

Housing

Ombudsman Service

REPORT

COMPLAINT 202320094

Bury Metropolitan Borough Council

6 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 the landlord's handling of:
 - a. The resident's reports of antisocial behaviour (ASB) from a neighbour;
 - b. The removal of a gas fireplace at the property;
 - c. The resident's reports of damp and mould at the property.
2. The Ombudsman has also investigated the landlord's complaint handling.

Background

3. The resident is a secure tenant under a tenancy agreement beginning in August 2008. The property is a semi-detached bungalow and the resident is the sole occupant. The resident said he has a number of vulnerabilities including hearing and vision impairment, and back pain. The landlord recorded these impairments, in addition to a "longstanding illness" and "mental health condition". The resident was 69 years old at the start of the complaint process.
4. A report from the landlord shows a gas fireplace in the living room was condemned in 2020 following a gas safety inspection by its contractor. The resident asked for a replacement gas fire as he said he needed to heat the living room all year due to his health conditions. He added this was necessary so he could heat the room without heating the rest of the property.
5. In 2020 the resident additionally reported ASB from his neighbour in the bungalow next door. The neighbour is also a tenant of the landlord. The resident reported offensive language and shouting from the neighbour while in their bungalow and garden. The landlord offered to visit the resident and supply

him with an iPad and noise app to support his reports. This was declined. There is a gap in the timeline up until September 2021 where the landlord made a safeguarding referral. It raised concerns about the resident's comments relating to a nervous breakdown and suicide.

6. The landlord's email records show the resident made multiple reports of ASB through 2022. These reports concerned offensive language and shouting. Further, that the neighbour assaulted him several times. He said the police told him the neighbour was well known to them and mental health services but there was insufficient evidence for a prosecution against them.
7. The resident reported damp at the property on 17 May 2023. The landlord inspected the property on 10 August 2023 and reported on its findings. It said there was damp to the walls in the kitchen and bedrooms. Further, mould was forming in low-level areas in the bedrooms. It said this was due to condensation and noted the resident did not use heating. The report said the landlord would treat the mould in the bedrooms.
8. The resident raised a stage 1 complaint on 8 September 2023. He said:
 - a. He had sent multiple emails, photographs and recordings over 4 years, of offensive language and assaults from the "mentally ill" neighbour that the landlord "knowingly housed" next to him. He added his evidence shows the fence the neighbour burnt down when they left burning rubbish in their garden.
 - b. He was forced to spend time away from the property and his "nerves were shattered". He added he had "come close to suicide and a nervous breakdown" as result of the issue.
 - c. The landlord removed the gas fireplace that had "nothing wrong with it".
9. The landlord issued the stage 1 response on 18 October 2023. It said:
 - a. It would not replace gas heaters as radiators were available. However, in consideration of his vulnerabilities, it supplied a hard-wired electric heater. It offered for its energy adviser to visit and assist with budgeting, explain running costs, and fit a dual fuel control for the living room.
 - b. A damp inspection had been delayed at the resident's request. Further, it attended for mould treatment and plastering on 5 October 2023 and left a calling card because the resident was not at home. It asked the resident to make contact so it could complete the work.
 - c. It opened an ASB case in September 2020 and had received over 500 emails and recordings since. It acknowledged the resident said he could not keep diary sheets, but it had tried to work with him to collect records relating to noise. This included an offer of an iPad with an installed noise

application. This offer was still available. It acknowledged there were “issues” between him and the neighbour. However, when its tenancy support team tried to arrange visits, he refused access.

