

# Housing

Ombudsman Service

## REPORT

*COMPLAINT 202101087*

*GreenSquareAccord Limited*

*13 June 2023*

## **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 handling of the resident's reports of noise nuisance.
  - b. The landlord's handling of the resident's reports about pigeon spikes.
  - c. The landlord's complaint handling.
2. This report also examines:
  - a. The landlord's record keeping.

## **Background and summary of events**

3. The resident has an assured tenancy with the landlord which began on 8 September 2003. A merger took place between two landlords on 1 April 2021 which is relevant to the timeline of this case. The property is a two bedroom flat on the ground floor of an Edwardian building.
4. The landlord has no recorded vulnerabilities for the resident, however evidence seen shows that she suffers from post-traumatic stress disorder (PTSD), depression and anxiety following the death of her son.
5. The landlord's website states that it does not consider loud talking, and noise from people moving around in their home as anti-social behaviour (ASB). If an ASB case is opened for investigation the landlord will:
  - a. respond to reports of noise nuisance within five working days
  - b. take an initial risk assessment and agree an action plan with the resident

- c. ask the resident to monitor the situation by keeping a record of dates and times the problem is occurring.
  - d. keep the resident informed at each step of the complaint, and consider mediation as appropriate.
6. At the time of the complaint, the landlord operated a two stage complaint policy which stated that:
- a. stage one “initial investigation” complaints should be acknowledged within two working days and responded to fully within ten working days
  - b. stage two “review” complaints will be investigated by a senior member of staff where the resident remains dissatisfied. A response will be acknowledged within two days and responded to fully within ten working days
  - c. a “beyond stage two” process allowed the resident to approach the Ombudsman or request that a customer panel reviews their complaint
  - d. reports of ASB or nuisance were not covered by the policy
  - e. it would adopt a “person-centred approach” and keep customers informed about the stage the complaint was at, and the timescales for which they could expect a response.
7. The landlord’s repair policy at the time stated that if contractors required specialist materials to complete a job outside of timescale, then the resident will be notified of the intended completion date.
8. On 8 June 2020, the resident told the landlord that her neighbours were moving in upstairs and the noise was “horrendous”. The landlord responded the same day and advised that a new resident was moving into the property so she could expect to hear people moving things around. However if it continued, then she should approach her neighbour to “have a chat”.
9. On 13 June 2020 the resident contacted the landlord and said she had been upstairs to see her neighbour twice, but it had made no difference. She said that:
- a. the previous evening the noise went on until 1am. It sounded like her neighbours were walking heavily across floorboards
  - b. she found the levels of noise unacceptable and requested that the housing officer “deal with it” and look into whether they required additional flooring or sound proofing.
10. The housing officer responded to the resident on 15 June 2020. He said he would make arrangements to see that her neighbour had settled in, and review whether they had carpets and underlay. He advised that “normal noise” including walking across floorboards would not be classed as ASB.

11. On 18 June 2020 the resident contacted the housing officer's manager. She said that:
  - a. she wanted to formally complain about the lack of contact from her housing officer. Following a visit, he said he would send details of the noise recording app, but she had heard nothing further. She believed he had shown a private email of hers to the neighbour she was complaining about
  - b. the banging from her upstairs neighbour had escalated and continued up until 1am. Visitors to her property had commented that they had also heard the noise, and it was disturbing her on a regular basis
  - c. the landlord needed to act on the noise, or she would deal with it herself and that would result in a "huge problem" with her neighbour. She wanted to know what action had been taken to date.
12. The landlord responded on 20 June 2020 and sent instructions of how to use the noise app. It advised the resident that "since you would like to make this complaint official, I have raised an ASB case".
13. The resident did not respond to the landlord until 21 July 2020. She said that:
  - a. her complaint was about her housing officer, and she wanted it formally logged that he had ignored her and shared her personal information
  - b. she had been a tenant for 17 years and the problem had only just started with noise after the new neighbours above had moved in. She wanted to know what action the landlord had taken with regards to the noise and soundproofing
  - c. she had support from organisations helping her with PTSD that would be willing to explain the impact the loud bangs and noise was having on her
  - d. the landlord had "no interest in supporting or helping" her. No actions had been followed up, and her housing officer seemed more concerned about rent payments.
14. The manager dealing with the case advised that she was about to go on annual leave, arranged to contact the resident to discuss her complaint further on 5 August 2020. No record of the conversation was seen.
15. On 18 and 20 August 2020, the resident told the landlord that she had heard nothing further about a proposed inspection of the upstairs flooring. The noise was constant and had submitted noise app recordings. She felt she "could not cope" and would be staying away from the property.
16. The landlord arranged an appointment to visit on 3 September 2020, which the resident had to cancel because she was required to self-isolate. The landlord

advised that it would still visit her neighbour and call to update her afterwards. No record of the visit to the neighbour or the call was seen.

