

The investigation of a complaint against
Flintshire County Council

A report by the
Public Services Ombudsman for Wales
Case: 201900014

Contents	Page
Introduction	1
Summary	2
The complaint	5
Investigation	5
Relevant legislation and guidance	5
The background events	7
The Landlord's evidence	13
The Council's evidence	13
Analysis and conclusions	14
Recommendations	18

Introduction

This report is issued under s16 of the Public Services Ombudsman (Wales) Act 2005.

In accordance with the provisions of the Act, the report has been anonymised so that, as far as possible, any details which might cause individuals to be identified have been amended or omitted. The report therefore refers to the complainant as “the Landlord”, and to the affected tenant as “Mr R”.

Summary

A Landlord complained that, between 2014 and 2019, Flintshire County Council failed to take timely and appropriate action to deal with a car wash which was causing Statutory Nuisances of noise and water/chemical spray affecting the Landlord's tenant, Mr R and which was also in breach of planning control. The Landlord also complained that the Council failed to investigate and respond to its complaint appropriately and in line with its Corporate Complaints Policy.

The Ombudsman found that despite identifying in 2014 that the car wash was causing a Statutory Nuisance, the Council did not open an appropriate case file until 18 months later and did not serve an Abatement Notice for a further 13 months. When the car wash continued to operate and cause the Statutory Nuisance, contravening the Abatement Notice, the Council took no further action. Consequently, Mr R had to endure significant persistent, disruptive and intrusive noise levels and water spray for a number of years. This was a significant injustice to the tenant and also to the Landlord, in view of the Landlord's obligations to its tenant and his right, under Article 8 of the Human Rights Act 1998, to the quiet and peaceful enjoyment of his home.

The Ombudsman found that the Council was aware from at least 2012 that the car wash did not have appropriate planning consent but it had almost no planning records from before August 2018. There were also failures in inter-departmental communication and co-operation. The lack of records coupled with the Council's inaction over the 5 years preceding August 2018 suggested that it did not fully consider whether to take enforcement action against the car wash and amounted to maladministration. Consequently, the Council could not explain the reasons behind its actions (and inaction) and moreover, it was impossible for the complaint to be dealt with fully and the history of the case in the Planning Department to be examined and evaluated.

The Ombudsman also found that the Council failed to respond to the Landlord's complaints appropriately and escalate them when it asked for assistance to raise a formal complaint. There was also an absence of clearly established ownership at senior levels in the Council, compounded by the length of time that the failures continued and a lack of regard for the

difficulties being faced by Mr R. Consequently, there was no appropriate investigation of the complaint and the Landlord received no meaningful response to its concerns.

The Council agreed that, within one month of the Ombudsman's report, it would:

- a) Remind relevant staff at all levels within the Council of the importance of dealing with correspondence appropriately, including signposting individuals who want to raise a formal complaint to the Corporate Complaints Team
- b) Offer a meaningful apology, in writing, to the Landlord along with £1000 financial redress in recognition of the failings in complaints handling, and the Landlord's time and trouble pursuing the complaint for at least 5 years
- c) Offer a meaningful apology, in writing, to Mr R, along with £2,500 financial redress for the failure to deal with the Statutory Nuisances and in recognition of the persistent and prolonged exposure of Mr R to unacceptable levels of noise and water spray for at least 5 years.

In January 2019 the Council reviewed and updated its policy on Planning Enforcement. The Council also agreed that, within 3 months of the Ombudsman's report, it would:

- (a) Share this report and its findings with relevant staff in the Planning, Environment and Legal Departments as well as with the Leader of the Council, the Cabinet Member for Planning and Public Protection, the Planning and Development Control Committee and the Environment Overview and Scrutiny Committee
- (b) Establish what powers remain available to it to resolve the issues and ensure that it fully exercises those powers as appropriate to achieve an ultimate resolution

