



Northern Ireland

Public Services

Ombudsman

**Investigation of a complaint
against the Department for
Agriculture, Environment and
Rural Affairs**

Report Reference: 202002457

The Northern Ireland Public Services Ombudsman

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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Case Reference: 202002457

Listed Authority: Department of Agriculture, Environment and Rural Affairs

SUMMARY

I received a complaint about the actions of the Department of Agriculture, Environment and Rural Affairs (DAERA). The complainant said DAERA had failed to investigate his reports of unlawful waste activity by a local waste management company. This involved the burial of illegal waste in an area bordering the waste management company's landfill site, the depositing of waste at the waste management company site, the transfer of landfill to the site of a neighbouring housing development, the burial of tarmac at the housing development site and wood dust contamination from the waste management company's recycling area. The complainant said he found the ongoing issues with the waste management company stressful and they had adversely affected both his and his wife's health.

My investigation found significant variation in the quality of the investigation undertaken by the teams within DAERA who responded to the complaints about activities on the company's site. My investigation found a failure by the Regulation Unit to follow its own procedures and an absence of contemporaneous records relating to the investigation of the complainant's concerns in 2018/19, September 2020 and December 2020. This left me with the impression of a lack of rigour in the action taken by DAERA to investigate the alleged unlawful activities on the site. In relation to the investigation of concerns regarding activities in March 2021 I was satisfied the actions of DAERA staff were largely in line with relevant standards though I consider they should have viewed the evidence held by the complainant. I also consider that there were failures in the actions of DAERA staff regarding the investigation of allegations of wood dust leaving the confines of the site including not checking the site diary or the complainant's evidence. I was satisfied that allegations of transfer of material to a local factory were properly investigated.

I recommended that DAERA should apologise to the complainant. I also made recommendations for service improvements and to prevent further recurrence. I cannot say on the balance of probabilities whether DAERA would have had

reasonable grounds to take action against the Waste Management company had it recorded its investigations appropriately. However, there remains uncertainty for the complainant about whether things may have been different for him had DAERA acted in accordance with its internal processes and the relevant legislation when it investigated his concerns. The remaining uncertainty caused the complainant upset and frustration.

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THE COMPLAINT

1. The complainant raised concerns about the actions of the Department of Agriculture, Environment and Rural Affairs (DAERA) in relation to its investigation of allegations of unlawful waste activity by a local waste management company between February 2018 and March 2022. The complainant believed DAERA failed to properly investigate his concerns.

Background

2. On 28 February 2018 the complainant reported that a waste management company whose premises (the site) were close to his home address was dumping and burying '*poor quality*' waste from the site on area of land behind the site. He also reported that the company was transferring waste to a housing development area (the development) adjacent to the site.
3. On 16 September 2020, the complaint reported that a lorry from a skip company was depositing material on the site.
4. On 2 December 2020, the complainant reported that the same waste management company was again moving '*illegal materials*' from the site onto the development. The complainant alleged the company was dumping the waste into an area designated for a school as well as into the area of a badger's sett.
5. On 7 January 2021, the complainant reported that lorries were dumping tarmac at the development. He subsequently reported that waste management company lorries were moving tarmac around the development and covering the tarmac with topsoil.
6. On 19 February 2021 the complainant reported the Waste Management Company was removing '*landfill waste*' from the site and '*dumping*' it at a factory several miles away
7. On 24 June 2021 the complainant reported that two days previously a cloud of wood dust from the site had covered the cars on his property and prevented

him from opening his windows. The complainant reported the same occurrence on 23 February 2022.

8. Officers from Northern Ireland Environment Agency's¹ (NIEA) Environmental Crime Unit (ECU), and Regulation Unit (RU) conducted the investigations referred to in this report. In broad terms, RU investigate any potential breaches of compliance within premises that hold a Waste Management Licence (such as the waste management company). ECU investigates waste crime which occurs in areas without waste authorisations.

Issue(s) of complaint

9. The issues of complaint accepted for investigation were:

1. **Whether DAERA investigated complaints of alleged unlawful waste activity and management in accordance with relevant guidance, policies and procedures? In particular, this will examine:**

- Unlawful waste disposal 2018/2019;
- Depositing of waste at Waste Management Site 2020;
- Transfer of landfill 2020;
- Transfer of waste material 2021;
- Burial of tarmac 2021; and
- Wood dust contamination 2021/2022

INVESTIGATION METHODOLOGY

10. To investigate this complaint, the Investigating Officer obtained from DAERA all relevant documentation together with its comments on the issues raised the complainant raised. This documentation included information relating to DAERA's handling of the complaint.

Relevant Standards and Guidance

11. To investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the

¹ An executive agency within DAERA

circumstances of the case. I also refer to relevant regulatory, professional and statutory guidance.

The general standards are the Ombudsman's Principles²:

- The Principles of Good Administration.

12. The specific standards and guidance referred to are those which applied at the time the events occurred. These governed the exercise of the administrative functions and professional judgement of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- Criminal Procedures and Investigation Act (CPIA) Code of Practice, July 1996 (CPIA);
- Department of Agriculture, Environment and Rural Affairs (DAERA) Environment, Marine and Fisheries Group (EMFG) Complaints Policy, November 2017 (DAERA Complaints Policy);
- Department of Agriculture, Environment and Rural Affairs (DAERA) Environment, Marine and Fisheries Group (EMFG) Enforcement Policy, November 2017 (DAERA Enforcement Policy);
- Department of Agriculture, Environment and Rural Affairs (DAERA) Retention and Disposal Schedule, March 2021 (DAERA Retention Schedule)
- Department of Agriculture, Environment and Rural Affairs (DAERA) Waste Management Authorisations, WML³ Site Inspection WML 01, January 2106 (WML Site Inspection procedure);
- Police and Criminal Evidence (NI) Order (PACE), September 1989 (PACE)
- The Waste and Contaminated Land (NI) Order 1997 (Waste and Contaminated Land Order)
- The Waste Framework Directive 2008, updated 2018 (Waste Framework Directive);

² These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

³ Waste Management Licence

13. Relevant sections of the guidance considered are enclosed at Appendix two to this report. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the administrative actions of the body complained of. It is not my role to question the merits of a discretionary decision taken unless that decision was attended by maladministration.
14. I did not include all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important was taken into account in reaching my findings.
15. I shared a draft copy of this report with the complainant and DAERA for comment on factual accuracy and the reasonableness of the findings and recommendations. DAERA and the complainant made a number of comments in relation to the findings of the draft report. I have addressed these issues where possible in the body of the report.

