left open the option to consider new evidence from Ms X if this materially changed the situation. There was no fault in how it made this decision. It is open to Ms X to provide the Council with such evidence which it must properly consider before deciding whether to take further steps. The officer specifically considered whether vibration they experienced was at a level to be a statutory nuisance and did not consider this threshold was met.
34. The Council did not respond to the part of Ms X's complaint that she felt officers may have tipped off her neighbour when installing the MATRON equipment. It was concerned to avoid disclosing personal and sensitive information. It could have explained its actions to investigate and summarised its conclusion, that there was no evidence of inappropriate behaviour, without going into personal details.

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35. Its lack of response to this point was fault, causing Ms X frustration. It should apologise to Ms X for this omission. The Council acted appropriately at other times throughout the investigation to inform the neighbour about its actions and to give them advice about reducing noise.

### **Agreed Action**

36. The Council agreed that within one month of my final decision it would apologise to Ms X for not responding to that part of her complaint that concerned her allegation about staff action.
37. Ms X, in response to my draft decision said she does not want it to do so. I am therefore satisfied it does not need to carry out this action.

### **Final decision**

38. I have completed my investigation. There was no fault in the Council's actions to investigate Ms X's complaint of noise nuisance. There was some fault in its response to her complaint for which it agreed to apologise.

### **Investigator's decision on behalf of the Ombudsman**