



Northern Ireland

Public Services

Ombudsman

Investigation of a complaint against Antrim & Newtownabbey Borough Council

Report Reference: 202004493

The Northern Ireland Public Services Ombudsman
33 Wellington Place
BELFAST
BT1 6HN
Tel: 028 9023 3821
Email: nipso@nipso.org.uk
Web: www.nipso.org.uk

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.

TABLE OF CONTENTS

	Page
SUMMARY	4
THE COMPLAINT	5
INVESTIGATION METHODOLOGY	6
THE INVESTIGATION	7
CONCLUSION	20
APPENDICES	22
Appendix 1 – The Principles of Good Administration	

Case Reference: **202004493**

Listed Authority: **Antrim and Newtownabbey Borough Council**

SUMMARY

I received a complaint about the actions of Antrim and Newtownabbey Borough Council (the Council). This complaint concerned how it responded to reports of odour nuisance.

The complainant believed the Council failed to provide him with an appropriate level of service and failed to supply its out of hours reporting telephone number. He said it failed to recognise the requirement for his neighbour to register a food business. He also said the Council failed to facilitate mediation between his neighbour and himself.

My investigation identified maladministration in how the Council handled its investigation into the concerns he raised. This included a failure to engage with the complainant and supply him with a means of reporting incidents of odour occurring outside of office hours. In addition, the investigation found the Council failed to provide the complainant with full reasons for its initial decision the odour did not constitute a statutory nuisance – only doing so 10 months later after having reopened its investigation. It also found maladministration in how the Council determined that the complainant's neighbour was not operating a food business.

I recommended the Council provide the complainant with a written apology for the injustice caused as a result of the maladministration. I also made recommendations for service improvements to prevent recurrence of the failings identified.

THE COMPLAINT

1. This complaint was about how Antrim and Newtownabbey Borough Council (the Council) responded to a complaint of odour nuisance affecting the resident of a domestic dwelling. The complainant was the resident.

Background

2. The complainant contacted an Alderman ¹ on 28 March 2022 seeking advice on “*continuous*” smells. He believed a neighbour was cooking food from his garage on a “*commercial*” basis. The complainant said the odours prevented him from enjoying his garden as the garage was located on the boundary line between the two houses and vented fumes in his direction. On 28 April 2022 the complainant contacted the Council’s Environmental Health service about another instance of odour.
3. The Council started a complaint investigation on 29 April 2022. It advised the complainant on 29 June 2022 its enquiries had been unable to substantiate the existence of a statutory nuisance². The complainant continued to report recurrence of odour, and the Council reopened its investigation on 30 August 2022. In total, the complainant reported 33 instances of problematic odour occurring during the time frame of the investigation.
4. The Council advised the complainant on 26 April 2023 it had ended its investigations and had “*not*” been able to establish a statutory nuisance.
5. The complainant brought the complaint to my office on 18 June 2023. The investigation considered the actions of the Council from when the complainant first raised his complaint with it on 28 April 2022, until it issued him with its final complaint response on 26 April 2023.

Issue of complaint

6. I accepted the following issue of complaint for investigation:
 - **Did the Council handle the complaint of odour nuisance in an appropriate manner, and in accordance with the relevant legislation, policy and guidance?**

¹ Member of a municipal assembly or council.

² A nuisance is something which interferes with a person’s right to use or enjoy their property and a statutory nuisance arises where such interference is prohibited by statute.

INVESTIGATION METHODOLOGY

7. To investigate this complaint, the Investigating Officer obtained from the Council all relevant documentation together with its comments on the issues the complainant raised. This documentation included information relating to the Council's complaints process.

Relevant Standards and Guidance

8. To investigate complaints, I must establish a clear understanding of the standards, both of general application and those specific to the circumstances of the case. I also refer to relevant regulatory, professional, and statutory guidance.

The general standards are the Ombudsman's Principles³:

- The Principles of Good Administration.

9. 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 of those individuals whose actions are the subject of this complaint.