- d. The reports made by the resident were not sufficient to progress action. It required both diary and noise evidence to support claims of ASB. It offered to attend on the days there was noise to help him complete diary sheets.
 - e. It made a safeguarding referral when the resident raised concerns about his own mental health. Social services offered support which he declined. Further, he told its housing officer not to contact him following offers of help in collecting evidence.
 - f. As he is hard of hearing and still reporting noise, it would: contact other neighbours to see if they were experiencing noise nuisance; consider additional fencing; inspect both properties and carry out soundproofing measures; offer mediation; and contact the police to see if there were any other reports. It suggested he and the neighbour sign a ‘good neighbour agreement’.
10. The resident escalated the complaint on 27 November 2023. He reiterated previous points and added the neighbour had placed “obscene notes” to the inside of her kitchen window, which only he could see. Further, he stated he did not need to take part in mediation as he had not done anything wrong. He reiterated examples of the ASB and added he was threatened with a 10-inch knife. In relation to the mould, he said he had to live with it through no fault of his own. He was unhappy that his wallpaper may be removed as he had received quotes of £650 per room to replace it.
11. The landlord issued its final response on 11 December 2023. It said:
- a. Its investigation would focus on reports from the preceding 6 months. It added it had listened to all recordings provided by the resident. Having listened to the recordings, it said it was “clear there are disputes” between him and the neighbour. It added most of the recordings begin quiet, followed by the resident going outside and getting closer to the neighbour’s fence.
 - b. It would need to install noise monitoring in the property to “clearly evidence the sound levels, frequency, and timing of incidents in order to take formal action”. It added it offered to provide such equipment but the resident refused. It urged him to reconsider.
 - c. It reiterated its proposals around checking with other neighbours, fencing, mediation and a ‘good neighbour agreement’. It noted the “ongoing dispute” and requested that the resident “engage positively” with it. It also reiterated proposals around offers of energy advice.

12. The resident updated this Service in September 2024. He said the issues with his neighbour were active and had been since the landlord's final response. He added there had been no improvement in the circumstances. In email correspondence between the resident and landlord during this period, the resident continued to report ASB. He indicated he wanted the landlord to move the neighbour to a different property.

Assessment and findings

Scope of investigation

13. The timeline shows some concerns raised in the complaint, relate to events that took place much earlier in the timeline. These events have been included in the background for context only. While they will not be assessed directly, they will be considered where fair to do so, given their connection to the issues raised in the complaint.
14. Residents are expected to bring any dissatisfaction with the landlord's service to the landlord's attention within a reasonable time. Our Scheme explains that this will usually be within 12 months of the matter arising. Further, the Ombudsman notes that while there was an event in 2020, there was no further report of ASB in 2021, until Sept 2021. As such, our investigation into the resident's reports of ASB will commence from Sept 2021 - 12 months prior to the resident raising his dissatisfaction.
15. The timeline shows the issue with the gas heater occurred in 2020, approximately 2 years prior to the resident raising his complaint. There was no evidence seen to show the resident raised any complaint with the landlord within 12 months of this issue arising. It was not disputed the issue was first raised by the resident on 27 June 2023. As it was not raised prior to this, the Ombudsman will investigate this issue from that point.

ASB

16. The landlord's ASB policy says it 'has a number of tenants who are identified as vulnerable and in these circumstances it is important that as part of any investigations, [it will] assess the vulnerability of the alleged perpetrators and also assess the vulnerability of the complainants'. If it 'does instigate legal action against a tenant, it is essential that [it will] liaise with the tenant's relevant support agencies or use case conferences / multi-agency meetings'.
17. Further, it 'also engages the help of adult care services and children's services who can assist and get involved with people with special needs, who may be causing antisocial behaviour or may be a victim of it'.
18. The landlord's ASB procedure states:

- a. "A member of the ASB team will be responsible for carrying out the initial investigation of a complaint. They will interview both parties to a complaint and try to resolve it in the most appropriate way".
 - b. "Before arranging to interview someone, the ASB team will make a number of background checks. The purposes of these checks is to assess whether individuals pose a risk and to obtain any relevant information relating to the support services engaged with the individuals".
 - c. "Whilst the ASB team will take overall ownership of the case, the complainant must take responsibility and work in partnership to help build a case against the alleged perpetrator. This may include the complainant collecting evidence on behalf of [the landlord] by keeping diary records of any nuisance that occurs, providing details of potential witnesses and reporting any problems to the police".
 - d. "During the interview of the complainant, a plan of action will be agreed and this will set out the steps to try and resolve the matter... The action plan will need to be regularly reviewed and updated as the case is progressed".
 - e. "It is important that sufficient evidence is obtained and full written records kept to back up any action we taken against the person responsible for the antisocial behaviour".
 - f. "Photographs and video evidence are very important in certain cases, such as car repairs, overgrown gardens, and internal condition of properties. Video recordings can be used, especially where more than one event is recorded. These would be accompanied by a logbook noting the date, time and details of the incident being filmed".
 - g. "Diary sheets are extremely useful and important in providing good evidence of neighbour nuisance and antisocial behaviour. The ASB Team is aware that tenants and residents can find them difficult to complete, may complete them incorrectly or feel that it is a waste of time completing them. The ASB Team will advise complainants how to complete the diary sheets and the importance of the diary sheets during the initial interview".
 - h. "It is important to note that not all residents can complete the diary sheets and this may be due to issues such as problems with literacy or disability. In these cases, the ASB Team will agree how the complainants can record the nuisance".
 - i. "As an alternative to written diary sheets, Dictaphones can also be issued to complainants, which will allow them to verbally record the details of the antisocial behaviour and / or nuisance. It is important to note that the Dictaphones are not for recording the noise from a neighbouring property".
19. The landlord's records show it completed multiple visits to the neighbour's bungalow between 2020 and 2024. The landlord acknowledged the resident's

