

# Gloucester City Council

<b>Meeting:</b>	<b>Audit and Governance Committee</b>	<b>Date:</b>	<b>12 September 2023</b>
<b>Subject:</b>	<b>Report by the Local Government and Social Care Ombudsman into a complaint against Gloucester City Council Environmental Services and Public Protection and Regulation</b>		
<b>Report Of:</b>	<b>Monitoring Officer</b>		
<b>Wards Affected:</b>	<b>All Wards</b>		
<b>Key Decision:</b>	<b>No</b>	<b>Budget/Policy Framework:</b>	<b>No</b>
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<b>Appendices:</b>	<b>1. Report by the Local Government and Social Care Ombudsman (reference number:22 012 725)</b>		

## FOR GENERAL RELEASE

### 1.0 Purpose of Report

- 1.1 To consider the report of the Local Government and Social Care Ombudsman following a complaint made in relation to a failure to investigate an alleged noise nuisance at a business property.

### 2.0 Recommendations

- 2.1 Audit and Governance Committee is asked to:
- i. Note the requirement for the report to be considered by an appropriate committee of the Council in accordance with the Local Government Act 1974;
  - ii. Note the contents of this report and the Ombudsman's report;
  - iii. Note the remedial recommendations made by the Ombudsman;
  - iv. Note the agreed remedial actions already taken by the Council in response to the Ombudsman's recommendations; and
  - v. Note and approve the proposal to progress the completion of those agreed remedial actions which are yet to be undertaken

### 3.0 Background and Key Issues

- 3.1 In December 2022 a complaint was made to the Local Government and Social Care Ombudsman (LGSCO) that the Council had failed to properly investigate a complaint about alleged noise nuisance at a business property caused by a neighbouring business. As a result, the complainants stated that they had suffered frequent intrusive noise while they were at work causing them distress and, in some cases, to lose business.
- 3.2 The LGSCO investigates complaints about maladministration and service failure. Where the LGSCO determine that a fault has caused an injustice, they may suggest

a remedy. The LGSCO upheld the complaint outlined at 3.1 and found fault causing injustice.

3.3 The LGSCOs final report was published on 9 August 2023 and the Council was required by the LGSCO to publish a press notice and make copies of the report available on request. Notices were published in Gloucester Citizen and the Western Daily Press on [14th August 2023. In addition, the Council posted a notice at its Gateway Centre and on its website. Copies of the report were made available for inspection at Management Offices, Eastgate Shopping Centre for three weeks starting on 14th August 2023.

3.4 In their finding of fault on the behalf of the Council the LGSCO made four remedial recommendations which are listed below and the Council has agreed to take the actions detailed to remedy the injustice determined by the LGSCO:

3.4.1 Write a formal letter of apology to the complainants to acknowledge the frustration they have suffered, and the uncertainty caused by its poor handling of the investigation into their allegations of noise nuisance. A letter of apology was sent on 4 August 2023;

3.4.2 Offer to pay the two complainants £250 each, for the same reason. Compensation was paid on 26 July 2023;

3.4.3 Agree that if the Council receives any new complaints of nuisance about the business in question, it should start a fresh investigation, approaching it as it would an investigation using the correct procedures and standard of proof. No further complaints have been received to date.

3.4.4 Circulate guidance to all relevant staff highlighting and correcting the factual errors the LGSCO identified in this case, which include that:

- a statutory nuisance can be suffered in a non-residential property, and the law does not limit this solely to residential properties. Therefore, when someone alleges, they are suffering a statutory nuisance in a non-residential property, officers should approach it in the same way as a complaint about a residential property;
- creating a statutory nuisance, in isolation, is not a criminal offence, and so it need only be proved to the civil standard to warrant serving an abatement notice. It is the breach of an abatement notice which constitutes a criminal offence; and
- section 82 of the Environmental Protection Act concerns statutory nuisance, not common law nuisance.

A review of the guidance was initiated on the 31 July 2023 and is being undertaken by an external Environmental Protection Consultant Lead Officer.

#### **4.0 Social Value Considerations**

4.1 There are no Social Value implications as a result of the recommendations made in this report.

#### **5.0 Environmental Implications**

5.1 There are no Environmental implications arising from the recommendation made in this report.

#### **6.0 Alternative Options Considered**

- 6.1 There are no alternatives as the LGSCO requires that their report is considered by an appropriate committee of the Council in accordance with s31 of the Local Government Act 1974.

## **7.0 Reasons for Recommendations**

- 7.1 The Council has agreed to take the remedial actions required by the LGSCO and also agreed to bring a report to an appropriate committee of the Council to note and endorse the actions taken and to be taken in response to the report and its findings.

## **8.0 Future Work and Conclusions**

- 8.1 The review of guidance issued to officers investigating noise nuisance is to be completed. Once completed the guidance will be circulated to appropriate officers.

## **9.0 Financial Implications**

- 9.1 There are no further financial implications arising from this report over and above the compensation payments already made.

(Financial Services have been consulted in the preparation this report.)

## **10.0 Legal Implications**

- 10.1 The LGSCO investigates complaints about maladministration and service failure. In accordance with the Local Government Act 1974, there is a requirement for the report to be considered in full by an appropriate committee of the Council. As the LGSCO has determined that a fault has caused an injustice the LGSCO has suggested a remedy and made a number of recommendations. The committee is required to consider the report and note the action that have been taken in response to the report and the further actions proposed. As the Council has agreed to take the recommended remedial action there are no further legal implications arising from this report.

(The Monitoring Officer has been consulted in the preparation this report.)

## **11.0 Risk & Opportunity Management Implications**

- 11.1 Failure to take the required remedial actions could have resulted in further action being taken by the LGSCO but this has been fully mitigated. Officers are reviewing guidance which will ensure that all future investigations will be carried out in accordance with legislation and best practice.

## **12.0 People Impact Assessment (PIA) and Safeguarding:**

- 12.1 The PIA Screening Stage was completed and did not identify any potential or actual negative impact; therefore a full PIA was not required.

## **13.0 Community Safety Implications**

13.1 There are no Community Safety implication as a result of recommendations made in this report.

#### **14.0 Staffing & Trade Union Implications**

14.1 There are no Staffing and Trade Union implications as a result of recommendations made in this report.

#### **Background Documents:**