17. On 9 and 14 September 2020 records show that the resident was confused about what stage her complaint was at, what actions were being taken and how often she was expected to make noise app recordings. She said she had “no idea what was happening”.
18. Evidence suggests that the landlord visited the resident on 24 and 29 September 2020. However no notes from either visit were seen, though they were referenced in the landlord’s stage one complaint response.
19. On 5 November 2020, the resident contacted the landlord. She asked that someone call her to go through her complaint. She said that she heard sounds of domestic violence from the flat above, and wanted a formal complaint logged against her neighbour.
20. On 9 November 2020 the landlord responded at stage one of its complaint process. It advised that:
  - a. during a home visit on 28 September 2020:
    - i. the resident, the neighbours and the landlord met together to experience first-hand the reports of noise the resident was complaining about. The landlord went into each flat separately, walked around and exaggerated their movements
    - ii. a sound monitoring device was used to record the noise in decibels, and the feedback it gave was that the noise level was low. Although the landlord could hear people walking around and saw some movement of the ceiling light, it did not consider the noise to be excessive or of a statutory noise level
    - iii. the ceiling was visually checked and there were no cracks in the plaster boarding that suggested movement within the joists. Having reviewed the documents relating to the historic fire, it was satisfied that the ceiling did not warrant further works to reduce the noise she was experiencing
    - iv. it did feel that there were two repair jobs that could improve the noise. These were to ease the kitchen door from catching the threshold strip, and fixing of loose floorboards. The works were completed on 23 October 2020
    - v. it was concerned with the emotions the resident displayed during the visit, where she was crying and visibly shaking. It offered her support to signpost her to specialist support for her mental wellbeing
  - b. it had explained how the noise app worked, and noted that although the resident had made it clear that the noise was not ASB, it provided her with its ASB leaflet

- c. with regards to her concerns that some of the pigeon spikes had fallen off in the communal area, a cherry picker would be required to complete the job. A date had not been confirmed, but it would update the resident as soon as it had one
  - d. it was sorry for the breakdown in communication from various colleagues, and acknowledged that the resident had not always been kept informed of progress during its investigations. It would take this learning and ensure that the same mistakes were not repeated
  - e. her complaint was upheld, as it accepted that the level of service she had received fell short of expected standards. It considered the matter concluded, but if the resident remained dissatisfied she could escalate her concerns to stage two of the complaint process.
21. On 16 November 2020, the resident informed the landlord she was not happy with the landlord's complaint response. She said that a number of questions were left unanswered, including:
- a. why nobody had answered "what is classed as normal noise in a flat?". She wanted to know if it was normal to hear footsteps or a toddler running around, or her neighbour having sex. No one had explained the ASB procedure
  - b. whether the violent fighting she could hear between her neighbours was something the landlord considered to be "normal".
22. The landlord responded the following day and advised reports of noise and ASB fell outside of the complaint she was escalating, and it would need to arrange to discuss this separately. It advised her neighbour had been in contact and made counter allegations that she had been banging on the ceiling.
23. On 19 November 2020, the landlord asked the resident if she would consider mediation with her neighbour. On the 23 November 2020 it followed up with an email link to a website that set out what could be considered reasonable noise nuisance.
24. On 16 December 2020 the resident sent the landlord a diary record of noise nuisance from 5 December 2020. The entries noted random banging noises that took place at various times of the day and night. She also reported she could hear the washing machine, people talking, and her neighbour having sex.
25. On 17 and 22 December 2020 the landlord tried to arrange a call to discuss the resident's reports of noise. On 23 December 2020 following a report of screaming, it advised that the resident should contact the police if she had concerns for the safety and welfare of her neighbour. It asked her to submit weekly diary sheets, and give further consideration to its offer of mediation.

26. On 4 January 2021 the resident asked for an update on what was happening with her noise complaint. The landlord responded and advised:

- a. it had been trying to arrange a meeting, in person or on the phone with the resident since 17 November 2020 without success
- b. it was concerned about the resident's reports of violence
- c. it had spoken to her neighbour about the noise, but she had made counter allegations that the resident was banging on the ceiling and playing loud music. It was felt that mediation would be helpful to encourage communication and understanding between both parties.

27. On 11 January 2021, the resident told the landlord that after six hours of banging noises, she decided to approach her neighbour but was "faced with attitude". The altercation escalated to a full blown argument. She said that she couldn't live like that any longer, and wanted the landlord to insulate the properties, or move her.

28. On 13 January 2021, the landlord informed the resident that her neighbour had taken a video of what had happened when she approached her. It advised that it wanted to speak to her about the language she had used, and the threats that she had made. Her neighbour had been advised to report the altercation to the police.

29. The resident responded and said:

- a. she did not see the point in speaking with the landlord over the phone. She was not being taken seriously or supported, and was woken at 4am that morning by banging noises
- b. one of her other neighbours had to support her because of how distressed she was feeling. She too had witnessed the noise and was willing to write a witness statement against the neighbour above
- c. the incident with her neighbour was after hearing six hours of noise and a domestic argument. She was very upset, and at the "end of [her] tether" when she decided to approach her neighbour
- d. she realised she overreacted and said things in the heat of the moment. She had since apologised to her neighbour and agreed that she would not approach them again
- e. since the incident, she sought support from her GP and private counsellor for her declining mental health due to the noise
- f. she wanted the issue of sound proofing looked at to eliminate the noise.

