

Housing

Ombudsman Service

REPORT

COMPLAINT 202204778

London Borough of Croydon

27 July 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. This complaint is about the landlord's response to the resident's:
 - a. report regarding noise nuisance from a neighbouring property.
 - b. request to be transferred to another property.
 - c. associated complaint.

Jurisdiction

2. What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme. When a complaint is brought to the Ombudsman, we must consider all the circumstances of the case as there are sometimes reasons why a complaint will not be investigated.
3. Paragraph 42(k) of the Housing Ombudsman Scheme, states "the Ombudsman may not consider complaints which, in the Ombudsman's opinion: fall properly under the jurisdiction of another Ombudsman, regulator or complaint-handling body.
4. As the resident's complaint regarding being transferred to another property is currently being investigated by the Local Government and Social Care Ombudsman, it would not be appropriate for this service to consider this aspect of the complaint.

Background

5. The resident is a tenant of a flat, which is owned by the landlord. The resident had reported issues to her landlord of noise nuisance as a result of the neighbour upstairs installing laminate flooring.
6. The resident first brought this matter to the landlord's attention in 2018 and was provided with noise recording equipment to capture the noise levels. The landlord consequently lost the recordings and advised the resident that it would provide her with alternative recording equipment to capture the levels of noise nuisance.
7. The resident raised a formal complaint with the landlord on 11 September 2019, the landlord issued its final response to the complaint on 15 January 2020, which covered the ongoing issues of noise nuisance that the resident had raised. The landlord reiterated that it would provide the resident with recording equipment. The landlord acknowledged failures in their service at this stage and offered £150 compensation, which was later increased to £300. The landlord advised it had written to the neighbour and a property inspection would take place and update would be provided to resident following visit. The landlord later advised that it was delayed in carrying out this visit due to the Covid-19 pandemic. The landlord attempted to visit the neighbouring property in September 2020, but it could not gain access to the property.
8. On 5 February 2021, the landlord advised the resident that the neighbour had been told to remove their laminate flooring. The neighbour was unable to afford to replace this with carpet. Therefore, the neighbour was advised to put rugs and matts down to reduce noise.
9. The resident had continued to contact the landlord from January 2020 up until December 2022, including a formal complaint on 14 April 2022 in which the resident advised this had been the fourth time she had made formal complaint about the noise nuisance, and had been left waiting for recording equipment for four years by the landlord, as well as experiencing 'bullying' from the neighbour. She detailed the impact this had on her and her household, as well as her ex-partner knowing her address, which caused additional fear and stress to the resident. The resident brought this complaint to this service again on 20th December 2022 at which point, the matters remained unresolved.
10. The landlord responded to a further complaint on 15 July 2022. It reiterated again that the resident would be provided with noise recording equipment. The landlord stated there had been delays in visiting the neighbour due to Covid 19 restrictions, but further correspondence had been sent to the neighbour about replacing the laminate flooring or putting rugs down to reduce noise. The landlord advised it was looking at seeking a grant to assist

the neighbour with the costs of carpet. The landlord apologised for the ongoing delay in this matter.

11. The resident escalated the complaint as the landlord had not referred to her previous complaints from 2019 and 2020 when the landlord agreed to provide noise recording equipment. The resident was unhappy that the noise recording equipment had not yet been provided.
12. The landlord responded on 5 October 2022 and acknowledged that the resident had been waiting for noise recording equipment for 31 months and apologised for this. The landlord apologised for its failure to suitably progress the resident's request for sound recording equipment and indicated it would provide further update in writing within two weeks. It offered the resident £200 for its service failure.
13. The resident remained dissatisfied with this outcome, which led to the case being taken to review panel on 30 November 2022. The landlord advised it would seek to provide the resident further recording equipment, and explain the reasons for the delay, to ensure the offer of £200 was made and an offer of mediation would be offered again. The resident refused the offer of mediation advising it was pointless and repetitive as it had been attempted in 2018. The resident remained dissatisfied as she had been waiting for the same outcomes from her complaint in January 2020. The resident indicated that she was stressed and scared to live at the property.
14. The landlord contacted the resident on 21 December 2021 explaining why there had been a delay in obtaining sound recording equipment. It advised it was hoping to gain access to a noise recording app, as well as working with the neighbour to attempt to resolve the issues of noise.

Assessment and findings

Scope of Investigation

15. While this Service understands that this matter has been distressing to the resident, who had expressed the mental health issues caused by this ongoing matter, this investigation is unable to determine a causal link between these issues and the landlord's actions. This Service is not able to draw any conclusions on whether the resident's health has been affected by the way in which the landlord handled her reports of this matter. The Ombudsman can consider the landlord's response to the resident's concerns about their health and whether its response was reasonable and proportionate in all circumstances of the case. This Service can also review whether the landlord followed its own policies and procedures, the law and industry best practice.