THE INVESTIGATION

- 1. Whether DAERA investigated complaints of alleged unlawful waste activity and management in accordance with relevant guidance, policies and procedures?**

Detail of Complaint

Unlawful waste disposal 2018/19

16. The complainant said the following: on 28 February 2018 he reported to DAERA that the waste management company neighbouring his home was dumping waste from its '*landfill*' area⁴ on private land behind the site. He spoke to another officer '*a few days*' later and reported the company was covering the area where it had dumped the waste with topsoil. The officer responded, '*don't worry...we can dig it up.*' DAERA closed the case on 12 March 2018 '*without*

⁴ The site consisted of two separate areas: a Waste Transfer/Materials Recovery facility and a closed landfill site.

my knowledge’ which suggested *‘they did not want to know the truth’*. DAERA never asked to view any of the complainant’s evidence. On 11 June 2019 the complainant again reported the waste management company was depositing material in an area bordering the site’s boundary. He also alleged the waste management company had buried medical waste on the site.

Evidence Considered

Legislation/Policies/Guidance

17. I considered the following guidance:

- CPIA;
- Waste and Contaminated Land Order; and
- WML Site Inspection procedure.

Relevant extracts are enclosed at Appendix two to this report.

DAERA’s response to investigation enquiries

18. In response to investigation enquiries DAERA stated the following: site inspections in common with all DAERA investigations are *‘evidence led’*. Officers *‘will follow evidence’* in line with the Enforcement Policy *‘taking into account’* proportionality, transparency, legality and consistency. In the course of their duties, officers also *‘work under the auspices’* of PACE and CPIA legislation.
19. In response to the complainant’s concerns that the waste management company had dumped illegal waste on areas of land adjacent to the site, DAERA directed this office to the reports of its investigations as proof of its actions. The report stated the following: two officers from RU visited the site on 8 March 2018 and spoke to the owner. There was *‘no sign’* of any waste materials other than those used to level out an area of ground on the site. There was *‘no evidence’* of illegal waste activity.
20. Following further allegations from the complainant, officers from RU returned to the alleged area of illegal dumping on 21 June 2019. The complainant was also present. The area was now a raised bank in which the company had planted trees. It was used to screen the development. The complainant produced

photographs of the area *'taken 15 months previously'* which showed what were *'possibly black plastics'* within the area. On 28 June 2018 officers visited the development and spoke to the foreman. The foreman said the bank was *'mainly'* made up of black clay. The area was now *'overgrown'* but the officers saw *'no signs'* of mixed materials. The black clay the foreman said the bank was composed of *'explained'* the black material in the complainant's photographs. The officers were satisfied the materials used to infill the area were *'compliant'* with the development's waste exemption certificate⁵. The officers then drove to the site in response to the allegation the waste management company had buried medical waste there. They carried out an inspection of the site and found *'no areas of illegally buried materials.'*

21. In addition to the officer's report DAERA also stated: under the Waste and Contaminated Land Order officers can *'take samples and collect evidence'* when inspecting a site. If there is *'no evidence'* of buried waste, officers have *'no grounds'* to conduct an *'intrusive'* survey. An intrusive survey would require *'earth moving equipment'* which may require a *'warrant'*. It would not be *'proportional'* (sic) to conduct this kind of survey on land with concrete or brick on the surface. Evidence which may indicate buried waste includes distressed vegetation, polluted waterways, *'signs of the buried waste'* and the *'nature of the reported crimes'*.

DAERA's records

22. I considered DAERA's records. Extracts from the records are enclosed at Appendix three to this report.

Interview with DAERA staff

23. The investigating officer met with a DAERA staff member from RU with knowledge of the complainant's allegations. The officer explained the following: while both RU and ECU investigate potential criminal offences, RU's principal remit was to ensure companies with a Waste Management Licence were

⁵ A certificate issued by DAERA allowing the use of soil and stones for the purpose of infilling on the development.

compliant with the regulations. While the unit could and did conduct criminal investigations, it usually *'worked with'* operators to ensure compliance.

24. The staff member stated that RU conducted site inspections in accordance with the unit's WML Site Inspection procedure. He provided a copy of the procedure to the Investigating Officer. He explained the following: when conducting a site inspection, an officer should fill in a Site Inspection Report form which contains 24 areas of inspection. Officers may look at all areas during a routine inspection, or a specific area during an *'incident response'*. DAERA retains a copy of the form and provides the operator with a copy *'on site'*. Officers from ECU used pocketbooks as standard during inspections. RU officers *'mostly'* did not, though *'they should'*.

