

# Housing

## Ombudsman Service

# REPORT

*COMPLAINT 202213713*

*Arun District Council*

*14 November 2024*

## **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:
    - i. The resident's reports of anti-social behaviour (ASB) from the adjoining neighbour (neighbour A).
    - ii. The allegations of ASB made against the resident by the downstairs neighbour (neighbour B).
    - iii. The resident's reports of ASB from neighbour B.
    - iv. The associated complaint.
  - b. The resident's concerns about the landlord's attitude towards her reports of ASB and complaints.

## **Background**

2. The resident holds a secure tenancy at the property, a 1 bedroom first floor flat in a purpose-built block. Neighbour A lives in the adjoining block, sharing a party wall with the resident's property. Neighbour B lives in the same block as the resident, in the property directly below her.
3. In June 2021 the landlord wrote to the resident inviting her to an interview regarding allegations of ASB made against the resident. The interview went ahead by telephone on 1 July 2021. The resident then reported ASB against neighbour B, including reports of noise nuisance and abusive language. The resident submitted recordings to the landlord in support of her claim. The landlord told the resident that it had sent the recordings to Environmental Health.

4. On 5 August 2021 the resident asked the landlord for advice about noise from neighbour A. The landlord advised the resident to submit her recordings to Environmental Health. The landlord asks the resident to get back in touch after speaking with Environmental Health, suggested mediation and sent block letters to all residents in the block. The resident continued to submit recordings and report issues with neighbour A to the landlord, however the issues continued. Environmental Health installed noise monitoring equipment at the property on 30 August 2022.
5. The resident complained to the landlord on 4 September 2022. She was unhappy with the landlord's handling of the reports of ASB for both neighbours A and B and the allegations of ASB made against her. The resident felt the landlord had not taken her concerns seriously and had taken a different and unfair approach in handling her reports of ASB to those made against her.
6. The landlord responded on 16 February 2023. It confirmed that the allegations made against the resident had come from neighbour B and it was satisfied with its handling of the matter. It said it had sent a letter to neighbour A about the resident's reports of ASB and it noted that Environmental Health had concluded that there was no statutory noise nuisance. The landlord had agreed to a joint visit with Environmental Health to assess the sound proofing between the two flats and would continue to make efforts to organise this.
7. The resident was unhappy with the landlord's response and asked to escalate the complaint on 28 February 2023. She felt the landlord's response was misleading and did not fully address the issues raised. The landlord responded at stage 2 on 14 April 2023. It acknowledged that it had used a poor choice of words on occasion in its handling of the resident's concerns. However it felt it had addressed all the resident's issues. The landlord said it was waiting for Environmental Health to revisit the resident's property as it had been unable to organise the visit to neighbour A's property to assess the sound proofing. It also offered mediation, information relating to a property move, and contact details for Citizens Advice. It offered £150 compensation in recognition of its complaint handling failures.
8. The resident remained dissatisfied with the landlord's response and referred the matter to this Service. In doing so, she said she wanted the landlord to handle her reports of ASB more effectively.
9. It is relevant to note that the landlord has informed this Service that the resident has reported that she is still experiencing ASB from neighbour A.

## **Assessment and findings**

### *Scope of the investigation*

10. This complaint involves a large volume of correspondence and other documents dating back to 2021. The resident's efforts in compiling evidence in support of the matters raised are recognised, as are the challenges faced by the landlord in reviewing these documents and coordinating a response in relation to each area of concern. Whilst not all documents and events are explicitly referred to, all have been examined and taken into account during this investigation.
11. In communication with this Service, the resident has stated that the issues with neighbour A are ongoing. The Ombudsman may only investigate matters that have exhausted the landlord's internal complaints procedure. For this reason, this investigation is limited to the time period of June 2021 when the issues were first reported to May 2023, when the landlord confirmed its final position in relation to the sound proofing. If the resident is unhappy with the landlord's handling of any more recent matters, she can make a complaint about this to the landlord.
12. Throughout the complaint process, the resident raised concerns with how Environmental Health handled her case. This Service does not have any jurisdiction over Environmental Health and the resident has been advised to make a complaint to them which can be referred to the Local Government and Social Care Ombudsman if required. General consideration has been given in this report to the landlord's handling of the referrals to Environmental Health and any recommendations to the landlord made by Environmental Health.
13. It is evident that this situation has been distressing to the resident. It may help to firstly explain that the Ombudsman's role is not to decide if the actions of the neighbour or the resident amounted to ASB, but rather, whether the landlord dealt with the resident's reports about this appropriately and reasonably.

