



Northern Ireland

**Public Services**  
Ombudsman

# Investigation Report

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## Investigation of a complaint against the Northern Ireland Housing Executive

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**NIPSO Reference: 16918**

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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. She may also investigate and report 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.

Where the Ombudsman finds maladministration or questions the merits of a decision taken in consequence of the exercise of professional judgment she must also consider whether this has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. The Ombudsman may recommend a remedy where she finds injustice as a consequence of the failings identified in her report.

The Ombudsman has discretion to determine the procedure for investigating a complaint to her Office.

## **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

	<b>Page</b>
SUMMARY .....	4
THE COMPLAINT .....	5
INVESTIGATION METHODOLOGY .....	6
MY INVESTIGATION .....	7
CONCLUSION .....	19
APPENDICES .....	22
Appendix 1 – The Principles of Good Administration	

## SUMMARY

I received a complaint from a member of the public who alleged that the Northern Ireland Housing Executive (NIHE) failed to deal with the anti-social behaviour of his neighbour, who was a Housing Executive tenant.

I accepted the following issue of complaint for investigation:

- Did the NIHE deal appropriately with the man's complaint concerning anti-social behaviour?

I did not find maladministration in respect of the matter complained of. I considered that in the absence of independent, verifiable evidence of anti-social behaviour, the Northern Ireland Housing Executive dealt appropriately with the complaint.

# THE COMPLAINT

1. I received a complaint from a member of the public who alleged that the Northern Ireland Housing Executive (NIHE) had failed to deal with his neighbour's anti-social behaviour.

## Background

2. The complainant is the owner occupier of a property in Banbridge. His neighbour has been a tenant from December 2008 and there have been complaints concerning noise disturbance and anti-social behaviour from this time. The neighbour has also made complaints to the NIHE about the complainant. Mediation took place between both parties in March and April 2009. Further mediation was arranged by the NIHE in 2012, however this failed to resolve the issues. There have been continuing disputes, and prior to April 2015, the complainant states that he obtained an injunction in Court against his neighbour. He made a further complaint to the NIHE on 2 June 2015, going over matters which had occurred over a seven year period, but was informed that as the NIHE was unable to apportion blame, it was unable to progress matters. There has continued to be complaints (from both parties) concerning noise nuisance. More recently and prior to bringing his complaint to this Office the man complained to the NIHE over the erection of a fence, stating that the NIHE failed to take action against his neighbour. At meetings with the NIHE, and in his complaint to this Office, the man has stated that by way of resolution he would like the NIHE to either move/evict the neighbouring tenant or buy/rent his property, thereby allowing him to relocate.

## Issues of complaint

3. The issue of complaint which I accepted for investigation is:

- **Whether the NIHE dealt appropriately with the man's complaint concerning anti-social behaviour?**

The man provided a comprehensive and extensive narrative of the events over a

number of years and raised numerous points and questions which he considered should be answered during the course of this investigation. After giving consideration to the extended period of time over which this complaint has stretched before being brought to this Office, I decided that the focus of my investigation would be on the events and actions subsequent to the man's complaint to the NIHE from October 2013 up to June 2016. This period has been the focus of the investigation, however I have referred to earlier events and actions as background and context to the complaint.

## INVESTIGATION METHODOLOGY

4. In order to investigate the complaint, the Investigating Officer obtained from the NIHE all relevant documentation, including the NIHE Anti-social Behaviour Manual and procedures, the PSNI and NIHE's Agreement for Sharing Personal Information, the anti-social behaviour files relating to the man and his neighbour, his neighbour's tenancy agreement, the General Conditions of Tenancy and the man's complaints file. Information was also received from the Environmental Health Department of Armagh, Banbridge and Craigavon District Council (ABC Council)

5. The Investigating Officer also obtained correspondence from the man's solicitor, met with the man at his home and interviewed NIHE staff.

6. I have carefully considered the complainant's letter in reply to my draft report. Where I considered it appropriate I have made amendments to the report. A number of points raised relate to events prior to and after the period I have considered and are listed in my report as background. These are not matters I have considered as part of my investigation.