The specific standards and guidance relevant to this complaint are:

- Antrim and Newtownabbey Borough Council Environmental Health Enforcement Policy, May 2019 (Environmental Health Enforcement Policy);
- Clean Neighbourhoods and Environment Act (Northern Ireland) 2011; (the 2011 Act);
- Guidance to District Councils on Part 7 (Statutory Nuisances) of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011, (Guidance on the 2011 Act);
- Council Guidance Note on Odour Assessment and Evaluation, November 2021 (Odour assessment and evaluation guidance);
- Antrim and Newtownabbey Borough Council Guidance on Investigation of Odour from Commercial Premises and Agricultural Sources, September 2016 (Investigation of Odour from Commercial Premises guidance);

³ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- Antrim and Newtownabbey Borough Council Documented Procedures, Statutory Nuisance Complaints, 2013 (Documented Procedures);
- Guidance on the application of EU food hygiene law to community and charity food provision, March 2016 (EU food hygiene guidance);
- Regulation (EC) No 178/2002 of the European Parliament and of the Council, 28 January 2002 (EC Regulation 178/2002);
- Regulation (EC) No 852/2004 of the European Parliament and of the Council, 2004, (EC Regulation 852/2004); and
- Food Standards Agency (FSA) Guidance on the Application of EU Food Hygiene Law to Community and Charity Food Provision, July 2021, (FSA guidance on application of EU food hygiene)

I enclose relevant sections of the guidance considered at Appendix Three to this report.

10. In investigating a complaint of maladministration, my role is concerned primarily with an examination of the Council's administrative actions. It is not my role to question the merits of a discretionary decision. That is unless my investigation identifies maladministration in the Council's process of making that decision.
11. I did not include all information obtained in the course of the investigation in this report. However, I am satisfied I took into account everything I considered relevant and important in reaching my findings.
12. A draft copy of this report was shared with the complainant and the Council for comment on factual accuracy and the reasonableness of the findings and recommendations. I gave careful consideration to the comments I received in preparing this final report. I have addressed relevant elements of those concerns in the body of this report.

THE INVESTIGATION

- **Did the Council handle the complaint of odour nuisance in an appropriate manner, and in accordance with the relevant legislation, policy and guidance?**

I investigated the complaint under the following sub issues:

- *The response to the complaints of odour;*
- *The determination to require registration as a food business; and*
- *Mediation between the involved parties.*

The response to complaints of odour

Detail of Complaint

13. The complainant said his family had been “*inundated*” with smells affecting their “*daily*” living. He said he “*always*” made the Council aware “*most*” of the nuisance was happening “*outside*” office hours. Despite this, it “*never*” offered him the number for the out of hours service. He said there was a “*non-provision*” of Council services which contributed to his family’s “*distress*”. This had a “*detrimental*” effect on their mental and physical health.

The Council’s response to investigation enquiries

14. The Council stated:
 - It made “*numerous*” visits to the complainant and his neighbours and highlighted to the complainant on a “*number*” of occasions the requirement to call Environmental Health “*as soon as*” the odour was evident. However, the complainant reported many incidents of odour only “*after*” the odour incident had occurred.
 - It gave “*due*” consideration to providing the out of hours number but “*considered*” there was “*no*” assurance it could have detected the odour at the property. It also said the out of hours number is “*primarily*” accessible to statutory partners. The Council “*occasionally*” provides the number to residents but there is “*no established policy*” dictating when it does so. Instead, senior management evaluates each case “*individually*”.

Relevant Council records

15. I reviewed the Council’s complaint file which included logs and records of site visits.

Analysis and Findings

16. The complainant said he felt let down and frustrated by the Council’s response to his reports of odour nuisance. He felt particularly frustrated it did not provide him with its

out of hours telephone number until the conclusion of its investigation and the issuing of the stage two complaint response. He saw this as letting down a rate payer.

