

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202011713*

*East Devon District Council*

*11 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) from her neighbour.
  - b. The landlord's handling of the associated complaint.

## **Background**

2. The resident was a tenant of the landlord, she left the property in November 2020. The landlord's records report that the resident suffers with PTSD and her mental health as well as having limited mobility.
3. The resident initially reported that a wrapped banana had been placed on her front doorstep in December 2019. She believed that this was left by her neighbour and reported the incident to the police as she felt that this was racially motivated. In February 2020, the resident reported that her neighbour had threatened her with a sledgehammer and had hit her door. The incident was reported to the police and the resident was provided with diary sheets by the landlord to document any further incidents.
4. During November 2020, the resident expressed dissatisfaction with the landlord's handling of her reports and lack of support. The landlord initially responded informally, explaining that the police had closed their investigation due to a lack of evidence. It added that there was a lack of evidence to support the resident's claims of ASB or hate crimes. It noted that the resident had not supplied diary sheets documenting any similar incidents and without further evidence it would be difficult for it to take further action against the neighbour.

5. The resident pursued a complaint with the landlord in January 2021. In response, the landlord explained that it had liaised with the police on both matters and there was a lack of evidence to support her claims. It acknowledged that it had not followed the correct process when handling her reports of ASB and had instead solely relied on the findings of the police investigation. It apologised that it had not contacted the resident or kept her updated. It later confirmed that it had interviewed another neighbour at the resident's request. They had not witnessed any form of racial abuse towards the resident but had noticed that the neighbour's behaviour had changed when it became apparent that they were friends with the resident. The landlord apologised that the resident's claims were not properly investigated, that the opportunity to gather evidence of the alleged behaviour had been missed and that its failings may have allowed the behaviour to continue unchallenged. It confirmed that it would provide training to the member of staff responsible for investigating the reports.
6. The resident referred her complaint to this Service as she remained dissatisfied with the landlord's handling of her reports of ASB and hate crimes from her neighbour. She wanted the landlord to issue a warning letter to her former neighbour in case someone else was attacked because of their race. She also wanted the landlord to lower her current rent arrears of around £1000 as she felt she had needed to leave the property due to her neighbour's behaviour.

## **Assessment and findings**

### *Scope of investigation*

7. It is acknowledged that the resident has said that the alleged ASB has caused her distress. The resident has said that as a result of the landlord's poor handling of the ASB and the distress she experienced, her health was adversely impacted. The Ombudsman does not doubt the resident's comments. However, it is outside the remit of this Service to decide on whether there was a direct link between the landlord's handling of the resident's reports of ASB and her health. The resident therefore may wish to seek independent advice on making a personal injury claim if she considers that her health has been affected by any action or lack thereof by the landlord.
8. While this Service cannot consider the effect on health, consideration has been given to any general distress and inconvenience which the resident experienced as a result of any errors by the landlord in its handling of the ASB reports.

### *The landlord's response to the resident's reports of antisocial behaviour (ASB) from her neighbour.*

9. It is evident that this situation has been distressing for the resident. It should be noted that the role of this Service is not to establish whether the ASB reported

was occurring or not. Our role is to establish whether the landlord's response to the resident's reports of ASB was in line with its legal and policy obligations and whether its response was fair in all the circumstances of the case.

10. The landlord's ASB policy confirms that on receiving a report of ASB, the landlord will interview the complainant and develop an action plan. The landlord will consider offering mediation and it will gather further evidence, for example by interviewing the alleged perpetrator, contacting witnesses and providing diary sheets to the complainant. Actions that may be taken include issuing warning letters, arranging acceptable behaviour contracts, partnership working with other agencies such as the police and social services, and legal action. Regular contact will be maintained with the complainant.
11. In line with its ASB policy, the landlord has an obligation to investigate reports of ASB and respond appropriately. The resident accused the neighbour of intimidating behaviour and racial abuse, which would fall under the heading of ASB. The landlord's records confirm that it was made aware of the resident's initial reports about the neighbour during January and February 2020. There is no evidence of the landlord responding at this time, either to interview the resident and agree an action plan, or to investigate the reports and gather evidence, although the landlord has said it provided diary sheets to the resident. There is evidence the landlord followed up on the police investigation in June 2020, when it was confirmed that the police were taking no further action against the neighbour.
12. The landlord has acknowledged that it failed to fully investigate the resident's reports about the neighbour, and that it relied solely on the findings of related police investigations. It was appropriate for the landlord to liaise with the police given that the resident's allegations concerned criminal matters, and it was reasonable for it to await the outcome of the police investigation before considering whether tenancy enforcement action should be taken against the neighbour. However, the landlord failed to keep the resident updated on the matter and there is no evidence it considered other action it was able to take at this time, such as interviewing the neighbour and issuing written warnings. It would also have been appropriate for the landlord to have fully explained the importance of completing diary sheets as a means to gain evidence of the ASB.
13. It is noted that there were several occasions where the resident explained that she did not require further assistance from the landlord's support officers, including during a support assessment in March 2020. Despite this, it would have been appropriate for the landlord to have kept the resident updated in relation to its investigation into the ASB reports. There is no evidence to suggest that this was the case and it is understandable that the resident felt unsupported in regard to her ASB reports as a result.

