

Housing

Ombudsman Service

REPORT

COMPLAINT 202011449

East Devon District Council

18 August 2021

Our approach

The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.

Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.

The complaint

1. The complaint concerns:
 - a. The landlord's handling of the resident's reports of anti-social behaviour (ASB) by her neighbour.
 - b. The landlord's handling of the resident's request for her housing band to be changed.

Jurisdiction

2. What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme. When a complaint is brought to the Ombudsman, we must consider all the circumstances of the case as there are sometimes reasons why a complaint will not be investigated.
3. After carefully considering all the evidence, in accordance with paragraph 39(m) of the Housing Ombudsman Scheme, the aspect of the complaint concerning the landlord's handling of the resident's request for her housing band to be changed is outside of the Ombudsman's jurisdiction.

The Housing Ombudsman cannot consider complaints which relate to application for re-housing specifically made to the landlord. Complaints about the assessment of such applications, the award of points or banding, are more likely to be considered by the Local Government and Social Care Ombudsman (LGSCO). The resident would need to have raised a complaint to the landlord about this issue first, before bringing the matter to the LGSCO.

Background and summary of events

Background

4. The resident is a tenant of the landlord.
5. The property is a flat, situated in a property comprised of similar properties.
6. The complaint was raised jointly by the resident and her representative, however, for clarity purposes this report will refer to both the resident and her representative as “the resident”.

Summary of events

7. The resident reported to the landlord that the neighbour had been causing excessive noise. It is not clear from the information provided exactly when the resident first reported this to the landlord. On 17 January 2020, the landlord sent the alleged perpetrator a letter in which it noted an earlier conversation, advised that it had enclosed diary sheets, which it also sent to the resident, and offered mediation for both parties.
8. The resident emailed the landlord on 2 September 2020 to provide diary sheets that had been requested during the lockdown period and advise that noise issues had been ongoing since the alleged perpetrator moved in, that incidents had been logged via telephone, and that further “noise complaints” would be logged with the police, as per their advice.
9. On 28 September 2020, the resident emailed the landlord to request sound monitoring equipment and advise that the previous day there was “music banging and vibrating for 11 hours straight”. Additionally, the resident noted that another occupier of one of the landlord’s properties was involved in the anti-social behaviour and that the disturbances were caused at both properties. The resident then chased a response on 30 September 2020, for which the landlord apologised on the same day and advised that the resident’s correspondence was forwarded to the relevant department.
10. Landlord internal notes state that it logged an anti-social behaviour case on 29 October 2020, as a result of the resident’s emails, and had also tried to contact the resident via telephone on that day. The landlord then discussed the installation of sound monitoring equipment with the resident on 30 October via telephone, and 2 November 2020 via email.
11. On 31 October 2020, the resident also raised concerns regarding the neighbour’s relative staying at the property during the upcoming lockdown period, along with the occupier of another flat within the building, and that this would cause further disruption.

12. The resident emailed the landlord again on 5 November and 14 December 2020 to further express her dissatisfaction with the distress her and her family experienced by the noise caused by her neighbour, and the landlord's handling of it, along with additional issues concerning a "wasp infested tree" and rat infestation in the building, which she also advised was caused by the neighbour.
13. The resident then wrote to the landlord on 4 January 2020 to advise of the following:
 - a. She had sent it multiple emails, but she did not receive a response to all of them.
 - b. During the holidays period, one of the neighbour's guests acted in an "intimidating" manner towards her and her partner. The resident advised that this behaviour was reported to the police, as she felt at risk.
 - c. She experienced noise for prolonged periods of time, and at unsociable hours, which also impacted her and her family's ability to sleep.
14. The landlord acknowledged and advised it forwarded the above to the relevant department on the same day.
15. Noise monitoring equipment was installed at the resident's property between 4 and 11 January 2021.
16. The resident provided this Service with communication records, dating from 7 to 29 January 2021, between herself, the police, and the landlord regarding the anti-social behaviour she was experiencing, by her neighbour and her guests, in the form of noise and intimidating behaviour, and the impact this had on her partner's mental health.
17. The resident emailed the local authority's environmental health department on 19 January 2021 advising she was unsure what to do "regarding [the] sound equipment" and whether the alleged perpetrator responded to the police's attempts of contact. Furthermore, the resident included diary sheets detailing the incidents that occurred between 1 September 2020 and 17 January 2021, which included prolonged periods of loud music, screaming and banging, including during unsocial hours, intimidating behaviour caused by the neighbour's guests, and pests being found outside the neighbour's property.
18. Sound recording equipment was installed in the resident's property again on 29 January 2021.
19. On 1 February 2021, the landlord issued a stage one complaint response, comprised of the following:
 - a. Details regarding the installation of noise monitoring equipment.