30. On 15 January 2021, the landlord asked the resident if she had considered approaching the local authority environmental health (EH) team. The resident commented that no one had advised her that this was an option before.
31. On 21 January 2021, the landlord wrote to the resident and advised that:
- a. it had already informed her it would not be providing any additional floor insulation. It had written a stage two complaint response but did not reference reports of ASB as they were not covered by the complaint policy
  - b. all her reports had been raised with her neighbour and it was deemed to be normal every day household noise, and not ASB. Her allegations of domestic violence had also been addressed, and her housing officer had spoken to EH
  - c. it had received reports that she was banging on her ceiling and ringing the buzzer of her neighbour's property, which was scaring a young child.
32. The resident denied banging on the ceiling or ringing the buzzer. She continued to experience banging noises, and had sent the recordings to the landlord. The landlord said it could hear "some noise" but it was difficult to pick up, and suggested the equipment issued by EH may help give a professional opinion of what the next steps might be.
33. On 22 January 2021 the landlord emailed the resident and advised:
- a. it wanted to send an overview of the actions it had taken for the resident's records. It had noted that the resident had been clear from the outset that she did not feel the issue was ASB, but related to sound proofing
  - b. no evidence of excessive noise was found during the visit by the landlord in September 2020, and the findings were explained in the stage one response
  - c. she had been given access to the noise app to record the type of noise and frequency, in the event it needed to take further action. All recordings had been listened to, but it was difficult to hear the noises she was reporting. No action could therefore be taken against her neighbour
  - d. it was still unclear whether the resident felt the noise was ASB
  - e. it was concerned by the emotions the resident had displayed during its visit in September. It had offered her support, but to date she had not requested it
  - f. it noted that the resident had apologised for approaching her neighbour. It said that any reports of ASB would be taken seriously and action taken, if there is supporting evidence.
34. The resident responded to the landlord on the same day and said that:
- a. the way her noise complaint was being handled was having a "huge negative impact" on her mental health. She had support from her GP about this

- b. she had never been reassured that her concerns were being taken seriously, yet when her neighbour raised a concern about her banging on the ceiling, she was personally challenged and felt the attitude of its staff was unprofessional
- c. all she had been offered was mediation, but she wanted the soundproofing looking at
- d. she would be visiting her GP in the morning because she was concerned about how she was feeling in herself.

35. On 10 March 2021 the resident stated that she had to leave her home as the noise was unbearable due to a gathering of people in the neighbour's property.

36. On 15 March 2021 the resident reported that there was noise and the neighbour above was in breach of covid 19 regulations, and she had reported the matter to the police. The housing officer responded and said it would be beneficial for all parties to meet with the police present. The resident said she was unwilling to meet with the housing officer as she had an open complaint about him.

37. On 19 March 2021, the housing officer responded and advised:

- a. he respected her decision not to meet him, but the visit would continue to take place in her absence and he would be in contact again to update her on any outcomes
- b. whilst she was "within her rights" to complain about him, it should not stop her from cooperating with regards to recent incidents relating to her tenancy
- c. at the meeting he would be sharing the "troubling" video footage he received from January in which she was seen intimidating her neighbour and making verbal threats. It caused alarm and distress to her neighbour, and was a breach of her tenancy conditions
- d. he was aware that the police had attended her neighbour's property on four occasions and found no evidence of any issues. He expected some "common sense" to be applied before contacting the police. Malicious reports made to the police would be wasting their time, and a further breach of her tenancy agreement
- e. if she did not want to cooperate with him, then he would investigate the matter directly with the police and write to her of the outcome. If she continued to behave in an anti-social manner, he would have no option but to pursue enforcement against her tenancy.

38. The resident contacted the landlord later the same day and advised:

- a. she was very upset by the housing officer's email and felt "totally intimidated" by him. She wanted no further contact with him, but would be willing to speak to someone else
- b. she had made her own enquiries with the police who confirmed she had made three reports, and not four, as the housing officer had suggested. She would never make false reports to the police
- c. in response to the incident where she went upstairs to confront her neighbour, she said she made a "terrible out of character mistake" after hours of enduring noise, and immediately regretted her actions. She had already apologised to the landlord and directly to the neighbour about this
- d. she had done everything possible since the incident to seek support from her GP and other agencies. She wrote a letter of apology to her neighbour and they had seen each other since without any further issues
- e. the threats made against her tenancy were based on false statements and had caused her significant distress. She was struggling with her mental health and was "holding out hope" that the customer panel would resolve the issues.

39. On 29 March 2021, the landlord spoke to a close neighbour of the resident, and asked if she could hear any noise from the neighbour the resident was complaining about. She said she could hear "slight noise" but she was not affected by it at all.

40. On 6 April 2021 the resident's counsellor wrote to the landlord and advised that:

- a. in her professional opinion, the noise from the flat above the resident had greatly impacted her mental and physical health. She had developed symptoms of severe depression and anxiety, and was finding it hard to sleep through the night.
- b. the noise was unsettling for the resident and she felt "unheard" by the landlord. She could not see that there would be a positive outcome for her
- c. at times she had felt the need to stay in a hotel to enjoy a more peaceful environment where she could focus on her work
- d. the resident was a confident, strong woman who demonstrated tremendous resilience. However, was now presenting as "severely incapacitated" due to the chronic noise.

41. A meeting was held by the landlord's complaint and communication panel on 7 April 2021. The resident was not present at the meeting. Minutes of the meeting noted that:

- a. there was little evidence to support the resident's claims of noise, and there were concerns that she was the perpetrator of ASB against her neighbour

- b. no evidence of unprofessional behaviour of staff had been found. The resident seemed to not like the response she was being given, and at times was not cooperating with the landlord
- c. there had been a lack of action around the pigeon spikes, but covid restrictions may have played a part
- d. there were mental health concerns about the resident, and it was noted she was seeing a therapist. It was unknown whether covid restrictions had affected her as she was at home more often
- e. it needed to track what had been recorded on the system, the decisions that had been made, and how she had been informed. The information was “all over the place”.

42. On 8 April 2021 the resident’s art therapist wrote to the landlord and advised that:

- a. before lockdown, the resident was working full time following the death of her son. She was admired by many for her clear and calm approach to her work. However, recently she had described herself as being “on the edge of an abyss”, having lost her “safe space” following the arrival of new neighbours who had been “noisy in the extremis”
- b. she had had suicidal feelings, felt distressed, anxious and overwhelmed by the noise, and was not sure how much longer she could cope. The noise was of an unacceptable level at an unacceptable time of day, leaving her feeling exhausted
- c. the resident had forwarded an email sent by the housing officer, which appeared to threaten her about her tenancy and with a visit from the police. She found the officer intimidating and only considerate of the needs of her neighbour
- d. a referral had been made to the community mental health team (CMHT) due to increasing suicidal thoughts, and she was being supported by them
- e. whilst the resident was a very resilient person, the noise was impacting her quality of life. It felt that the landlord should address the immediate problem of lack of soundproofing between the flats, and investigate threats made by the housing officer.