17. The power of the Council to investigate a statutory nuisance derives from the 2011 Act. The Guidance on the 2011 Act states a council “*must*” take such steps as are “*reasonably*” practicable to investigate any complaint of statutory nuisance. It describes a statutory nuisance as generally entailing interference with a person’s use or “*enjoyment of property*”. It specifically includes odours arising from “*cooking smells*” from “*private dwellings*” as an example of a statutory nuisance.
18. Records document the complainant contacted an Alderman ⁴ about an odour nuisance on 28 March 2022. After the issue appeared abated, the complainant rang the Council on 28 April 2022 to advise the odour had returned. The Investigation of Odour from Commercial Premises guidance states an Investigating Officer achieves the “*best*” evidence when he witnesses it “*first-hand*”. It also suggests an Investigating Officer should visit the complainant’s property at the “*earliest*” opportunity. Records show an Investigating Officer from the Council’s Environmental Health Department attended the complaint location on that same date. She noted a “*strong*” cooking smell was evident “*from the distance of the footpath*”.
19. Records further show the complainant rang the Council again the following day to advise of a recurrence of odour. An Investigating Officer re-attended later that same date and noted “*some odour*” detected. These were the only two instances in which records show the complainant reported odour which was then on-going during the period of the complaint investigation. I commend the Council on its swift action in visiting the complainant on the two dates on which he reported the problem taking place. I consider its actions on those occasions to be appropriate in accordance with the relevant guidance and policy, which required the Council to contact the complainant within three days of receiving the odour concern. However, I note the complainant continued to report instances of odour.
20. The Odour Assessment and Evaluation Guidance states gathering evidence on alleged odour nuisance can be “*difficult*”. It states the use of odour diaries can be of “*great*” benefit in detailing instances of nuisance. Records show the Council supplied the complainant an odour diary template on 28 April 2022. It asked him to “*detail the*

⁴ Member of a municipal assembly or council.

dates and times” and to describe the “*effect*” any odour was having on him and his family. I am satisfied the Council adhered to this Guidance when it provided this template. However, there is nothing recorded in the Council’s records to reflect it explained to the complainant at that time how it would use that information. I consider the Council should have done so. Although the odour diary template contains advice it would “*form*” the basis of evidence in potential legal proceedings, the Council provided no additional explanation to the complainant how it would do that. I find the Council’s inaction on this to be contrary to the Second Principle of Good Administration; “*being customer focused*” which requires public bodies to inform customers what they can expect.

21. Records show the Council initially ended its investigation into alleged odour nuisance on 29 June 2022. By that date, records reflect the complainant submitted one odour diary. That odour diary documented nine alleged instances of problematic odour. The complainant described the odour on eight of these occasions as “*very strong*”. I note the Council re-attend the complainant’s property to observe odour only on one additional date, 3 May 2022. On that date, it detected no odour. The Council advised the complainant it was not able to “*substantiate*” a statutory nuisance. The records do not show how the Council reached that finding. The Investigation of Odour from Commercial Premises states corroborative evidence provided by a complainant will be an “*important*” feature of any investigation. However, records do not show what consideration, if any, the Council gave to the information the complainant provided within the odour logs. Nor do records show what consideration, if any, the Council gave to the observations of its own Investigating Officers who detected odour during site visits. Records document the Council provided the complainant with an interim verbal explanation on 18 May 2022 of the difficulties it had in establishing a statutory nuisance. However, it did not explain to the complainant its rationale for making that definitive finding when it concluded its investigation six weeks later on 29 June 2022. I consider the Council should have documented its consideration of these factors and provided the complainant with a full and reasoned written rationale for its decision. I understand the complainant’s frustrations in this regard. I consider the Council’s actions contrary to the Third Principle of Good Administration, “*being open and accountable*”, which requires public bodies to state its criteria for decision making and to give reasons for its decisions.

22. Records show the Council re-opened its complaint investigation on 30 August 2022. This was in response to the complainant submitting a second odour diary. Records show the Council rang the complainant on 30 August 2022. Staff asked him to continue completing the odour logs. On that occasion also, I note the Council offered no explanation about how it would use the data in these diaries. Records confirm the Council contacted the complainant by e-mail on 25 October 2022, two months after it reopened the complaint investigation, and explained to him the role the odour diaries would play in the Council's investigation. Whilst I commend the Council for the level of detail it went into in explaining the significance of data captured by the diaries on that date, I consider it should have provided that information in a timelier manner. Over the course of the next eight months, records show the complainant submitted a further five odour diaries. They contained details of 18 recurrence of odour, ten of which allegedly occurred on a weekend.
23. Apart from one occasion on 25 October 2022, I found nothing to document the Council acknowledged receipt of each of the additional diaries with the complainant. I found no evidence the Council told the complainant how his information influenced the investigation.
24. Records show the complainant told Council staff during a telephone call the odours had returned "*mainly*" at the weekends. In an email the Council sent the complainant on 25 October 2022, it said it could "*arrange*" for an officer to visit his property to "*corroborate*" complaints of odour "*outside of Council hours*". The Council informed my office the complainant "*was advised that observing the odour during working hours would determine whether arrangements needed to be made for weekend visits.*" I found no evidence in records this occurred. I must question the logic of the Council basing a decision to attend out of hours on the number of issues raised during standard operational hours. I also found no evidence staff told the complainant how to report instances of ongoing odour at a weekend or other out-of-hours periods. I consider the telephone call to have been an opportunity for Council staff to further engage with the complainant and to explain how they intended to investigate the complaint and to establish how they could best handle the evolving investigation. I saw no evidence this took place. The complainant said the Council "*never*" offered its out of hours reporting telephone number until it provided him with its final complaint response. Records document the complainant rang the Council on 29 March 2023