Analysis and Findings

25. I refer to the WML Site Inspection procedure. The procedure's purpose is to ensure that DAERA's regulation of waste facilities *'is undertaken in a consistent and transparent manner'*. The procedure specifies the following:
- *'A written Site Inspection Report Form (SIRF) of the visit should be completed by the officer (on site) following each routine or specific inspection.'*
 - *'Officers may consider the use of their pocket notebook...in all cases where an offence is suspected.'*
 - *'It is vitally important that the operators are made aware that the breach of their Waste Management Licence conditions is a criminal offence.'*
26. I note further DAERA's response that its officers *'work under the auspices'* of PACE and CPIA legislation. I examined CPIA which requires officers to:
- record *'material which may be relevant to the investigation'*. This includes *'negative information'*.
 - record information *'at the time it is obtained or as soon as is practicable after that time'*.
 - retain material *'which may be relevant to the investigation'*.
 - *'pursue all reasonable lines of inquiry.'*

27. I examined DAERA's case file which documents officers from RU carried out a visit to the site on 8 March 2018. The officers appear to have made a record of the visit on 12 March 2018, two working days later. It is not documented if the officers completed a Site Inspection Report. There are no pocketbook records, or any other contemporaneous notes relating to the visit. The memo states there was '*no sign*' of any waste materials other than those used to level out an area of ground on the site. It is unclear how the officers made this determination; the file contains no photographic records. It does not document if the officers took samples to check for waste below ground level. It is also unclear from the records if the officers checked waste movement records or site diaries. DAERA closed the case on 12 March 2018. In its response to the draft report DAERA stated the '*WML Inspection Procedure is not relevant in this case*' as the complaint related to alleged dumping of waste on private land '*not subject to regulation by the Waste Licensing Team*'. DAERA's report clearly documents the officers visited the waste management site and examined an area within the site as well as an adjacent area outside the boundary fence. While the complaint concerned an allegation of illegal dumping on private land it is clear the officers also inspected a licensed site as part of the investigation and therefore the guidance applies. I am surprised that before providing its response to this office DAERA has apparently not referred to its own reports.
28. DAERA reopened the case on 11 June 2019 after the complainant reported the issue again and informed officers he had photographic evidence of the illegal dumping. The record of the investigation consists of a memo completed on 5 July 2019. I note RU officers attended the complainant's home on 21 June and viewed photographs which the complainant claimed was evidence the waste management company had unlawfully dumped waste in February 2018. The officers provided a description of the photographs in the memo, but do not appear to have taken, or requested a copy for the case file. On 28 June the officers visited the development to view the alleged area of illegal dumping. The memo records that the area was '*overgrown*', but the officers saw '*no sign*' of illegal waste. The officer stated the foreman's explanation that the area was made up of black clay '*explained*' what he had previously observed in the photographs.

29. The officers left the development and carried out an inspection of the waste management company site where they found '*no areas of illegally buried materials*', contrary to the site's waste management licence⁶. I note again the lack of contemporaneous notes relating to these inspections. I find this concerning as the officer appears to have written the memo a considerable amount of time after undertaking the visits. The records do not document if the officers completed the mandatory Site Inspection report during the visit to the site or took photographs or samples during the inspection. I acknowledge DAERA's explanation it would not be proportionate to carry out an '*intrusive*' survey on land with concrete or brick on the surface when there is no evidence of buried waste. However, the records do not indicate if the areas the officers inspected were covered in brick and concrete. Therefore, I fail to see the relevance of this explanation.
30. DAERA provided its case files as evidence it had investigated the complainant's allegations of unlawful waste disposal in 2018 and 2019. On review it is evident the case files have an absence of detail and lack any supporting documents. I note there are specific instructions within the WML Site Inspection Procedure for recording actions taken during site visits. I note further CPIA's requirements for recording and retaining material relevant to an investigation in a timely fashion. The officer appears to have written his memo two weeks after his visit to see the complainant and the development and a week after the visit to the waste management company site. I consider this lack of contemporaneous documentation makes it difficult to determine how the officers evidenced their decision that the areas they inspected were compliant with the licences for the development and the site. I consider this to be poor record keeping. While I cannot definitively conclude that DAERA failed to investigate the complainant's allegations of unlawful waste disposal, it is nevertheless clear it did not follow its internal site inspection procedures and the relevant legislation (CPIA) in that it failed to adequately record how it

⁶ A document issued by DAERA that allows a company to handle waste.

investigated the complaints. This lack of documentation leads me question the robustness of DAERA's investigation of these matters.

31. The First Principle of Good Administration 'Getting it Right' requires a public body to '*Act in accordance with the law and with regard for the rights of those concerned*' and to '*Act in accordance with the public body's policy and guidance (published or internal)*'. It also requires a public body to '*Take proper account of established good practice*'. The Third Principle of Good Administration 'Being Open and Accountable' requires a public body to '*State its criteria for decision making and giving reasons for decisions*' and to '*Keep proper and appropriate records*'. Also, the Fourth Principle of Good Administration 'Acting Fairly and Proportionately' requires a public body to ensure that decisions and actions are proportionate, appropriate, and fair. I do not consider that DAERA meets these standards for the reasons outlined above. I am satisfied DAERA's failure to act in accordance with its internal procedures and the relevant legislation and its failure to keep proper and appropriate records and to conduct a robust and structured investigation constitutes maladministration. Therefore, I uphold this issue of complaint. I will address the injustice below.

Detail of Complaint

Depositing of waste at Waste Management Site 2020

32. The complainant said on 16 September 2020 he reported that a large lorry '*with a 4 wheel boogie (sic) behind it as big as the lorry*' had delivered material to the site that morning. He said he was still waiting for the result of this report.

Evidence Considered

Legislation/Policies/Guidance

33. I considered the following guidance:

- CPIA;
- WML Site Inspection procedure

DAERA's response to investigation enquiries

34. In response to the complainant's concerns that the waste management company had taken delivery of materials from a skip company, DAERA directed this office to the report of its investigations as proof of its actions. The report stated the following: an officer from RU visited the site on 16 September and spoke to the owners. The owners showed the officer '*video footage and documentation of the vehicle concerned*'. The officer recorded the vehicle did not bring waste on site '*and in fact*' collected PVC frames the company had previously stored. The officer met the complainant and his wife at his home and '*discussed his findings*' regarding the waste delivery.

