

Season 3 Episode 1 - December 2022

Interview with Victoria Smith, Senior Solicitor at Devonshire's about Spotlight report into noise complaints.

00:00:09 Victoria Smith

Hello and welcome and thank you for listening in on this latest edition of the Housing Ombudsman's podcast. Firstly, I'd just like to introduce myself. I'm Victoria Smith and I am a solicitor within the housing management and property litigation team at Devonshire Solicitors.

00:00:27 Victoria Smith

I act for a number of registered providers assisting with all kinds of housing management issues. Now I am delighted to be asked to join Richard Blakeway, the Housing Ombudsman. Today we are going to be taking a look at the latest Spotlight report on noise complaints at time to be heard and I've got a list of questions here on the report which I'm going to be posing to Ric to provide further insight on some of the key issues and recommendations within the report.

So firstly, Ric, can you tell us why you decided to write the report?

00:01:03 Richard Blakeway

Thanks, Vicky. So about 18 months ago, we were looking at our new powers to undertake kind of deep dives into areas to look at systemic issues that may be driving complaints and resident dissatisfaction.

00:01:24 Richard Blakeway

One of the areas which we identified was damp and mould and we obviously did our report on that. The other area was noise nuisance and noise related complaints and even though the issue is perhaps talked about less and focused on less than, say, disrepair, it's an area which we know can be a significant driver of complaints to landlords and can be hard to handle. I would say there was another reason as well - I recall meeting a resident at one of the open forums that we do and the resident had had their case investigated by us and their case involved noise nuisance, but it wasn't ASB, and they felt really dissatisfied with the outcome and that sort of stuck with me because even though the decisions were right, I could see from their perspective, they felt it was unresolved. And that's really stuck with me and becomes quite a big theme in this report.

00:02:20 Victoria Smith

Yeah. Yeah, I think that's the point. We're going to highlight a bit later. So yeah, definitely. Thank you for that.

Now, in order to hear the report, I understand that you issued a call for evidence and you were also assisted with by 4 different organisations. Can you tell us more about the

responses you received and how you use that information to reach the findings within your report?

00:02:43 Richard Blakeway

Yeah, absolutely. I mean, most of these reports are, you know, based on the evidence arrived from the complaints we handle and the investigations that we undertake. And hundreds of investigations contributed to this report. But we feel that it's important to try and get a kind of 360 view and to enrich that evidence base, so one of the things we do is we call for evidence. We had over 200 responses to that, and I think what's striking in the report is the contrasting views of residents compared to landlords. Even in areas where you might say, you know, there should be some commonality. So take for example mediation. You know very few residents, I think something like fewer than one in four residents said that mediation was offered.

00:03:37 Richard Blakeway

Three in four landlords said 'Ohh we routinely use mediation', so just this big gap between expectations and experience. And the other thing, as you rightly say, is that we engage with four landlords who represented the members of our scheme. So a mix of local authorities, different sizes, different parts of the country.

00:03:58 Richard Blakeway

And different outcomes on noise. So some who have higher rates of maladministration forming our investigations compared to those and that was really useful opportunity to engage with both those landlords and residents to understand actually understand from their perspective what it's like handling these cases. What has changed over the years and in particular, what is it like engaging with other agencies who are involved? Because the landlord, so often in these cases is not the only actor. So getting a sense of that sort of engagement with other parties was really beneficial.

00:04:37 Victoria Smith

Yeah, really important point there. Yeah, definitely.

Now as you've already touched on, the report notes that at the heart of the findings was the fundamental and fairness that most noise reports concern household noise rather than ASB. And yet most reports were handled under the ASB policies.

I think from review of the report there was 76% of landlords dealt with noise nuisance by a by ASB policy. Now it seems there must be a shift in approach with landlords having a more proactive good neighbourhood management policy. And the report also recommends some changes to ASB policies.

Now, Ric, can you give us some guidance on what changes should be made both in relation to a good neighbourhood management policy and an ASB policy? And also, do you have any examples of where landlords might have got this right?

00:05:33 Richard Blakeway

Yeah, really important question. So just to touch on this point that too often landlords will view noise through the prism of the person and not the building.

