

**Report
on an investigation into
complaint no 12 015 642 against
Birmingham City Council**

11 November 2013

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against Birmingham City Council**

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Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

- Ms A** - the complainant
- Mr X** - the neighbouring tenant
- Officer B** - antisocial behaviour team officer
- Officer C** - antisocial behaviour team manager
- Officer D** - assistant housing officer

Report summary

Housing

Birmingham City Council failed to take court proceedings for the possession of a tenant's property after it served him with a noise abatement notice and twice seized his noise equipment and prosecuted him for breaching the notice. It also failed to carry out proper background checks when it received an application from the tenant for a mutual exchange of a property. Had matters been handled properly, the mutual exchange would not have taken place and Ms A, his new neighbour, would not have suffered from his antisocial behaviour for two and a half years.

Finding

Fault found causing injustice and recommendation made.

Recommended remedy

I recommend the Council pays Ms A £1,500 to acknowledge the distress caused by its failures.

The complaint

1. Ms A complains Birmingham City Council:
 - gave consent to Mr X's application for a mutual exchange to a property next to her home despite having evidence of his antisocial behaviour; and
 - failed to tell the Housing Association, who owns the neighbouring property, about Mr X's past behaviour.
2. As a result of these failures, Ms A says she suffered harassment and antisocial behaviour from Mr X.

Legal and administrative background

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. If there has been fault, I consider whether it has caused an injustice and, if it has, I may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. Schedule 3 of the Housing Act 1985 sets out the grounds on which a landlord can withhold consent to an assignment by exchange. These include:
 - ground 1: the tenant or the proposed assignee is subject to an order of the court for the possession of the dwelling-house of which he is the secure tenant;
 - ground 2: proceedings have begun for possession of the dwelling-house of which the tenant or the proposed assignee is the secure tenant on one or more of grounds 1 to 6 in Part 1 of Schedule 2 (grounds on which possession may be ordered despite absence of suitable alternative accommodation), or there has been served on the tenant or the proposed assignee a notice under section 83 (notice of proceedings for possession) which specifies one or more of those grounds and is still in force (ie, within one year).
5. Part 1 of Schedule 2 of the Act sets out the grounds on which a court may order possession if it considers it reasonable. These include:
 - ground 2: the tenant or a person residing in or visiting the dwelling-house has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality or has been convicted of (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or (ii) an indictable offence committed in, or in the locality of, the dwelling-house .

How we considered this complaint

6. This report has been produced following interviews with relevant employees of the Council. The Council could not provide the case files to my Investigator as they had been lost during office moves.
7. The complainant and the Council were given a confidential draft of this report and invited to comment. The comments received were taken in to account before the report was finalised.

What happened

8. Ms A is an owner occupier of her house. A Housing Association owns the property next door. In 2010, the Council and the Housing Association consented to Mr X's application to exchange his property with that of the Housing Association's tenant, and he moved in next door to Ms A. Since the exchange, Ms A complains Mr X has harassed, intimidated and threatened her. She complains of loud music through the night, late parties and violent and aggressive behaviour.
9. Ms A discovered Mr X had a history of antisocial behaviour while he was a Council tenant. The Council failed to tell the Housing Association that it had served a noise abatement notice on Mr X and seized his sound equipment.

What the investigation found

10. Mr X and his partner were joint tenants of a Council property. On 9 January 2009, the Council's Environmental Health Department served Mr X with a noise abatement notice following complaints. The following week Officer B in the Housing Department received information about, and a copy of, the notice. Under Council procedures for tackling antisocial behaviour, Officer B should have drafted an 'action plan' setting out what was discussed and agreed with the complainant, what action the officer would take, and time targets and review dates. Officer B did not draft an action plan. On 29 January, the Council seized sound equipment from Mr X's property.
11. In April, the Council received further reports about Mr X's antisocial behaviour. Officer B sent Mr X a letter warning that he was in breach of his tenancy conditions.
12. In June, Environmental Health again seized Mr X's sound equipment. Officer B was told Mr X would be prosecuted for two breaches of the notice, but was not told when the case would go to court.
13. Officer B discussed the case with the Council's Antisocial Behaviour Unit, a specialist central team set up to deal with such behaviour across the city. The Unit advised him to send a warning letter to Mr X and await the outcome of the court case.
14. In July 2010, the Council received Mr X's application for a mutual exchange. He wanted to exchange his Council property with the Housing Association tenant who lived next door to Ms A. Both the Council and the Housing Association had to consent.
15. Officer B only discovered the case had gone to court in August by reading about it in a local newspaper. He then went on long term sick leave and then retired. Officer B's manager, Officer C, says no one covered Officer B's cases during his absence. Several officers were on long term sick at the time, so the department was short staffed. Officer C's manager was also on long term leave and there was no replacement cover during her absence.
16. Officer D (an assistant housing officer), who had previously been an antisocial behaviour officer, checked the application. Council procedure required checks for 'tenancy and support issues'. She says she checked the computer system for live court orders, notice of possession proceedings in force, and antisocial behaviour issues, but there were no recorded problems for either property. The Council's computer system recorded details of antisocial behaviour against the name of the person complaining, not the perpetrator. So a check against Mr X's name may not