43. On 12 April 2021 the complaints and communications panel met with the resident. Minutes from the meeting noted that:

- a. it had not yet reviewed the evidence with regards to allegations against the housing officer
- b. the resident had lost trust in the landlord and was not getting answers to her questions. She was “never asked” about her own wellbeing. She wanted

reassurance that the landlord would do what they said they would do, both about the noise and the pigeon spikes

- c. a surveyors visit took place on the “29<sup>th</sup>” to investigate the noise. The resident had no more interactions with EH.

44. The resident approached the Ombudsman on 14 April 2021 and said that she had made a complaint to her landlord about noise nuisance and staff conduct. She was advised she could expect to receive a response within two months, but was not sure what stage her complaint was at. The Ombudsman prompted the landlord for a response.

45. On 20 April 2021 the landlord produced a report about the noise between the resident and her neighbour above. The report noted that:

- a. an ASB case was raised three days after her neighbour and her young daughter moved into the property on 8 June 2020. A counter allegation was made against the resident on 14 January 2021
- b. it had analysed noise recordings from the resident from September to December 2020. None of the recordings were deemed to be noise of an unacceptable level. Many were taken within reasonable hours, and either demonstrated normal living noise such as walking, closing the door or dropping something on the floor, or no noise at all
- c. on the contrary, the recordings made in the case of counter allegations against the resident demonstrated loud music being played, and the resident banging on the ceiling. Sometimes the banging on the ceiling went on for approximately 30 seconds
- d. on one occasion, the resident was recorded shouting expletives. The neighbour’s daughter could be heard and she was scared
- e. there had been no other complaints from any other neighbours about noise, and no evidence to substantiate noise from visitors
- f. it concluded that the noise app was working and picking up noise levels. Often the recordings from the resident were showing as blank because the noise levels were not high enough, and therefore were not considered unreasonable
- g. communication between both parties was identified as being key. They both had to appreciate they will hear noise living in a flat, and that the neighbour had a one year old daughter who would play, move around the house and drop things.

46. The resident contacted the Ombudsman again on 30 April 2021 and said she had still not had any contact from the landlord. This Service prompted the landlord for a response, and it advised that a panel hearing had taken place but more information was required before providing an outcome.

47. On 10 May 2021, the landlord advised the resident that:

- a. the panel had already met with her but required additional information before they could conclude the matter. It “had provided timescales” for this
- b. it acknowledged that the resident had been in touch with the Ombudsman and wanted to make her aware of what it had informed the Service:
  - i. that it had taken minor works to improve the transition of noise between the flats, and had asked the panel for their view on the noise nuisance
  - ii. an internal investigation was being undertaken in relation to allegations the resident had made about her housing officer. All the information would be subject to an internal management review, and considered by the customer panel
- c. as part of reviewing her complaint it had noted she had to stay in a hotel due to the noise nuisance. It asked her for dates and costs, so it could consider whether compensation was payable after it had reviewed all of the information
- d. it had asked the housing officer not to contact her. It been in contact with the police involved, who had said that they felt that the housing officer had been “hasty” in accusing her of unacceptable behaviour, before considering all the facts
- e. loose pigeon spikes were refixed on 18 September 2020, but arrangements were being made to take them down altogether
- f. it could not discuss whether her neighbour was moving out due to GDPR
- g. it understood she was being supported for her mental health, and would be happy to work in partnership with any external service
- h. it would “not entertain” any further correspondence on the matter pending the outcome of the customer panel and Ombudsman deliberations.

48. On 20 May 2021 the complaints and communication panel met without the resident. Minutes of the meeting noted:

- a. the neighbour had been visited and had thick carpet with good underlay. No unreasonable noise had been heard during a visit to the properties. There was no evidence to suggest that there was any issue with the sound proofing
- b. the recordings the resident had submitted had general background, including external noise. The resident was not complaining about the external noise so it seemed like “selective complaining” and her behaviour appeared to make her the “aggressor”
- c. the landlord’s reporting system for complaints was not comprehensive or coherent. This had since been addressed, but the panel would take approximately a further six weeks to finalise its deliberations.

49. On 19 May, 4 June and 28 June 2021, the resident advised the Ombudsman that she has not received any further update to her complaint. This Service made attempts to contact the landlord on each occasion.
50. On 11 June 2021, the landlord told the resident that she would receive the outcome of the panel hearing by 25 June 2021.
51. On 2 July 2021 the resident contacted the landlord and said that:
- a. noise transference continued to be an issue. She could hear floorboards and doors banging, and talking that was excessive
  - b. it was ignoring requests from the Ombudsman to deal with her complaint, and it had ignored her emails about noise and pigeon spikes. She felt “genuinely shocked and disappointed” about how the landlord was behaving.
52. On 7 July 2021, this Service wrote to the landlord and advised it must issue the resident a final complaint response within five working days.
53. The landlord wrote to the resident with the outcome of its customer panel on 6 August 2021. It advised that:
- a. with regards to the pigeon spikes, the final removal was being planned alongside other works required on the building. The panel could not uphold this element of the complaint, but acknowledged more could be done by the landlord to communicate with the resident
  - b. it had investigated her complaint about the behaviour of her housing officer. No GDPR breach could be substantiated, and the content of his emails were reviewed and were deemed to be polite and professional. Whilst the resident may not have liked the content of his emails, the landlord had an obligation to bring the issues to her attention
  - c. enquiries had been made to determine if there were any other complaints about the housing officer, and no evidence was found. The panel found no evidence to uphold this element of the complaint, but identified that the landlord had not responded to the resident about the issue
  - d. with regards to her allegations that the landlord had made out of hours calls to her mobile, the panel could find no basis to uphold that part of the complaint. The panel recognised that the resident had communicated with the landlord into the evening, the “one or two” calls the landlord made back around 7pm were not deemed unreasonable
  - e. it had reviewed the landlord’s communication with the resident. She had alleged that the landlord had repeatedly failed to address concerns or answer questions. The panel had looked at the copy of email exchanges provided by