- (c) Review its Public Protection Service Enforcement Policy, to ensure that it remains relevant, effective and compliant with Welsh Government guidelines, legislation and best practice, with particular reference to Statutory Nuisances
- (d) Develop formal procedural arrangements for co-operation between departments to improve the efficacy and efficiency of inter-departmental collaboration, with an emphasis on Planning, Legal and Environmental Health
- (e) Review the Complaints Policy to ensure it is clear who should have overall responsibility for investigating and responding to complaints, particularly where the matters concern different departments in the Council
- (f) Reflect on how the consideration of human rights can be embedded into its practice when deciding whether to take enforcement action, with particular reference to planning control and investigations into Statutory Nuisances
- (g) Review its internal communication and escalation channels to ensure that staff can raise concerns during their day-to-day work which can then be managed constructively, to encourage ownership and accountability whilst discouraging a “blame culture”.

The Complaint

1. Body A (“the Landlord”) complained that between 2014 and 2019, Flintshire County Council (“the Council”) failed to take timely and appropriate action to deal with:
 - a) An identified Statutory Nuisance relating to:
 - i. Noise
 - ii. Water/chemical spray
 - b) A breach of planning control.
2. The Landlord also complained that the Council failed to investigate and respond to its complaint appropriately and in line with its Corporate Complaints Policy (“the Complaints Policy”).

Investigation

3. I obtained comments and copies of relevant documents from the Council. There were barely any records available from the Planning Department for the time period and therefore I was obliged to extract as much information as possible about its actions from the records of the Environmental Health Department. I considered all the information available in conjunction with the evidence provided by the Landlord. I have not included every detail investigated in this report, but I am satisfied that nothing of significance has been overlooked.
4. Both the Landlord and the Council were given the opportunity to see and comment on a draft of this report before the final version was issued.

Relevant legislation and guidance

5. The Town and Country Planning Act 1990 provides the Council with discretionary powers to enforce planning control regulations and take enforcement action. A Planning Contravention Notice may be served to obtain information as a pre-requisite to enforcement action, such as serving a Planning Enforcement Notice. If a Planning Enforcement Notice

is served, a Stop Notice may also be issued to prohibit any or all of the activities which comprise the specified breach. However, there are restrictions on when a Stop Notice may be used and what activities it may prohibit.

6. Planning Guidance (Wales) Technical Advice Note 9: Enforcement of Planning Control 1997 states that initial steps should explore, with the responsible person, what might be done to reduce any adverse effects on public amenity. The intention should be to provide remedy in the event of significant or unacceptable effects of the breach.¹

7. Planning Guidance (Wales) Technical Advice Note 11: Noise 1997 confirms that planning conditions can be imposed, when granting an application, to minimise the adverse noise impact of developments or change of use and prevent an unacceptable degree of disturbance.

8. The Planning (Wales) Act 2015 provides that the Council may issue an Enforcement Warning Notice before considering enforcement action where there is a reasonable prospect that a retrospective planning application may be granted.

9. The Welsh Government Development Management Manual 2016 (revised 2017) encourages prompt decision making and action because well-established unauthorised development is often more difficult to remedy. It also states that the Council should regularly review the efficiency and effectiveness of inter-departmental co-operation. Revised procedural arrangements should be introduced where necessary in the assessment process to ensure that administrative delays do not allow statutory time limits for taking enforcement action to expire.

10. The Environmental Protection Act 1990 defines a Statutory Nuisance as “an unlawful interference with a person’s use or enjoyment of land”. It places a duty on the Council to detect Statutory Nuisances and take steps to investigate any complaints it receives. If a Statutory Nuisance exists or is likely to occur or recur, an Abatement Notice must be served on the person responsible which can require the nuisance to be stopped, reduced, mitigated and/or limited to certain times of the day. Failure to comply with

¹ This was subsequently incorporated into, and replaced by, the Welsh Government Development Management Manual, 2016.

an Abatement Notice is an offence for which the Council has discretion to consider taking legal action. If a commercial operation can demonstrate that it used the “best practicable means” of preventing or counter-acting the effects of its operation, then it may have a defence in any proceedings.

11. The Clean Neighbourhoods and Environment Act 2005 enables the Council to defer serving an Abatement Notice for up to 7 days to allow it to take steps to persuade the responsible person to desist, reduce or mitigate the Statutory Nuisance. However, if it is not abated, then the Council must proceed to serve a formal Abatement Notice.