Analysis and Findings

35. I examined DAERA's case file which documents an officer from RU carried out a visit to the site on 16 September 2020. It is not documented if the officer completed a Site Inspection Report. The memo states the owners showed the officer video footage and documentation relating to the lorry. There are no details regarding the video footage, such as times and dates or the quality of the footage. In addition, the officer did not provide an explanation of what the '*documentation*' relating to the vehicle was. There is no contemporaneous record of the site owners' explanation of events, either in the form of a signed Site Inspection report, a witness statement from the owners, or copies of contemporaneous notes signed by the owners. It is not detailed if the officer viewed the site diary or checked waste movement records.
36. I note there are specific instructions within the WML Site Inspection Procedure for recording actions taken during site visits. I note further CPIA's requirements for recording and retaining material relevant to an investigation. The officer has clearly detailed his decision-making process. However, I consider the lack of contemporaneous documentation makes it difficult to confirm the officer's investigation of the complaint was '*evidence led*'. I consider this to be poor record keeping. While I cannot definitively conclude that DAERA failed to investigate the complainant's allegations that lorries deposited waste at the site, it is nevertheless clear it did not follow its internal site inspection procedures

and the relevant legislation (CPIA) in that it failed to adequately record how it investigated the complaint.

37. The First Principle of Good Administration ‘Getting it Right’ requires a public body to ‘*Act in accordance with the law and with regard for the rights of those concerned*’ and to ‘*Act in accordance with the public body’s policy and guidance (published or internal)*’. It also requires a public body to ‘*Take proper account of established good practice*’. The Third Principle of Good Administration ‘Being Open and Accountable’ requires a public body to ‘*Keep proper and appropriate records*’. Also, the Fourth Principle of Good Administration ‘Acting Fairly and Proportionately’ requires a public body to ensure that decisions and actions are proportionate, appropriate, and fair. I do not consider that DAERA meets these standards for the reasons outlined above. I am satisfied DAERA’s failure to act in accordance with its internal procedures and the relevant legislation and its failure to keep proper and appropriate records constitutes maladministration. Therefore, I uphold this issue of complaint. I will address the injustice below. In relation to the complainant’s concern that officers did not notify him of the outcome of the investigation, I am satisfied the notes document that they did.

Detail of Complaint

Transfer of Landfill 2020

38. On 2 December 2020 the complainant reported that ‘*several*’ of the waste management company’s lorries had transferred ‘*illegal materials*’ from the site to the development over the previous month. The lorries dumped the materials ‘*into an area*’ of a badgers’ sett which had been ‘*dozed in*’ by a waste management company digger. He had photographic evidence of this. No one from DAERA ever asked him for his ‘*witness evidence*’. DAERA never ‘*thoroughly investigated*’ any of his allegations of the company’s ‘*illegal activity*’.

Evidence Considered

Legislation/Policies/Guidance

39. I considered the following guidance:

- CPIA;

- DAERA Enforcement Policy

DAERA's response to investigation enquiries

40. In response to the complainant's allegation, DAERA directed this office to the report of its investigation as proof of its actions. The report details the following: an officer from RU visited the development on 3 December 2020. The development company needed to move soil within the development and used the waste management company's trucks to do so. The waste management company did not supply any material. The badgers' sett within the site was not '*breached*' as the trucks deposited the loads '*adjacent to the sett but not encroaching*'.
41. DAERA stated as this allegation solely concerned the transfer of materials to a site without a waste management licence, the investigation fell under the remit of the ECU. It was unclear why an officer from the Waste Management section of RU carried out the inspection.

Analysis and Findings

42. I examined DAERA's records of its investigation into the allegation that the waste management company had transferred landfill from its site to the development. The case file consisted of an incident report (the complainant's allegation), team allocation details and a document titled Initial Site Visit Details. In the document the '*Initial Visit Observation*' records the housing development company needed to move soil within the development and hired the waste management company's lorries to carry out the task. The officer stated the deposits of soil did not breach the badger sett. The case file does not record the time when the officer carried out the visit, or which location he visited. It does not record the name or position of the individual who provided the information regarding the transport of soil. It does not explain how the officer determined the deposits of soil did not breach the badger sett; whether this was personal observation or information someone provided on site. There are no contemporaneous notes, or photographs in the case file. I could find no documentation indicating DAERA approached the complainant to view his

photographic *'evidence'* which he said corroborated the allegation. I consider this lack of contemporaneous documentation makes it difficult to determine how the officer evidenced his decision that the complaint required no further action.

43. I refer to DAERA Enforcement policy which states:

- *It is illegal to carry out a range of activities without registering compliance, making a notification, or being granted the appropriate licence, authorisation or exemption.*

44. I note DAERA's response to enquiries made by this office in which it stated all DAERA investigations are *'evidence led'*. Officers *'will follow evidence'* in line with the Enforcement Policy, *'taking into account'* Proportionality, Transparency, Legality and Consistency. I refer to CPIA which requires officers to:

- record *'material which may be relevant to the investigation'* This includes *'negative information'*.
- record information *'at the time it is obtained or as soon as is practicable after that time'*.
- retain material *'which may be relevant to the investigation'*.
- *pursue all reasonable lines of inquiry'*.

