

# Report

on an investigation into complaint no  
03/B/05263 against  
Plymouth City Council

25 October 2005

# **Investigation into complaint no 03/B/05263 against Plymouth City Council**

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## **Report summary**

### **Subject**

A residents' association has complained of maladministration by the Council in respect of Plymouth City Airport. The association has complained that the Council has failed as ground landlord of the airport to manage the operations of its tenants, in particular noisy helicopter operations and engine-testing, and that it has failed to act on the findings of a Government review of the future of air transport.

### **Finding**

Maladministration causing injustice.

### **Recommended remedy**

The Council should urgently re-consider whether directions on the airport operators have been complied with and, if not, take action to enforce the directions; should urgently take legal advice on its interpretation of a planning condition restricting use of a runway at the airport, and if necessary take action to enforce the condition; should take prompt and effective action to control nuisance caused to local residents by engine-testing; and should make payments to members of the residents' association who have been significantly disturbed by noise from naval helicopter operations and engine-testing.

The Council should also pay the residents' association £500 as compensation for its time and trouble in making this complaint.



## Introduction

1. A residents' association with members living near Plymouth City Airport ('the airport') has complained of maladministration by the Council in respect of operations at the airport; the Council is the ground landlord of the airport.
2. One of the Commission's officers has examined the Council's files, interviewed Members and officers of the Council, and visited the airport and the homes of members of the residents' association. The complainants and the Council were invited to comment on a draft of this report, before the conclusions were written. I have taken account of their comments in preparing the final text and reaching my conclusions.
3. The parts of the complaint considered in this report are as follows:
  - a) that the Council has failed as ground landlord to manage the operations of its tenants, especially helicopter operations;
  - b) that the Council has failed to remove helicopter operations from the airport's runway 06/24 in contravention of a lease clause restricting the runway to fixed-wing aircraft only;
  - c) that the Council has failed to control engine-testing by FOST [Flag Officer Sea Training], BIL [British International Limited], Plymouth Executive Aviation and BA in close proximity to homes;
  - d) that the Council has failed to act upon the results of its own sound-recording programme;
  - e) that the Council has failed to act after the Department of Transport, in its review of the Future of Air Transport in the UK, identified Plymouth City Airport as a source of noise pollution causing significant community annoyance.
4. The residents' association says that, as a result of these failures by the Council, its members, and particularly those living in Tavistock Road and other roads near the airport's perimeter, have suffered considerable nuisance from noise from the airport.
5. The Chair of the residents' association has told me that its catchment area covers approximately 750 homes, of which less than 10 have opted not to be included in the association.
6. For legal reasons<sup>1</sup> the names used in this report are not the real names of the people concerned.

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<sup>1</sup> Local Government Act 1974, Section 30(3)

## Legal and administrative background

7. The Council is the ground landlord of Plymouth City Airport. In 1980 the Council entered into a lease, subsequently amended by a Deed of Variation in 1987, with a private company to conduct operations at the airport. This complaint was made at a time when the lease was coming to an end and three new leases were being negotiated. New leases for 150 years were signed on 27 April 2004. However, the “operating conditions” by which the Council manages the airport are being negotiated with the airport operator separately from the leases. Those old operating conditions relevant to this report have continued in force after 27 April 2004 while new conditions are being negotiated.
8. The Environmental Protection Act 1990, Part III, section 79(6), excludes noise caused by aircraft other than model aircraft from matters that can constitute statutory nuisances.
9. My predecessors and I have issued reports on complaints relating to noise nuisance and other aspects of operations at the airport before.
10. In one (reference 87/B/00644), the Ombudsman concluded that there had been failings by the Council in ensuring that proper consultation occurred about proposed changes to operating conditions at the airport but that there had been no injustice to the complainant.
11. In another (references 91/B/02626, 91/B/03736 and 92/B/00107), where complainants had complained about noise from engine-testing, the Ombudsman found that there had been maladministration by the Council causing injustice to the complainants; he recommended that the Council should pay compensation of £500 and £250, and that the Council should set up regular noise-monitoring arrangements. The noise-monitoring arrangements were introduced in 2000.
12. In another (reference 94/B/04973), I criticised the Council for failure to take reasonable steps to control the weekend training activities of a flying school operating from the airport. I recommended that the Council should make a modest *ex-gratia* payment to the complainants and should take steps to control activities causing damage or unreasonable nuisance to complainants. The Council accepted my recommendation.
13. In another (references 95/B/4579, 95/B/4827, 96/B/1049 and 96/B/3459), complainants complained of nuisance arising from helicopter movements at the airport. I found maladministration causing injustice to one complainant, and I recommended *ex gratia* payments to the complainant, and that the Council should determine whether or not the lease could be renegotiated; the Council eventually followed this recommendation.
14. In another (reference 01/B/03243), the complainant complained particularly that the Council had failed to prevent noise from the flying school. I found maladministration by the Council which had led to injustice to the complainant, and I recommended that the Council make payments of £500 for each succeeding year that the problem remained unresolved, and take what steps it deemed necessary to regulate the

