

Housing

Ombudsman Service

REPORT

COMPLAINT 201912937

East Devon District Council

7 December 2020

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 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 tenant has complained that:
 - The landlord has not responded appropriately to their reports of anti-social behaviour in the street
 - The landlord has not resolved their reports of a bad smell in their bathroom (believed to be from the flat below)

Jurisdiction

2. The tenant has also complained about the banding of their transfer application to the local choice based lettings scheme. This includes how supporting medical information has been used in the banding.
3. This issue is outside the jurisdiction of the Housing Ombudsman Service. The operation of choice based letters schemes, and the assessment of reasonable preference categories (which includes transfers for medical reasons) is for the Local Government and Social Care Ombudsman.
4. Paragraph 23(m) of the Housing Ombudsman Service Scheme explains that complaints that "*fall properly within the jurisdiction of another Ombudsman, regulator, or complaints-handling body*" are outside the jurisdiction of the Housing Ombudsman Service.

Assessment

Antisocial behaviour

5. The tenant complained to the Housing Ombudsman Service that antisocial behaviour (including violence) was a weekly occurrence on their street, but that the landlord had taken no action. The tenant summarised the incidents on their road as including "*fight, parties, drug taking, drug dealing, hammer attacks, criminal damage, vandalism, assaults, suicides*" and that they had made 53 reports to the landlord or police.

6. This Housing Ombudsman case relates to the formal complaint the tenant first raised on 30 October 2019. The tenant complained that the landlord had explained it was not taking any action in response to antisocial behaviour (ASB).
7. The stage 1 response (12 November) clarified that it did not have an active ASB case for the tenant as they had not been 'directly' involved in any incidents of ASB. It acknowledged the tenant was the point of contact for the police (which was investigating another resident on the road) and had allowed access for the police as part of its investigations. Therefore the landlord concluded as there was no current incident against the tenant as a 'direct result' of another resident, that no action had been due at the time of the formal complaint.
8. Confusingly the stage 1 response went on to agree that there were 'ASB issues from some residents on [the resident's road].' As such it agreed to consider future lettings on the road sensitively to try and help the situation.
9. The landlord's ASB policy gives 3 definitions of ASB:

"For the purposes of an application to the courts by a housing provider, local authority or the police for a civil injunction: "conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises"

"For the purposes of the housing management functions of a housing provider or local authority: "conduct capable of causing housing-related nuisance or annoyance to any person"

"For the purposes of ASB case reviews (the "Community Trigger"): "behaviour causing harassment, alarm or distress to members or any member of the public".

10. The policy does not give any guide on when ASB is considered relevant to one resident and not to another, such as in this case when the ASB is occurring on the road but not necessarily targeted at the complainant.
11. The tenant's escalated complaint explained:
 - a. As well as providing access for the police investigation, they had received a crown court summons to give evidence against one of the neighbours
 - b. There was a long history of serious ASB on the road
 - c. That the landlord's decision to not respond to the tenant's reports meant they no longer wished to help the landlord or police in their investigation, as by doing so they felt it had reduced the support they had received from the landlord
12. The landlord's final response:
 - a. Acknowledged there were some incidents in the past the tenant had to given evidence about
 - b. Explained there were no current 'matters' that the Estate Team were dealing with in relation to any tenancies on the tenant's road

13. However, as with the stage 1 response, the final response also provided further contradictory information, including:

- a. *"We will continue to work with existing tenants who pose an issue"*
- b. *"I appreciate that there is no quick resolution to the concerns you have raised with anti-social behaviour in your road, but we are aware and are endeavouring to improve the situation for all the residents and tenants"*

14. The landlord's update to the Housing Ombudsman Service again contradicted its complaint responses, as it explained:

"At the time of [the] complaint, we were not aware of specific antisocial behaviour cases concerning [the tenant] or [their] neighbours. [They] advised us that [they were] working with the police in order to help them to deal with ongoing matters but the council at that time did not have knowledge of, nor involvement in, these cases"

15. The Housing Ombudsman Service has received limited specific detail about the ASB incidents in the street. This is largely because the formal complaint concerns the fact there were no associated open/active ASB cases. The landlord was asked to provide all related historic and contemporary records related to the formal complaint in April and October 2020.