7. I have not included all of the information obtained in the course of the investigation in this report however I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.

## Relevant Standards

8. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.

9. The general standards relevant to this complaint are the Ombudsman's Principles:

- The Principles of Good Administration<sup>1</sup>

The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of the NIHE whose actions are the subject of this complaint. The specific standards relevant to this complaint are

- The NIHE Antisocial Behaviour Manual

## MY INVESTIGATION

10. As part of the investigation I have obtained and considered information, documentation and correspondence from the NIHE and Armagh, Banbridge and Craigavon Council (ABC Council). Some of this information is covered by legal, professional privilege and cannot be disclosed. The following extracts from correspondence is relevant.

**11. 13 June 2014 – Email from Banbridge Council Environmental Health to the NIHE.**

*'..... With regard to [the complainant's] allegation of noise disturbance noise monitoring has not been carried out by this department and statutory nuisance has not been found. We have had no further communication with [the complainant] since our letter to his solicitor on 4 September 2012 advising that the record of noise nuisance*

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<sup>1</sup> These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

*provided did not indicate a level of intrusion that would present the Council with a reasonable prospect of establishing a statutory noise nuisance offence.'*

#### **12. Advice received from Housing Executive Legal Department following review of private DVD RW discs submitted by the complainant**

The discs last 4.06 minutes and 7.44 minutes respectively. I sought and obtained details of the advice received from the NIHE legal department on 29 August 2014, in relation to the private recordings supplied by the complainant.

#### **13. Note of NIHE conversation with Legal Department regarding the issue of warning letter**

I note the record of a telephone conversation on 1 September 2014, regarding the advice which was sought from the NIHE legal department. I am satisfied that the NIHE followed the legal advice given. I note that a warning letter was not sent to the man's neighbour.

#### **14. Extract from legal advice regarding erection of a fence**

I note the record of advice received from the NIHE legal department on 23 September 2015, concerning the erection of a fence by the man's neighbour between her property and his. I am satisfied that the NIHE followed the legal advice given. I note that legal proceedings were not instigated against the neighbour by the NIHE.

#### **15. Letter to the man's solicitor from the NIHE**

I note that following advice from the legal department the NIHE wrote to the man's solicitor on 2 February 2015 as follows. *'I can advise that the Housing Executive will not be taking any action against [the neighbour] with regard to the erection of her fence. The reason for this being the fact that [the] fence has been erected alongside [the complainant's] and whereas [the neighbour] has part of her fence across the boundary line, [the complainant's] is similarly across on the Housing Executive's side of the boundary. The Housing Executive does not intend taking any action against either party.'*



#### **16. NIHE Regional Office to the man in response to a letter of complaint**

A further letter was sent by the NIHE Regional Office to the complainant on 22 October 2015. An extract from this letter is set out below.

*‘... I would advise you that a number of anti-social behaviour case files have been opened since your initial report of noise nuisance and these contain details of the investigations carried out by the Banbridge Office. Having had these files reviewed I am satisfied that all incidents that you have reported [...], and any counter allegations have been, and continue to be fully investigated. I also consider that the Banbridge Office has made every effort to effectively address this neighbour dispute and I regret that despite extensive liaison with other agencies including the PSNI, Banbridge District Council and independent mediators, in an attempt to resolve this matter, a satisfactory resolution has not yet been found.....I am pleased to note that from the latest PSNI report submitted to the Banbridge Office that you have now accepted the offer of the installation of noise monitoring equipment from the Environmental Health Department of Banbridge Council...’*

#### **17. NIHE Chief Executive’s letter in response to a letter of complaint**

Further on 29 December 2015, the NIHE Chief Executive wrote to the complainant as follows. *‘...I can assure you that the Housing Executive takes all reports of antisocial behaviour very seriously and I have been advised that a number of Anti-Social Behaviour case files have been opened as incidents have been reported, with the most recent being a case opened in October 2013 and closed in April 2015 [...] the Police Service of Northern Ireland [also] advised in July 2015 that you had accepted the offer of the installation of noise monitoring equipment from the Environmental Health Department of Banbridge Council. To date, I understand that this has yet to be installed...’*

