

The Ombudsman's final decision

Summary: Mrs X complains the Council has failed to take sufficient action to stop a resident from feeding birds which is causing a nuisance. The Council is at fault as its investigation drifted. This is because it did not consider if the investigation should be carried out by its Environmental Health Team when its Housing Management Team could not progress the investigation. This caused frustration and uncertainty to Mrs X. The Council has agreed to remedy this injustice by apologising to Mrs X and drawing up an action plan to ensure its investigations do not continue to drift.

The complaint

1. Ms X complains that the Council has failed to take sufficient action to stop a resident, Ms Y, from feeding birds which is causing nuisance. Ms X says the bird feeding has encouraged rats to infest her property and they are caused nuisance by flocks of birds which can be aggressive.

What I have investigated

2. I have investigated how the Council's Environmental Health Team has considered Ms X's complaints about nuisance from bird feeding. I have not investigated any action relating to Ms Y's tenancy as the provision and management of social housing does not fall within our jurisdiction.

The Ombudsman's role and powers

3. We investigate complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I have:

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- Considered the complaint and the information provided by Ms X;
 - Discussed the issues with Ms X;
 - Made enquiries of the Council and considered its response;
 - Invited Ms X and the Council to comment on the draft decision. I considered any comments received before making a final decision.

What I found

6. Councils have a general duty to take action to tackle anti-social behaviour (ASB). But ASB can take many different forms; and councils should make informed decisions about which of their powers is most appropriate for any given situation. For example, they may approach a complaint:
 - as an environmental health issue, where the complaint is about noise or pollution;
 - as part of their duties as a social landlord, where the alleged perpetrator is a council tenant (although we are unable to investigate the council's actions as a social landlord); or
 - using their powers under the Anti-social Behaviour, Crime and Policing Act 2014.
7. The 2014 Act introduced six new powers for agencies involved in tackling ASB. These include the power to issue community protection notices (CPN). Failure to comply with a CPN is an offence and may result in a fine or fixed penalty notice.
8. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential 'statutory nuisances'.

What happened

9. Ms X owns a property where her son, Mr Z, lived for a period of time. In 2020, Mr Z complained to the Council about nuisance caused by Ms Y feeding birds. This included being attacked by gulls, mess caused by the birds and the presence of rats in the garden and walls of the property. Other residents also complained about nuisance caused by the birds and rats.
10. Some years earlier the Council's Environmental Health Team had served a CPN on Ms Y to prevent nuisance from excessive bird feeding. The Council's records show Environmental Health officers contacted the Council's Housing Management Team to see if could take action in its role as Ms Y's landlord as the Council had previously issued a CPN.
11. The Council's pest control team placed bait at Ms X's property and those of other residents. The Council's records show that the pest control team made significant number of visits to control the rats. But the infestation took several months to resolve as Ms Y continued to feed the birds despite warnings from housing officers about breaching her tenancy agreement. The rat infestation was cleared in November 2020.
12. In February 2021 Ms X reported to the Council that Ms Y had started to feed the birds again. Ms X then made a complaint to the Council as she considered it had not taken sufficient action to stop Ms Y feeding the birds. The Council considered the complaint through its two stage complaints procedure. In its stage one response the Council said housing officers had not witnessed Ms Y feeding the birds. At stage two the Council said it was in the process of gathering evidence of

the bird feeding to see if it could take action under Ms Y's tenancy agreement. But it had not been able to progress this as quickly due to other matters taking priority. The Council said it was making regular checks on the situation.

13. Ms X remained unhappy so made a complaint to the Ombudsman. Ms X has also said that Ms Y's excessive bird feeding has caused another rat infestation.
14. I asked the Council if it had investigated Ms X's complaints as a potential statutory nuisance under the Environmental Protection Act 1990. The Council said it felt actions taken under the Anti Social Behaviour, Crime and Policing Act 2014 would be more effective than considering if the bird feeding was a statutory nuisance. As previous notices had not stopped Ms Y from feeding the birds, the Council considered taking action under the tenancy agreement would be a better longer term approach.
15. The Council has also said that it requires clear evidence for it to take action which is why it needs to carry out regular visits. The Council has acknowledged its visits were less frequent in Autumn/Winter 2021 due to the housing management team's heavy workload. It acknowledges this was frustrating for Ms X.
16. The Council has also said its Housing and Environmental Health teams are in discussion about a collaborative approach going forward. So it is able to consider action under Environmental Health legislation if action under Ms Y's tenancy agreement is not appropriate.

Analysis

17. The evidence shows the Council took sufficient action to deal with the rat infestation when reported by Mr Z in 2020. Its pest control team made repeated visits to the properties affected until the infestation was cleared.
18. The key aspect of Ms X's complaint is that the Council has not taken sufficient action to stop Ms Y's continued bird feeding. The Council has a range of powers to deal with nuisance and anti social behaviour. The Council decided to deal with Ms Y's nuisance bird feeding under her tenancy agreement. It made this decision following advice from Environmental Health about its previous action. I therefore consider there is no evidence of fault in how the decision was made.
19. But, the Council should have remained mindful of all of its powers to deal with the nuisance. The Council has acknowledged its Housing Management Team was not able to visit Ms Y as frequently as intended to gather evidence to support taking action under her tenancy agreement. Given the Council was aware the problem was ongoing, I see no reason why it did not consider a collaborative approach sooner. It also should have considered if the Environmental Health Team was better placed to investigate if the bird feeding was causing a nuisance when the Housing Management Team could not progress the matter in 2021. The Council let the matter drift and this is fault.
20. I cannot know if the Council would have been able to take action against Ms Y sooner if it had considered a collaborate approach or if its Environmental Health Team had investigated in 2021. This is because I cannot know what the outcome of those investigations would have been and if the Council would have been able to take enforcement action. Ms X has said the Council told her it had sufficient action to take Ms Y to court. I have not seen evidence to show this is the case. But I will not investigate this further as even if the Council did have sufficient evidence to take Ms Y to court, I cannot know what the outcome of any court action would have been.

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21. But Ms X has been caused some uncertainty and frustration by the Council letting matters drift. The Council should apologise to Ms X for this injustice.
22. I note the Council is now considering a collaborative approach going forward. I welcome this approach but the Council should not delay in considering its range of enforcement options if it is not able to deal with the nuisance quickly in its capacity as a landlord.

Agreed action

23. That the Council will:
- a) Send a written apology for the frustration and uncertainty caused to Ms X by the Council letting its investigations into whether Ms Y's bird feeding was causing a nuisance drift.
 - b) Draw up an action plan for the Council's investigations into whether Ms Y's bird feeding is causing a nuisance to ensure the matter does not continue to drift. The Council should also keep Ms X informed of the progress of its investigation and/or action. The Council should provide to the Ombudsman a copy of the action plan, including how it will keep Ms X informed.
24. The Council should take the action at a) and b) within one month of my final decision.

Final decision

25. The Council is at fault as its investigation into whether Ms Y's bird feeding was causing a nuisance and any action to be taken drifted. This is because it did not consider if the investigation should be carried out by its Environmental Health Team when its Housing Management Team could not progress the investigation. This caused frustration and uncertainty to Ms X. The Council has agreed to remedy this injustice so I have completed my investigation.

Investigator's decision on behalf of the Ombudsman