And I think that's just really unfair. It's unfair to the person who's complained about, and it's also unfair to the person who's making the complaint because you know where the issues may be about, say, noise transference. You know, that resident can just end up in some sort of kind of purgatory of, you know, diary sheets and records to try and prove that their neighbours being antisocial.

00:06:22 Richard Blakeway

And that when in reality it's not going to reach, in many cases, that statutory threshold. So they're just left in kind of limbo. I think that is absolutely key now to get this right.

00:06:35 Richard Blakeway

It reflects that do the policies and approaches of social landlords reflect their social purpose, reflect their values and you know that kind of grain of unfairness I think really departs from the role that most social landlords will want to perform in their communities and the relationship they want with their residents. Now look in terms of getting this right. Firstly, I think triage is key so you know, depending on obviously the scale of the landlord and the complaints it's receiving, can it distinguish between what may be genuine ASB or potential ASB from something which may be you know as I say a kind of household noise possibly accentuated by the building.

00:07:25 Richard Blakeway

Then how can you have a good neighbourhood policy which supports that and there's a bit more embracing, a bit more holistic, so you're not just relying on the ASB policy, but you actually have a good neighbourhood policy, where it works best, can help prevent issues as well.

00:07:52 Richard Blakeway

It means engagement in the community and so on. And we saw, and it includes those four landlords that we did work with. We saw some really good examples of community engaged. We saw how it was highly valued. We saw landlords thinking about how they might prevent instances of noise. We saw landlords really trying to actually, in some cases, filling the gap where other services should be doing something. To try and make sure that they were supporting their residents and I was really struck actually by some great engagement work that landlords did which we mentioned in the report particularly on estates and particularly on outreach. Yes it can be resource intensive but it's clearly highly valued and was seen as highly affective by many landlords.

00:08:44 Victoria Smith

Yeah, yeah, I agree. And I also like the idea of when you're reviewing your policies, engaging with residents in those reviews that you mentioned that a lot in the report as well.

So just moving on to the Decent Home Standard, I know that that's a key issue in the report. Can you explain what issues you've found with that standard and why you consider it should be reviewed to reflect modern living?

00:09:13 Richard Blakeway

It's 20 years old and it sets the kind of expectations around, you know, properties and quality of homes in the social housing sector. And look, the government we know has been really open as part of its White Paper on social housing that standard, you know, was due for review and refreshment.

00:09:33 Richard Blakeway

And obviously the standards come into particular focus recently because of issues around damp and mould, but I have to say, if you look at the standard and its treatment of noise, it's incredibly narrow. I mean, it talks about important issues like traffic, trains and it talks about factories. So this is important stuff. But it's entirely focused on external noise.

00:10:04 Richard Blakeway

Internal noise is just absent. And I think, you know, reflecting the kind of homes that have been developed over the last 20 years, clearly an increase in density. You know, denser development that you've seen over that time frame, it is obviously due to be refreshed and reviewed and frankly it sounds a little archaic when you look at the kind of experiences that we've seen in our complaints that residents are having and the kind of issues that landlords are having to deal with and it seems entirely appropriate to me that the decent home standards, the one that really sets expectations and sets the benchmark on dealing with an issue, which is obviously a really big issue for many residents and crucially, could affect anyone tomorrow.

00:10:52 Richard Blakeway

The cases that you see in this report, the stories that we tell of residents could happen to anyone tomorrow. And in some ways, you could argue there's nothing different about the noise that people in social housing experience to any other tenure. What is different, though, is the presence of a professional landlord and therefore the role that they can play in the policy framework.

00:11:18 Victoria Smith

Yeah. Great. Thanks, Ric. And so the report also recognises that issues with installation are significant and that they should be considered as part of the landlord's wider work on carbon reduction. The report also sets up some handy tips for more immediate and practical steps that landlords can take now to address issues of noise reports.

It recommends that the board standard be updated. Ric, can you please explain some of the recommended changes to the board standard and why you consider that they might be helpful?

