

CABINET

14 JANUARY 2025

***PART 1 – PUBLIC DOCUMENT**

TITLE OF REPORT: Local Government and Social Care Ombudsman’s report of failings in the investigation of statutory noise nuisance by North Hertfordshire District Council (ref. no.: 23 014 065)

REPORT OF: The Monitoring Officer

[post consultation with the Environmental Health Manager, Service Directors for Housing & Environmental Health, Customers, Resources and the Managing Director]

EXECUTIVE MEMBER: Executive Member for Housing and Environmental Health

COUNCIL PRIORITY: ACCESSIBLE SERVICES

1. EXECUTIVE SUMMARY

1.1 The purpose of this cover report is to draw Cabinet’s attention to the Local Government & Social Care Ombudsman –‘LGO’s finding(s), following an investigation into a complaint about the Council (referenced above) and the conclusion of fault and recommended action (report at Appendix A).

2. RECOMMENDATIONS

That Cabinet:

- 2.1. considers the LGO report;
- 2.2. notes the LGO recommended action compliance information as in para 7.2 – 7.3 below;
- 2.3. considers the measures that the Environmental Health Service has put / will put in place to prevent the recurrence of the failings;
- 2.4. notes that the Council’s Comments, Compliments and Complaints Policy and Procedure will be reviewed in 2025, to potentially include remedies, and supporting guidance will be issued for Officers; and
- 2.5. recommends to Council the revisions to section 14 of the Constitution relating to LGO decisions and payments, as detailed under section 8.5 of this report.

3. REASONS FOR RECOMMENDATIONS

- 3.1. Recommendations 2.1-2.4 are to cover the issues that have arisen / linked to the LGO in its report dated 19 September 2024, titled ‘Investigation into a complaint about North Hertfordshire District Council (reference number: 23 014 065)’, appended at A, and in the opinion of the Monitoring Officer, are necessary steps for the Council in this matter.
- 3.2. Recommendation 2.5 is to recognise the wider involvement of the statutory officers in such matters and specifically in relation to the issue of compensation, to increase notification and flexibility.

4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1. In the light of the recommendations in the LGO report, none considered appropriate.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. The Monitoring Officer has been informed that: the Leader, Deputy Leader, Executive Member for Housing and Environmental Health, and the Shadow Executive Members, were made aware of the report and the need for this cover report to be presented to Cabinet.

6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

7. BACKGROUND

- 7.1. This report is presented to Cabinet in response to the LGO report appended. That report provides a background to the complaint relating to statutory noise nuisance and findings of fault. The background to the complaint to the LGO is set out under paragraphs 13-69, with the LGO's recommendations at paragraphs 70-71.

- 7.2. Paragraphs 70-71 in summary, recommended that to remedy the injustice, that within one month (of 17 October), the Council :

- 7.2.1 pays the complainant £3,000, to cover loss of residential amenity;
- 7.2.2 circulates guidance to relevant staff regarding nuisance/ statutory nuisance and informal resolution (and when permissible to take such informal resolution steps);
- 7.2.3 Explains to relevant staff, the purpose of the Council's compensation claim email address (and that a request for financial remedy for an intangible loss can only be considered through the complaints process).

That on or before 25 January 2025 a report is presented to Cabinet or Council relating to this matter (as per paragraph 71).

- 7.3 The LGO compliance information is as follows:

- 7.3.1 the compensation was paid to the complainant on 5 November 2024;
- 7.3.2 a Procedure note was circulated to relevant staff by the Environmental Health Development Manager / Approver, on 18 December 2024;
- 7.3.3 an email explaining the purpose of the compensation scheme was sent to all relevant managers on 29 October 2024, noting that the compensation claims email address is the insurance contact address; and
- 7.3.4 This report covers the recommendation under paragraph 71.

8. RELEVANT CONSIDERATIONS

- 8.1 The full copy of the report is provided in Appendix A.
- 8.2 The reasons for the LGO findings are set out in their report.