weekend operations of the flying school. The Council has made the payments, and in June 2004 served a formal “reasonable directions” legal notice on the airport operator in respect of weekend flights, but this has not been effectively enforced and I have not yet been satisfied that the Council has taken the necessary steps to regulate the operations.

## Investigation

**(a) that the Council has failed as Ground Landlord to manage the operations of its tenants, especially helicopter operations**

15. The current operating conditions allow the Council to manage aspects of the airport’s operations through the serving of “reasonable directions” on the airport’s operator.
16. Helicopter operations at the airport include the Royal Navy’s FOST, commercial flights and police helicopter flights. The complainants are particularly concerned with noise from FOST operations.
17. There is a history of disputes and disagreements between the airport operator, the Council and local residents over these helicopter operations and their location within the airport, which have featured in a number of previous complaints made to me. This report is concerned only with recent developments.
18. One of three “reasonable directions” served on the airport operator by the Council on 11 February 2000 required that FOST should generally use the area in or near the airport’s engine-testing area, which is next to runway 06/24; this is the shorter of two runways at the airport, and is also nearer to residents’ homes.
19. A report to a Council Cabinet meeting of 23 March 2004 detailed the current conditions in respect of helicopter operations as:

“Permitted from 06.30 to 22.30, 7 days a week. ‘Base’ for FOST operations moved from runway 06/24 to engine test/hangar area in compliance with ‘reasonable direction’ served in 2000. Runway 06/24 should only be used if main runway cannot reasonably be used. Only emergency flights allowed between 22.30 and 06.30.”
20. The complainants say that runway 06/24 is frequently used when the other runway could be used, with resulting noise nuisance to residents.
21. In written comments on this complaint the Council has said in respect of FOST operations and the direction served in 2000 that the airport operator has “generally complied with this direction although there are some occasions when helicopters remain on [runway] 06/24, usually when the area in and around the engine test area is being used by other aircraft”.
22. Officer A, formerly the lead officer on airport issues, told my investigator at interview that the judgment that the airport operator has generally complied with the direction is based upon monitoring carried out by an environmental protection officer of the Council, Officer B.

23. Officer B has told my investigator at interview that his view has not been sought on this, and that the problem of noise from helicopters at the airport is very serious. He says that helicopters frequently use runway 06/24 for take-off and landing, rather than being towed to the airport's other runway.
24. Officer B has carried out noise-monitoring at a permanent station on the airport adjacent to Tavistock Road and with monitoring equipment stationed in the gardens of residents living near the engine-testing area and runway 06/24. He has analysed the recorded data using specialised computer software, and is able to identify not only noise-levels at specific times, but also the type of aircraft and activity producing the noise.
25. My investigator has not found any statement as to whether or not the direction is being complied with in officers' reports to Cabinet since March 2004. Officer C, who replaced Officer A as lead officer on airport issues, has told my investigator by email:
- "I have trawled through the previous reports and have not seen any specific statement relating to compliance by FOST with the reasonableness direction of 2000, also the views of my Env Protection colleagues appear to have been reported in a more balanced way, weighed against the commercial operational necessities of the Airport which still trades at a significant annual loss each year."
26. In its written comments the Council has said, "The issue of FOST and other military helicopters is one of the matters dealt with in the matter of the proposed new operating conditions."
27. The reports to the Council's Cabinet meetings of 24 August and 12 October 2004 made reference to the ongoing negotiations regarding the proposed new set of operating conditions and the three issues in respect of which the Cabinet, on 23 March 2004, instructed officers to give particular attention, namely weekend flying training, large helicopters and measures to address engine-testing issues. On the issue of weekend flying training and large helicopters, the report of 12 October 2004 made reference to the need to include both as part of a holistic settlement of the new operating conditions, including the engine-testing noise issue.
28. My investigator has not found the views of the Council's environmental protection officers on the noise from helicopter operations cited in any reports by officers to Cabinet about airport matters from March 2004 onwards. Officer C has told my investigator by email:
- "... as referred to in my previous email, the view presented to Members in these Reports will have balanced the environmental and economic considerations. We do not recall any report which specifically relates the views of the Env Protection officer."
29. When pressed to be more definite on this point, Officer C has said that the report to Cabinet in March 2004 included two consultants' reports from 2003 "which served to appraise [*sic*] Members of the noise issues at Plymouth Airport".