#### **18. Letter from ABC Council to Ombudsman**

In relation to the issue of noise nuisance, as part of the investigation, enquiries were made of Armagh, Banbridge and Craigavon Council. A letter dated 4 August 2016 stated *“The installation of noise monitoring equipment has been discussed with [the complainant] as part of our noise complaint procedure and also as part of intervention*

*by agencies (NIHE and PSNI) who have also been involved extensively [...]. The Council has not carried out noise monitoring at [the address].*

#### **19. NIHE record of a meeting with MLA representative**

On 11 October 2016 the complainant and a representative of his MLA (Mrs Joanne Dobson) met with the NIHE to discuss his complaint. The record of this meeting states *'[Complainant] and the MLA representative both appreciated the meeting being set up to try to resolve his situation however when we discussed our anti-social behaviour policy and the information/evidence which we would require, in order to take action through the Court against his neighbour, they were not happy as they felt that [he] had provided enough evidence and information over the last 8 years in order for NIHE to take action and ultimately evict [the neighbour]... Advised that in order to move forward with this case and try to obtain evidence we could offer noise monitoring equipment, which we could have installed this week, however he declined stating that we would have to inform [the neighbour].... and that she is clever and would be on her best behaviour. [He] was offered mediation again as a resolution to his case but he stated that this was also unsuccessful in the past. He stated that he is beyond all of this and wants the NIHE to take prompt action and remove her from her home.....I tried to encourage [him] to install the noise monitoring equipment again but he declined. The offer of mediation was also turned down again.....I asked if he would keep a diary and log dates and times of factual information as this could be used as evidence but this was also declined. Both [the complainant] and the MLA representative felt very let down by what NIHE were offering ...'*

#### **20. Response to the NIHE offer of a further meeting regarding the complaint**

On 16 November 2017 the complainant responded to the NIHE offer of a further meeting as follows; *'If NIHE are now prepared to discuss the movement of [the neighbour] away from [the address] and are willing to present a timetable for that movement at any meeting then I would gladly meet with NIHE'*

## **The NIHE response to investigation enquiries**

21. The Chief Executive of the NIHE responded to investigation enquiries by stating that he was satisfied that the NIHE took, and continues to take all reasonable action, including a multi-agency approach, in relation to the man's complaints against his neighbour.

22. With regard to the complaint that he failed to receive any further correspondence following incidents on 23 and 25 September 2013, despite a request from his MLA that an investigation be carried out, the Chief Executive stated he responded to the MLA on 6 October 2013 confirming that he would be interviewed and an action plan agreed. He was interviewed on 10 October 2013 and the NIHE agreed to contact the PSNI and visit the neighbour. A copy of the action plan was copied to him on 11 October 2013. An incident diary was received on 20 November 2013. The NIHE subsequently wrote to his MLA stating that it would continue to monitor and review the situation.

23. As part of investigation enquiries the NIHE also supplied me with details of the neighbour's communication and interaction with the NIHE.

24. The man complains that the NIHE has refused to buy or rent his property, contending that there is a lack of social housing in all areas of Northern Ireland, including Banbridge. The Chief Executive provided details of the housing waiting list for Banbridge town in 2015 including the numbers in housing-stress. On the basis of these figures he stated that the NIHE did not consider that it needed to purchase the man's house as at that time it had only eight households on the waiting list in housing-stress for this type of accommodation. He stated that it would not be NIHE policy, except in exceptional circumstances such as Special Purchase of Evacuated Dwellings (SPED), to purchase properties.

25. The complainant stated that an injunction was granted against his neighbour. The Chief Executive stated that it was the NIHE's understanding that a full injunction had not been granted by the Judge. However previously both parties had agreed to

an “undertaking” not to harass or annoy one another. A copy of the agreement between the man and his neighbour was provided and examined by this Office.