- b. Confirmation of the operatives who would “keep in contact” regarding the recordings and that it would need substantial evidence before taking action against a tenant for anti-social behaviour.
20. The resident contacted this Service on 17 February and 4 March 2021. We contacted the landlord, which advised it would issue a stage two complaint response by 8 March 2021.
21. On 8 March 2021, the landlord issued a stage two complaint response, comprised of the following:
- a. The recordings obtained on 4 and 5 January 2021 matched the resident’s reports of loud music at unsociable hours.
 - b. No further incidents were recorded on 29 January 2021.
 - c. The recordings made by the resident using her telephone could not “be used as evidence when pursuing any kind of legal action”.
 - d. The landlord acknowledged the resident’s intent to move property and her request for her banding on the housing list to be changed.
 - e. Advised that considering the nature of the anti-social behaviour recorded it could not accommodate this change of banding as the level of ASB reported was not considered “an immediate risk”.
 - f. Mentioned it could arrange mediation if both parties agreed to it.
 - g. Advised it would contact the neighbour but could not disclose the actions it would be taking towards them due to data protection.
22. On 19 March 2021, the landlord issued a warning to the neighbour, requesting that they “stop playing music or guitar, and singing” in a manner that disturbs other residents, and advised of the repercussions that ignoring this could have.
23. The resident contacted this Service on 13 and 26 April 2021 to advise she was unhappy with the landlord’s response to her reports of anti-social behaviour, that she wished to be moved, and that she had logged a harassment complaint with the police.
24. The resident also wrote to the landlord on 26 April 2021, to advise she had made another complaint as the neighbour was using her washing machine at unsociable hours and continued to play loud music at both her and another resident’s property, which was impacting her child’s ability to sleep. Furthermore, she also mentioned that the neighbour was using drugs and alcohol.
25. The complaint was formally brought to the attention of this Service on 10 May 2021. This was followed by further emails and telephone calls to both this Service and the landlord, dating between 11 May and 12 July 2021, in which the resident

detailed further incidents, including one where one of the neighbour's guests followed and filmed her family from her property to a nearby park, and reiterated her desire to be moved to another property.

Assessment and findings

The landlord's anti-social behaviour policy

26. The landlord's anti-social behaviour policy defines anti-social behaviour as "conduct that has caused, or is likely to cause harassment, alarm or distress to any person".
27. When handling reports of anti-social behaviour, the landlord commits to "using a wide range of measures to prevent and combat" this. Furthermore, the anti-social behaviour states that it would use a wide range of measures such as tenancy agreements, mediation, formal and informal warnings, acceptable behaviour contracts and legal remedies, when necessary.
28. When receiving a complaint or report of anti-social behaviour the landlord commits to recording the complaint, acknowledge and respond, discuss and develop an action plan with the complainant, consider and offer mediation, investigate and take "timely, effective and consistent action".
29. Furthermore, the landlord commits to working with partner agencies when dealing with anti-social behaviour cases. The landlord's handling of the resident's reports of anti-social behaviour (ASB) by her neighbour
30. It is noted that the resident has stated that she considers that the issue has exacerbated her family's medical conditions. However, it is beyond the expertise of this Service to make a determination on whether there was a direct link between the landlord's handling of the resident's reports of ASB and her family's medical conditions. The resident therefore may wish to seek independent advice on making a personal injury claim if she considers that her family's health has been affected by any action or lack thereof by the landlord. Although consideration has been given to the general distress and inconvenience which the situation involving her property caused the resident and her family.
31. In its correspondence to this Service, of 24 June 2021, the landlord stated that it began receiving noise complaints from the resident in October 2020. However, the communication records submitted show that it initially issued a letter offering mediation to the neighbour on 17 January 2020. Although the landlord appears to have inaccurate records concerning the start of the ASB case, it took appropriate action in January 2020, in line with its anti-social behaviour policy by offering mediation in the first instance in an effort to resolve the ASB.