*The resident's reports of ASB from neighbour A.*

14. The resident first reported issues with noise from neighbour A on 29 July 2021. She described the noise as an intermittent "thud" and explained how she felt the noise was intentional and targeted. The evidence shows the resident reported the issue to the landlord on at least 8 occasions before making her complaint on 4 September 2022.
15. In response to the resident's reports of ASB, the landlord:
  - a. Told the resident in July 2021 to contact Environmental Health to ascertain if the noise was a statutory noise nuisance.
  - b. Suggested mediation in July 2021.
  - c. Sent out letters to the block reminding all residents of the requirements under the tenancy agreement in September 2021.

- d. Said it would contact neighbour A regarding the noise in September 2021. There is no evidence of the landlord doing this.
  - e. Said it had written to neighbour A on 7 February 2022 regarding the noise.
  - f. Opened an ASB case on 30 June 2022 and provided the resident with an action plan.
  - g. Confirmed to the resident that Environmental Health had found no statutory noise nuisance and agreed to visit jointly with Environmental Health to assess the sound proofing between the properties.
  - h. Offered information about a property move and provided contact details for Citizens Advice for support in the stage 2 response.
  - i. Jointly attended with Environmental Health to complete a noise transference test between the properties in May 2023. The test concluded that the sound proofing between the properties is poor and recommended that the landlord should investigate the party wall to improve this.
  - j. Confirmed to the resident on 31 May 2023 that it would not be completing any sound proofing works due to its resources being required for higher priority repairs works.
16. Although the landlord's actions set out in the previous paragraph were an appropriate response to the resident's allegations of ASB, the landlord failed to:
- a. Respond to the resident's reports of ASB in line with its ASB policy on each occasion (within 10 working days for noise complaints).
  - b. Contact the resident to discuss the matter or open an ASB case until June 2022.
  - c. Update the resident on the status of her ASB case.
  - d. Complete a risk assessment without involvement from the resident. The resident has informed this Service that she was never contacted to complete a risk assessment and the copy the landlord holds on file was completed by the landlord without her input.
  - e. Contact neighbour A regarding the allegations made until sending a letter in February 2022.
  - f. Make any investigations into the source of the noise or the resident's allegations that the behaviour was intentional or targeted.
  - g. Treat the noise as ASB, as defined in its ASB policy as anything from low-level nuisance.
  - h. Contact the resident with updates on a monthly basis, as set out in its action plan in June 2022.

- i. Suggest other interventions it could take to resolve the issues, such as providing diary sheets or suggesting a good neighbour agreement, while waiting for the outcome of Environmental Health's investigations.
  - j. Confirm if the sound proofing improvement work would be completed at a later date when resources were available. Or confirm if it had any alternative solutions to the issue.
17. The landlord's ASB policy says that ASB covers a range of behaviours including low-level nuisance. The landlord failed to treat the reports as ASB and instead insisted the resident would have to refer the matter to Environmental Health to prove a statutory noise nuisance before it would take any action. The landlord also repeatedly relied on the fact that it had not received any other complaints from residents in the block to suggest that the issue was not severe. This was inappropriate given the resident explained the layout of the block meant her property was the only adjoining property and she also explained that other residents were out all day at work so might not be impacted.
18. The resident made it clear to the landlord that she felt the behaviour from neighbour A was targeted at her and had shown the landlord text messages from neighbour A saying they were now "enemies". She also offered witness statements from people who had witnessed the noise when in her property. There is no evidence of the landlord making any investigations into these allegations or attempting to speak with the witnesses the resident provided. This was unreasonable. The landlord failed to take a victim-centred approach, as is suggested in its policy, and this was inappropriate.
19. It is furthermore inappropriate for the landlord to have failed to complete a risk assessment with the resident following her reports of ASB. The resident raised concerns about her ability to enjoy living in her flat and the impact the situation was having on her sleep on several occasions. It is reasonable to conclude that the landlord completed the risk assessment without involvement from the resident as there is no evidence of the landlord discussing the outcome with her. The landlord is ordered to complete an updated risk assessment concerning the current issues with ASB from neighbour A.
20. Environmental Health installed noise monitoring equipment in August 2022 and confirmed there was no statutory noise nuisance to the landlord and the resident in September 2022. They recommended that a noise transference test be completed to assess the sound proofing between the properties. The landlord was unable to agree access to neighbour A's property until May 2023. This was understandably frustrating for the resident, however the landlord has provided evidence of its multiple attempts to agree access with neighbour A and it took reasonable steps to agree this.