30. One of these reports, on “Noise at Plymouth City Airport – Identification of Noise Mitigation Measures for Economic Evaluation” (National Britannia, 13 March 2003), gives information on noise-levels from helicopter operations, and recommends that “The economic implications of changing the helicopter operations to avoid sustained ground running and restricting the helicopter types should be quantified.” It sets out alternative “scenarios” for noise-mitigation measures, “Acceptable to Airport Management” and “Imposition by City Council on Environmental Grounds”. It does not directly cite the views of the Council’s environmental protection officers.
31. The other report, on “Plymouth City Airport – Economic Appraisal of Noise Mitigation Measures”, cites the National Britannia report in respect of noise levels and possible mitigation measures.
32. In officers’ reports to the Cabinet meetings of 24 August 2004 and 12 October 2004, reference was made to a proposal by the Devon and Cornwall Police to relocate the basing of its helicopter from Middlemoor, Exeter to Plymouth City Airport. In view of the likelihood of increased night-time helicopter movements and the close proximity of residential areas, discussions took place with the airport operator and the police, as a result of which this proposal was not pursued further.
33. In commenting on this and other parts of the complaint, Officer D, who currently has overall responsibility for airport matters, has said, “...I find it difficult to see what directions we could enforce against the airport within the meaning of reasonableness.” In an email he says:

“...In the eyes of the ordinary man, looking at the words of the lease, I would say that our ability to give reasonable directions under the terms of the lease to be [*sic*] limiting. This does not take away the meaning of reasonableness with regard to the problems experienced by the complainants, as I'm sure the ‘ordinary man’ would have sympathy with their case. I simply make the point that under the lease, we are restricted. Another way of looking at this is that it appears that the lease is the mechanism that everybody is using with regards to our alleged maladministration, as it is only the lease that has the reasonable directions in it. Therefore, what would we be expected to do if there was no such lease? What if we had no proprietary interests in the airport? What reasonable action could we then take?”

34. Later, Officer D has said:

“...The nub of my previous arguments is that PCC [Plymouth City Council] would be calling for a derogation from the Grant that has been afforded to PCA [Plymouth City Airport] Ltd, by asking them to restrict operations that the lease clearly allows them to carry out.”

- (b) **that the Council has failed to remove helicopter operations from runway 06/24 in contravention of a lease clause restricting runway 06/24 to fixed-wing aircraft only**

35. The complainants have said that the old lease restricts runway 06/24 to “propeller-driven airplanes”, and that this excludes helicopters.
36. There is no clause to this effect in the lease, but a condition attached to a 1980 planning consent (Notice No. 2215/80) for the widening of runway 06/24 says:

“Unless prior written permission shall otherwise have been granted by the local planning authority and except in the case of an emergency the widened runway hereby permitted shall not be used except by propeller driven airplanes.”

In its written comments on this complaint, the Council has said, “As use of the airport by helicopters is permitted under the lease, it is understood that this condition must have referred to a restriction against use by jet aircraft”, and has later commented, “In 1980, 06/24 was the main runway and it is inconceivable that helicopters were not to be allowed to use it”.

37. The complainants have commented that this interpretation is implausible, since the runway is not long enough to be used by jet aircraft. The Council has responded that the runway could be used by jet aircraft with the ability for vertical take-off.