16. The resident had also advised that the issue of noise nuisance had been ongoing since 2018. The Housing Ombudsman's Scheme states under Paragraph 42(b) "the Ombudsman may not consider complaints which, in the Ombudsman's opinion: were brought to the Ombudsman's attention normally more than 12 months after they exhausted the member's [landlord's] complaint's procedure". While issues dating back to 2018 would normally fall outside of the Ombudsman's jurisdiction, these issues formed the basis of the resident complaint in 2019 and the landlord stage two response to this complaint on 18 January 2020. As these issues remain unresolved, it is reasonable for this Service to consider information from this landlord's stage two response to this complaint as part of our current investigation.

The landlord's handling of the report by the resident regarding noise nuisance from a neighbouring property.

17. The landlord's antisocial behaviour (ASB) policy states that it will

- (i) Carry out a formal review with the complainant of any action taken. The first review will be undertaken after 6 weeks. The 2nd review after 12 weeks. After which any further reviews will be based on the outcome and resulting actions following/during the inspections"
- (ii) "Contact complainants regularly to update them on the progress we are making with their case. The regularity of such contact will be determined by the investigating case officer depending on the seriousness of the problem(s) reported."

18. There is no indication in evidence provided that the landlord had adhered to either of these points within its own policy. The landlord had not kept in regular communication or provided updates to the resident until they raised further complaint. This shows that the landlord had failed to adhere to its own ASB policy and caused unreasonable delay and distress to the resident.

19. The landlord was aware the noise was a longstanding issue when the resident complained in 2020. The landlord should have prioritised fitting noise recording equipment at this point given how long the issues had been ongoing for as well as its earlier promise to fit noise recording equipment.

20. The landlord advised in communication that there has been a delay in obtaining recording equipment and attempts to order new equipment were unsuccessful. The landlord told the resident for four years that she would be provided with recording equipment, without evidence of any progress with arranging this. This demonstrates an unreasonable delay from the landlord.

21. While this equipment may have been unavailable due to high demand, it is not reasonable that the landlord failed to show it had considered other options in

relation to sound recording until 21 December 2022 when the landlord advised the resident it was exploring the use of a noise recording app. While this would be considered the correct measure, this should have been considered by the landlord at the point of the stage two complaint in January 2020, as it had experienced difficulty in providing the resident with suitable equipment from 2018. There is no indication that the landlord had correctly acknowledged the impact this matter was having on the resident, and this was unfair.

22. The landlord had written to the neighbour about the laminate flooring being fitted without permission and requesting it was removed. The landlord asked the neighbour to put rugs down to reduce the noise. The landlord had referred to occupation contract, which states:

- (i) You may carry out improvements to your property, but you must first obtain our written permission” and “permission to install laminate or other hard-surface flooring or a wind turbine may be withheld where there is a serious risk that noise transmission may cause a nuisance or interfere with our resident’s quiet enjoyment of their homes”.

23. There was suitable time for the landlord to carry out a home inspection to the neighbour from the point of the initial stage two complaint on 15 January 2020, and the point where it would have been unable to carry out visits due to Covid 19 restrictions. The landlord should have prioritised a visit at this stage in view of the length of time the matter had been going on for. While the landlord would have been limited in the actions it could have taken during the Covid 19 restrictions, it still had powers to taken enforcement action against the neighbouring resident during this time, such as issuing tenancy warnings, but it had failed to do so.

24. The landlord made a visit to the property to carry out an inspection in September 2020 and it also wrote to the neighbour again reminding them of their responsibility to fit carpets rather than laminate flooring. This was reasonable action from the landlord; however, the landlord should have actively followed this up with the neighbour and kept the resident updated regarding this matter. There is no evidence that the landlord had done this.

25. The landlord indicated to the resident as part of the stage one complaint response on 15 July 2022, that it was exploring the possibility of obtaining a grant to support the neighbour with carpeting. There is no further evidence of the landlord communicating with the resident in relation to this or providing the resident with updates regarding any progress being made. This again is unreasonable delay in resolving this matter. It was reasonable for the landlord to consider obtaining a grant as a possible option for resolving the noise

issue, but it should have followed through with this and let the resident know the outcome. As the noise remains an issue, the landlord should consider the option of a grant again at this stage and it should let the resident know the outcome of this.