have identified problems with his behaviour. Officer D says the check may not have shown previous problems because the system was difficult to interrogate. During the checks she failed to identify that Mr X's partner was no longer living at the property. She told the Housing Association that Mr X's tenancy was 'conducted satisfactorily'. The Housing Association queried this and she confirmed there was 'no known antisocial behaviour'.

17. The Council consented to the exchange in September. Shortly after the start of Mr X's tenancy, the Housing Association received reports from Ms A and other neighbours about his antisocial behaviour. The Housing Association discovered the Council had taken Mr X to court for noise nuisance and seized sound equipment. It says that if it had been aware of the noise abatement notice and Mr X's previous antisocial behaviour, its officers would have investigated. Based on the information it later got, it would not have consented to the exchange.
18. In November, a Council officer reviewed Officer B's work. This found several failures with Mr X's case. Officer B:
 - a) failed to contact Mr X's neighbours;
 - b) failed to carry out follow up action after the seizure of sound equipment;
 - c) had not been in regular contact with the Environmental Health Department; and
 - d) had wrongly recorded the Environmental Health Department as the complainant.
19. Officer C says there was a communication breakdown, and the Council could have served Mr X with a notice seeking possession for the recovery of his property had the case been dealt with properly. Officer C says the review identified a missed window of opportunity to take legal action. Following the review, officers contacted Mr X's neighbours, but they did not report any problems. The Environmental Health Department confirmed it had closed the case two months before.
20. The Housing Association issued repossession and injunctive proceedings against Mr X. These proceedings cost the Housing Association more than £15,000. Environmental Health officers served Mr X with a second noise abatement notice on 2 August 2011. Officers seized sound equipment a few days later. Mr X was in prison on an unrelated matter from October 2012 to March 2013. Following his release, Ms A says Mr X returned to the property and continued to act antisocially. The Housing Association obtained a court order for the possession of the property. It is instructing bailiffs to enforce the order.

Conclusions

21. I find the Council has acted with fault which caused Ms A a significant injustice.
22. The Council failed to plan or take appropriate action to deal with Mr X's initial antisocial behaviour which led to the abatement notice, or following the breaches of the notice and the Council twice seizing noise equipment. The Council's own review found a lack of action and a missed opportunity to pursue possession proceedings. I am satisfied, on the balance of probability, that if the Council had addressed matters properly it would have pursued possession proceedings. Its failure to do so was fault.
23. Mr X's application for the mutual exchange was received in July 2010, within a year of the August 2009 court case. So action for possession would have been grounds to

withhold consent for the mutual exchange. I am clear the Housing Association would have had the right to, and would have, refused a request for a mutual exchange if the Council had not been at fault.

24. The Council failed to make proper background checks before agreeing to the mutual exchange. Had these checks been done properly, not only would Mr X's behaviour have been identified, but his eligibility for the exchange would have been in doubt because his partner was no longer living at the property. This was fault. The Council's poor record keeping, illustrated by the lost files, and its poor records system, illustrated by referencing complaints against the complainant rather than the alleged perpetrator, can only have hindered proper consideration of the matter. This poor records management was fault. There was also poor communication between Council departments and a lack of adequate attention to the case.
25. The Council has since changed the way it records information on its computer system. It now records information against the perpetrator. It has reviewed antisocial behaviour procedures, carried out training for staff about enforcing tenancy conditions, and integrated skilled officers into local teams to provide support for victims of antisocial behaviour. It reorganised housing management across the city. The Council also sent a letter of apology to Ms A and the Housing Association.

Recommendations

26. I welcome the apology the Council has given to Ms A and to the Housing Association but, apart from the period when Mr X was in prison, Ms A has suffered from his antisocial behaviour for about two and a half years. I am satisfied this has caused her significant unnecessary distress. If the Council had acted properly this would not have occurred. I recommend the Council pays Ms A £1,500 to acknowledge the injustice caused to her.



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11 November 2013