**(c) that the Council has failed to control engine-testing by FOST, BIL, Plymouth Executive Aviation and BA in close proximity to homes, and**

**(d) that the Council has failed to act upon the results of its own sound recording programme**

38. The complainants are particularly concerned with aircraft engine-testing carried out in the early morning, and the nuisance caused to residents living on the border of the airport near the testing area.

39. One of the “reasonable directions” served by the Council on the airport operator on 11 February 2000 required the operator to carry out suitable noise-attenuation measures at the engine-testing area.

40. The report to the Council Cabinet meeting of 23 March 2004 detailed the current conditions in respect of engine-testing as:

“Permitted from 05.30 in engine test area. Outstanding requirement for noise attenuation measures including ‘reasonable direction’ served in 2000.”

41. In its written comments the Council has said of the “reasonable direction”:

“... In practice this referred to a physical barrier to overcome the fact that the engine test area only has two ‘arms’ [fixed barriers to baffle sound]. At the time, serious thought was given to the provision of a third arm by means of stacked freight containers, filled with dense material. However, although this would have been a low cost solution, it was found to be potentially unsightly and impractical due to the

uneven ground levels and the need for a section to be movable.

A properly and professionally constructed third arm was estimated to cost around £500,000, which was considered to be more than... [the airport operator] could reasonably be expected to invest, and of a level where the City Council could not realistically make any significant landlord contribution.

In an effort to find an alternative solution, a proposal was put to the Tavistock Road residents in the summer of 2002 for the construction of a landscaped earth bund parallel to the rear garden boundaries. Estimated at around £200,000, this was thought to be potentially affordable.

The bund would have provided appreciable attenuation of noise from the engine test area (thought not as good as a third arm), and would have also given protection from general ground noise at the airport, such as from aircraft and helicopters taxiing along runway 06/24.

All of the residents responded in writing, and the great majority did not want the bund as it would have adversely affected the outlook from the backs of their properties. Many of them indicated that noise was not a major concern to them.

In view of the lack of an obvious solution and the ongoing negotiations over the new operating conditions, in April 2003 the Portfolio Holder approved a report under which no further action was to be taken for the time being regarding the reasonable direction.

If it were possible the early morning engine test problem could be overcome if the flights started at a later time. Unfortunately, due to the schedules of the aircraft, which fly a number of legs per day, it is necessary for some flights to commence at or soon after 06.30.”

42. The Council’s Cabinet resolved on 23 March 2004 that:

“... instructions be given to officers to engage in negotiations with... [the airport operator] as soon as possible with a view to identifying solutions to the provision of effective noise attenuation of engine testing of aircraft and that a Member decision on the enforcement of the reasonable direction be made as soon as the outcome of such negotiations known.”

43. On the issue of engine-testing noise, the report to the Cabinet meeting of 24 August 2004 suggested that the provision of physical measures should await a “Master Plan” being produced pursuant to the Government’s White Paper *The Future of Air Transport* (see paragraph 60 below). The Council says that this document is currently being prepared by the airport operator.

44. The Cabinet’s meeting of 24 August resolved that:

“the reasonable direction served in 2000 regarding the provision of noise attenuation measures be continued to be held in abeyance pending the outcome of discussions on improvements to the engine testing area.”

45. The report to the Cabinet meeting of 12 October 2004 stated that, in the light of the success of the main airline operating from the airport and the prospect of growth in services in the future, it was evident that a solution based only on a cap on numbers of engine tests was not going to be workable, and that even though the Master Plan had not been produced, fresh efforts were being made to find a solution to the problem to include physical means of noise attenuation. One physical scheme had been produced but was prohibitively expensive and so other alternative physical options were in the course of preparation by consultants appointed by the City Council.

46. The Cabinet meeting of 12 October resolved:

“...progress on the definition of measures to reduce engine test noise be noted, as set out in this report and as updated at the meeting by the Director of Development.”

47. As regards the alleged failure to act upon the results of its own sound-recording programme, the Council has said in its written comments:

“The introduction of the noise monitoring system followed the serving of the third reasonable direction in February 2000.

This system does flag up events which cause serious levels of disturbance and actually provides supporting evidence when complaints are received from residents.

The data retrieved has helped inform the consideration process with regard to the proposed new operating conditions, which, as previously stated is the subject of an impending report to the Cabinet.