26. The landlord's antisocial behaviour (ASB) policy states powers available to the landlord to address issues of antisocial behaviour. The landlord had previously undertaken mediation between the resident and the neighbour and had issued the neighbour written warnings. There is no indication that the landlord had considered other options such as acceptable behaviour contracts, which would have allowed the landlord to put in specific agreements with the neighbour to try and reduce aspects of the noise nuisance. It would have been reasonable for the landlord to consider other powers available to it to attempt to address the issues of noise nuisance.
27. It is clear throughout the landlord's response to this issue, that there has been constant delays and a lack of communication with the resident, only providing updates when the resident raised further complaints, causing further distress to the resident, which is both unfair and unreasonable. It is unacceptable for a resident who is experiencing noise nuisance to wait for a period of five years for recording equipment. It is also unreasonable for the landlord to indicate to the resident that it was unable to progress this matter to legal enforcement due to a lack of evidence when the landlord has failed to provide the resident with necessary tools or advice on how to capture this evidence.
28. The landlord had indicated to the resident that it would consider the option of soundproofing the property, before later advising as part of the stage one complaint on 15 July 2022 that it would not do this. The landlord would not be obliged to fit soundproofing as this would be seen as an improvement and the landlord does not have to make improvements to the property, it just has to maintain it. Raising this as an option to the resident created a false hope that this may have taken place, when it would be very unlikely that a landlord would consider this as an option. This created an unreasonable expectation for the resident.
29. The landlord had accepted its own failures of service in relation to these matters. It has made offers of compensation totalling of £300 in the original stage two complaint response in 2020, and a further £200 for the most recent stage two complaint response. However, the landlord's offer of compensation was not sufficient considering the length of time this matter has been ongoing for, the fact it is still ongoing and the distress this would have caused to the resident. The Ombudsman's approach to compensation is set out in our service's remedies guidance (published on our website). The remedies guidance suggests that awards of £600 and above are appropriate in cases where there has been severe maladministration by the landlord which had a

long term and significant impact on the resident. In line with the remedies guidance, the landlord should pay an additional £100 compensation, bringing the total compensation to £600.

30. The landlord should arrange for the resident to either be provided with sound recording equipment or given access to a mobile app to capture noise nuisance. The landlord should either taken necessary enforcement action against the neighbour to remove the laminate flooring or consider whether it could assist the neighbour with the costs of carpeting these areas as appropriate.
31. The landlord's complaints policy states that the maximum amount of time given for responding to a stage one complaint is 20 working days". The landlord should let the resident know if the response will take longer than 20 working days and provide a revised timescale for its response. The landlord should respond to stage two complaints within 20 working days. If it will need longer to respond, it should keep the resident updated.
32. The landlord updated its complaints policy in October 2022, but the resident was already in the process of the stage two complaint process prior to this being updated, so this service will refer to the previous complaints policy when assessing the landlord's handling of the resident's complaint.
33. The resident raised further complaint on 14 April 2022 regarding the outstanding issues following her previous stage two complaint response issued in January 2020. The landlord failed to log this complaint until further communication was sent by the resident on 9 June 2022. A full response to this stage one complaint was not sent until 15 July 2022, 62 days since the resident hand initially contacted the landlord to raise further complaint. This would have caused unreasonable delay and further distress for the resident.
34. The landlord provided a full stage two complaint response on 5 October 2022, 54 days after the resident had requested this complaint was escalated, falling well outside the landlord's own response times of 20 working days. Within its response the landlord accepted its failings in service, and apologised for the delays in the action that was agreed in the January 2020 stage two complaint. The landlord advised that it would provide further update to the resident in writing within two weeks. This is not reasonable, the landlord had sufficient time to provide an update and it was unreasonable to expect the resident to wait a further two weeks when she had already waited an additional 34 working days for a response.
35. The landlord's complaint handling throughout this process has fallen well short of its own complaints policy, and what this service would deem acceptable and reasonable. The landlord's response to the complaint, while

does provide apology for the delay, it shows a pattern of repeated failure, providing the resident with the same promised outcomes as in 2020, but failing to deliver on those. There is no indication of the landlord learning from its previous failures in this process.

36. In line with this Service's remedies guidelines, the landlord's handling of this complaint has demonstrated maladministration, due to the repeated delays in response to the resident, a failure to progress the matter, as well as offering remedies that had been exhausted previously. As a result of this, the landlord should offer compensation of £300 to the resident for these failures. This is in line with the Ombudsman's remedies guidance which suggests awards in this range are appropriate where there have been failings by the landlord which affected the resident but there may be no permanent impact from the failings. Whilst the delays caused inconvenience to the resident, there was no permanent impact from these as the landlord ultimately responded to the complaint and it also offered a noise recording app as an option to progress the matter.

Determination

37. In accordance with paragraph 52 of the Scheme, there was severe maladministration by the landlord in respect of its handling of the resident's report of noise nuisance from the neighbour.

38. In accordance with paragraph 52 of the Scheme, there was maladministration by the landlord in respect of its handling of the resident's formal complaint.

Orders and recommendations

39. The landlord is to pay the resident £900 total compensation made up of:

- (i) £600 to be paid due to repeated failure in the handling of all aspects of the resident's report of noise nuisance from a neighbouring property.
- (ii) An additional £300 to be paid due as a result in failure in its handling of the complaint.

40. The landlord is to provide the resident with sound recording equipment or access to a mobile sound recording app to allow her to evidence the level of nuisance she is experiencing to allow the landlord suitably to act on this.

41. The landlord is to apologise to the resident for the timescales in relation to this matter. The apology is to come from someone at the level of Director within the landlord's structure.

42. The landlord is to confirm to this Service that the above orders have been complied with within 28 calendar days of this report.
43. The landlord should carry out an internal case review regarding the handling of this case within two months of this report being issued to identify lessons learnt and set out improvements it will make to prevent similar situations occurring in future. It should provide a copy of the review to both the resident and this service.