14. The landlord has utilised the complaints process to identify points of learning from the resident's complaint and apologise for its lack of action regarding her ASB reports. It has acknowledged that the correct process was not followed and said that it would provide retraining to the member of staff responsible for investigating the resident's case to prevent similar failures occurring in the future. It also interviewed another neighbour to gain further evidence of the alleged behaviour which was appropriate. Ultimately, there was a lack of evidence to support further action being taken against the neighbour in question.
15. While the landlord has apologised for its lack of communication and action in this case, this did not provide adequate redress to the resident. The landlord's complaints policy confirms that there will be circumstances where the landlord is unable to put the customer back into the position they would have been in because of the amount of time lapsed or due to other events which may have occurred, and in such circumstances it may consider financial compensation. In this case it would have been appropriate for the landlord to have considered offering compensation to the resident and the failure to do so was a service failure.
16. It is noted that as a resolution to her complaint, the resident wants a warning letter to be sent to her former neighbour. The resident has now moved out of the property and due the length of time that has elapsed since the reported incidents, it would not be reasonable for the landlord to send a warning letter unless it has received evidence that the behaviour is ongoing. It is recommended that the landlord considers whether any recent reports have been made about the neighbour and whether a warning letter is appropriate in the circumstances.

*The landlord's handling of the associated complaint.*

17. The landlord operates a two-stage complaints process. The target timescale at both stages is 20 working days. If, at any stage, there is likely to be a delay, the landlord should contact the resident, explain the delay and provide a new timescale for response.
18. The landlord's records suggest that the resident raised a formal complaint on 18 January 2021, although the details of this have not been provided to this Service for review. The landlord issued its stage one complaint response on 11 February 2020, which was within its 20-working day timescale.
19. The resident confirmed that she wished to escalate her complaint to stage two of the landlord's process on 12 February 2021. Following this, there was a significant delay in issuing a stage two complaint response. While the landlord provided an interim response on 16 March 2021, this did not provide a timescale in which the resident could expect to receive a response. The stage two

complaint response was issued on 5 May 2021, which was 36 working days outside of its published timescales.

20. The landlord has failed to acknowledge its complaint handling delays within its complaint response or apologise to the resident for any inconvenience caused. In view of this, the landlord should offer the resident compensation as detailed below. It is also recommended that the landlord considers carrying out staff training for complaint handlers to ensure that residents are adequately updated where there are likely to be delays to its complaint responses.

### **Determination**

21. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was service failure by the landlord in respect of its response to the resident's reports of ASB from her neighbour.
22. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was service failure by the landlord in respect of its handling of the associated complaint.

### **Orders and recommendations**

23. The landlord is ordered to pay the resident £300 compensation within the next four weeks, broken down as follows:
- a. £250 in recognition of the inconvenience and distress caused by its handling of the resident's ASB reports.
  - b. £50 in recognition of the inconvenience caused by its poor complaint handling.
24. The landlord may choose to pay this directly to the resident or pay this into the resident's rent account to offset any current arrears at its discretion. The landlord should contact the resident to confirm the actions taken.
25. It is recommended that the landlord:
- a. Carries out staff training for complaint handlers to ensure that residents are adequately updated where there are likely to be delays to its complaint responses.
  - b. Considers whether any recent reports have been made about the neighbour and whether a warning letter, or other action, is appropriate in the circumstances (details of any action taken in this regard cannot be divulged to the resident for confidentiality reasons).