45. In my view the case file lacks sufficient detail to demonstrate that DAERA's investigation of this complaint into a potential *'illegal...range of activities'* was *'evidence led'*. I consider this lack of contemporaneous documentation makes it difficult to conclude how the officer's actions could be considered *'transparent'*. I consider this to be poor record keeping. While I cannot definitively conclude DAERA failed to investigate the complainant's allegations of unlawful transfer of landfill, it is nevertheless clear it did not follow its internal enforcement policy and the relevant legislation in that it failed to adequately record how it investigated the complaints. I also note DAERA's response that while this investigation fell under the remit of ECU an RU officer undertook the investigation. I am concerned by DAERA's inability to explain or justify this. Given the poor record keeping and the fact the case was investigated by an

officer from outside the ECU, once again I share the complainant's concern that DAERA's investigation of this issue was not robust.

46. The First Principle of Good Administration 'Getting it Right' requires a public body to '*Act in accordance with the law and with regard for the rights of those concerned*' and to '*Act in accordance with the public body's policy and guidance (published or internal)*'. It also requires a public body to '*Take proper account of established good practice*' and to provide effective services, '*using appropriately trained and competent staff*'. The Third Principle of Good Administration 'Being Open and Accountable' requires a public body to '*State its criteria for decision making and giving reasons for decisions*' and to '*Keep proper and appropriate records*'. I do not consider that DAERA meets these standards for the reasons outlined above. I am satisfied that DAERA's failure to act in accordance with its internal procedures and the relevant legislation and to keep proper and appropriate records and to use appropriately trained staff constitutes maladministration. Therefore, I uphold this element of the complaint. I will address the injustice below.

Detail of Complaint

Burial of tarmac 2021

47. On 7 January 2021 the complainant reported lorries were dumping tarmac at the development. He provided a registration (VRM⁷) for one of the lorries. On 12 January he additionally reported that the waste management company was moving the tarmac from one part of the development to another and covering it with soil. He said DAERA had not '*done anything*' about it.

Evidence Considered

Legislation/Policies/Guidance

48. I considered the following guidance:
- CPIA;
 - Waste and Contaminated Land Order; and
 - DAERA Enforcement Policy

⁷ Vehicle Registration Mark

DAERA's response to investigation enquiries

49. In response to the complainant's allegation, DAERA directed this office to its investigation file as proof of its actions. The file included an ECU officer's notebook which includes the following handwritten notes: the officers arrived at the development on the morning of 3 March 2021 and had a '*look around*'. The officers spoke '*at length*' with the foreman and put the complainant's allegations to him. The foreman explained the development company brought tarmac in for use on the development. The waste management company did not bring it in or bury it. The development company '*stockpiled*' any excess tarmac. The officer took '*digital images*' of the development. Following the visit, the officer noted she did not carry out a search on the lorry's VRM. This was because she had '*no concerns*' regarding waste issues.

Analysis and Findings

50. I examined DAERA's records of its investigation into an allegation the waste management company was involved in dumping and burying tarmac at the development. The case file consisted of an incident report (the complainant's allegation), team allocation details, initial visit details with typed observation notes and follow up actions, contemporaneous pocketbook entries and digital images. The initial visit observation and follow up actions outline the actions the officer took during the inspection on 3 March 2021. Detailed notes in the officer's pocketbook provide a contemporaneous account of the officer's actions. The notes document the explanation provided by the foreman of why the housing development company was bringing tarmac onto the development. The notes also provide the foreman's explanation of why the waste management company brought topsoil onto the development. The notes document that the officers inspected the development. This is supported by digital images taken by one of the officers during the inspection.

51. I refer to CPIA which requires officers to:

- record '*material which may be relevant to the investigation*' This includes '*negative information*'.

- record information '*at the time it is obtained or as soon as is practicable after that time*'.
- retain material '*which may be relevant to the investigation*'.
- '*pursue all reasonable lines of inquiry.*'

52. The officer did not request a VRM check on the vehicle the complainant referred to in his allegation. However, the case file details the officer's rationale for not doing so. In addition, I consider there is sufficient information documented in the case file to support the officer's decision to close the investigation. In his response to the draft complaint the complainant said the officer had just '*accepted the site manager's word*' there was no tarmac buried on the development. He said the officer had not '*followed up*' by looking at his video evidence and the job was only '*half done*'. I acknowledge the complainant's view and consider it would have been appropriate for ECU staff to have contacted the complainant and viewed the footage that he recorded of the events. On this occasion I am satisfied that DAERA staff undertook a more thorough investigation of the complainant's concerns about activities on the site, however I consider the staff should have viewed the evidence held by the complainant to ensure all available evidence was considered prior to determining what further action if any that they needed to take.

53. The First Principle of Good Administration '*Getting it Right*' requires a public body to '*Take reasonable decisions, based on all relevant considerations.*' I do not consider that DAERA meets these standards for the reasons outlined above. I am satisfied that DAERA's failure to view the complainant's evidence constitutes maladministration. Therefore, I uphold this element of the complaint. I will address the injustice below.

Detail of Complaint

Transfer of waste material 2021

54. On 19 February 2021 the complainant reported the Waste Management Company was removing '*landfill waste*' from the site and '*dumping*' it at a

factory several miles away. He said the officer investigating the complaint '*promised*' to view his CCTV evidence of the activity and had not done so.

Evidence Considered

Legislation/Policies/Guidance

55. I considered the following guidance:

- CPIA;
- Waste and Contaminated Land Order; and
- DAERA Enforcement Policy

DAERA's response to investigation enquiries

56. In response to the complainant's allegation, DAERA directed this office to its investigation file as proof of its actions. The file included an ECU officer's notebook which included contemporaneous handwritten notes of the visit to the factory and a site inspection report: The inspection report detailed a conversation the officer had with the factory's chief operations officer. The conversation documented the factory was in the process of installing a water treatment works. As part of the operation the factory used crushed concrete from the waste management company which it supplied at the factory's request.

57. The officer contacted the Waste Management company who confirmed that it supplied the material to the factory. The officer obtained receipts from the waste management company detailing the transfer of the materials to the factory. It also obtained a laboratory certificate from the waste management company demonstrating that the material met the protocol specification for the purpose for which the company was supplying it. The investigation file included copies of this documentation.