26. Finally in response to the man’s complaint that the NIHE has a duty of care to him and that it took no account of his wellbeing, the Chief Executive stated that the NIHE does not have a duty of care to owner occupiers such as the complainant. However it does have an obligation to follow its own policies and procedures and in this case the NIHE considers that it has done so by carrying out investigations into anti-social behaviour complaints and the offer and provision of mediation services.

27. The NIHE also informed the Investigating Officer that it has been in contact with ABC Council which has confirmed that it is more than willing to work with the NIHE to arrange the installation of noise monitoring equipment if the man was agreeable. The NIHE stated that it would also arrange further mediation. The NIHE further confirmed to the Investigating Officer that warning letters had not been sent to either party in this case as insufficient evidence was available to warrant their issue.

### **Interview with NIHE staff**

28. As part of the investigation, the Investigating Officer interviewed NIHE staff to discuss the complaint. NIHE stated that it was sympathetic to the man and it understood that relations with his neighbour were not good. However no independent evidence to substantiate a noise complaint had ever been received. The man had supplied the NIHE with two recordings which he had made himself. The NIHE view was that because the voices heard were unidentified and not independently verified, insufficient evidence was disclosed to justify taking proceedings. The Investigating Officer was informed that the NIHE had obtained legal advice on this matter. The NIHE stated that despite its longstanding offers to facilitate the installation of monitoring equipment through the offices of ABC Council’s Environmental Health Department, the man had declined to have equipment installed. The NIHE stated that as a result it did not have any independent evidence of noise nuisance.

29. With regard to the man's request that the NIHE either purchase his home or rent it from him, the Investigating Officer was informed that action such as this was not NIHE policy unless special circumstances, such as the SPED scheme, existed. NIHE operate a Special Purchase of Evacuated Dwellings (SPED) scheme. This NIHE policy was established to deal with properties that were abandoned or evacuated due to intimidation or threat (usually paramilitary threat). The NIHE confirmed that the man had made an application under the SPED scheme. However it had been unable to proceed as he was unable to obtain the required certificate from the Chief Constable of the PSNI stating that he was at risk of serious injury or death. In relation to the request that the NIHE take action to evict the man's neighbour from her property, NIHE explained that it was considered, based on legal advice, that the evidence required to ask a Court for a possession order was not available. Also his neighbour was a tenant with five children and it was unlikely that a Court Order would be granted.

30. The NIHE was aware that the man had been to Court and had applied for an injunction for nuisance against his neighbour. An ex-parte interim injunction had been granted in April 2014 but that this did not progress to a full injunction. The NIHE was aware that both parties had, in the past, signed undertakings to improve their behaviour. The NIHE considered that insufficient evidence of wrongdoing had emerged from this process to justify it taking action.

31. The Investigating Officer was informed that the offer of further mediation between the parties remained an option and that the NIHE was willing to arrange and pay for this. The NIHE recognised that mediation had proved to be unsuccessful in the past. However it considered that, with good faith on the part of both parties, it may improve neighbour relations in this case.

## **Analysis and conclusions**

32. It is evident from a reading of the man's letters of complaint, over an extensive period, that he has a poor relationship with his neighbour and that this situation has

existed from 2008. He has made numerous complaints to the NIHE, ABC Council and to the PSNI, mainly in relation to noise disturbance and verbal abuse. He has expressed how deeply unhappy he is with the current situation and he has described the negative effect the stress has caused to both his mental health and that of his long term girlfriend. The complainant considers that over the years he has presented the NIHE with sufficient evidence of anti-social behaviour by his neighbour to warrant the NIHE taking possession proceedings against her. In particular through his reporting of behaviour to both the NIHE and the PSNI, the completion of incident logs and the provision of recordings which he made himself. He has also sought to obtain an injunction through the Courts. In my consideration of this complaint I shall examine the actions of the NIHE as follows.