the resident. These exchanges demonstrated that the landlord had been proactive, responding on the same day, or within a day or two.

- f. however there were occasions where questions had gone unanswered and suggestions had been made that extensive discussions had taken place, but had not been recorded. Based on the evidence and the other failures it had identified, the panel upheld the communication element of her complaint
- g. with regards to the resident's complaint of how her noise case was handled:
  - i. the panel members found the noise app easy to use. The recordings the resident submitted were listened to and "simply showed background noise", for example hoovering, walking, chatting and a baby playing. Nothing suggested any ASB
  - ii. at the same time the resident made the recordings about her neighbour, external noise could be heard, such as a dog barking and sitting traffic, but the resident had not complained about this
  - iii. the notes from the staff visit in 29 September 2020 did not identify noise of unacceptable levels, but raised repair works to any loose floorboards and eased the kitchen door. These works were completed on 23 October 2020
  - iv. the panel made enquiries as to the flooring in the above property, and it was confirmed that carpet had been laid with underlay. No one else had come forward to state that they had witnessed unreasonable noise nuisance
  - v. based on the evidence seen, the panel could find no basis to uphold the resident's complaint about noise. The noise levels had been assessed as low, and the external noises seemed to be of similar levels to that which she said were being caused by her neighbour
- h. from investigating the complaint, there were clear issues with communication that needed to be addressed, which would have removed the majority of the points the resident had raised. It would refer the process of investigating a noise complaint to its scrutiny panel to see if it could be improved
- i. the panel process had been time consuming due to the additional items the resident had added to the noise complaint. It requested that she communicate with the landlord in writing so that she could evidence what had been promised to her should the need to investigate further issues arise.

54. On 27 August 2021 the resident emailed the landlord and advised that:

- a. she felt the noise insulation in the building was deteriorating. She was being woken up on a regular basis from sounds of people using the communal stairs which were adjacent to her bedroom. This had not happened before

- b. the repair job to the pigeon spikes had not been completed, despite reassurances from the landlord that a cherry picker would be ordered to address the issue
55. The landlord responded and advised that it wanted to visit in person to discuss the issues. It advised that her new reports of noise nuisance would be dealt with separately to her formal complaint, and would be investigated under the ASB policy. It said it needed to be quite clear what it could do if the noise she was reporting was ASB or everyday use of the communal areas.
56. On 3 September 2021 the landlord wrote to the resident and advised that following the tenant panel that took place on 6 August 2021, it had identified that it had failed to meet the following criteria:
- a. it did not state clearly which stage the complaint was being considered at
  - b. it failed to inform her how she could escalate her complaint, or inform her that she had exhausted the landlord's internal complaints process
  - c. it failed to inform her that she would refer to the Ombudsman for further assistance. However, it was aware that she was already pursuing this action.
57. At some point around June 2022, the neighbour above the resident moved out. The resident contacted the landlord and asked if it would consider putting in sound proofing whilst the property was empty. On 13 June 2022, it responded to the resident and advised:
- a. there was an issue with accessing notes on the system. The problem had been reported to its IT department
  - b. sound proofing was not considered to be part of void works, and that a housing officer could visit the property above to establish what flooring was in situ.
58. Around July 2022, an elderly neighbour moved into the flat above. On at least 11 occasions between August and November 2022, the resident reported to the landlord she could hear banging noises in the flat above her, and the television on loud.
59. On 15 January 2023, the resident contacted the landlord having heard that the resident above her had passed away. She said it was a good opportunity for the landlord to reconsider soundproofing whilst the property was empty again.
60. In recent contact with the Ombudsman the resident said that:
- a. the property above her remains empty, following the passing of her previous neighbour. She had asked if the landlord could consider what measures could

be put in place to improve the insulation whilst the flat was empty, but had not received a response

- b. the landlord had told her that it would not communicate with her further, until it had an outcome from the Ombudsman. She has been left feeling anxious, as noise triggered strong suicidal feelings in the past. She is nervously waiting to see who moves in above her and is worried those feelings will return
- c. she is conscious noise can be a trigger for her PTSD. If she is outside, she can move away from the noise, but at home, she cannot escape. The landlord had never done a risk assessment with her, and she sought support for herself
- d. she remains confused about her landlord's stance on the matter. She had never said the noise above her was ASB, or deliberate to cause her upset. She was unsure whether the landlord partially agreed with her that there was a sound transference problem. If it was, she had offered to pay towards insulation above her lounge and bedroom
- e. she had approached EH as the landlord had advised, and was told that the noise she was reporting was not something it could further investigate or take action on
- f. she is keen to stay in the property, as she has been there for over 20 years and it has the bedroom of her late son. However, she feels the landlord should be brave enough to have some honest conversations with her about whether she had unrealistic expectations of living in a flat. If this was clearly explained to her, she would consider moving with support from the landlord
- g. the pigeon spikes have not been removed, and the landlord has not communicated further with her on the matter. She continues to have no relationship or communication with her housing officer
- h. she wants to be compensated for the distress and inconvenience she has suffered in trying to get her landlord to address the issue. She has found the landlord's complaint process unhelpful, confusing and exhausting.