21. The resident was disappointed that both the noise monitoring equipment and the noise transference test completed by Environmental Health were only to assess household noise or to prove a statutory noise nuisance and not to identify the source of the “thud” or if the noise was considered ASB. The landlord could have done more to explain the reason for these tests and the likely outcomes. Following the noise transference test, it was identified that the sound proofing between the properties was poor and the test recommended that the landlord take steps to improve this. There is no legal obligation on the landlord to complete this work. However, given the impact the ongoing situation was having on the resident, it would have been reasonable for the landlord to have at least considered what options it had to improve the noise transference. For example, there is no evidence of the landlord seeking quotations for the work required to improve the sound proofing. Instead, the landlord just said it would not be completing the work due to its resources.
22. If the landlord decided it was not going to be completing any work to the sound proofing, then it would be reasonable for it to have outlined what other steps it would be taking to tackle the resident’s reports of ASB. These could include interviewing the neighbour or offering a good neighbour agreement. The landlord is ordered to update the resident on its plans to complete the sound proofing work at a later date or any alternative solutions it can offer.
23. The landlord did not identify the above failures in its complaint responses and therefore the landlord missed the opportunity to put things right. This is of particular note given the resident has informed this Service that the noise issues from neighbour A are ongoing. In order to put things right, the landlord is ordered to apologise to the resident for the failures outlined above. It is also ordered to confirm to the resident the current status of her ASB case and provide an updated action plan.
24. In conclusion, although the landlord did take some steps to investigate the ASB, the landlord failed to act fully in line with its ASB policy in handling the resident’s reports of ASB from neighbour A. It also failed to use its complaints process to put things right. This investigation has found maladministration in the landlord’s handling of the resident’s reports of ASB from neighbour A and orders have been made below. This includes an order for £500 compensation in line with the maximum amount that can be awarded for distress and inconvenience in the landlord’s compensation policy.

*The allegations of ASB made against the resident by neighbour B.*

25. The resident received a letter from the landlord on 22 June 2021. It invited her to a telephone interview on 1 July 2021 regarding allegations of ASB made against her and said the interview was to discuss the matter fully. In her complaint, the resident said that the landlord did not provide her with any

details of the allegations during the interview and instead made her guess what the ASB report might have been about. The resident said she was able to deduce the allegations may have come from neighbour B based on the timeframe the landlord said the incidents occurred but that the landlord did not confirm this. The landlord has not provided any call notes from the interview.