12. Article 8 of the Human Rights Act 1998 provides individuals with the right to respect for their family and private life, including the peaceful enjoyment of their home. Where a person’s right is or may be infringed, the Council must balance the individual’s Article 8 rights against any competing rights and interests, to ensure that any interference with that person’s rights is not “disproportionate”.

The background events

13. In August **2012** the Council noted that a car wash within its authority (“the Car Wash”) was operating without planning permission. A retrospective planning application (“the first application”) was submitted on 26 November **2013**. There is no other information available from that time about the Car Wash, although it appeared that the first application was “invalid” and that ownership of the Car Wash subsequently changed hands.

14. In 2014 a Planning Enforcement Manager (“the Planning Manager”) exchanged emails with the Landlord about the Car Wash, which the Landlord said was causing a nuisance to its tenant (“Mr R”) in a neighbouring property (“the property”). The Landlord asked the Council to take action because the Car Wash was causing “constant noise... into the late evening, 7 days a week” and affecting Mr R’s health.

15. On 5 August the Planning Manager and a Pollution Control Officer (“the Environmental Officer”) met a representative of the Landlord, Mr R and the Car Wash Operator. The Environmental Officer noted that both the noise and the amount of water spray coming from the Car Wash probably constituted Statutory Nuisances. Furthermore, he felt that if a retrospective

planning application was made without addressing this issue, it would probably be refused on the grounds that it was causing a significant loss of amenity to the property and having a significant impact on Mr R. However, he believed that if the Council were to issue an Abatement Notice, and the Statutory Nuisance had continued, the options to the Council would then have been limited. Firstly, the potential for the Car Wash to use the “best practicable means” defence might limit the realistic prospect of a conviction. Secondly, given that the Car Wash was unregulated, it would have been inappropriate for the Council to have encouraged or required the Car Wash to spend money on mitigation measures at the same time as saying that it was operating unlawfully and was unlikely to be regularised. Thirdly, there could be no guarantee that any potential mitigation measures would be successful or sufficient to pass the planning process and they might, actually, have required planning permission in their own right.

16. In November the Planning Manager proposed to allow the Car Wash Operator 2 more months to identify a suitable alternative site to relocate the Car Wash. It is not clear whether this decision was relayed to the Landowner or the Car Wash Operator because there is no documentary evidence available.

17. By 29 April **2015** the Landlord told the Planning Manager that Mr R was “extremely stressed” and that “the intensity of the use of the car wash seem[ed] to be increasing”. On 25 June the Landlord told the Environmental Officer that it wished to make a formal complaint and asked for his assistance on the process. The Environmental Officer emailed a Planning Enforcement Officer (“the First Planning Officer”) to confirm that having visited the property again, his opinion was unchanged. However, rather than serve an Abatement Notice at that time he suggested it would be more appropriate and effective for the Planning Department to take enforcement action and potentially issue a Stop Notice, to prevent the Statutory Nuisances and require the Landowner/Car Wash Operator to submit a retrospective planning application. He suggested the Council could then consider imposing appropriate conditions on any planning consent which might be granted.

18. Although the First Planning Officer noted that he would ask the Car Wash Operator to cease operating and allow time for a retrospective planning application to be submitted, there is no evidence available that any

action was taken until 1 September. The Chief Officer of Planning and Environment (“the Chief Officer”) wrote to the Landowner confirming that as there was no extant planning permission, the Car Wash was in breach of Planning Control and the Landowner should discuss the matter with the First Planning Officer, before submitting a retrospective planning application.

19. In October and November, the Landlord and the Environmental Officer requested updates from the First Planning Officer. The Landlord wrote to the Environmental Officer on 23 November, stating that “Nothing has happened... and the whole scenario is now causing [Mr R] stress and anxiety”. The Environmental Officer emailed the First Planning Officer again and referred the matter to his Team Leader (“the Environmental Team Leader”). Two days later, the Chief Officer requested either a valid planning application from the Landowner or for the Car Wash to cease operating by 23 December. Assurances were given to the Environmental Officer and to the Landlord that, should the Landowner fail to comply, a Planning Enforcement Notice would be served.