## **Assessment and findings**

### *The landlord's handling of the resident's reports of noise nuisance*

61. It is acknowledged that this situation has been distressing to the resident. It may help to explain that the role of the Ombudsman is to consider complaints about how the landlord responded to reports of noise. It is not the Ombudsman's role to decide if the actions of the resident's neighbour amounted to ASB, but rather, whether the landlord dealt with the resident's reports appropriately and reasonably.

62. The resident made it clear to the landlord on several occasions that she did not deem the noise to be ASB, and her primary concern was the soundproofing quality between the flats. Being clear on how a noise report will be handled is key to good communication between the landlord and the resident, and aids expectation management. The landlord gave appropriate advice in the initial stages of her reports of noise nuisance. It informed her she could expect to hear the noise of her neighbour moving in and encouraged her to have discussions with the neighbour directly.
63. When the resident advised that the noise transference continued, the landlord's stance on the matter changed. Despite no suggestion from the resident that the noise from her neighbour was deliberate or intentional, it advised that it would open an ASB case in June 2020. Its rationale for opening the case was unclear, and no evidence was seen that it made reference to its policy or explained what could reasonably be investigated in order to manage her expectations.
64. Contrary to its ASB procedure, the landlord did not seek to agree an action plan and regular timescales for contact with the resident. This was a missed opportunity to build trust and give her confidence that it was taking her issues seriously, and contributed to the breakdown in her relationship with her housing officer. As a result, the resident had to chase the landlord for an update on several occasions, adding to her distress.
65. The landlord asked the resident to keep noise app recordings of the frequency and intensity of the noise. However, no evidence was seen which demonstrated that it had explained how long she was expected to keep recordings, and what the landlord could do with the information. Timely feedback on the recordings she had taken was not given. It was not until 22 January 2021, seven months after her initial complaint of noise, that it advised the resident that it had listened to the recordings and did not deem the noise to be ASB.
66. The landlord's communication on this day was particularly unclear. It acknowledged that the resident was not complaining about noise that amounted to ASB, yet it also said it was confused as to whether she was complaining about ASB. This demonstrated that the landlord had not listened to and understood the resident's concerns. It gave no assurances of what the conclusion of its investigations were.
67. The landlord was not assertive in explaining clearly to the resident that the noise it had investigated amounted to daily living noise which could be reasonably be expected living in flats. Though it provided her with links to resources that explained this, it did not take ownership in explaining this to the resident directly and applying it to her personal circumstance. No evidence was seen that it discussed move options available to the resident if the property type was impacting her threshold for noise.

68. It was unreasonable that the landlord suggested that the resident contact EH for “a professional opinion” when it had already concluded that the noise she was experiencing was everyday living noise. As a result, the resident experienced further time and trouble approaching the local authority, only for them to advise that they were unable to assist her.
69. The Ombudsman’s Spotlight on Noise Complaints explains that where noise reports do not meet the statutory threshold, then landlords should adopt a proactive good neighbourhood management policy, distinct from its ASB policy, with clear options for maintaining good neighbour relationships. This should include mediation, which should be offered to residents at the earliest opportunity in an attempt to establish a mutual understanding of each other’s lifestyles. In this case, the landlord was significantly delayed in its offer of mediation, and it was not discussed with the resident until five months after she reported an escalation of noise.
70. There were instances of counter allegations against the resident, and in the absence of a timely offer of mediation, relationships between the two neighbours were fraught. It is important that any allegations which put residents in breach of their tenancy agreement are addressed in a timely and appropriate manner. Consideration as to what support could be offered to both parties should be at the forefront of the landlord’s decision whether to take further action.
71. The resident recognised that when she approached her neighbour in January 2021, her behaviour was inappropriate and she swiftly apologised for this. The incident made her recognise the impact the noise had on her mental health and sought support from her GP immediately. In its correspondence dated 22 January 2021, the landlord accepted this explanation, and the resident reiterated that she had concerns for her own mental health.
72. No evidence was seen of a response to the resident’s concern that her mental health was declining and no further support was offered. The next contact from the landlord was in March 2021 during an email conversation with her housing officer. The matter of the altercation with her neighbour was brought up again, and she was threatened with action being taken against her tenancy. The landlord’s response was not appropriate, and failed to recognise that it had already accepted her apology for the incident. It failed to acknowledge the lack of contact between January to March 2021 and failed to establish the ongoing welfare of the resident.
73. The housing officer made assumptions that the resident was making malicious reports and had wasted police time, which is concerning given that some of what the resident had reported involved hearing violent arguments. The approach was heavy handed and unsympathetic. It was not appropriate for the landlord to tell

the resident to apply “common sense” and make accusations against her that were later unsupported by the police.