### **Noise nuisance**

33. From October 2013, and before, the man has made numerous complaints concerning noise nuisance coming from and outside of the neighbouring property. These complaints have been made to both the NIHE and the PSNI. In his complaint he references audio discs which he states his solicitor supplied to NIHE in August 2011. I have not considered the content of these discs. Following the receipt of a letter from the complainant on 8 October 2013, the NIHE opened a Case File Document titled Anti-Social Behaviour and Neighbour Disputes. The man completed and supplied the NIHE with incident sheets detailing events from 23 September 2013, when he complained of an argument coming from next door. Further incident sheets were completed in October and November 2013 alleging that his neighbour had verbally abused him and that fleas from her property had caused a flea infestation in his property. Over the next number of months I note that the NIHE and PSNI received further noise nuisance complaints. On each of these occasions the NIHE obtained details of incidents reported to the PSNI. For example incidents on 23 and 25 September 2013 were reported by the PSNI to have been caused by an abusive relative of his neighbour's ex-partner calling at her home. There were further claims and counter claims practically on a monthly basis, with the complainant alleging noise nuisance from banging doors and banging on walls coming from his neighbour's property. He also made a complaint regarding the erection of a fence. The complainant had sought an injunction from the Court

against his neighbour which the NIHE noted on its file together with the dates of adjourned hearings. The NIHE interviewed the neighbour concerning the allegations and met with the PSNI on 25 June 2015. She totally refuted the allegations and made counter claims against the complainant. I also note that she filed countering affidavits in response to the complainant's application for an injunction in April 2014 and that a full injunction hearing was not heard in Court. On 22 April 2015, NIHE closed its file as it stated that it was unable to substantiate claims made by the man. Over the next number of months, he made further complaints regarding noise nuisance. Further interviews in relation to these complaints were held between the two parties. The NIHE wrote to the man on 23 June 2016 again stating that it was unable to substantiate the claims made.

34. Throughout his correspondence with my Office and in person with the Investigating Officer, the complainant has refuted the NIHE position. He has stated his view that the detail of his complaints to the PSNI and the NIHE regarding noise nuisance and his provision of his noise recordings in 2014 is sufficient evidence (in his view) of noise nuisance to enable the NIHE to take action.

35. Eviction of the neighbour can only be ordered by a Court on the basis of evidence that she has breached the terms of her tenancy agreement with NIHE. In particular Clause 5 of the Tenancy Agreement requires the tenant 'Not to do or permit or suffer to be done in the dwelling or within the curtilage or neighbourhood of the dwelling any act or thing which is or may be an annoyance to the occupiers of any neighbouring or adjoining premises.' I note that this clause of the Tenancy Agreement is to refrain from 'any act or thing', this can include but is not limited to 'noise nuisance'. There has been (to date) no independent evidence of the levels of noise nuisance provided to the NIHE to enable it to decide if a possession order is necessary. An order for possession is an interference with a tenants Article 8 right to privacy and family life. A Court will only order possession of a secure tenancy when it is reasonable and proportionate to do so. Both the NIHE and the PSNI have suggested that noise monitoring equipment should be installed so that independent, verifiable evidence of noise nuisance be obtained. An offer to install such equipment was made by the Environmental Health Department of the ABC Council and the NIHE has stated that it would liaise with the

Council to arrange installation should the man be willing. For a period of time he was reluctant to take this course of action, being of the view that if his neighbour knows that monitoring equipment has been installed, she will modify her behaviour accordingly, during the period of installation. I accept that this has been the complainant's genuinely held belief.

36. However, I note that during the course of this investigation, during 2017, the Council did install noise monitors in response to the man's complaint regarding a barking dog in his neighbour's property. I note a letter, dated 4 May 2018, from the Council concerning this period of monitoring. This letter stated that its findings were that *'dog barking events were not of sufficient duration to support statutory noise nuisance conditions. Noise monitoring carried out indicated that dog barking was responded to and controlled after relatively short periods.'* The Council therefore discontinued its investigation. The actions of the Council are not part of my consideration of the complaint against NIHE. This information is included by way of background.