20. However, on 8 January **2016** the First Planning Officer advised the Landlord that he did not intend to take enforcement action yet because he anticipated a retrospective planning application, including proposals to mitigate the noise and spray, within a couple of weeks. Four days later the Landlord wrote to the Environmental Team Leader, requesting that she look into its complaint urgently and provide information on what steps the Landlord needed to take to pursue the complaint further.

21. On 1 February the Environmental Team Leader told the Acting Head of the Planning Department that the Environmental Health Department could not delay taking action any longer, given the length of time that had passed and the Council’s duty under the Environmental Protection Act. A Statutory Nuisance complaint file was opened and Mr R was asked to complete log sheets of the Car Wash’s activities.

22. A retrospective planning application was received from the Owner of the Car Wash (“the Owner”) on 7 April (“the second application”). The Owner was advised that the second application was invalid owing to missing information and errors on the form, and the application was closed on 15 August.

23. In June the Landlord again requested an update. On 6 September the Environmental Officer wrote to the Landlord, Mr R and the Owner, confirming that monitoring was ongoing. The Owner's letter was returned to the Council marked "gone away" and was re-sent to him at an address abroad in January **2017**.

24. On 17 March the Environmental Officer served Abatement Notices on the Owner and the Car Wash Operator, which advised that if evidence was found that the Statutory Nuisances were continuing after 21 days then further legal action might be taken, including potential prosecution in a Magistrates Court. The Landlord emailed the Environmental Officer for an update on 15 May.

25. On 2 June the Landlord outlined the history of the complaint back to 2014 in an email to the Chief Officer and the Development Manager for Planning and Enforcement ("the Development Manager"), asking what would be done to resolve it. In June the Environmental Officer visited the property again and re-assessed the Statutory Nuisances.

26. On 10 August the Environmental Officer wrote to the Owner and the Car Wash Operator. He confirmed that monitoring had identified a breach of the Abatement Notice and so the case was being referred to the Council's Legal Department to consider prosecution. However, the records do not reflect that this took place.

27. On 5 December the Landlord wrote again to the Chief Officer and the Development Manager, noting that no response had been received from either of them and there had been no progress on its complaint. The only response apparent was another assurance from the Environmental Officer that prosecution would be considered. On 19 January **2018** the Environmental Officer requested advice from the Legal Department, again noting that he believed a Stop Notice was the better course of action.

28. In May my office informed the Council that I had received a formal complaint from the Landlord, which the Environmental Team Leader noted that she had been expecting. Internal emails demonstrated that the Environmental Officer was still trying to arrange a meeting with the Legal Department up to 1 June. However, by that time, the Owner's company had been dissolved and the Car Wash was also under new

management. It was agreed that the Environmental Officer would draft a Statutory Enquiry Notice (which legally requires the recipient to respond) to ascertain who owned the site and the Car Wash, as well as current contact details for both parties.

29. On 20 June in response to a further update request from the Landlord, the Environmental Officer apologised for the delay and explained that the Council had to start the Statutory Nuisance process again because the business had changed hands. He again asked the Planning Department to consider acting to stop the unauthorised Car Wash but assured the Landlord that he would continue with pollution control action at the same time. Two days later the Environmental Officer met the prospective new owner of the Car Wash by chance (“the New Owner”), who said he was keen to find a way to continue the Car Wash operation.

30. On 9 July after my office referred the Landlord’s complaint to the Council to complete its complaints process, a Corporate Complaints Officer (“the Complaints Officer”) acknowledged the complaint and advised the Landlord that she was aiming to send a full response at the beginning of August. On 20 August the Community and Business Protection Manager (“the Environmental Manager”) advised the Complaints Officer that officers had “recently met ... to find a way forward” and agreed to issue the Statutory Enquiry Notice, but that it was likely additional monitoring would be required. Furthermore, environmental legislation remained unlikely to resolve the problem because it did not provide the necessary regulatory power to stop the business operating permanently.