- 8.3 An initial cover report was prepared for the Cabinet meeting on 26 November 2024. However, this report of 14 January replaces that. As of 26 November, the recommended guidance (see 7.2.2 above/ paragraph 70) had not been circulated to staff. This has now been rectified.
- 8.4 It has also been confirmed that the Council will review the scope of the complaint remedies responses when the Complaints Policy and Procedure is reviewed during 2025 and guidance provided to relevant officers.
- 8.5 In terms of recommendation 2.5, the proposed wording to amend section 14.6.5/ 14.6.13 of the Constitution, would assist with ensuring that this matter is discussed between the three statutory officers (Head of Paid Service, Section 151 and Monitoring Officers), with the removal of the settlement limit to reflect the increasing awards now being made by the LGO. It should be noted that at the time the compensation payment of £3,000 was made, this was not in line with the original delegation (albeit under the Managing Director's general delegation to make such a payment above £2,000, on urgency grounds, under section 14.6.5(a)(iv)). The proposed amended wording would be:

14.6.5(a)(xiii) Managing Director's delegation, to be amended (as underlined):

"(xiii) To consider any report of the Local Government Ombudsman and to settle any compensation payments ~~up to £2000~~ (in conjunction with the section 151 Officer and Monitoring Officer)"

14.6.13 Proper Officers Schedule to be amended as (as underlined):

"Local Government Act 1974 S.30(5) To give notice and that copies of an Ombudsman's report, in draft and final are available to the Managing Director, and Monitoring Officer (where maladministration identified)"

- 8.6 In respect of 14.6.5 (a)(xiii), 3-Cs related reports (including those that cover maladministration) are presented to Overview & Scrutiny Committee. A relevant report will be brought to Cabinet (or Council) as appropriate, highlighting that such a payment has been made, if above £5,000. In the situation where additional budget approval is required, for such a compensation payment, then approval for the payment will be sought *in advance* of the payment, under the relevant Cabinet's or Council's financial remits. Reports may be presented by the Monitoring Officer in cases of maladministration in any event, below that limit or where no compensation is payable.

9. LEGAL IMPLICATIONS

- 9.1. The legal framework applicable in this case is the Environmental Protection Act, 1990 'the Act', sections 79 and 80. These sections place duties on the Council to take reasonable steps to investigate potential statutory nuisances. The Act requires that where the Council is satisfied that a statutory nuisance exists, or is likely to occur or recur, in their area, the Council shall serve an abatement notice imposing all or any of the following requirements:
- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence
 - (b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes, and that the notice shall specify the time or times within which the requirements of the notice are to be complied with.

- 9.2 The duty to serve an abatement notice may be discharged by use of other more appropriate legislation. However, it may not be discharged by an external enforcing authority, or in respect of a confirmed statutory noise nuisance by use of a Community Protection Warning/Notice issued pursuant to the Anti-Social Behaviour, Crime and Policing Act 2014. It is only permissible to attempt to resolve a nuisance informally where (a) a statutory nuisance exists, but it is within the seven-day delay period allowed by law in some cases, or (b) a statutory nuisance does not exist.
- 9.3 Statutory Nuisance has two limbs: whether a situation is a nuisance and whether it is prejudicial to health. The nuisance limb may be defined as something caused by or belonging to another that unreasonably and substantially interferes with the use or enjoyment of a home or other premises, whilst the prejudicial to health limb deals with something that is harmful or injurious to health (as further defined). Statutory nuisance may include:
- (a) any premises in such a state as to be prejudicial to health or a nuisance;
 - (b) smoke emitted from premises so as to be prejudicial to health or a nuisance;
 - (c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
 - (d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
 - (e) any accumulation or deposit which is prejudicial to health or a nuisance;
 - (f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
 - (fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
 - (fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
 - (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
 - (ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; and
 - (h) any other matter declared by any enactment to be a statutory nuisance.
- 9.4 Otherwise in respect of *this* report, section 5/5A of the Local Government and Housing Act 1989 places a requirement on a Council or authority's Monitoring Officer to prepare a formal report to the Council when the LGO finds fault. This is reflected under section 12.3.2 of the Constitution.
- 9.5 In the unlikely event that an authority is minded not to comply with the Ombudsman's recommendations following a finding of fault, the Monitoring Officer should report this to Members under section 5 of the Local Government and Housing Act 1989. This is an exceptional and unusual course of action for any Council or authority to take and should be considered at the highest tier of authority.
- 9.6 *The recommendation of the Monitoring Officer in this case is to confirm that the LGO recommended action should be (and was) accepted.*

