

The Ombudsman's final decision

Summary: Ms S complains about the Council's lack of action in dealing with noise nuisance and anti-social behaviour from her neighbour. The Ombudsman's investigation found the Council considered the issue, but decided the noise was not statutory nuisance or anti-social. We cannot question the merits of that decision. But we do uphold the complaint, because the Council delayed responding to Ms S's complaint. The Council has apologised. So there is not enough remaining injustice to warrant further action by the Ombudsman.

The complaint

1. The complainant, whom I shall refer to as Ms S, complains the Council:
 - ignored her for months, after she complained about noise and harassment from her neighbour;
 - did not deal with her request for a stage two complaint.

What I have investigated

2. Since contacting the Ombudsman about the above complaint, Ms S made a new complaint about the Council's inaction. We have dealt with that complaint separately.

The Ombudsman's role and powers

3. We investigate complaints of injustice caused by 'maladministration' and 'service failure'. I have used the word fault to refer to these. We consider whether there was fault in the way an organisation made its decision. If there was no fault in the decision making, we cannot question the outcome. (*Local Government Act 1974, section 34(3), as amended*)
4. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
5. If we are satisfied with an organisation'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

6. As part of the investigation, I have:
 - considered the complaint and the documents provided by Ms S;
 - made enquiries of the Council and considered its response;
 - spoken to Ms S;
 - sent my draft decision to Ms S and the Council and considered the responses I received.

What I found

Legal and administrative background

Statutory nuisance

7. Under the Environmental Protection Act 1990 (EPA), councils have a duty to take reasonable steps to investigate potential 'statutory nuisances'. Noise can amount to a statutory nuisance.
8. For the issue to count as a statutory nuisance, it must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; and / or
 - injure health or be likely to injure health.
9. There is a long-established legal principle that 'nuisance' must be judged on how it affects the average person, not someone who, for whatever reason, is particularly sensitive to it. Officers should always therefore consider whether the issue would amount to a nuisance to the 'average' person.
10. Councils have powers of enforcement under the EPA, which can involve the Magistrates Court. So, if a council serves a notice asking someone to abate a nuisance that person can appeal the notice to the Magistrates Court. Or, in cases where a council believes prosecution is the only way to stop a nuisance that will also involve court proceedings, giving rights of defence. For that reason, a council must gather evidence that will persuade a court the action is proportionate and necessary. It cannot therefore act on the complainant's word alone. It would need strong evidence, likely including its own officers witnessing the noise.

Anti-social behaviour

11. 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.

Community Trigger

12. The Anti-social Behaviour, Crime and Policing Act 2014 introduced a mechanism to review the handling of complaints of ASB. This is commonly known as the 'Community Trigger' process. When a person requests a review, relevant bodies (which may include the council, police and others) should decide whether the local threshold has been met.
13. If the threshold has been met, the relevant bodies should undertake the review. They should share information, consider what action has already been taken, decide whether more should be done, and then inform the complainant of the outcome. We can only consider councils' actions in an ASB case review. Any

contribution made by other relevant bodies, such as the police, is not in our jurisdiction.

What happened

14. In 2018, new neighbours moved into a home that adjoins Ms S's. She says, from soon after the move, she has experienced unwanted noise from them. In January 2020 she began to report issues with noise from the neighbours to the Council and police.
15. In March 2021 Ms S complained to the Council about its inaction.
16. In April, Ms S asked the Council for a Community Trigger. The Council accepted the request. Around the same time, it also referred Ms S and her neighbour to mediation.
17. The Council wrote to Ms S in May, after its Community Trigger meeting. It advised:
 - the main noise she reported was loud radios, doors slamming, heavy feet on the stairway and dogs barking. This usually happened in the daytime or early evening;
 - the Council considered this noise to be everyday noise and not unreasonable;
 - the design of the houses and the COVID-19 lockdowns may have exacerbated Ms S's awareness of the noise;
 - the neighbour had made counter allegations, so the Council had asked both households to sign good neighbour agreements;
 - the Council had also referred the case for mediation;
 - it was closing its case.
18. Later in May and again in June, internal Council emails noted an improvement in reports, following work with the Ms S and her neighbours.
19. Ms S contacted the Ombudsman again in April 2022; after problems with the neighbour re-started. We asked the Council to respond to the complaint. It did so in July. It apologised it had not dealt with her March 2021 complaint, which it said was an "unfortunate oversight". But it did not uphold the other parts of Ms S's complaint.

Analysis

20. I have restricted my investigation to events from April 2021 onwards, as Ms S did not complain to us until April 2022. I see no reason why it would have been unreasonable for her to not come to us sooner.
21. The Council's notes indicate that a large part of the noise Ms S reported was during the daylight hours, or of a type that could be interpreted by the courts as everyday household noise. Ms S has a strong contrary view about the persistent noise. While I understand the noise has undoubtedly affected her, we cannot criticise the merits of the Council's decision about whether the noise amounted to a statutory nuisance, or if the neighbour had been anti-social.
22. The Council has taken appropriate action to respond to Ms S's reports. It took part in the Community Trigger process. It also suggested mediation. The evidence suggests this did lead to an improvement for a while.
23. I do however uphold the complaint, because the Council has accepted it did not provide a response to Ms S's March 2021 complaint. We agree: the Community

Trigger process is not analogous with a complaint. But the Council has apologised for this, which is a suitable remedy. So there no need for any further recommendation.

Final decision

24. I uphold the complaint because the Council did not respond to Ms U's complaint. But the Council has apologised, so no further action is needed.

Investigator's decision on behalf of the Ombudsman