31. The next day, the Complaints Officer wrote to the Landlord (“the first response”) explaining that the case had not progressed “as the Council would usually intend”. It provided a potted history of the complaint but did not explain why the case had not been progressed. However, it provided assurances that the Planning and Environmental Health Departments were committed to working together to address the concerns raised, and would keep the Landlord updated.

32. On 23 August the Council opened a new Planning Enforcement case file. The Chief Officer acknowledged the Landlord’s “recent enquiry” and asked it to have patience while the Council investigated. There was no response to the Landlord’s request for a timeframe in which it might expect

the complaint to progress. On 20 September the Environmental Officer advised that he had been nominated as the Landlord's single point of contact and confirmed that the New Owner planned to approach an acoustic consultant to advise on how the noise issues could be overcome, before submitting a planning application to regularise the Car Wash ("the second response").

33. At the end of January **2019** the Landlord raised a further complaint with my office. As my staff did not consider that either the first or the second response had adequately explained the length of time it had taken to consider enforcement action, or addressed the fact that the Landlord's formal complaint had been overlooked, the Council was asked to explain the current position. A Complaints Officer noted that she "[did]n't think anyone was aware of the background". The Council agreed to provide a full, formal, final response by 21 February.

34. On 7 February the Environmental Officer told the New Owner that progress must be made to resolve the issues as a matter of urgency, otherwise the Council would consider taking enforcement action to abate the Statutory Nuisances and regularise the Car Wash. He noted that the Council's primary concern was Mr R, who had been suffering the nuisance and requested a response within 7 days. The New Owner confirmed that the Acoustic Consultants had designed a potential solution. However, when the plans were submitted 3 days later the Environmental Officer thought that they did not include an appropriate noise assessment and he did not consider the proposed solution would adequately resolve the problem.

35. On 15 February the Council served the New Owner with a Planning Contravention Notice. Five days later a Second Planning Officer and the Environmental Officer met the New Owner and his Acoustic Consultants. It was noted that the best solution would require affixing a barrier to the fence bordering the property. The next day the Environmental Officer emailed the Landlord ("the third response"). He offered re-assurance that, whilst it would require more time to resolve the problem the New Owner was "fully engaged in the process" and he was hopeful that the matter could move forward quickly. When the Landlord enquired why the Council did not issue a Stop Notice in the meantime, the Environmental Manager responded that the Council believed a Planning Contravention Notice was more appropriate, given the New Owner's apparent commitment

to resolve the noise and spray issues. On 12 March the New Owner responded to the Planning Contravention Notice and by 3 May he had confirmed his intention to submit a planning application within the next 2 weeks.

36. On 22 May an Enforcement Warning Notice was served on the New Owner confirming that he was required to either submit a valid retrospective planning application, provide evidence that the breach had persisted for more than 10 years without interruption or cease operation of the Car Wash within 14 days. On 15 July a retrospective planning application was submitted (“the third application”).

The Landlord’s evidence

37. The Landlord said that Mr R had been significantly affected by the situation and he had been prevented from peaceful enjoyment of his home, for 7 days a week, for years. It said he cannot use any area of his garden without being covered in spray, and that the noise from the Car Wash is intrusive throughout the whole of the property. As a result of the stress of being subject to the Statutory Nuisances for so long and without respite, Mr R now suffers from anxiety and depression. The Landlord felt that it had been very patient in its attempts to engage the Council and said it did not understand why neither the Planning Department nor the Environment Department was willing to take appropriate enforcement action.

The Council’s evidence

38. The Council acknowledged that its Planning Enforcement records prior to August **2018** were incomplete and recognised that there had been delays by both the Planning and Environment departments in responding to the Landlord’s concerns. It contended that formal investigation of any Statutory Nuisance could not take place until a formal complaint was received, but that the formal Statutory Nuisance case file was opened after the Landlord made an official complaint. It said the delays in monitoring were owing to difficulties accessing the property, work pressures, including high demand on monitoring equipment, and difficulties identifying and locating the Landowner.