In addition to its environmental responsibilities to residents, the Council also has obligations with regard to the economy of the City, and, of course, the airport is a vital piece of economic infrastructure. Therefore, the new operating conditions, when agreed, will need to be consistent with the airport being able to meet existing and future operational requirements and to operate viably.”

48. Officer A has told my investigator, when interviewed, that the number of occasions of engine-testing has reduced over recent years; he says that at one time there was close to one occasion a day; now it is less than two a week; in 2003 there were 96 early-morning testings. However, he agrees that the testings are exceptionally noise-intrusive, so that even a small number is unacceptable in environmental terms, and has said that the Council is not satisfied with the situation.

49. During interviews with Council officers it became apparent to my investigator that there is a divergence of opinion between officers on the issue of noise at the airport. Officer B and Officer E, a senior environmental protection officer, have confirmed

that there is “a conflict of interests between environmental protection officers’ requirements and economic development officers’ objectives.”

50. Officer E told my investigator, when interviewed, that the issue of engine-testing is “extraordinary”, and that the noise is very intrusive; the most intrusive noise is the early-morning testing, up to 100 decibels at 5.30 a.m.; he comments that in a factory, ear-protectors are required for sustained exposure at 90 decibels or more. He says that the direction regarding early-morning testing has not been enforced because the operator has been given “the benefit of the doubt”, bearing in mind that apparent steps have been taken to alleviate the situation; more recently, the issue of the economic effect of control has been raised, which has led to the commissioning of a report on economic issues at the airport by consultants, and further delay.
51. Officer E says that there has never been any disagreement about how bad the noise is, but that the conflict of opinion within the Council is about what the Council does about it; a report on the environmental issues at the airport produced by consultants in 1998 was supposed to be an independent view, and should therefore be the “bible” for Council action. He comments that the leases have conditions relating to noise and nuisance, based on “reasonableness”, and give the power to issue “reasonable directions” where noise is unreasonable, and that there is a very serious noise problem affecting the area.
52. Officer E comments also that local residents are particularly exposed to the airport – the only comparable situation that he is aware of being at the London City Airport – and so special consideration should have been given to the noise problems.
53. In an email to my investigator dated 4 January 2005, Officer E said:

“It is my professional opinion that noise from a variety of sources at Plymouth Airport would be judged as a statutory nuisance to a variety of receptors around the airport if the Environmental Protection Act 1990 applied in the same way as it does to other domestic or industrial premises which might be sources of disturbance. In such circumstances where the EPA applies, once a LA is aware that a nuisance exists it is obligated to take legal action by service of a Statutory Notice. In coming to individual judgements the LA would take into account intensity, frequency, timing, regularity and duration of the noise as well as national and international guidelines and previous experience.”
54. Officer B told my investigator, when interviewed, that he believes that the Council owes a duty of care to local residents and thinks that noise from various sources at the airport can be extremely intrusive. He believes that the Council should take action in the case of unreasonable nuisance and suggests that this may be achieved by controlling the weight of helicopters or types of aircraft, or through limits by time and frequency as well as imposing a curfew on times of arrivals and departures.
55. As indicated above (paragraph 24), Officer B’s judgment is based upon monitoring of noise at the airport with recording equipment and analysis of the recorded data using specialised computer software, from which he is able to identify both noise levels at specific times and the type of aircraft and activity producing the noise.

56. In an email to my investigator dated 15 April 2005 Officer B said:

“I can confirm that in my opinion there has been no significant decrease in the noise levels overall since monitoring began. There are periods (a week or two here and there) when the noise levels are relatively down especially when strong winds are blowing in the opposite direction, but conversely there were many periods when the noise levels have been excessive. However overall there has been no improvement to the noise climate between the year 2000 and now and I can firmly confirm that noise nuisance does exist.”

57. My investigator has not found the views of the Council’s environmental protection officers on the noise from engine-testing or other operations at the airport cited in any reports by officers to Cabinet about airport matters from March 2004 onwards. As previously mentioned (see paragraph 28 above), Officer C has told my investigator by email:

“... the view presented to Members in these Reports will have balanced the environmental and economic considerations. We do not recall any report which specifically relates the views of the Env Protection officer”,

and has referred to two consultants’ reports from 2003 included with the report to Cabinet of March 2004.