26. The landlord's ASB policy says that it seeks to take early positive action to stop further incidents of ASB occurring. By failing to inform the resident what she had allegedly done to cause ASB during the telephone interview, it is unclear how the landlord hoped it might prevent further incidents. The landlord also denied the resident the opportunity to respond to the allegations and provide her side of the story. This was inappropriate.
27. The landlord sent the resident an email on 16 July 2021 reminding her of the terms of her tenancy agreement. It said she should not behave in a way that could cause harassment or intimidation and that it was unacceptable to record people in another flat on her iPad. It said this was a breach of her tenancy. The resident has told this Service that there was no mention of harassment or intimidation during the interview on 1 July 2021. It was reasonable that the landlord informed the resident that recording another resident could cause harassment and was therefore a breach of tenancy. However, it was unreasonable that it failed to discuss this with the resident during the telephone interview and that it first made the resident aware of this in an informal email.
28. The landlord later disclosed the details of the allegations made to the resident. First in an email of 11 July 2022 and then later in its stage 1 response. It said it was in relation to the resident recording neighbour B on her iPad. The landlord said the behaviour was intimidating and explained that recordings such as these do not provide context and therefore cannot be used as evidence of ASB. It was also not until 11 July 2022 that the landlord confirmed that no further incidents had been reported and the case had been closed. It is unclear why the landlord failed to disclose this information at an earlier stage if it was later able to share the details of the allegations. The landlord's decision to withhold the information for so long was unreasonable and caused a great deal of distress to the resident. It was inappropriate that the resident had to wait over a year to receive the details of the allegations made against her. It was also inappropriate that the landlord took over a year to confirm that the case had been closed.
29. The resident feels it is unfair that the allegation of ASB remains on her file when she was not provided the details of the allegation and therefore did not have the chance to respond to the claims. The landlord informed the resident that it feels it was justified in inviting the resident to the interview about the ASB and will not be removing the letter from her record. It said it has attached all relevant



correspondence from the resident in response to the matter to her file. This is a reasonable approach.

30. The landlord's complaint responses note that it was correct to invite the resident to an interview based on the allegations. However, the responses fail to acknowledge that the resident was not privy to the details of the allegations until the following year. It was unreasonable of the landlord to ignore this part of the resident's complaint given she had raised the issue on several occasions throughout the year.
31. In failing to identify these issues, the landlord missed the opportunity to put things right. The landlord is ordered to apologise to the resident for the delays in providing the information on the allegations. It is also ordered to pay the resident £100 in recognition of the distress and inconvenience the resident informed the landlord she had felt as a result of its poor handling of the matter. This is in line with the landlord's compensation policy for failures where inconvenience and/or distress have clearly been caused.
32. In her escalation request, the resident said she felt the landlord had been heavy-handed in its approach to handling the allegations made against her. She compared this to its response to her reports of ASB against other neighbours. The landlord's ASB policy notes it will respond to and investigate each report of ASB on a case by case basis. As the allegations made were of a different nature, it is reasonable that the action taken may not be the same. However, the landlord did not explain this fully to the resident at the time and this was unreasonable.
33. In conclusion, the landlord acted appropriately in inviting the resident to a telephone interview regarding the allegations of ASB made against her. However, it failed to provide adequate information relating to the allegations during this interview to allow the resident to respond to the allegations. It also failed to formally confirm what the outcome of the investigation was until a year after the allegations had been made. This investigation has found maladministration and orders have been made below.

*The resident's reports of ASB from neighbour B.*

34. The resident reported ASB from neighbour B in response to the allegations made against her. She first informed the landlord of the issue in an email on 16 July 2021. She said that neighbour B had been shouting and used abusive language towards her and she had recorded neighbour B to send the evidence to his brother. She hoped his brother would be able to help manage the situation. The resident said she was not planning on raising the issues to the landlord but now felt she had to because of the allegations made against her. In response to her report of ASB, the landlord:

- a. Said it would pass the recordings to the ASB officer for investigation but that it could not initially hear anything to justify taking action.
  - b. Sent recordings to Environmental Health.
  - c. Asked the resident for the contact details of neighbour B's brother.
35. Although the landlord acted appropriately in passing the recordings to the relevant staff member and listening to the recordings, the landlord has failed to otherwise act in accordance with its policy in the following ways:
- a. There is no evidence of the landlord making any further enquiries into the incident, either by contacting the resident or by discussing the matter with neighbour B.
  - b. There is no evidence of the landlord following up with Environmental Health after it submitted the recordings.
  - c. There is no evidence of the landlord following up with the resident until the resident made a complaint about the issue.
  - d. There is no evidence of the landlord confirming formally that it did not consider the matter to be ASB, as is outlined in the ASB policy.
36. It was inappropriate that the landlord did not take any of the above actions. In particular it is unclear how the landlord concluded that no action would be required without first investigating the resident's concerns. The landlord did acknowledge that it had failed to respond to the resident's reports of ASB against neighbour B in an email dated 14 December 2022 and apologised for this. However this was not a proportionate way to put things right.
37. In conclusion, in failing to follow its ASB policy, the landlord acted inappropriately in its handling of the resident's reports of ASB from neighbour B. Therefore, this investigation has found that there was maladministration in the landlord's handling of this matter. The landlord is ordered to write to the resident to confirm why it did not consider the matter ASB and to confirm if the resident has any further reports of issues with neighbour B that she would like to raise. The landlord is also ordered to pay the resident £100 in recognition of the distress and inconvenience the resident told the landlord she had experienced as a result of its failures in handling this matter.