39. The Council also said that the Development Manager was new in post and unfamiliar with the history of the case when the Landlord wrote to her in July **2017**. Therefore, she thought it was an ongoing matter related to the second application (in **2016**) and did not progress it under the Complaints Policy. The Council stated that in future, it would share information between Departments to clarify at each stage which team is responsible to take forward any potential enforcement action. It also stated that in future, neither department would delay starting an investigation, even if a department was of the view that it was preferable for another department to take the lead in any matter.

Analysis and conclusions

40. The Landlord complained that the Council failed to take timely and appropriate action in respect of the Statutory Nuisances. I **uphold** this element of the complaint. The duty on the Council to investigate a Statutory Nuisance is not discretionary; once the Council was satisfied that a Statutory Nuisance existed it was under a duty to serve an Abatement Notice on the Car Wash Operator and deferment of that obligation is permitted for only 7 days. The Council did not open a Statutory Nuisance case file until 18 months after the Statutory Nuisance was identified by the Council. Even if I accept that the Council needed to receive a “formal complaint” before it could begin monitoring, its duties to act under the Environmental Protection Act 1990 are clear. Moreover, the Landlord advised the Planning Manager in April 2014 that the Car Wash was a nuisance to Mr R and the property and by June 2015 the Landlord had told the Environmental Officer that it wished to raise a formal complaint. I do not know what more the Landlord could or should have said to indicate that it wanted to raise a complaint and for the Council to investigate it.

41. Having considered the evidence on the Council’s files I believe that the Environmental Officer genuinely considered that the more effective route to deal with the Statutory Nuisance was via the planning process. The Officer’s suggestion when matters were fresh for a retrospective planning application to be submitted which could then have been refused or granted with conditions to address the Statutory Nuisances was reasonable. Also, the further option of a Stop Notice with or after a

Planning Enforcement Notice would not have been unreasonable had the matter been acted upon in a timely manner.

42. However, as time progressed with no action being taken by the Planning Department, internal emails demonstrate that both the Environmental Officer and the Environmental Team Leader were aware that the delay in addressing the Statutory Nuisance was unreasonable. The evident reluctance to act resulted in a staggering lack of urgency, not just to open a Statutory Nuisance case file, but to deal with it properly once that decision had finally been made. I recognise there were some genuine external obstacles over the years, which hindered progress, but there were also numerous examples of procrastination, missed opportunities and inaction for months at a time.

43. It appears that legal advice was not formally sought from the Legal Department promptly, despite express assurances being given to the Landlord in August 2017 by the Environmental Officer.

44. Whilst the Environment and Planning Departments failed to make any meaningful progress from 2014, the Landowner eventually dissolved his business and moved abroad and the business officially changed hands in September 2018 which resulted in further, significant delays as the Council attempted to identify and locate the responsible individuals. This amounts to maladministration.

45. The Landlord also complained that the Council failed to take appropriate action in respect of the breach of planning control. I **uphold** this element of the complaint. Evidently, the Council was aware as early as 2012 that the Car Wash had been opened despite no application for a change of use on the site being submitted or approved. However, the information about how the first and second planning applications were considered is inadequate and that is unacceptable. Whilst it was at the Council's discretion to consider whether to take any planning enforcement action, it is impossible for me to know at this remove and with no records available, whether enforcement action was considered in line with relevant legislation and guidance, or whether a decision not to take action was properly made. The Council's Planning Department's failure to communicate with the Environmental Health Department is also evidence of maladministration.

46. I acknowledge that in August 2018 the Council opened a Planning Enforcement case file and efforts then began to work with the New Owner, who was willing to co-operate to both mitigate the nuisance and seek retrospective planning permission. I also note the Legal Department's advice that, in the circumstances, it was appropriate to begin the process again. I am pleased that since that time, both the Environmental Officer and the Second Planning Officer appear to have engaged fully with each other, and the New Owner, to seek a solution and that appropriate enforcement action has been pursued. I recognise that the Council has latterly, therefore, demonstrated appropriate regard for the considerations it must balance in relation to both the New Owner of the Car Wash and Mr R. If matters are not yet resolved however, the Council should consider using the various powers available to it to resolve these issues. In view of the significant passage of time which has elapsed the Council must consider what options remain available to it and ensure that it fully utilises them to resolve the matter.