74. The resident stated on several occasions that she was distressed and at times suicidal. Indeed the landlord noted that it was concerned about how she had presented during a meeting in September 2020. Where the landlord had committed to opening an ASB case, its policy stated that it would carry out a risk assessment on receipt of a report of ASB to identify risk of harm and provide appropriate support. However no evidence was seen that the landlord conducted a risk assessment with the resident, and it did not offer any support until its stage one complaint response.
75. There was a lack of a victim-centred approach by the landlord in its relationship with the resident. The landlord failed to recognise that the impact on the resident was severe, regardless of the fact that it considered the noise to be general living noise. No evidence was seen that the landlord understood that noise was triggering for the resident’s PTSD and mental health conditions, and it was not empathetic to her experience.
76. Counter allegations against the resident were not addressed in a timely manner. It does not appear that the landlord conducted a full review of all the evidence it had for both parties, until it produced a report dated 21 April 2022. The purpose of the report is unclear and it is unknown whether the landlord shared it with the resident. The report noted that the landlord had formed the view that the resident was “selectively complaining” and the “aggressor”, allegations which do not appear to have been presented to the resident for a fair response.
77. In correspondence dated 10 May 2021, the landlord advised the resident that it would “not entertain” further correspondence on the issue of noise nuisance until the Ombudsman had completed its investigations. This response was inappropriate, as the landlord’s duty to investigate reports of noise did not cease once the resident approached this Service. It was unreasonable for the landlord to have stopped communicating with the resident, particularly as it was aware of her vulnerabilities.
78. The resident has highlighted that there is an opportunity for the landlord to address noise transference whilst the property above her is vacant. The Ombudsman’s Spotlight on Noise Complaints addresses this very scenario, and encourages landlords to take practical steps to reduce noise transference by offering practical solutions such as ensuring carpet is not removed, and fitting anti-vibration mats. An order has been made with regards to this, so that the landlord can consider what preventative steps it might take to reduce noise complaints in the future.

79. Overall there was severe maladministration in the landlord's handling of the resident's reports of noise nuisance. It failed to follow its ASB procedure and conduct a risk assessment or produce an action plan. It failed to manage the resident's expectations throughout the case. This contributed to a breakdown in communication and lack of trust between the resident and her housing officer. The landlord did not go far enough in considering the resident's vulnerabilities. It should have been aware that even very low level noise could be very significant and triggering to someone with a diagnosis of PTSD.

*The landlord's handling of the resident's reports about pigeon spikes*

80. The resident has informed this Service that the issue of the pigeon spikes has been an ongoing source of frustration and remains unresolved. In accordance with the landlord's repair policy, if a repair requires specialist equipment and sourcing it contributes to a delay in the repair being completed, then the resident should be appropriately informed.

81. The landlord's communication of when it could expect to have sourced a cherry picker to remove the remaining spikes has been poor, and the resident has suffered time and trouble in chasing it for an update on several occasions. Despite the tenant panel acknowledging the landlord's failures in communication, it has not provided any further update on the matter for approximately two more years.

82. The landlord has been unable to demonstrate that it has learnt from the outcomes of the tenant panel and an order has been made to update the resident and compensate her for this service failure.

*The landlord's complaint handling*

83. It is evident that the resident said she was unhappy with the landlord's handling of her noise reports. When receiving a complaint that references noise, it is important that the landlord distinguish whether the resident is complaining about the noise itself, or the handling of the landlord's noise case. The danger of not recognising the difference can lead to a delay of formally investigating the matter as a complaint, as was seen in the handling of this case.

84. The resident was clear in her correspondence dated 18 June 2020 that she was unhappy with the response from her housing officer in investigating her noise complaint. The landlord was quick to acknowledge the complaint, but did not issue a stage one response until 101 working days later. This was significantly outside of the timeframe expected within its complaint policy, and no apology or explanation was offered for the delay.

85. The landlord's response was heavily focussed on a visit that took place on 29 September 2020, two months earlier. No evidence was seen that the landlord

sought to get any update from the resident after this date and before it concluded its response at stage one of its complaint process. The delay in concluding its findings from the visit was unreasonable, and there was little focus on the original part of her complaint which involved the actions of the housing officer.

86. The landlord acknowledged that there had been a breakdown in communication with the resident and that it had not kept her informed of progress. It said it would “ensure that the same mistakes were not repeated” but gave no assurances as to how it would do this, or what specific actions it would take to put matters right. Indeed communication continued to be an issue after its response, resulting in the resident requesting an escalation to her complaint.
87. The landlord’s complaint policy and the Housing Ombudsman’s Complaint Handling Code make it clear that when a resident is dissatisfied with the landlord’s stage one response, they can escalate the matter to stage two. Although the landlord referenced that it had completed a stage two review in its correspondence dated 21 January 2021, the resident does not recall receiving it, and no copy was seen by this Service. The issuing of a stage two response is key to the landlord’s complaint process, yet the landlord appears to have omitted this step and referred the complaint from stage one to its tenant panel, nine months later.
88. The landlord’s delay in progressing the resident’s complaint and following its own policy was inappropriate. The resident was left feeling confused as to what stage her complaint was at, and who she could escalate the matter to, which prompted her contact with this Service. The Ombudsman was also unable to establish whether or not the resident had exhausted the complaint process. This is consistent with the landlord’s own comments that its complaint process has not been “comprehensive or coherent”.
89. The delay in providing the outcome to the tenant panel was unreasonable, particularly as the landlord had several prompts by this Service to conclude the matter. No apology was offered to the resident for the delay, and it was inappropriate that the panel concluded that the reason its investigations had taken so long was because of the additional items the resident had raised. It put the onus on the resident to be more concise with her complaints, and failed to acknowledge that the delays were caused by the landlord’s own investigation process.
90. The tenant panel concluded that regular communication had been an issue with the resident. This demonstrated that the landlord had not learnt from previous outcomes, and the same mistakes continued to be made over a prolonged period of time. The landlord took no steps to put matters right for the resident, it offered no compensation for the time and trouble she had experienced, and no reassurance that its actions would be followed through to conclusion.