58. The report on “Noise at Plymouth City Airport – Identification of Noise Mitigation Measures for Economic Evaluation” gives information on noise-levels from engine-testing, and recommends that “The economic implications of reducing the number of early morning engine tests and providing noise attenuation should be quantified.” It sets out alternative “scenarios” for noise mitigation measures, “Acceptable to Airport Management” and “Imposition by City Council on Environmental Grounds”. It does not directly cite the views of the Council’s environmental protection officers.

59. Councillor F, the Member of the Council holding its environmental portfolio, has said that he is aware of a divergence of opinion between environmental health and economic development officers over airport issues, and that this divergence goes back to 1995. He comments that the airport creates local jobs; it is a “balancing act” between that and the annoyance caused to residents.

60. In commenting on a draft of this report, Councillor F has said that the comments attributed to him are “highly selective” from his interview with my investigator. At Councillor F’s request he was provided with a copy of the notes made by my investigator of the interview; he has not challenged the accuracy of those notes, and has not asked for any specific changes or additions to the report.

**(e) that the Council has failed to act after the Department of Transport, in its review of the Future of Air Transport in the UK, identified Plymouth City Airport as a source of noise pollution causing significant community annoyance**

61. I understand that the complainants are here referring to a consultation paper issued by the Department of Transport in 2003, *The future development of air transport in the UK – South West*. The Summary of this consultation paper says:

“Growth at Bournemouth and Plymouth could result in significant increases in the number of people affected by aircraft noise.”

and there are other reference to communities being affected by airport noise which are not specific to Plymouth.

62. The consultation paper was followed by a Government White Paper, *The Future of Air Transport*, published on 16 December 2003. The references to Plymouth which I have found in the White Paper are as follows:

“10.8 ...We also invite the regional authorities to review the options for meeting the air travel needs of the City of Plymouth and its hinterland and to make appropriate provision for this in future regional planning, transport and economic strategies.”

10.26 During the consultation a proposal was put forward for a new airport to the east of Plymouth. As this was not covered by the consultation, we have not reached conclusions on it. The Government is content, therefore, for this issue to be considered by regional and local authorities, having careful regard to the alternatives. These are to extend the runway at the existing Plymouth City Airport, or to take advantage of air services available from other airports in the region potentially capable of serving the Plymouth catchment area.

10.27 In the interim, at the existing airport a range of safety-related and surface access enhancements are underway that will provide an improved Runway End Safety Area. These are essential to facilitate continued operation of the existing Plymouth/Newquay – London Gatwick service, and to enable other routes to be established. This should allow the City of Plymouth to continue to benefit from air connections to a number of domestic, and possibly international, business destinations using aircraft types that can use the airport's short runway, while final decisions on long-term solutions for air access serving Plymouth are being taken at a regional level.

## Conclusions

63. Taking the parts of the complaint in turn:
- (a) **that the Council has failed as Ground Landlord to manage the operations of its tenants, especially helicopter operations**
64. The Council has successfully controlled the operation of police helicopters from the airport. It is addressing problems connected with other helicopter flights in its current negotiations with the airport operators over the new operating conditions.

65. However, in considering whether FOST helicopter flights have complied with the direction served in 2000, the Council has failed to take account of the views of its own environmental protection officers based on noise-monitoring, even though this monitoring has been cited by Officer A as the basis for the judgment that the airport operator has generally complied with the direction. Officer B has told my investigator that his view has not been sought on this, and that the problem of noise from helicopters at the airport is very serious (see paragraph 23 above). He has also said that generally noise from airport activities has not diminished since 2000. The failure to take proper account of these views is maladministration.
66. Because the Council has not given enough regard to the views of environmental protection officers on this matter, the residents' association cannot be satisfied that the Council is doing enough to control noise nuisance. So I consider that the Council's maladministration has caused injustice to the residents' association.
- (b) that the Council has failed to remove helicopter operations from runway 06/24 in contravention of a lease clause restricting runway 06/24 to fixed-wing aircraft only**
67. The complainants' interpretation of the planning condition restricting use of the runway to "propeller driven airplanes" is not wholly unreasonable. On the face of it, helicopter operations are excluded from the runway. The Council has stated its position on the interpretation of the condition, but in all the circumstances it should have sought expert advice and shared it with the complainants. Its failure to do so was maladministration
68. A consequent injustice was again the uncertainty that the residents' association's interests were being properly protected by the Council.
- (c) that the Council has failed to control engine-testing by FOST, BIL, Plymouth Executive Aviation and BA in close proximity to homes, and**
- (d) that the Council has failed to act upon the results of its own sound recording programme**
69. In considering whether to implement the direction served in 2000, and whether to take other action over noise nuisance from the airport, the Council has failed to take reasonable account of the views of its environmental protection officers based on noise monitoring. The views of these officers have not been reported to the Council's cabinet.
70. The nuisance caused by the noise as assessed by the Council's own environmental protection officers is in my opinion sufficiently serious to have warranted prompt and effective action by the Council to control the engine-testing; but there has been no such action. This is maladministration.
71. The consequence has again been at least uncertainty as to whether the residents' association's interests were being properly protected.