and specifically asked “*what out of hours service the Council has*”. However, the Council did not provide that out of hours contact telephone number until it issued him the stage two complaint response on 26 April 2023. In its response to my office, the Council said it had no “*established*” policy covering when it should provide that number. It said senior staff considered giving it to the complainant before issuing the stage two complaint response but made the decision not to. The Council was unable to provide records evidencing that consideration process took place. I cannot therefore be satisfied the Council considered providing the telephone number to the complainant. I note the Council’s position that it advised the complainant to contact it when he became aware of odour. I consider that in not providing the complainant with its out of hours number sooner, in the context of the volume of diary entries for out of hours periods, the Council prevented the complainant from being practically able to comply with its advice. I consider this impacted on the appropriateness of the Council’s handling of the odour concerns.

25. Furthermore, given the volume of out of hours occurrences reported, I consider the Council should have analysed the data in the odour diaries, and consulted with the complainant directly, to determine when might have been suitable times for out of hours spot visits to observe the alleged odour. This would have enabled the Council to complete its own investigation logs and test the patterns in the complainant’s entries. I appreciate this could not guarantee there would be an odour on the day of such a visit, but I consider it would have given the Council additional scope to corroborate the complainant’s evidence. In failing to do so, I consider the Council missed the opportunity to potentially gather evidence that would have formed a critical part of its decision-making on the question of statutory nuisance. Had the Council done so, it would have provided it with a clear rationale for any further action it may have needed to take.
26. As set out above, Guidance on the 2011 Act states a council “*must*” take such steps as are “*reasonably*” practicable to investigate any complaint of statutory nuisance. The complainant submitted odour diaries to the Council, expecting it would take reasonably practicable action to address his concerns. I find the Council failed to do so. Although the complainant did not submit the diaries with a consistent frequency, I consider that he submitted them with a regularity. I consider it would have been reasonably practicable for the Council to have taken the above steps, and that in failing to do so, it failed to act in accordance with the Guidance. I consider the

Council therefore failed to take sufficient steps to itself examine the frequency, intensity, duration, offensiveness and location of the alleged odour incidents the complainant reported. This impacted on its ability to make a reasonable decision, based on all relevant considerations.

27. The First Principle of Good Administration, '*getting it right*' requires public bodies to provide an effective service, and to act in accordance with relevant guidance, with regard to rights of those concerned. It also requires public bodies to take reasonable decisions, based on considerations relevant to the issues. The Second Principle, 'being customer focused' requires public bodies to ensure customers can access services easily, and to provide a helpful and prompt service, bearing in mind an individual's circumstances. It also requires public bodies to respond to customer's needs flexibly. I find the Council failed to adhere to these Principles in this instance.
28. In terms of the Council's ultimate outcome, records show the Council told the complainant in a letter dated 26 April 2023 it had "*not*" been possible to demonstrate a statutory nuisance. In contrast to its communication on 29 June 2022, the letter contained detail acknowledging the complainant's concerns and accurately reflected the reported instances of alleged odour nuisance. On this occasion, I am satisfied it provided the complainant, at that stage, with an explanation for how it considered the evidence he provided in making its decision, and a sufficiently detailed rationale for its decision.
29. In summary, the Environmental Health Enforcement Policy states the aim of a Council investigation is to provide an "*effective*" service. I consider the Council failed to provide an effective service to the complainant during the relevant period under review. It failed to adequately engage with the complainant and provide him with a means to report his concerns as they occurred. I find this constitutes maladministration which caused the complainant to sustain the injustice of uncertainty, frustration and anxiety. I therefore uphold this element of the complaint. I acknowledge the Council continued to take actions to investigate the complainant's issues of complaint beyond the period of my investigation. Whilst I welcome the continued efforts of the Council in this regard, my finding remains unchanged in relation to the relevant period under review.
30. As outlined previously in this report, it is not my role to question the merits of a discretionary decision unless my investigation identifies maladministration in the