47. Ultimately on balance, the lack of records coupled with the Council's inaction over the 5 years preceding August 2018 suggest that it did not fully consider whether to take enforcement action against the Car Wash. This in itself, is maladministration resulting in a significant injustice to both the Landlord and Mr R because the Council cannot explain the reasons behind its actions (and inaction). Furthermore, it is impossible for the complaint to be dealt with fully and the history of the case in the Planning Department to be examined and evaluated.

48. It is not my function to make definitive findings about whether a public body has breached an individual's human rights by its actions or inaction. However, where I identify evidence of maladministration which has caused injustice, I may consider whether a person's human rights may have been engaged and comment on a public body's regard for them. The Landlord made it clear that the Car Wash was impacting on Mr R's living and enjoyment of his home and garden, and that the stress was significantly impacting on his health. In addition, the fact that the Environmental Officer identified the existence of the Statutory Nuisance in 2014 without the need for monitoring provides an indication of just how disruptive and intrusive the noise and the water spray was to Mr R. I am of the view that the Council did not give due regard to Mr R's right under Article 8 of the Human Rights Act,

to the quiet and peaceful enjoyment of his home when addressing the concerns raised. This is a significant injustice to Mr R and to the Landlord, in view of the Landlord's obligations for Mr R. The fact that the failings continued for over 4 years means that the injustice to Mr R is even more serious.

49. The Landlord also complained that the Council failed to investigate and respond to its corporate complaint appropriately. I **uphold** this element of the complaint. Whilst I agree that the very first contacts were, strictly speaking, service requests rather than a formal complaint, it was soon obvious that the Landlord was frustrated by the lack of response and the lack of action. If anything, those sentiments were echoed in the difficulties the Environmental Officer experienced when attempting to engage his colleagues in the Planning Department. As soon as the Landlord clearly expressed its dissatisfaction with the actions of the Planning Department to the Environmental Officer, its concerns should have been escalated or, at the very least, information on the Complaints Policy should have been provided. It is disappointing that the Landlord had to try to identify for itself how to escalate its concerns and that it had to contact the Council repeatedly for updates, particularly in light of the evidence that some staff were very aware of the situation.

50. Each time the Landlord escalated its concerns and each time the Ombudsman asked the Council to respond, the complaint was simply sent back to the Environmental Officer, who had neither the impartiality nor the seniority to be able to identify what had gone wrong, ensure that lessons were learned and take action to put things right. As a result, the timeline put forward was compressed, misrepresented the order of events and minimised the significant delays. Furthermore, the responses issued were little more than sporadic updates on the current situation, which were often only provided following prompting from the Landlord and appeared, at times, to be disingenuous.

51. In fact, the approach of senior officers to the Landlord's complaint and direct correspondence is, in my view, the most troubling element of this part of the complaint. Notwithstanding that she was new in post, I do not accept that in July 2017 the Development Manager was unaware that the case dated back to 2014 because the Landlord's email outlined the history of the case and clearly expressed its frustration with the Planning Department and

the lack of communication. Furthermore, the Council has not been able to explain why the Environmental Team Leader, the Development Manager and the Chief Officer all failed to respond to direct correspondence from the Landlord even when it wrote again to complain that no acknowledgement or response had been received.

52. The Complaints Officer's internal note in January 2019 that she thought "no one was aware" of the history of the case is concerning for 2 reasons. Firstly, it suggests that no attempt had been made up to that point to look into the complaint properly; a cursory review should have recognised that the Planning Department's records were non-existent while those for the Environmental Health Department were littered with complaints. Secondly, however, the records that are available indicate that staff were, in fact, anticipating the intervention of my office but remained unwilling or unable to accept ownership of the situation and take any action to prevent it. Moreover, I am unable to identify any sympathy for Mr R and the Landlord's position, or appreciation for the fact that this matter had been ongoing for at least 6 years. In this context the Chief Officer's letter in August 2018, which requested the Landlord "be patient" while the Council considered its "recent enquiry" was wholly inconsiderate and inappropriate.