37. I find no evidence of maladministration in the decision making process to justify action against the man's neighbour with regard to noise nuisance. In the absence of independent, verifiable evidence of noise nuisance, NIHE would not be justified in taking legal action against her. I note that the man supplied the NIHE with recordings which he made himself. However in August 2014, NIHE considered these recordings and decided that they did not provide NIHE with sufficient evidence to support a prosecution for the offence of statutory nuisance. I note that NIHE took legal advice on this matter and followed that legal advice. The man has complained to the PSNI detailing incidences of noise and verbal abuse which he states he received and which caused him annoyance. There is no evidence of the level or extent of noise experienced. I also note the recent installation of monitoring equipment by the Council has not produced actionable evidence of noise nuisance which would support enforcement action by that Council. **I do not uphold this element of the complaint.**



## Injunctions

38. In making his complaint the man has stated that he obtained injunctions in Court for harassment and annoyance which he has experienced. He is of the view that the evidence before the Court was accepted. He therefore is dismayed that the NIHE does not accept this evidence as proof of the actions of his neighbour and has not used this as the basis upon which to take possession proceedings.

39. With the man's permission, the Investigating Officer obtained documentation relating to the Court action from his solicitor. I note that prior to April 2015, his neighbour sought an injunction against the man. On that occasion, on 9 October 2013, both parties signed undertakings not to 'molest harass or pester each other in any way whatsoever'. I note that subsequent to this he obtained an ex-parte interim injunction on 3 April 2014. The case was initially listed for Newry Courthouse on 2 May 2014. However I note that the hearing was adjourned until 6 October 2014. His neighbour submitted two replying affidavits on 8 October 2014 rebutting his arguments. The hearing for 6 October 2014 was adjourned until 6 December 2014 and then until 22 January 2015. On 25 March 2015 the injunction proceedings were dismissed. The history of these legal proceedings is provided by way of background and demonstrate that the issue of nuisance is contested by both parties.

40. The complainant informed the Investigating Officer that during these proceedings his neighbour was given a strong warning about her behaviour by the Court. His solicitor confirmed this. However it is accepted that any warning given by the Court was verbal and was not documented in the form of an Order or injunction. Nor were any sanctions put in place against the neighbour should the man have cause to complain to the Court again. He complained that the NIHE did not use the Court proceedings and the outcome as a basis for taking legal action against his neighbour.

41. The consideration by NIHE of possession proceedings is a discretionary decision. I cannot challenge the merits of a decision taken without maladministration. The granting of an ex-parte interim injunction in proceedings brought by the complainant is not conclusive of the matters in dispute. His allegations were not tested in Court. No

final order was made as a result of the Court proceedings as his application was discontinued without a full hearing having taken place. His neighbour denied the alleged conduct. I have examined the relevant NIHE case files. I am satisfied that NIHE was aware of the proceedings and the various adjournments. To have taken action during the course of injunction proceedings and before they concluded could have been considered by the Judge hearing those proceedings as contempt of court. I am satisfied that NIHE was aware of the inconclusive outcome of the contested court proceedings, sought and relied upon legal advice in arriving at its decision not to commence further court action against the woman. **As there is no evidence of maladministration, I do not uphold this element of the complaint.**

42. The man, in his complaint to my Office, has referenced additional instances in support of his contention that the NIHE ought to evict his neighbour. For example he received damages from the Compensation Agency in 2011 as a result of a 'hate crime'. He also complained about the erection of a fence by his neighbour.

43. I have considered these additional issues again by way of background information. The complainant supplied the Investigating Officer with a copy of an advice note from the Compensation Agency, dated 14 January 2011, showing a payment to him of £8,500. He informed the Investigating Officer that this payment related to an incident when his front window was smashed with a brick. However when interviewed by the Investigating Officer on 8 March 2018, he stated that no one had been arrested for the damage to his property and there was no evidence that his neighbour was involved in this criminal damage incident. She had not been found to have caused the incident by any agency and The Compensation Agency had not apportioned blame to her in this regard. The Investigating Officer asked the man why he thought the NIHE should use this incident and the award of compensation as a basis for action against his neighbour. He stated that he was convinced that she was culpable in some way, however he accepted that there was no proof of this. Given this, and the lack of any verifiable evidence, I make no criticism of the NIHE for the fact that the award of monies to the man by the Compensation Agency in 2011 was not a consideration in its dealings with his complaint.