10. FINANCIAL IMPLICATIONS

- 10.1. In direct response to the LGO report, the financial implication is the acceptance and to pay the £3,000 compensation as recommended; this has already been paid as indicated.
- 10.2 There are no direct or specific revenue or capital implications linked to this report other than the compensation payment which has been met from the Environmental Health budget.

11. RISK IMPLICATIONS

- 11.1. Good Risk Management supports and enhances the decision-making process, increasing the likelihood of the Council meeting its objectives and enabling it to respond quickly and effectively to change. When taking decisions, risks and opportunities must be considered.
- 11.2. The failures highlighted by the LGO report into the service delivery provided by the Environmental Health Service were, it is understood caused principally by the inability to employ sufficient and experienced officers at that time.
- 11.3. Guidance recommended, has been issued in the form of a Procedure note and further notes are to be produced and circulated to staff in 2025.
- 11.4. There is a growth bid, submitted for the 2024/25 Budget setting process, to provide a response to this risk. The Service Director: Housing & Environmental Health, will be available to address any queries regarding this at the Cabinet meeting and any contingency planning, if this is not approved.
- 11.5. The potential longer-term risks of including compensation payments in the Complaints Policy and Procedure, will be considered as part of the review to take place next year.
- 11.6. The 'compensation claim' email address referred to should only be used by a resident where they feel there has been an accident or loss that they have suffered, occurred as a direct result of the Council's actions or negligence and they wish to make a claim. This is then dealt with by Hertfordshire County Council insurance, as per the information on the Council's website [here](#). There are no other financial risks directly associated with this report.

12. EQUALITIES IMPLICATIONS

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. There are no equalities implications as a result of this report.

13. SOCIAL VALUE IMPLICATIONS

- 13.1. The Social Value Act and "go local" requirements do not apply to this report.

14. ENVIRONMENTAL IMPLICATIONS

- 14.1. There are no known Environmental impacts or requirements that apply to this report, other than those set out at Section 9.

15. HUMAN RESOURCE IMPLICATIONS

- 15.1 During the period of this complaint, the Environmental Protection & Housing Team was experiencing difficulties in being able to deliver its statutory service due to a large backlog of work following the pandemic, staffing vacancies and the necessity to use contract staff who were in high demand. These factors were presented to the LGO following initial contact from the Ombudsman.
- 15.2 It is understood that challenges in recruiting qualified Environmental Health staff continue as there is a national shortage. North Herts Council has developed a plan to address these shortages, which it is believed, will take time and investment; however, this should see a reduction in the risk of future failings.
- 15.3 Otherwise, there will be some consequential workstreams following this report and they shall be dealt with in the normal manner by relevant staff.

16. APPENDICES

- 16.1 Appendix A - The full report of the Local Government and Social Care Ombudsman's (LGO) report dated 19 September 2024 entitled Investigation into a complaint about North Hertfordshire District Council (reference number: 23 014 065).

17. CONTACT OFFICERS

- 17.1 Jeanette Thompson, Monitoring Officer & Service Director: Legal & Community.
- 17.2 Frank Harrison Environmental Health Manager.
- 17.3 Jo Doggett, Service Director – Housing & Environmental Health....
- 17.4 Chris Jeffery, Customer and Digital Services Manager.
- 17.5 Jo Dufficy Service Director: Customers.
- 17.6 Anthony Roche, Managing Director.
- 17.7 Ian Couper, Chief Finance Officer and Service Director: Resources.
- 17.8 Reuben Ayavoo. Policy & Communities Manager.
- 17.6 Human Resources.