91. Overall there was severe maladministration in the landlord's handling of the resident's complaint. It failed to follow its own complaint process and respond to the resident in a timely manner. The landlord failed to learn from outcomes and put matters right for the resident, and evidence has shown since the resident approached this Service, it has continued to fail to maintain regular contact with the resident.

*The landlord's record keeping*

92. Evidence points to failures in relation to the landlord's record keeping. The "file notes" the landlord provided this Service appeared to be more recent statements from staff, than contemporaneous records of what discussions took place. An example of this is a word document dated 23 April 2021 in which a senior member of staff provided his recollections of interactions with the resident dating back to 2020. A history of the case from a member of staff's perspective, rather than contemporaneous contact records of interactions with the resident was not appropriate, and could not be relied upon as accurate evidence.

93. Internal records in the investigation into this case show that the landlord had commented that its information was "all over the place", "not comprehensive or coherent", and notes were inaccessible owing to an IT error. The landlord's lack of confidence in its own record keeping is evident in the response of the tenant's panel, where it asked that she communicate in writing so that she could keep a "clear paper trail" with the landlord. The responsibility for keeping a clear record of interactions with the landlord is not the resident's responsibility. Landlord's should have systems in place to maintain accurate records contact with residents, including telephone calls and details of visits.

94. Without contemporaneous notes, the landlord could not reasonably demonstrate what actions it had taken to investigate both her allegations of noise, and her formal complaint. This impacted the Ombudsman's ability to review what discussions had taken place with the resident and when. Conversations with the resident were alluded to in formal complaint responses and on emails, but the records of the conversations were not seen. It was unreasonable that most of the evidence of email trails were provided to this Service by the resident and not the landlord.

95. The landlord's records did not appropriately reflect the resident's vulnerabilities. It informed this Service that there were no known vulnerabilities for the resident, however it is clear from records seen that the resident suffers significantly with PTSD, anxiety and depression. An order has been made for the landlord to update its records to appropriately reflect her conditions so that it can give consideration as to what further support it can offer her.

## **Determination (decision)**

96. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was severe maladministration in respect of the landlord's response to the resident's reports of noise nuisance.
97. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was maladministration in respect of the landlord's handling of the resident's reports about pigeon spikes.
98. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was severe maladministration in respect of the landlord's complaint handling.
99. In accordance with paragraph 52 of the Housing Ombudsman Scheme there was severe maladministration in respect of the landlord's record keeping.

## **Reasons**

100. The landlord failed to manage the resident's expectations with regards to noise. It's decision to open an ASB case when the resident had made it clear the noise was not deliberate was not clear, and it did not take ownership for explaining to the resident clearly it deemed the noise she was experiencing was reasonable for living in flats. The resident was vulnerable, and the landlord was not proactive in offering and monitoring what support it could offer her. When it opened an ASB case, it failed to conduct a risk assessment or action plan.
101. The landlord recognised that its communication with the resident was poor in relation to the repair to the pigeon spikes following the outcome of its tenant panel in August 2021. However it has failed to update the resident on progress since and the spikes remain in situ, almost two years later.
102. The landlord did not follow its complaint policy. The resident experienced significant delays, and the landlord failed issue a stage two response. Further, the landlord failed to put matters right for the resident, resulting in the same mistakes being made with regards to poor communication over a prolonged period of time.
103. There was poor record keeping by the landlord, no evidence was seen of contemporaneous notes from its customer relationship management system. It failed to be able to demonstrate all its interactions with the resident and put the onus on her to keep a written record of her contact, which was inappropriate. It failed to record that she had specific vulnerabilities, which is key to providing an effective housing management service.

## Orders

104. The Ombudsman orders the landlord's chief executive to provide a written apology to the resident for the failures identified in the handling of this case, within four weeks.
105. The Ombudsman orders the landlord to pay the resident a total of £1,700 in compensation, within four weeks. Compensation should be paid directly to the resident, and not offset against any arrears. The compensation comprises:
  - a. £1,000 for the distress caused to the resident in the handling of the resident's reports of noise
  - b. £100 for the inconvenience, time and trouble the resident experienced as a result of the landlord's handling of the removal of pigeon spikes
  - c. £600 for the time and trouble caused to the resident by the failures found in the landlord's complaint handling.
106. Within four weeks of the date of this report, the landlord is ordered to visit the property above the resident (if it remains void) and give consideration as to whether further improvements could be made to assist with soundproofing.
107. Within four weeks of the date of this report, discuss with the resident its findings with regards to the visit above, giving consideration as to whether she requires any further support, and move options discussed if appropriate.
108. Within four weeks of the date of this report, the landlord is ordered to review its planned programme of works and provide the resident with an update of when the pigeon spikes will be removed.
109. Within four weeks of the date of this report, the landlord is ordered to update its vulnerability records for the resident.
110. Within six weeks of the date of this report, carry out a full review of this case to identify and improve its working practices. The review must include:
  - a. a full review of its training to staff on its ASB policy and procedure, with particular focus on the use of risk assessments and action plans
  - b. an update of the scrutiny panel findings in relation to how noise complaints are investigated
  - c. consideration to designing and publishing a good neighbourhood management strategy, as highlighted within the [Housing Ombudsman's Spotlight on Noise Complaints](#)
  - d. a full review of its training and information available to staff specifically around managing resident vulnerabilities. Include recognition of how mental health

issues will be recorded and how PTSD can impact the resident's experience of noise

- e. a review of its customer relationship management system and plan for improvement to ensure that the landlord is able to evidence all contact with residents
- f. a programme for training its staff on complaint handling, giving regards to the Housing Ombudsman's Complaint Handling Code.