58. The file documents the officer emailed the complainant on 9 March 2021. The email contains his findings and explains his rationale for closing the case. The file also documents the officer did not find it necessary to view the complainant's CCTV as he was satisfied from the documentation he obtained

the company supplied the factory with recycled material '*that was no longer considered waste*'.

Analysis and Findings

59. I examined DAERA's records of its investigation into an allegation the waste management company was transferring waste material to a local factory. The case file consisted of an incident report (the complainant's allegation), team allocation details, typed site inspection notes and follow up actions, contemporaneous pocketbook entries and documentation from the waste management company. It contains a detailed explanation from the chief operations officer of the factory of why it required the material. It also contains documented evidence the officer took steps to verify the factory's explanation by obtaining receipts and laboratory reports from the waste management company.
60. I refer to CPIA which requires officers to:
- record '*material which may be relevant to the investigation*' This includes '*negative information*'.
 - retain material '*which may be relevant to the investigation*'.
 - '*pursue all reasonable lines of inquiry.*'
61. The officer did not view the complainant's CCTV as the complainant said he '*promised*' to do. However, the case file details the officer's rationale for not doing so. In addition, I consider there is sufficient information documented in the case file to support the officer's decision to close the investigation. In his response to the draft report the complainant said his main concern was that DAERA left him '*in the dark*' in relation to this issue. He never knew what had happened in the investigation until he read the draft report. He said that had he been properly updated at the conclusion of the investigation he '*probably would not have submitted the complaint*'. I examined the investigation file which documented the officer sent the complainant an email on 9 March 2021 outlining the findings of the investigation including the information detailed above. I am therefore satisfied the officer provided the complainant with an

appropriate update when he closed the investigation. On this occasion I am satisfied that that DAERA followed the relevant guidance and legislation, therefore I do not uphold this element of the complaint.

Detail of Complaint

Wood dust contamination 2021/2022

62. On 24 June 2021 the complainant reported he was unable to open the windows of his house due to a cloud of wood dust originating from the site two days previously. The dust had covered the cars on his property. He informed DAERA he had photographs of the woodpile on the site and the dust covering the cars. He contacted DAERA on 8 July 2021 to report more wood dust contamination at his property from the site. He had more '*photographic evidence*'. DAERA took '*no action*' against the company.

Evidence Considered

Legislation/Policies/Guidance

63. I considered the following guidance:

- CPIA;
- WML Site Inspection

DAERA's response to investigation enquiries

64. In response to the complainant's allegation, DAERA directed this office to the investigation file as proof of its actions. The report details the following: an officer from the RU carried out an initial visit to the site on 30 June 2021. He spoke to the manager and informed him of the complaint. He '*noted no wood processing*' during the visit. The officer completed a Site Inspection report. He inspected the site and its boundary and found '*no evidence*' of dust escape '*at the time of the visit*'. The report documents he did not inspect the site diary. The officer included digital photographs of the yard, the woodpile and waste wood on site. He reminded the manager of his responsibilities in relation to this issue.

65. On 24 February 2022 another officer from the RU carried out a routine site inspection visit at the site. At the time the officer carried out the visit, he was unaware of the complainant's allegation. It was *'very windy'* with *'sleet and snow'*. There were *'no outstanding issues'*. The officer saw no machinery *'that could create'* wood dust. The officer took photographs showing the weather conditions and a large pile of wood chippings stored externally. He completed a Site Inspection report and inspected the site diary. Officers from the RU returned to the site on 3 March. They found *'no evidence'* of *'excess'* dust on site.

Analysis and Findings

June 2021/August 2021/February 2022

66. I examined the waste management company's waste management licence. Table 5.1: 'Standards for monitoring and control of aerial emissions of dusts, fibres and particulates' states that staff supervising waste handling operations should undertake *'visual monitoring of aerial emissions.'* It states that if staff detect emissions which are *'liable to be transported beyond the site boundary'* they should take immediate action *'to suppress the aerial emissions from the waste'* which *'shall be recorded in the site diary'*. I note DAERA's WML Site Inspection procedure states if incidents involving the release of dust particles have occurred previously officers should *'ensure they were dealt with appropriately and that they were recorded in the site diary'*.
67. I reviewed DAERA's records of its investigation into allegations of wood dust contamination originating from the site. The complainant initially reported the incident to DAERA on 24 June 2021, advising the incident occurred on 22 June. The officer attended the site on 30 June 2021. The officer completed a Site Inspection Report. The officer recorded in the report that he did not inspect the site diary. The officer took digital images of the yard showing a large pile of wood chippings stored externally. The officer detailed his conversation with the site manager and noted the site was free of wood dust at the time of his visit. I note the officer carried out a follow up visit on 12 August 2021 and completed a Site Inspection report on which he recorded the area around the site was free of dust.