00:11:50 Richard Blakeway

Well, at the moment for intervention and actually the more I reflect on our work, the more important I see the voice standard and the role of the voice standard performs. And so we've picked it up in this report. We've actually alluded to it in previous spotlight reports and I think it's something I wanted to look at going forward and particularly if you have, I mean I think it should be routine, but particularly if you have had reports of noise nuisance.

00:12:20 Richard Blakeway

Such as movement, at that point that void, there's an opportunity to think about, well, are there measures that we can take? And one of the really practical things that we flag up in there is anti-vibration mats and the white goods, you know, the idea of people using washing machines and people incentivised through energy costs to you know, charging to potentially use those kind of goods outside normal hours. And then the carpets and I get that people might be worried that, well, 'are we going to be liable if the residents are unhappy that the carpet was left down'. But I would have thought that a waiver would make it possible, as indeed you might see with mutual exchange would make it possible for that kind of furnishing to be left in place because evidently, the absence of carpets or the presence of hard flooring can be a significant driver for noise and it just seems a missed opportunity not to address it when there's a void.

00:13:35 Victoria Smith

Yeah. Thanks, Rick. It's really interesting and helpful.

And allocation is another key area mentioned in the report. It's recognised that there is an uneven playing field between housing associations and council landlords on the information available that let in Sage. Can you please explain more about the unfairness you found and what powers housing associations could use to access information and why that information is really important?

00:14:03 Richard Blakeway

Yeah, I mean, this is one of the things which came up during that engagement with the four landlords. But we've seen it elsewhere as well. And I think there might be a mix of reasons here. So whether it is just an absence of relationships or develop relationships or whether actually the kind of bureaucracy has unintentionally led to a housing association has been disadvantaged. But typically what we're seeing is that where the Council is the landlord and has nomination rights, it is sharing information with the management arm. That can lead to understanding. Actually, you know, might there be any sensitive lettings here or any issues that we you know might need to address to prevent the issues? And that's not from what we saw, that's not the kind of relationship that many housing associations have.

00:15:15 Richard Blakeway

You know and sometimes it's because data protection has been invoked as a reason not to share that information but our view is that is an entirely legitimate reason to share information with housing associations.

00:15:28 Richard Blakeway

And that would just allow them to think about sensitive lettings, to think about some of the issues that they might need to address depending on the nomination. Look I totally get there are acute pressures on you on housing stock and that those challenges obviously are very real and very acute but nonetheless allowing for a more intelligent approach by not being too restrictive or out of data protection where it is appropriate to share information and reflect the information that would be shared within a Council between its management. It seems to me entirely reasonable and would result in better outcomes in some cases.

00:16:26 Victoria Smith

Thanks, Rick. And now you've already picked up on this session of issues with third parties and it seems that resources are dictated by a postcode lottery now. Noise reports are complex as we know, and they often involve third parties such as the police or environmental health and the report. And that landlords can receive poor responses from those third parties. Sometimes responses are inconsistent or there is an undue onus on landlords by other agencies to act beyond their roles and responsibilities.

Now Ric, can you please give us some guidance on what needs to be done to repair or possibly strengthen those relationships and what you think this might achieve?

00:17:10 Richard Blakeway

Yeah. So I mean a couple of thoughts there. So the first thing, it's a really important area. So I think the first thing to say is that again, this is perhaps a reflection of how noise has been sometimes treated in a slightly one-dimensional way and seen as anti-social behaviour because many of those bodies are involved because of the policy and the statute around anti-social behaviour and it's just I can't emphasise enough as we talked about at the start, the importance of landlords being more holistic in their approach on noise.

00:17:53 Richard Blakeway

Offence that can be caused to a resident when they're told that their noise is low level, you know, and I can see why the landlord and the landlord staff are thinking it's low level because it's not reaching those kind of statutory thresholds. But for the resident, it's very

real and it doesn't feel low level otherwise they probably wouldn't have complained about it.

00:18:15 Richard Blakeway

You know, and it's just sucking out the kind of empathy and effective communication with residents. But where it is potentially a kind of an ASB issue and stuttering noise, then obviously there may be other agencies involved. You may have the police and environmental health. I think one of the things which was really striking from the Call for Evidence that we did is that landlords give the impression of routinely involving environmental health.