process of making that decision. In this case, I consider the maladministration identified does give me cause to question the Council's process in determining there was no statutory nuisance caused by odour. This finding entitles me to recommend the Council revisit its decision. It is not a finding that I consider the outcome should have been different, nor is it a finding to require the Council to make a different decision. However, given the passage of time, and the complainant's acknowledgement his odour concerns have now resolved, I do not consider it appropriate, practical or in the best interests of the individuals involved to recommend the Council to revisit its decision on this occasion.

Observations

31. Section 5.10 of the Investigating Statutory Nuisance Complaints portion of the Documented Procedures states the Council should inform a complainant how to take their own action in the Magistrates Court for nuisance if they still feel aggrieved following the Council's investigation. This is to be "*at the earliest possible opportunity in writing*". I saw no evidence in the records the Council adhered to this policy. This indicates the Council did not use the full template letter provided in relevant guidance when it provided its outcome to the complainant. Although this is not a matter the complainant raised in bringing his complaint to this Office, it is important I highlight it in this report. It is my expectation the Council will give careful consideration to informing complainants of their right to raise their own action in accordance with s70 of the 2011 Act in its practice going forward.
32. I would have expected the Council to have in place a policy to specifically address concerns of statutory nuisance on the grounds of odour in a domestic setting. Such a policy would inform and empower members of the public to report concerns they may experience outside of the Council's normal operational hours. I strongly urge the Council to consider adopting a policy of this type to inform its future service provision.

The determination to register as a food business

Detail of Complaint

33. The complainant said his complaint related to "*a catering facility*" in a neighbour's garage. He said he was cooking food on a "*commercial basis*" which resulted in "*continuous... strong smells*". The complainant said he found reference on-line to the neighbour being a "*chef*". He also found a receipt showing his neighbour purchased

food in “*catering*” quantities. He did not believe the Council considered this evidence when making its finding.

The Council’s response to investigation enquiries

34. The Council said:

- the Planning Section investigated an alleged breach of planning law at the subject premises in relation to “*catering*”. It said it identified “*no breach*” of planning control.
- The Environmental Health team were aware of the details of a social media page which described the complainant’s neighbour as a chef, but it did not deem this information “*alone*” as evidence in relation to a statutory nuisance.
- A member of Council staff with 20 years’ experience as a Food Safety Officer examined the food invoice and observed it would “*not be uncommon*” for members of the Indian community to use a specialist outlet when buying ingredients. He also noted the purchase price was not “*typical*” of a business producing food for a volume of consumers.

Relevant Council records

35. I reviewed records of log sheets and visits and planning enforcement reports.

Analysis and Findings

36. The complainant said he had good cause to consider his neighbour was a professional chef operating a commercial enterprise from his property. He believed the commercial scale of the cooking was the cause of the odour problem. He felt frustrated when the Council determined the neighbour was not running a food business from his house.

37. EC Regulation 178/2002 defines a “*food business*” as “*any undertaking*” relating to any stage of the production of food. It does not matter if it is for profit or not. EC Regulation 852/2004 requires food business operators to register with the appropriate competent authority. In Northern Ireland, the competent authority is the local council. If the food activity is very limited and infrequent, the local authority may decide registration is not needed. FSA guidance on application of EU food hygiene law suggests “*as a starting point*” activity of “*at least once per month*” would require registration.