16. However it is not in dispute that the tenant has previously attended court to give evidence against one of their neighbours. It is also not in dispute that there has been past ASB cases directly involving the tenant. The landlord's final response also confirmed that it was *'working with'* tenants that *'pose and issue.'* It is therefore reasonable to assume that there continued to be behaviour issues on the street, as there would be no reason for the landlord to continue its involvement otherwise. The final response also stated that the landlord was *'endeavouring to improve the situation'* and that this *'situation'* related to *'ASB in the road.'*

17. Therefore the landlord's responses to the formal complaint were inappropriate. The ASB policy does not place specific limits on when a person is affected by ASB or not. Given the nature of the ASB as described by the tenant (and not disputed by the landlord) it is reasonable to expect that the landlord would support the tenant by maintaining an open ASB case and action plan with, for example, regular check ups with the tenant. This is particularly the case where a tenant has been so involved so as to appear as a witness in court.

18. The tenant's complaints clearly sought support from the landlord. The responses were contradictory and vague. If there truly was no ASB on the street that the landlord considered itself responsible for then the responses should have been much more robust so as to manage the tenant's expectations. Instead the landlord's responses have only served to say that there is an issue, as described by the tenant, but that it would not support the tenant directly as set out in its ASB policies/procedures.

19. The fact that the case involves ASB in the area of the tenant's home, as opposed to direct targeting of the resident of the tenant, is a mitigating factor insofar as the level of severity/prioritisation as well as the level of information that might be shared about the landlord's actions. However the lack of direct involvement is not so much a factor as to negate the landlord's requirements to offer any support.

Reported smell

20. The tenant has reported a 'horrific' smell entering their bathroom and that they believe it is from the neighbour below. They have complained the landlord has refused to explain what action is being taken due to data protection.
21. This issue was raised in the formal complaint and responses. The stage 1 stated the issue was being dealt with and the downstairs neighbour receiving support. This was confirmed in the final response, which also explained it could not provide details due to data protection for the neighbour.
22. The landlord was correct to explain it could not pass on details about another resident to the tenant.
23. However it was also reasonable for the tenant to escalate the complaint based on the fact the smell continued after the landlord's assurances.
24. The landlord has provided further details to the Housing Ombudsman Service that confirm the matter was investigated as required at the time. Given the need to provide a fair service to all residents, and given that part of a fair service is an evidenced based approach, the landlord was correct to say it had taken action in response to the reports of the smell.
25. It is important that the tenant themselves explained they would be contacting the Environmental Health Department. This demonstrates the tenant was aware of the appropriate authorities that could provide a technical review of the landlord's approach and determine whether further action was required and evidenced, or not.
26. The landlord could have provided more information about its handling of the matter in the formal responses. While the landlord could not provide specific details of its interaction with the neighbour, it could, for example, have provided a timeline against which it expect the situation to improve to help manage the tenant's expectations, and to provide reassurance that the matter would continued to be dealt with if it persisted. Equally if the landlord determined that the matter did not merit further involvement (whether based on confidential information from the neighbour's flat or from observing the smell in the tenant's home) then it should have explained this clearly to the tenant.
27. As with the response to the ASB case above, the landlord's responses have lack specificity and so have neither provided reassurance with action that will be

taken, or drawn a line under the matter by explaining the limits of the landlord's role.

28. In terms of the reported smell, the failure was less significant as the landlord has provided information about how the matter was followed up. However it does provide further evidence that the landlord's complaint handling and responses would merit from a review.

Determination

29. In accordance with paragraph 55 of the Housing Ombudsman Service:
 - a. There was maladministration in the landlord's response to the complaint about the handling of the ASB
 - b. There was service failure in the landlord's response to the complaint about the smell from the downstairs neighbour's home

Reasons

30. The landlord's decision to not open an ASB case for the tenant given the information in the formal complaint and responses did not adhere to the landlord's ASB policy commitment to support victims of ASB.
31. While the landlord did follow up the reports about the smell, and it was reasonable to explain there were limits on how much information it could share, the landlord did not clarify whether it considered the matter closed after its initial response; and it did not explain how the matter could be re-raised or re-investigated if the problem continued.

Order

32. As a result of the determination above the landlord has been order to, within 4 weeks:
 - a. Pay the tenant £300 to acknowledge the distress and inconvenience of the landlord's decision to not clearly respond to the tenant's ongoing reports of ASB