68. An officer from DAERA returned to the site to carry out a routine site inspection on 24 February 2022. The officer completed a Site Inspection Report and took photographs of the site. The officer noted the site was free of wood dust when he attended and that the weather conditions were unlikely to lead to dust dispersal. The officer noted his manager informed him about the complaint of wood dust contamination following the visit. He would therefore have been unaware of the complainant's allegation at the time of the inspection. I am therefore satisfied that the officer's actions on 24 February were reasonable and in accordance with WML Site Inspection procedure.
69. I acknowledge the complainant's frustration and his perception that DAERA took '*no action*' against the company. I consider that the officers' actions on their visits to the site on 30 June 2021, 12 August 2021 and 24 February 2022 were appropriately documented and found that the site was free of dust at the time of the visit. However, the complainant reported dust contamination at his property on 22 June 2021 and had evidence which was not viewed by DAERA staff. The officer who carried out the initial visit on 30 June 2021 did not check the site diary for a record of dust emissions on that day, or for any remedial action the company took to rectify it in accordance with the WML Site Inspection procedure.
70. The complaint relates to a potential breach of the site's licence conditions on a specific date. I am concerned the officer did not check the site diary to attempt to corroborate the complainant's allegation in accordance with the WML Site Inspection procedure. I cannot conclude that checking the site diary would have resulted in a different outcome, nevertheless I consider there is evidence to support the complainant's view DAERA did not thoroughly investigate his complaint during the site inspection of 30 June 2021. However, I am also mindful the officer reminded the site manager of his responsibilities in relation to this issue. In my view while this does not mitigate DAERA's failure to check the site diary, it demonstrates DAERA's commitment to ensuring the site remained compliant with the conditions of its waste management licence.

March 2022

71. The case file documents that officers from RU made a follow up visit to the site on 3 March 2022. The observation notes state only that the officers '*found no evidence*' of excess dust on site. There is no evidence of a site inspection report, contemporaneous notes, or photographs. The officers do not record to whom they spoke, whether wood chipping operations were ongoing, or how they quantified '*excess dust*'. In short, there is no evidence of what actions, if any the officers took during the visit.
72. I refer to CPIA which requires officers to:
- record '*material which may be relevant to the investigation*' This includes '*negative information*'.
 - record information '*at the time it is obtained or as soon as is practicable after that time*'.
 - retain material '*which may be relevant to the investigation*'.
73. I also refer to the WML site inspection procedure which specifies the following:
- '*A written Site Inspection Report Form (SIRF) of the visit should be completed by the officer (on site) following each routine or specific inspection.*'
 - '*Officers may consider the use of their pocket notebook...in all cases where an offence is suspected.*'
 - '*It is vitally important that the operators are made aware that the breach of their Waste Management Licence conditions is a criminal offence.*'
74. The officers' visit to the site concerned an allegation the operator had breached his Waste Licence Management conditions which is a potential criminal offence contrary to the Waste and Criminal Land Order. I am disappointed that DAERA considers it appropriate to address the matter in a single sentence without providing evidence of how it reached its decision.
75. I consider the case file's total absence of information makes it impossible to determine how officers reached their conclusion. I consider this to be poor record keeping. The WML Site Inspection procedure states its purpose is to ensure the identification and scoring of non-compliance with licence conditions

is *'undertaken in a consistent and transparent manner'*. In my view the 'report' of the officers' site visit on 3 March 2022 exemplifies DAERA's lack of consistency and transparency in relation to this issue. While I cannot conclude that DAERA failed to investigate the complainant's allegations of wood dust contamination on 3 March 2022, it is nevertheless clear it did not follow its internal enforcement policy and the relevant legislation in that it failed to adequately record how it investigated the complaint. It also did not consider the evidence the complainant indicated he held showing dust having left the site.

Summary of wood dust contamination issues

76. In summary, it is evident that on 30 June 2021 the officer who carried out the site inspection failed to check the site diary to attempt to corroborate the complainant's allegation of wood dust contamination originating from the site on 22 June or view the evidence held by the complainant. Furthermore, the officers who visited the site on 3 March 2022 failed to keep any record of their actions or findings or provide evidence on how they reached their decision there was no *'excess dust'* on site.

77. In its response to the draft report DAERA stated the *'site dairy (sic) was not inspected on this occasion because NIEA officers where (sic) not entering site offices to inspect paperwork as a safety measure linked with the Covid pandemic'*. It clarified the NIEA COVID safety protocols were still in place and as such it did *'not believe this issue should be a negative factor in the NIPSO assessment.'* I examined DAERA's record of site visits conducted over the period of the complaint. I note that in other visits carried out during the same period, the inspection forms document that officers inspected the site diary. I acknowledge that different officers may take a different approach and that it was reasonable not to enter a site office if the guidance recommended that officers should not. However, the officers did not record this in the investigation file as a justification. It is not clear in this case why the site manager could not bring the diary outside the office for officers to examine if it was in hard copy, or why the site manager could not email relevant sections of an electronic diary to the officers. It did not explain why the site manager could not scan a paper copy to the officer. There is no indication either that the officers asked the site

manager to check the diary. Given the officers were investigating a potential breach of the licensing conditions on a specific date, I consider that checking the documentary evidence to verify whether or not wood dust contamination occurred on that date would be a fundamental requirement of the investigation. I consider that DAERA's response that the officers could not inspect the diary as the officer could not physically enter the site office because of COVID regulations is a poor excuse for its inaction.

78. In its response to the draft report DAERA also stated the officers who visited the site on 3 March were responding to a '*very separate complaint*' from the complainant. which '*did not concern reports of dust*'. It clarified the officers notified the Waste Licensing team that the site was free of dust as '*a helpful observation*'. It was not '*as part of further investigative work in relation to a previous dust complaint*'. Therefore '*it would challenge*' the draft report's view of the officers' actions as a '*negative factor*' in DAERA's response to the complaint.
79. I examined the investigation file and I note the following: DAERA included the report of 3 March in the investigation file it supplied to this office as evidence of its actions to investigate the complaint. It wrote to the complainant on 7 March stating '*as a result of your report*' (my emphasis) officers from the RU attended the site on 25 February '*and again on Thursday 3 March*' (my emphasis). In addition it wrote to the complainant's MLA in July 2022 stating it carried out '*unannounced visits to the site on Friday 25 February and again on Thursday 3 March*' (my emphasis). It further stated '*at the time of their inspections [the officers] found no evidence of dust on site, or on the boundary of the site. Site management were spoken to and reminded of their responsibilities regarding dust management especially in dry weather*'. It is evident that on one hand DAERA are presenting the visit of 3 March as evidence of an inspection specifically related to wood dust contamination, while on the other hand claiming it was not when this office criticised it for its poor record keeping. I am deeply concerned by this, and it leads me to question the integrity of DAERA's responses in relation to this matter.