**(e) that the Council has failed to act after the Department of Transport, in its review of the Future of Air Transport in the UK, identified Plymouth City Airport as a source of noise pollution causing significant community annoyance**

72. The observation “Growth at Bournemouth and Plymouth could result in significant increases in the number of people affected by aircraft noise” in the consultation paper *The future development of air transport in the UK – South West* is descriptive rather than prescriptive, and I have found nothing else either in the consultation paper or the White Paper *The Future of Air Transport* which requires the Council to take action in respect of noise pollution, or of any of the other matters about which the residents’ association has complained.

73. I do not therefore find any maladministration by the Council here.

**Noise nuisance at the airport**

74. I can understand that the Council considers its approach to noise problems at the airport to be a delicate “balancing act” involving the economic importance of the airport. And of course all airports generate noise and that noise may well be a nuisance to residents. But the Council is finally responsible within the terms of the lease for controlling noise that it considers to be unacceptable. And the way it has approached the question of unacceptable noise has been defective. In considering whether directions were complied with or should be enforced the Council failed to take account of what environmental protection officers considered serious nuisance which from any other source would be actionable at law.

75. I am not asking the Council to require different operating conditions in the lease, but simply to ensure that the lease and operating conditions are reasonably complied with in order to protect residents’ amenities. How this can most effectively be achieved is a matter for the Council; but the Council must follow through the decisions it takes.

76. On balance I conclude that had the Council properly considered the results of its own monitoring it would have taken action to enforce the directions issued in February 2000. So loss of amenity from the use of FOST helicopters outside the prescribed area, and unattenuated noise from the engine-testing, should have ceased within a reasonable time from the directions being served. I have given some leeway to the Council in suggesting that the directions should have been effectively enforced within a period of some two years or so from date of service. So I conclude that loss of amenity from these two sources of noise since 1 April 2002 has been an additional injustice arising from the maladministration I have identified.

**Finding**

77. I find that the maladministration identified in paragraphs 65, 66, 67, 69, 70 and 76 has led to injustice to members of the residents’ association as described in paragraphs 66, 68, 71 and 76. To remedy the injustice the Council should:

- a) urgently consider whether FOST helicopter flights around the airport currently comply with the direction served in 2000, taking proper account of its environmental protection officers' assessment of the noise caused by the flights and the nuisance caused to residents, and, if the flights do not comply, take prompt and effective action to enforce the direction;
- b) urgently take legal advice on its interpretation of the planning condition restricting use of runway 06/24 at the airport to "propeller driven airplanes", and, if the advice is that the condition excludes helicopters, take prompt and effective action to enforce the condition;
- c) take prompt and effective action to control nuisance caused to local residents by unattenuated engine-testing; and
- d) carry out a survey to establish which members of the residents' association have been significantly disturbed by noise from FOST operations and engine-testing; yearly compensation-payments not less than £500 should be made to households for significant disturbance, and not less than £1,000 for severe disturbance (equivalent to what would otherwise be a statutory nuisance), these payments to be backdated to 1 April 2002; the judgment on whether disturbance is significant or severe is a matter for the Council, in consultation with me.

If the Council wishes to suggest alternative means of remedying the injustice through financial compensation, it should discuss them with me.

78. The Council should also pay the residents' association £500 as some compensation for the time and trouble entailed in making this complaint to me.

**J R White**  
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**Coventry CV4 8JB**

**25 October 2005**