32. While the landlord was reasonable to offer mediation, it is acknowledged that in order to act on this offer both parties involved in the anti-social behaviour case need to agree to attend. In this instance, the information provided does not show whether any of the parties involved accepted the landlord's offer to partake in mediation; therefore, the landlord would not be expected to take further action in respect of this. Mediation is voluntary and the resident and neighbour were both entitled to decline to participate in this, but it was reasonable for the landlord to offer mediation as an option because it can be helpful in resolving ASB in some cases.
33. Also, in its letter of 17 January 2020, the landlord noted that it had provided both the resident and neighbour with diary sheets to record incidents of noise and ASB. The resident provided the landlord with completed diary sheets on 2 September 2020, and also provided these to the local authority's environmental health department on 19 January 2021. The diary sheets covered different periods of time. The landlord has a responsibility to act in a fair and impartial manner towards all its residents, and it cannot take any action against a resident without substantial evidence. Therefore, it would be expected, and common practice, for the landlord to request for diary sheets to be filled in before taking any further action.
34. Following the resident's reports and diary sheets, the landlord logged an anti-social behaviour case on 29 October 2020, which then led to noise monitoring equipment being installed at the resident's property on 4 and 29 January 2021. Taking into account the frequency of the resident's reports of anti-social behaviour, it is this Service's opinion that the landlord could have looked at providing noise monitoring equipment sooner, rather than waiting over two months after logging the anti-social behaviour case. However, the landlord's anti-social behaviour policy does not dictate any timeframes for the provision of noise monitoring equipment; therefore, it was at the landlord's discretion to determine when it would/could install the equipment. The timescale for installing such equipment may also be affected by availability of the equipment, but if there are delays landlords should keep residents updated. The landlord acted reasonably by providing noise recording equipment on two occasions to attempt to gather sufficient evidence that may have enabled it to take further action as appropriate.
35. Following the completion of the investigation into the resident's complaint, and the evidence gathered, the landlord issued the neighbour with a warning to stop the anti-social behaviour and advised of the consequences of not doing so. While this Service appreciates that this was not the resident's desired outcome, however, as the landlord advised, there are certain limitations to the actions it could take.
36. Landlords are able to evict tenants for ASB but the landlord would need permission from a court before carrying out the eviction. The landlord would be

expected to show substantial evidence to the court confirming that the behaviour was severe and persistent. The landlord would also be generally expected to show that reasonable efforts had been made to resolve the issues informally through mediation, formal warnings, acceptable behaviour agreements etc before pursuing legal action.

37. Based on the information provided, this Service is satisfied that the landlord took reasonable steps to investigate, monitor and resolve this situation, considering the means available to it.

38. Furthermore, this Service took into account the resident's concerns regarding drug use and harassing behaviour by the alleged perpetrator and her guests, however, matters of alleged criminal behaviour are best reported and dealt with by the police force, rather than the landlord. Although the landlord should work with the police and assist them when any investigations as appropriate. If a tenant is convicted of a criminal offence, the landlord should consider whether it would be appropriate to start eviction proceedings on this basis. However, the exact action that the landlord should take would depend on the individual circumstances of each case.

39. To conclude, this Service has found that there was no maladministration by the landlord in its handling of the resident's reports of anti-social behaviour caused by her neighbour because the landlord complied with its anti-social behaviour policy by offering mediation, requesting diary sheets, logging an anti-social behaviour case, which remained open following the completion of the complaint investigation, installing noise monitoring equipment at the resident's property on two occasions, and issuing the neighbour with a warning about their behaviour.

Determination (decision)

40. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was no maladministration by the landlord in respect of its handling of the resident's reports of anti-social behaviour caused by her neighbour.

Reasons

41. The landlord complied with its anti-social behaviour policy and acted in a reasonable manner when dealing with the resident's reports of anti-social behaviour.