*The associated complaint.*

38. The landlord's complaints policy says it will issue responses to stage 1 complaints within 10 working days and stage 2 complaints within 20 working days. It also notes that where these timescales cannot be met, the landlord will contact the resident to agree an extension which will not exceed a further 10

working days without good reason. It lists examples of good reasons as a delay caused by a 3<sup>rd</sup> party or requiring further time to undertake interviews.

39. The landlord took 13 working days to acknowledge the stage 1 complaint and 23 weeks to issue the stage 1 response. The landlord said it would respond to each of the resident's concerns in turn which prolonged the process and prevented the resident from escalating the matters as they had not all been investigated at stage 1 until February 2023. The landlord did apologise for the delays on at least 2 occasions, however no full explanation was offered. There is also no evidence of the circumstances for extension equating to one of the good reasons listed within its policy. This was inappropriate. The landlord is ordered to apologise to the resident.
40. In its stage 2 response, the landlord offered £100 for the delays in issuing its stage 1 response. The landlord also offered £50 in recognition of its failure to address the resident's query about compensation. The landlord's compensation policy notes offers in this range as proportionate to failures causing a medium impact on the resident, where inconvenience and/or distress has clearly been caused. Although the delay in sending the response was excessive, there is evidence that the landlord was in regular communication with the resident throughout this time. Therefore, this offer was proportionate and no further compensation has been ordered. The resident has not accepted this compensation.
41. The evidence shows the landlord reallocated the stage 1 complaint to different staff members on at least 2 occasions prior to the investigating officer making contact with the resident. By the time it had done so, the files the resident had submitted on 4 September 2022, including her complaint, had expired and were no longer accessible to the landlord. This was not discovered until the landlord called the resident on 7 November 2022, 2 months after the resident had submitted the complaint. The landlord's records note that it had called the resident that day to discuss the complaint. However, it is unclear how the landlord hoped to discuss the complaint without having accessed the files. The evidence also demonstrates that the reason the landlord called the resident was in fact in response to an email from the resident telling the landlord she had received a notification that the complaint had been closed.
42. The resident said she felt frustrated that the landlord failed to acknowledge this error in its complaint and instead seemed to portray the events as if it had followed procedure by calling her to discuss the complaint. This was misleading of the landlord and it was a failure that it did not acknowledge this error in either of its complaint responses. This is of particular note considering the resident had specifically raised concerns that the landlord's records often noted what she described as a manipulated narrative. The resident felt this was a further

example of this. The landlord is ordered to apologise to the resident for this failure.

43. Although it did not form part of her formal complaint, the resident raised a concern with the landlord on a number of occasions that Environmental Health had not fulfilled their duty to investigate her reports of noise nuisance. It is not for the landlord to investigate complaints about Environmental Health. However, its complaints policy notes it can complete joint investigations with other local authority departments and would aim to provide a single response where possible. Alternatively, it could have referred the resident's dissatisfaction to the Environmental Health team for them to investigate separately. There is no evidence of the landlord considering if it should open a joint investigation nor is there evidence of the landlord contacting Environmental Health to make them aware of the resident's concerns. This was unreasonable and the landlord is ordered to apologise to the resident for its failure to at least refer her complaint to the relevant team. The landlord must also provide the resident with the contact details for the complaints team within Environmental Health.
44. In her communication with this Service, the resident raised a concern that the stage 2 investigating officer was not impartial to her case, having been involved in a previous complaint. The Housing Ombudsman's Complaint Handling Code notes that the person investigating the complaint at stage 2 must not be the same person that considered the complaint at stage 1. There is no requirement for the investigating officer to have had no involvement in previous complaints. The landlord acted appropriately in assigning the stage 2 complaint to a different staff member and no failure has been found in this matter.
45. In conclusion, although the landlord offered proportionate compensation for the delays in issuing its stage 1 response, it failed to transparently explain the reasons behind this. It also failed to act in accordance with its complaints policy as it did not demonstrate that it had a good reason for extending the complaint response date. This investigation has found service failure in the landlord's handling of the complaint and orders have been made below.