38. Records show the complainant rang the Council on 7 April 2022. During that call, staff told the complainant “*planning may be required*” if his neighbour was operating a food business. The Planning Enforcement Strategy recognises planning enforcement is a “*discretionary*” function. It states the Council will respond to an allegation by visiting the site in a timely manner and establishing whether it “*believes*” there is a breach of planning control. This is a matter of professional judgement. On 29 April 2022 the Council tasked its Planning Team to investigate possible breaches of planning law in relation to catering at the subject address. I find the Council acted appropriately and in line with policy when it tasked the Planning Team to commence an investigation one day after the Environmental Health commenced its investigation.
39. On 2 May 2022, the complainant supplied the Council with details of a LinkedIn⁵ account which described his neighbour as a “*chef*”. The following day, the Council’s Environmental Health team made a site visit to the complainant’s neighbour. Records show the resident told Council staff he converted the garage into a kitchen to prevent the house being “*overcome with odours*” when he cooked. Staff recorded the resident said he did “*personal*” cooking as well as cooking for “*community events*”. Records show Council staff noted the resident and his wife both worked on a full-time basis. I could find no evidence staff specifically enquired if the resident was a professional chef. I consider this information is likely to have influenced the Council’s decision-making process had it obtained it. Council staff told the resident he would need to register as a food business if he were cooking for community events at least “*once a month*”. This advice is in accordance with FSA guidance on application of EU food hygiene law.
40. Records show the Council’s Planning Team conducted a site visit to the complainant’s neighbour on 26 May 2022. I find the timing appropriate and in line with guidance. This was within four weeks of the commencement of its investigation which I consider “*timely*”. The Planning Team described the kitchen as “*appearing*” to be one which “*could*” cater for “*larger scale of food making than domestic*”. Records show it concluded its current use remained “*domestic*”. Its recorded rationale for reaching that decision was:
- The resident said there was “*no*” commercial business operating from the kitchen.

⁵ An employment and business-focused social media platform.

- There was “*no advertising*” for a catering company.
- The presence of items such as a washing machine “*would indicate*” the use was “*still domestic*”.

41. Although the Planning Team’s decision was a discretionary one made with professional judgement, I am concerned about the weight it gave to the resident’s denial he was operating a business. Records show the resident acknowledged he would “*occasionally*” cater for “*community events*”. I found no evidence the Council attempted to investigate the circumstances of this acknowledged catering, to include the scale of these events, and how often this took place. Nor did I find evidence the Council attempted to communicate with the community groups involved. This may have provided important contextual information to allow the Council to consider if the resident was operating a commercial business. I consider the information the complainant provided about his neighbour potentially being a chef highly relevant to this topic. In its response to my office, the Council said that information alone was not evidence of a statutory nuisance. I consider that information more relevant to the possibility (my emphasis) he was operating a commercial food business. Records do not show how the Council assessed that information in the context of operating a food business. I consider the Council should have recorded its consideration of this factor. Records also do not reflect how the Council updated the complainant about its assessment of that information. I consider the Council should have done so.
42. On 5 February 2023, the complainant provided the Council a copy of a receipt for food ingredients purchased on 14 December 2022. That receipt came from a Belfast cash and carry premises specialising in Indian cuisine. The complainant found the receipt outside his house and believed it belonged to his neighbour and evidenced his purchase of food items on a commercial scale. The complainant said it corroborated his belief the neighbour was operating a food business from his residence. I could find no evidence contained in records the Council evaluated the significance of the receipt before advising the complainant on 26 April 2023 of its determination his neighbour was not operating a food business. I found no evidence the Council addressed the receipt with the complainant or explained to him how it assessed its significance. I consider this was relevant evidence and therefore the Council should have documented its consideration of this factor in making its decision.

43. In summary, therefore, I find the Council failed to demonstrate it sufficiently probed the resident's denial he was cooking commercially. It failed to demonstrate it fully explored the nature and frequency of the cooking the resident conducted for community groups when it made and communicated its decision. I consider this would also have been important information also for the Councils' investigation into the reported incidents of odour. Had the Council obtained information from the resident about the frequency of these community events, it could have conducted a spot visit to observe any odours in the complainant's property on those occasions. However, it failed to do so. It also failed to demonstrate what consideration, if any, it gave at that time to the evidence the resident may be a chef, and the receipt the complainant supplied. I note in its response to my Office, the Council outlined its consideration of the information in the receipt and the resident's background as a chef. However, there is no evidence to demonstrate this consideration at the relevant time, when the Council made and communicated its decision. I consider the Council should have done so, to evidence its basis for its discretionary decision.
44. The First Principle of Good Administration, "*getting it right*" requires public bodies to take reasonable decisions based on all relevant considerations. In addition, the Third Principle "*being open and accountable*" requires public bodies to state its criteria for decision making, give reasons for its decisions, and keep proper and appropriate records of decision making. I find the Council failed to adhere to these Principles in this respect.
45. I consider these failures constitute maladministration, which caused the complainant to sustain the injustice of frustration and uncertainty as to the Council's decision, and its rationale for it. I therefore uphold this element of the complaint.
46. As outlined previously in this report, it is not my role to question the merits of a discretionary decision unless my investigation identifies maladministration in the process of making that decision. In this case also, I consider the maladministration identified does give me cause to question the merits of the Council's finding the complainant's neighbour had no requirement to register a food business. However, given the passage of time, and the complainant's acknowledgement his neighbour no longer cooks food in his garage, I do not consider it appropriate, practical or in the best interests of the individuals involved to recommend the Council to revisit its decision on this occasion.