visual impairment and acknowledged that this impairment prevented him from completing diary sheets or from using sound recording software. The landlord offered to provide the resident with an iPad with suitable software. This was initially offered in 2020 and reoffered periodically throughout the timeline. This was a reasonable step. The landlord's policy says the complainant will take responsibility in collecting evidence. The landlord was entitled to rely on this and its offer to assist in facilitating the resident's evidence collection.

20. The resident collected and sent multiple sound recordings to the landlord from 2020 until after the complaint process ended. This Service has listened to a number of recordings made prior to and during the complaints process. The majority appear to record the neighbour shouting. In many cases, it is not disputed the neighbour was not shouting at the resident, but shouting in general from inside her bungalow. Further, in most cases, it was not clear what the neighbour was saying. The landlord said these recordings were not in themselves sufficient in demonstrating ASB. However, the landlord did use these reports to engage with the neighbour and the resident. This was appropriate, as was the landlord's communication that it did not consider the issue to amount to ASB.
21. The landlord said many of the recordings show the neighbour became more agitated and started shouting when the resident approached their property to record them. This appeared to be consistent with the recordings listened to by this Service. Further, the resident said he could not hear the neighbour when he was inside the property. He also said many of the recordings started when the neighbour was shouting from their kitchen. The landlord indicated the resident was not helping the situation by going outside to his garden to record the neighbour. This appeared to be a reasonable conclusion reached by the landlord based on the neighbour's apparent agitation.
22. It was reasonable for the landlord to listen to the recordings, being the main evidence submitted by the resident. It was also reasonable for the landlord to offer to attend the property to assist the resident in diary keeping, as per its policy requirements. When it became evident the resident was unable to complete diary sheets or operate noise applications, the landlord communicated that it needed more than the noise recordings made by the resident. Its policy said any recording would need to be accompanied by a log book detailing the incident. The landlord was entitled to rely on its policy in relation to the resident's responsibility to contribute to evidence gathering.
23. The landlord said there was insufficient evidence in the recordings to support action under its policy against the neighbour. The resident provided a number of photographs of the neighbour's garden. These appear to have been taken over the shared fence. One appears to show a burnt section of fence and garden. The resident said the neighbour was burning rubbish. It was not

disputed this was reported to the police. Further, that no formal action was taken by the police. The landlord was entitled to rely on this position. The police are best placed to investigate reports of possible criminality. This was appropriate from the landlord and it showed multiagency working in accordance with its policy.

24. The timeline shows a joint visit by the landlord and police on 17 December 2022. The landlord said it was agreed with the resident that he would make notes of any ASB which would be discussed at fortnightly visits. It was not disputed the police also discussed the resident's conduct with him. This demonstrated appropriate multiagency engagement from the landlord. It showed it offered advice on steps the resident needed to take to collect evidence to demonstrate ASB.
25. Overall, it was evident the circumstances of this case were very distressing for the resident. It was also evident that the landlord took the resident's reports of ASB seriously and engaged with him and the neighbour over a 4 year period. The landlord was prepared to engage with the police in relation to reports of criminality. It was not disputed both the police and the landlord did not find the resident's recordings to show evidence of ASB. The landlord was entitled to rely on this position.
26. The landlord acted appropriately in offering the resident assistance with sound recording equipment and support in diary keeping. It also proposed mediation in an attempt to resolve the issue. These offers were rejected by the resident. As the ASB case had been opened a year prior to our investigation, we are unclear on whether a risk assessment was undertaken. From the starting point of our investigation, however, the landlord acted reasonably and in line with what we would expect. Consequently, there was no maladministration in the landlord's handling of the resident's reports of ASB.