00:18:46 Richard Blakeway

Residents don't see that and the awareness of mechanisms like the community trigger, which is this kind of all agency kind of review of the case, just almost nonexistent awareness amongst residents of that and therefore their rights to ask for that. So I think there's a real information thing there.

00:19:07 Richard Blakeway

And then you come to the kind of actions. I think, unfortunately, a lot of these agencies are stretched, but you're seeing environmental health perhaps stepping back unless they see it's a really serious kind of issue to get involved in. You see perhaps the same happening with the police. So landlords are kind of filling the gap there or conversely you might see that some of those other agencies expect more from the landlord, as you said in your question, expect more from the landlord than they would do say a private landlord.

00:19:40 Richard Blakeway

You know, and I think that those relationships need to be reset. I think it comes down to, what is reasonable, what can be effective, And in some places it will work, some places it won't. But what I was struck by is it's kind of there isn't really a kind of developed relationship for information sharing, routine engagement, and a service level agreement almost between those bodies. And improving that would have many benefits, not least to ensure that where there is a really serious issue it's dealt with effectively and timely, but also that residents are much clearer about the other bodies who are involved and their rights and things like the community trigger. So they can think of those routes as well and potentially pursue that ASB where appropriate.

00:20:44 Victoria Smith

Another big issue record keeping so much so it is the subject of your next spotlight report. I understand there is that call for evidence at the moment and that closes on the

23rd of December is so if anybody does have any information, please do submit those surveys. But in relation to record keeping.

Can you give us some detail on trends you found in relation to record keeping and explain why good record keeping is so important, particularly in relation to noise?

00:21:17 Richard Blakeway

Yeah. Record keeping is absolutely as you say one of those issues which we are frequently seeing across our casework and in the cases on noise where we upheld the complaint record keeping there was poor record keeping prevalent in about half of those cases. So I mean that's not great, albeit it is better than perhaps other areas where you know, sometimes we see almost two in three complaints upheld have poor records.

00:21:51 Richard Blakeway

I mean the effect of this manifests itself in different ways. So the first is that obviously it impedes really effective communication with the resident. If the caseworker is not able to access accurate records, timely records up to date records, then there can be misinformation, mismanagement of expectations.

00:22:19 Richard Blakeway

Secondly, that can then lead to the missed opportunities. If people aren't aware of what action should have been taken or have been taken at any given point, then it's just going to lead to missed opportunities. And this is where so often when I was talking to residents during the development of this report, they just weren't clear what was happening. They made their report. They felt they'd taken actions. They don't know what they were asked to do. They got the diary sheets. They might have made the recordings using apps or whatever, but they just were really unclear where it was leading. And poor records can then also extend the time scales.

00:23:02 Richard Blakeway

Because of those missed opportunities and because of those poor records and actions not being taken, these things can be elongated, and you know entrenchment of an issue is obviously common across many cases that we see and certainly where we uphold them. But in noise, it just means those parties are becoming really entrenched in the issue. So something like mediation could have been deployed more effectively and earlier but may not have been. And may be a result of poor records or certainly a lack of grip on the case. If you know poor records makes it hard for a landlord to grip a case and the lack of grip is potentially going to drive service failure.

00:23:49 Victoria Smith

Yeah, absolutely agree with that.

Now, along with the spotlight report, you have issued a letter to landlords where the maladministration rate was 50% or more in relation to noise complaints.

We are aware that there has been a significant increase in findings of maladministration and severe maladministration, and this is part of the Ombudsman's more proactive approach. Understandably, landlords want to avoid these findings and personally from speaking with clients, whilst they are aware that caseworkers do have a considerable amount of discretion when investigating.

Stating they would like a bit more clarity on the criteria applied in deciding what finding to make now Ric to taking a noise complaint and an example, can you please explain what factors might result in a finding of severe maladministration rather than maladministration?

00:24:42 Richard Blakeway

Yeah, I can. I rarely see a case of severe maladministration involving noise. So typically, we're not seeing cases result in that outcome and that may be partly a reflection of that anti-social behaviour policy approach. And whilst it might not resolve the issue and it might not drive the right outcomes and there may be unfairness in that approach or narrowness in that approach. I'm not seeing severe maladministration come through yet.