80. The First Principle of Good Administration 'Getting it Right' requires a public body to '*Act in accordance with the law and with regard for the rights of those concerned*' and to '*Act in accordance with the public body's policy and guidance (published or internal)*'. It also requires a public body to '*Take proper account of established good practice*'. The Third Principle of Good Administration 'Being Open and Accountable' requires a public body to '*State its criteria for decision making and giving reasons for decisions*' and to '*Keep proper and appropriate records*'. I do not consider that DAERA meets these standards for the reasons outlined above. I am satisfied that DAERA's failure to act in accordance with its internal procedures and the relevant legislation, to carry out a thorough investigation and to keep proper and appropriate records constitutes maladministration. Therefore, I partially uphold this element of the complaint.

Injustice

81. The complainant believed DAERA did not carry out '*robust*' investigations into his allegations of unlawful waste activity between 2018 and 2022. He believed this was because DAERA did '*not want to know the truth*' about the activities of the waste management company. It is not within the remit of this investigation to make a judgement on the outcome of DAERA's investigations. It is rather to establish if DAERA carried out these investigations in accordance with the relevant guidance and legislation. I considered DAERA's case files relating to the investigations, and it is evident there was a repeated failure of officers, particularly those from the RU, to keep an adequate record of their actions and decision-making processes.

82. I cannot overemphasise how important good record keeping is for public authorities; it underpins good administration. It is essential that public bodies make and maintain records that will allow others to follow their decision making processes and understand their basis for their decisions. The giving of reasons for decisions is essential for fairness and transparency. Furthermore, good records, which demonstrate the reasons why decisions were taken, offer protection to public authorities should their decisions be later subject to challenge.

83. While I have identified maladministration in five of the six elements of this issue of complaint, I cannot conclude with any reasonable certainty that had DAERA kept adequate and appropriate records to evidence its decisions the investigation would have identified grounds on which to question the merits of those decisions. Nevertheless, I consider that the complainant has sustained an injustice due to DAERA's failings in relation to this issue of complaint. This injustice is not due to DAERA's decision to take no action against the waste management company. I am satisfied that the maladministration I identified in DAERA's investigation of the complainant's concerns of unlawful waste activity and management caused the complainant to sustain the injustice of upset, uncertainty and frustration. Furthermore, the complainant had a reasonable and justifiable expectation that DAERA would deal with his concerns in a manner that was in keeping with good administrative practice. This investigation established that expectation was not met.

Residual matters

84. In addition to this, I must record my concern at DAERA's approach to logging and recording investigations. Although DAERA's file management is not a matter the complainant raised in bringing his complaint to me, it is important that I highlight it in this report, especially given the concerns raised over the quality of DAERA's record keeping. The inconsistencies in file management were especially apparent in RU investigations. I note that several investigations commenced after DAERA's assessment unit logged an allegation as an incident report and allocated it to an officer. Others appear to be ad-hoc actions taken by officers following a telephone call or email and have no reference number. In addition, the outcomes of the investigations were presented in a variety of ways; some were written as internal memos, others on forms which appear to be linked to the initial incident reports. I note that DAERA's Enforcement Policy states it will take a '*consistent approach*' to enforcement. In my view this approach is not reflected in its file management which is haphazard and inconsistent. It is evident that DAERA would benefit from a case management system in which officers can systematically log, assess and record cases. It is my understanding that DAERA is in the process of

introducing such a system to the ECU. I consider the RU would also benefit considerably from such a system. It is my expectation that DAERA will carefully consider this matter.

85. I note in his complaint to this office the complainant said DAERA's actions in investigating his complaints have had a '*serious effect*' on both his and his wife's mental health. He has expressed scepticism that DAERA will properly investigate his complaints or take actions to remedy a situation that he says he finds stressful. I consider that DAERA can take steps to alleviate the complainant's concerns by implementing the recommendations listed at the end of this report.

CONCLUSION

86. I received a complaint about the actions of DAERA. The complainant said that DAERA had failed to investigate his reports of unlawful waste activity by a local waste management company between February 2018 and March 2022.
87. I investigated the complaint and found maladministration in the actions taken by DAERA in relation to the following:
- The failure to act in accordance with its internal procedures and the relevant legislation;
 - The failure to view the complainant's evidence;
 - The failure to carry out its investigation of wood dust contamination in a thorough manner; and
 - The failure to accurately record its actions and decisions when investigating allegations of unlawful waste activity.

Recommendations

88. I recommend DAERA provides the complainant with a written apology in accordance with NIPSO 'Guidance on issuing an apology' (August 2016), for the injustice caused as a result of the maladministration identified within **one month** of the date of this report.

89. I further recommend for service improvement and to prevent future recurrence:
- DAERA to review its Enforcement Policy to ensure it sets out how it will keep records of its considerations and decision making;
 - DAERA ensure that staff tasked to investigate waste activity are reminded of the importance of making accurate contemporaneous records during an investigation and when recording decisions;
 - DAERA to carry out a random sampling audit of waste management incident reports between January 2023 to date to ensure that staff have recorded actions and decisions accurately and contemporaneously; and
 - DAERA to advise other agencies involved in investigations related to this complaint of the findings of this report.
90. I recommend that DAERA implement an action plan to incorporate these recommendations and should provide me with an update within **three** months of the date of my final report. That action plan should be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff have read and understood any related policies).
91. I am pleased to note DAERA accepted my recommendations.

Margaret Kelly

**Ombudsman
April 2024.**

Appendix 1

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.