

Housing

Ombudsman Service

REPORT

COMPLAINT 202106350

East Devon District Council

23 March 2022

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 is about:
 - a. The landlord's response to the resident's reports of antisocial behaviour (ASB) in the local area.
 - b. The landlord's response to the resident's reports of an odour from his neighbour's property.
 - c. The landlord's handling of the associated complaint.

Background

2. The resident had a historical complaint about the resident's reports of a bad smell from his neighbour's (Mr A) property and drug use in the local area. The Ombudsman determined this on 7 December 2020 and therefore events considered in that investigation will not be revisited here. This Service will, however, consider whether any actions taken by the landlord since that investigation were reasonable in the circumstances of this case and in line with its obligations. It should be noted that the historical investigation found failings with the landlord's communication about its response to the resident's reports of a smell from Mr A and also with its response to his reports of neighbourhood ASB.
3. The landlord has not provided information relating to its handling of the reports of ASB. In its response to this Service, it advised information was unavailable as it had closed its ASB case on 26 July 2021 with the resident's agreement. The landlord's formal complaint response in March 2021 response noted the resident's reluctance to complete ASB diary sheets and stressed the importance of these to enable it to build evidence of the reported neighbourhood ASB and

the smell reported from Mr A's property. The landlord also requested that he detail the impact on him of the smell and the ASB so that it could offer suitable support, such as mediation.

4. The landlord has provided information detailing its engagement with Mr A between 6 January and 26 July 2021. It informed the resident on 3 June 2021 that it had carried out improvement works and was working with Mr A to address the odour issues he reported.
5. Although the landlord provided a final response to the resident on 1 March 2021, the landlord has not provided details of his points of dissatisfaction. There was also no evidence of a stage one complaint response.
6. The resident responded to the landlord's final complaint response to contend that it was aware of Mr A's issues but was not addressing them. He made no commitment to mediation and said that he wanted to move property due to the ongoing ASB and drugs use in the neighbourhood. The landlord replied to advise that it was considering a managed move for the resident and would be in touch about this.
7. The landlord informed this Service on 1 September 2021 that it had no records of the resident's ASB case as it had been closed.

Assessment and findings

Policies and procedures

8. The landlord's ASB policy states that when it receives a report of ASB, it will interview the resident and make an action plan. This may involve gathering evidence through the use of diary sheets to enable it to assess how to respond to the ASB. If appropriate it will offer mediation to resolve the ASB and work with partner agencies.
9. The landlord's complaints procedure provides for a two-complaints process. Complaints at stage one and the final stage are to be responded to within 20 working days of the acknowledgement of the complaint. A complaint is to be commenced at stage one unless a decision is made by senior staff that the complaint should start at the final stage. If a complaint is considered at stage one, the resident may escalate this to the final stage by outlining the issues which he considers to be unresolved.

The landlord's response to the resident's reports of antisocial behaviour (ASB) in the local area.

10. The landlord's complaint response on 1 March 2021 was reasonable, insofar as it complied with its ASB policy in seeking evidence of ASB through the use of diary sheets. For a landlord to take any action in respect of ASB, it must have a

substantial body of evidence in order to do so. Landlords are expected to provide a fair service, and this includes taking an evidence based approach. If the matter requires more formal action, a court would require that the landlord show that it had independent evidence of the ASB and that it had exhausted all reasonable approaches to resolving it. Therefore, it was reasonable for the landlord to request that the resident engage with its ASB procedure by completing ASB diary sheets.

11. However, a landlord would be expected to retain robust copies of its correspondence and case files regarding reports of ASB. This is to enable it to ensure that it has followed its policies correctly, and so that the required body of evidence can be accumulated (if required) over time. It also provides an audit trail in the event of a complaint. In this instance the landlord has been unable to supply records of its handling of the ASB. While its complaint response to the resident did not show any evidence of its failure to follow its policy, the lack of correspondence evidence prevents the Ombudsman from fully assessing whether it took all actions in accordance with its policy. Where there is lack of evidence that the landlord has taken the appropriate actions in response to a complaint, the Ombudsman can only assume that these actions were not taken.
12. The landlord stated that the information relating to the resident's report of ASB was unavailable due to the case being closed. This was a failure by the landlord to maintain adequate records of its actions and constitutes a service failure as it has prevented a fuller examination of its response to the resident's reports of ASB.

The landlord's response to the resident's reports of an odour from Mr A's property

13. The landlord requested in its final response to the resident that he complete diary sheets to detail the impact of the smell from Mr A property on him as it had no prior knowledge of this issue. This contradicts information it provided to this Service that it was engaging with Mr A since 6 January 2021 about the smell. Despite the resident's subsequent contact with the landlord to say that he was seeking the intervention of the local authority's environmental health team and social services, there was no response from it to acknowledge this. The Ombudsman has inferred that the substance of his complaint was a perceived lack of action by the landlord to address the smell he had reported. The landlord therefore missed the opportunity to reassure the resident that it was dealing with the matter.
14. It was correct of the landlord not to divulge any specific information about Mr A's circumstances. However, given that it had responded to the resident's report of a smell from Mr A's property by engaging with Mr A from 6 January 2021 onwards, it should have provided more general information about its actions, as well as an explanation as to why it could not detail specifics. It could have used the

complaint as an opportunity to reassure the resident that the matter was being addressed.

15. There was, therefore, a failure in communication by the landlord. While it was appropriate for it to ask for the matter to be partly addressed through its ASB procedure by requesting diary sheets, it missed an opportunity to reassure him that it was dealing with the issue of the smell and manage his expectations.

The landlord's handling of the associated complaint

16. While the landlord addressed a historical complaint about the same issues from the resident, it would have been expected to open a new complaint about his dissatisfaction with its handling of the same issues after the closure of his previous complaint. This is because these are considered to be new issues.
17. While it is evident that the resident continued to be dissatisfied with the landlord's actions, there was no evidence that the landlord considered his continued dissatisfaction as a new complaint in accordance with its complaint procedure. As specified above, it should have opened a new complaint for him at stage one, or informed him that it had decided to consider his complaint at the final stage of its complaints procedure. There is no evidence that it did this.

Determination

18. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was service failure by the landlord in its response to the resident's reports of an odour from his neighbour's property.
19. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was maladministration by the landlord in its response to the resident's reports of ASB in the local area.
20. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was service failure by the landlord in its handling of the associated complaint.

Orders

21. As a result of the orders above, the landlord has been ordered to within 4 weeks:
- a. Pay the resident £150 compensation for its failures in the handling of his reports of ASB.
 - b. Pay the resident £50 compensation for its failures in the handling of his reports of an odour from Mr A's property.
 - c. Pay the resident £100 compensation for its failures in the handling of his complaint.

- d. Contact the resident to ensure it has an up to date understanding of the resident's concerns about any current ASB or odour; and to provide an update on any potential transfer if relevant.