*The resident's concerns about the landlord's attitude towards her reports of ASB and complaints.*

46. In her complaint, the resident said she felt the landlord had a negative attitude towards her and was reluctant to listen to her concerns. She felt that the landlord used the history of unrelated noise complaints about previous neighbours as a justification for not investigating her complaints. Below are a few examples:

- a. In a letter in July 2022, the landlord referred to the resident having “noise issues since 2010”.
  - b. On more than 1 occasion, the landlord said the resident had “fallen out with neighbours”.
  - c. On 8 November 2021, in response to the resident reporting being sworn at by another neighbour in the block, the landlord said it would not investigate the matter as it was likely the neighbour would say that the resident had instigated the interaction.
  - d. The landlord said it could not investigate matters already addressed in a previous case investigated by this Service, despite the previous case being about an unrelated matter.
47. In the stage 2 response, the landlord accepted it had used a poor choice of words on occasion and it apologised for this. It noted the amount of time and resource it had put into the handling of the resident’s complaint and it did not agree that it had placed any blame on the resident for the issues caused. There is no evidence of the landlord explicitly treating the resident differently based on its attitude towards her and therefore this investigation has not been able to make a finding of service failure. However, it is recommended that the landlord considers how it performs against the recommendations set out in this Service’s spotlight report on attitudes, respect and rights. Although the report centres around managing resident’s vulnerabilities, the approach should apply to all residents as, fundamentally, it is about a high standard of customer care and a human-centric approach to service delivery

## **Determination**

48. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration in the landlord’s handling of the resident’s reports of ASB from neighbour A.
49. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration in the landlord’s handling of the allegations of ASB made against the resident by neighbour B.
50. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration in the landlord’s handling of the resident’s reports of ASB from neighbour B.
51. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was service failure in the landlord’s handling of the complaint.

52. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was no maladministration in the landlord's handling of the resident's concerns about the landlord's attitude towards her reports of ASB and complaints.

### **Orders**

53. Within 4 weeks, the landlord is ordered to:
- a. Write a sincere apology to the resident, including for the failures outlined in this report.
  - b. Write to the resident confirming why it did not consider the resident's reports of noise and abusive language from neighbour B were ASB.
  - c. Contact the resident to confirm if she has any further issues she would like to raise in relation to neighbour B.
  - d. Contact the resident regarding her reports of the ongoing ASB from neighbour A and confirm the current status of her ASB case. This should include completing an up to date risk assessment.
  - e. Provide the resident with the contact details for making a complaint to Environmental Health, should she want to do so.
  - f. Pay the resident £850 compensation, comprising:
    - i. £500 in recognition of the distress and inconvenience the resident is likely to have incurred as a result of the landlord's failures in handling her reports of ASB from neighbour A.
    - ii. £100 in recognition of the distress and inconvenience the resident is likely to have incurred as a result of the landlord's failures in handling the allegations of ASB made against the resident by neighbour B.
    - iii. £100 in recognition of the distress and inconvenience the resident is likely to have incurred as a result of the landlord's failures in handling her reports of ASB from neighbour B.
    - iv. The £150 already offered in its stage 2 response in recognition of its complaint handling failures.
54. All monies ordered by this Service should be paid directly to the resident and not used to offset any money owed by the resident to the landlord.

### **Recommendations**

55. The landlord should consider its performance against the recommendations set out in this Service's spotlight report on attitudes, respect and rights.