44. The man complained, on 19 June 2014, regarding the erection of a fence by at the back of the adjoining properties. I note the fence was inspected by a NIHE maintenance officer who took measurements and photographed the site on 27 June 2014. His neighbour was also interviewed as part of the NIHE investigation. Further the NIHE obtained legal advice which it then followed. The NIHE concluded that the neighbour had no option but to erect the fence in the manner it was erected as the fence already in place that was already using the dividing party concrete baton for support. NIHE considered that the fence was of sound construction and did not encroach onto the man's property. Having obtained legal advice, his neighbour was granted retrospective permission by the NIHE for the fence in October 2014. The decision whether or not to take action against her in respect of the fence was not attended by maladministration. It is a discretionary decision. **I do not uphold this issue of the complaint.**

45. The man complained that the NIHE has failed to either move his neighbour from her property or purchase his property from him under the SPED scheme. Both decisions are discretionary and unless attended by maladministration I cannot challenge the merits of these decisions. I am satisfied there has been no maladministration evidenced in the NIHE decision not to take action against its tenant, under its anti-social behaviour policy. It therefore follows that, in the absence of concrete evidence, I accept that the NIHE would have no grounds to transfer or evict her against her will. The man has been informed by NIHE that it is not its policy, except in exceptional circumstances such as SPED, to purchase private properties. I note that he applied to the SPED scheme but was unsuccessful. I accept that the NIHE has no general policies to purchase private properties based on social housing need in a particular area and I can therefore make no comment in this regard. **I do not therefore uphold these additional issues of the complaint.**

## CONCLUSION

46. In considering a complaint of maladministration, my role is to examine whether the NIHE decision making process was fair and met its obligations. I can also

consider if NIHE were fair in its application of its policies and procedures and that decisions were not attended by maladministration. Based on the evidence available to me I do not make a finding of maladministration against NIHE in its consideration of the man's complaints under its anti-social behaviour policy.

47. The investigation has revealed that the NIHE opened anti-social behaviour files, liaised extensively with the relevant bodies such as the PSNI and obtained legal advice. NIHE also interviewed both the man and his neighbour on more than one occasion and met with the man's political representatives. Further NIHE has offered to arrange the installation of monitoring equipment and to pay for further mediation between the parties. The offer of mediation remains open. Overall I am satisfied that the NIHE has made fair and reasonable efforts to address the man's concerns. I consider that to date there exists a lack of independent, robust and verifiable evidence which would justify NIHE taking eviction or other action against his neighbour.

48. The man has described the effect this situation has had on his health and of how it has negatively affected his enjoyment of his home. I would encourage him to strongly consider taking up the NIHE offer of mediation. While this may have proved to be unsuccessful in the past, I am of the view that if approached in a positive manner, mediation has the potential, even if not to fully resolve disputes, to at least reduce the potential for escalation and to improve neighbour relations. I note that the man continues to complain of noise nuisance, and has recently put aside his reservations concerning the installation of noise monitoring equipment. I would encourage him to continue to engage with the Council with his concerns.

49. This has proved to be a lengthy and time consuming investigation. However having carefully and thoroughly considered the records and noted the circumstances of this case I find that I am unable to uphold the man's complaint. I have no doubt that he will be disappointed at my decision but, having investigated his complaint, I have found no evidence of maladministration on the part of the NIHE. I do hope,

however, that the complainant will accept that I have reached this judgement only after the most careful consideration of all the evidence and his detailed submissions.

*Marie Anderson*

**Marie Anderson**

**Northern Ireland Public Service Ombudsman**

**October 2018**

## 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.