53. The Council still did not take appropriate action to investigate the full circumstances of the complaint or offer any substantive explanation or meaningful response to the Landlord when it responded under its corporate complaints process. The absence of clearly established ownership at senior levels in the Council, the fact that the failures continued for so long and the lack of regard for the difficulties being faced by Mr R all raise serious concerns which I consider should be publicly reported in the public interest.

Recommendations

54. I **recommend** that within one month of this report, the Council should:

- (a) Remind relevant staff at all levels within the Council of the importance of dealing with correspondence appropriately, including signposting individuals who want to raise a formal complaint to the Corporate Complaints Team

- (b) Offer an apology, in writing, to the Landlord along with £1000 financial redress in recognition of the failings in complaints handling, and the Landlord's time and trouble pursuing the complaint for at least 5 years
- (c) Offer an apology, in writing, to Mr R, along with £2,500 financial redress for the failure to deal with the Statutory Nuisances and in recognition of the persistent and prolonged exposure, of Mr R, to unacceptable levels of noise and water spray for at least 5 years.

55. In January 2019 the Council reviewed and updated its policy on Planning Enforcement. I **recommend** that within three months of this report, the Council should:

- (a) Share this report and its findings with relevant staff in the Planning, Environment and Legal Departments as well as with the Leader of the Council, the Cabinet Member for Planning and Public Protection, the Planning and Development Control Committee and the Environment Overview and Scrutiny Committee
- (b) Establish what powers remain available to it to resolve the issues and ensure that it fully exercises those powers as appropriate to achieve an ultimate resolution
- (c) Review its Public Protection Service Enforcement Policy, to ensure that it remains relevant, effective and compliant with Welsh Government guidelines, legislation and best practice, with particular reference to Statutory Nuisances
- (d) Develop formal procedural arrangements for cooperation between departments to improve the efficacy and efficiency of inter-departmental collaboration, with an emphasis on Planning, Legal and Environmental Health
- (e) Review the Complaints Policy to ensure it is clear who should have overall responsibility for investigating and responding to complaints, particularly where the matters concern different departments in the Council

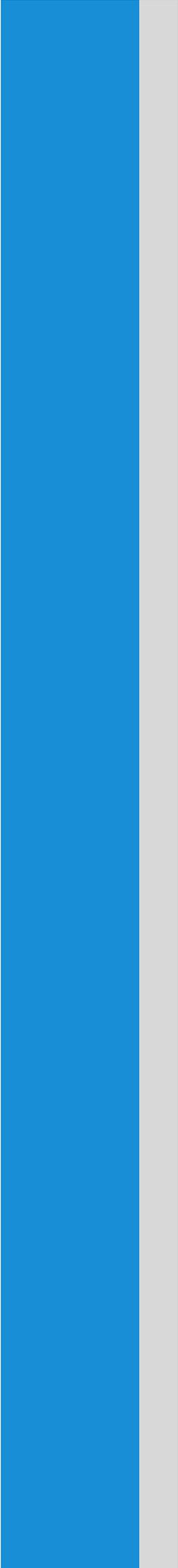
- (f) Reflect on how the consideration of human rights can be embedded into its practice when deciding whether to take enforcement action, with particular reference to planning control and investigations into Statutory Nuisances
- (g) Review its internal communication and escalation channels to ensure that staff can raise concerns during their day-to-day work which can then be managed constructively, to encourage ownership and accountability whilst discouraging a “blame culture”.

56. I am pleased to note that in commenting on the draft of this report **Flintshire County Council** has agreed to implement these recommendations.



Nick Bennett
Ombudsman

9 January 2020



Public Services Ombudsman for Wales
1 Ffordd yr Hen Gae
Pencoed
CF35 5LJ

Tel: 01656 641150

Fax: 01656 641199

Email: ask@ombudsman-wales.org.uk

Follow us on Twitter: [@OmbudsmanWales](https://twitter.com/OmbudsmanWales)