However, more broadly, maladministration as a concept has kind of been out there with our service for 1/4 of a century. And for, you know, other Ombudsman for, over half a century. So it's not a new concept and so a challenge to the sector that you know, they should be able to understand the role that my maladministration plays. Our scheme sets out our approach and where we may make decisions involving that maladministration. And then in October we published a suite of guidance around the revised scheme that we produced following the removal of the designated person. This was the kind of referral mechanism by elected representatives to the Ombudsman. That includes in it, and I would strongly encourage landlords to look at this to understand it, that includes for instance our remedies guidance and it sets out the thresholds on compensation. For instance, just one remedy that we might have it's like the thresholds.

00:26:40 Richard Blakeway

So for severe maladministration, it's an accentuated failure. So typically what we're seeing with the administration may be extended delays. It may be, you know, poor decision making outside of the policy or policy not being clear about the decision that needed to be made. You can see a particularly adverse impact on the household. And so I think every case under the law, we're obviously considering the individual circumstances. And that means that in itself, every case is slightly different. You can see those common themes cross maladministration of extended delays, missed opportunities, particularly adverse outcomes on the residents and that might tip it into a finance severe maladministration for us. But as I say, noise we don't see severe maladministration much. But on something like damper mould, about half of our findings of the severe maladministration in the last financial year involved damp and mould.

00:27:53 Victoria Smith

Yeah, I know that will be really helpful to a lot of landlords so thank you for that.

And then finally, the report recognises the economic challenges currently faced by landlords and that there is a that noise nuisance is being pushed to the margins.

Landlords are prioritising other issues, which is understandable and as you just mentioned, damp and mould is a big topic at the moment. You've highlighted that in your spotlight report. You've also highlighted that in your recent letter to landlords, and whilst this noise nuisance report recognises that noise nuisance isn't at the top of the priority list. It does note some practical and cost-effective recommendations that can make a real difference.

Now I know you've highlighted a lot of those today, which is great. And thank you. But just as a takeaway, if you could pick one or two recommendations that landlords can take away what would they be great.

00:28:52 Richard Blakeway

I absolutely sympathise that there are those real challenges there for landlords, but I think our report sets out very clearly why this is the perfect storm of issues. Just to briefly highlight. So I think that the 1st is obviously this idea of the policy. Good policy is just essential for consistent and effective decision making. So you know if 3/4 of the noise reports being raised are about household noise, but 3/4 of the, landlords use their ASB policy to respond - that's obviously not sufficient.

I think for an effective and fair and reasonable response getting the policy right, the policy framework right would be one of the most important recommendations.

00:29:58 Richard Blakeway

The second thing is just back to this point around communication and I think one of the things which was troubling in some of the cases that I looked at, some of the investigations that we looked at was unconscious bias. I don't think this was intentional, but was, you know, the resident whose perhaps elderly might be complaining about noise from children or the resident who's complained before. And, you know, it was a reasonable number of cases where you could see the residents said: 'I'm not being listened to here because of who I am making this complaint.'

00:30:42 Richard Blakeway

And you know, you look at it and you look at what the action, what the landlord did or the actions it didn't take and you know they hadn't thoroughly investigated it, hadn't followed its policy of producing an action plan. You know, the steps weren't taken. The tone of communication wasn't quite right. And I think that can be quite corrosive I think for that landlord/tenant relationship. And so I you know I think it's you know possibly it also reflects just a fatigue. And perhaps on case handlers, there's another complaint. Sounds like the last complaint, you know, and you just see that loss of empathy.

And I think that, it's probably broader than noise, but I think that's really important because obviously those guys are doing a hard job.

At times they've got to be resilient, and it's how do you make sure that they don't lose empathy. That came through in the few cases and I think it's probably an area to really reflect on.

00:32:01 Victoria Smith

Yeah, I agree there. Well, thank you. That is the end of all my questions.

Like I say, thank you so much for answering my questions today. I think they'll be extremely helpful to many people and there's a lot to take away there. And so yeah, thank you and thank you for inviting me to join you today.

00:32:19 Richard Blakeway

Thank you so much.