Gas heater

27. The resident raised the removal of his gas fire and requested a replacement on 27 June 2023. The landlord said it would not replace the gas fire as the property had central heating. This was a reasonable position for the landlord to take. As was its offer to install a wired electric heater to allow the resident to heat the living room independently from the rest of the rooms. The landlord was not obliged to do this and said it did so as a reasonable adjustment. This showed a resolution focused approach to the resident's concerns.
28. Following installation, the resident said he could not afford the cost of using the electric heater, as electricity was 3 times the cost of gas. In response, the landlord offered for its energy adviser to visit to check all radiators; assist with operating the combi boiler; to ensure the resident was accessing any available

financial support; and to discuss a dual control thermostat for the property. While the resident was dissatisfied with the offer, it was reasonable for the landlord to make it. This represented a reasonable attempt to resolve the issue and help the resident. Overall, while this issue was distressing for the resident, the landlord demonstrated it acted reasonably and therefore there was no maladministration in its handling of this issue.

Damp and mould

29. The timeline shows the resident reported damp and mould at the property on 17 May 2023. It was not disputed the resident was having surgery so the landlord attended the property to inspect on 17 August 2023. In consideration of the resident's circumstances, this was not unreasonable.
30. The report on the inspection found mould present to both bedrooms and the kitchen. It said the mould was due to condensation and said the property needed a mould treatment to these rooms. It also noted the resident "does not use heating" and it recommended the resident consider doing so. These were reasonable next steps to propose. The landlord did not consider whether there were issues around ventilation, but it was entitled to take the steps proposed first.
31. The resident said he did not want his wallpaper removed from the bedrooms as it could not be replaced. The landlord's damp specialist said walls could not be properly treated without removing the wallpaper. While this was distressing for the resident, it was evident this work could not be effectively completed with the wallpaper in place. The landlord was entitled to rely on this position in seeking to fulfil its repairing obligation.
32. The landlord said its operative left a calling card at the property on 5 October 2023. This was because the resident was either not at home or did not answer when the landlord tried to attend to carry out works. The landlord described the works as plastering; however, it was not disputed this was to also include mould treatment. It was appropriate for the landlord to attempt to attend at the advised appointment time and tell the resident to contact it to rebook the works.
33. It was not disputed the mould treatment was carried out on 17 December 2023. This represented a period of approximately 4 months from the inspection. In consideration of the circumstances around the resident's health and discussions in relation to the wallpaper, periods of delay were inevitable. However, the landlord advised the resident the wallpaper would need to be removed on 5 December 2023. While it might have reached this conclusion earlier, this did not have an impact on the overall timeframe.

34. While in reference to the complaint about the heater, the landlord offered to assist the resident with understanding and operating the radiator controls. This was reasonable, as an understanding around providing adequate heat to the property would have assisted in mould prevention. Further, the landlord shared a leaflet on damp and mould prevention with the resident. This represented good practice and was reasonable in the circumstances. Overall, there was no maladministration in the landlord's handling of reports of mould at the property.

Complaint handling

35. The landlord operates a 2 stage complaint handling process. Its policy says it will respond to stage 1 complaints within 10 working days and stage 2 complaints also within 10 working days. The timeline shows the resident raised the stage 1 complaint on 8 September 2023. The landlord issued its response on 18 October 2023. However, the resident initially raised his dissatisfaction in September 2022. The resident then had to raise the issues with this Service before the landlord accepted it as a complaint in September 2023. This was not reasonable and it created unnecessary delays in the process. It also prevented the resident from escalating the complaint to the next stage of the process.
36. The resident escalated the complaint to stage 2 on 27 November 2023 and the landlord issued its final response on 11 December 2023. This was appropriate. The resident escalated the complaint about damp and mould; however, the landlord did not respond to it. The landlord should have referred to it and detailed its position, even if that had not changed.
37. Overall, while the landlord responded to the stage 2 complaint in accordance with its policy, it did not accept the initial complaint in a reasonable timeframe. Nor did it detail its position on damp and mould in its final response. Therefore, there was maladministration in relation to the landlord's complaint handling for which compensation is due.

Determination (decision)

38. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was no maladministration in relation to the landlord's handling of the:
- a. Resident's reports of ASB from a neighbour.
 - b. Removal of a gas fire place.
 - c. Resident's reports of damp and mould at the property.
39. In accordance with paragraph 52 of the Housing Ombudsman Scheme, there was maladministration in relation to the landlord's complaint handling.

Orders and recommendations

40. Within 4 weeks of the date of this report, the landlord is to pay £250 compensation to the resident. This is for distress and inconvenience caused to the resident as a result of the landlord's complaint handling.
41. Within 4 weeks of the date of this report, the landlord is to apologise to the resident for the failings identified in the report.