Mediation between the involved parties

Detail of Complaint

47. The complainant said he was “*very willing*” to enter into mediation with his neighbour and the Council “*never acknowledged*” this.

The Council’s response to investigation enquiries

48. The Council said:

- It is an enforcing authority and must always show impartiality.
- It would not be appropriate for it to attempt to resolve a dispute in an informal way as it may need to take formal action through a judicial process.
- It had advised the complainant of this rationale

Relevant Council records

49. I reviewed the Council complaint’s file.

Analysis and Findings

50. The complainant said he had been willing to enter mediation with his neighbour but felt let down when the Council failed to acknowledge his offer. I note the Council confirmed the complainant raised this matter with it, and explained to my Office why it could not act on the request.

51. I do not consider it maladministration the Council did not attempt to arrange mediation between the complainant and his neighbour. I believe mediation may have been useful in these circumstances, but it was not the Council’s responsibility to arrange it. Instead, I consider it would have been inappropriate for the Council to have engaged in mediation, given its statutory role in matters of this type.

52. The Council initially informed my office it advised the complainant it was unable to arrange mediation. When asked to supply records of this communication, it stated “*no record has been made when this was communicated to [the complainant].*” I cannot therefore be satisfied the Council did advise the complainant. I consider the Council failed to adhere to the Second Principle of Good Administration, “*being customer focused*”, which requires public bodies to inform customers what they can expect. I also failed to adhere to the Third Principle, ‘*being open and accountable*’, which requires public bodies to give reasons for its decisions. I find this constitutes

maladministration that caused complainant to sustain the injustices of frustration and uncertainty. I uphold this element of the complaint.

CONCLUSION

53. I received a complaint about the way the Council responded to reports of odour nuisance in a domestic setting. I upheld the complaint for the reasons outlined in this report. I consider the failings identified constitute maladministration. I acknowledge the Council continued to liaise with the complainant beyond the scope of the complaint investigation period and I welcome its efforts to address his concerns. However, my finding of maladministration for the relevant time period remains unaffected.
54. I recognise these failures caused the complainant to sustain the injustice of frustration, uncertainty, anxiety, and the time and trouble of bringing his complaint to this office.

Recommendations

55. I recommend the Council provides to the complainant a written apology in accordance with NIPSO's 'Guidance on issuing an apology' (July 2019), for the injustice caused as a result of the maladministration identified (within **one month** of the date of this report).
56. I recommend the Council provides training to relevant staff involved in the investigation of statutory nuisance. This training should focus on the importance of staff adhering to relevant standards when conducting investigations into odour nuisance. This should include the importance of engaging with complainants, recognising patterns within raised complaints, responding flexibly and effectively and keeping and completing adequate records.
57. I also recommend the Council ensures staff record full contemporaneous rationales for its decisions which reflect the factors considered, and the weight it applied to them.
58. I further recommend the Council considers introducing a policy governing the circumstances in which it supplies complainants with the telephone number of its out of hours reporting service.

59. I recommend the Council implements an action plan to incorporate these recommendations and should provide me with an update within **six** months of the date of my final report. The Council should support its action plan with evidence to confirm it took appropriate action (including, where appropriate, records of any relevant meetings, training records and/or self-declaration forms which indicate that staff read and understood any related policies).
60. As outlined previously in this report, I decided not to recommend the Council revisit its decision the complainant's neighbour was not causing a statutory nuisance or operating a commercial cooking enterprise from his home on this occasion. The Complainant informed my Office he wanted the Council to take accountability for any maladministration identified. He also informed my Office he wanted to prevent similar maladministration occurring in the future. I am satisfied the above recommendations provide the complainant with the necessary reassurance in this respect.

Margaret Kelly
Public Services Ombudsman

July 2025

Appendix 1 - PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and relevant guidance, 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.