

The Ombudsman's final decision

Summary: Mr X complained the Council had not investigated his complaint of antisocial behaviour by his neighbour. He complains it has failed to use its discretionary power to force his neighbour to reinstate guttering to stop water cascading down the wall of his property. The Ombudsman has found only minor fault with the way the Council handled Mr X's guttering complaint. The Council has redressed any injustice to Mr X from this by the actions it has already taken and the actions it proposes to take. The Ombudsman has found no fault with the way the Council dealt with Mr X's antisocial behaviour complaint.

The complaint

1. Mr X complains the Council has not investigated his complaint of antisocial behaviour by his neighbour, Mr Y. He says the Council ignored this major part of his complaint from the beginning.
2. Mr X complains the Council has failed to use its discretionary power to force Mr Y to reinstate guttering to stop water cascading down the wall of his property. Mr X says this has caused stress and anxiety and affected both his and his wife's health.

The Ombudsman's role and powers

3. The Ombudsman investigates complaints about 'maladministration' and 'service failure'. In this statement, I have used the word fault to refer to these. She must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, she may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1)*)
4. The Ombudsman cannot question whether a council's decision is right or wrong simply because the complainant disagrees with it. She must consider whether there was fault in the way the decision was reached. (*Local Government Act 1974, section 34(3)*)
5. If the Ombudsman is satisfied with a council's actions or proposed actions, she can complete her investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i)*)

How I considered this complaint

6. I have considered the following:
 - Mr X's complaint to the Local Government Ombudsman
 - Mr X's correspondence with the Council
 - The Council's correspondence with Mr X
 - The Council's response to my enquiries.
7. I have explained my draft decision to Mr X and the Council and considered their responses.

What I found

Guttering dispute - Mr X's view

8. Mr X says he complained to his councillor about Mr Y's antisocial activities towards him. He said this included Mr Y adjusting the guttering at the front and back of his home to ensure the rainwater from his roof cascaded down the walls of Mr X's property.
9. Mr X says his councillor told him his complaint was serious, involved several Council departments, and she would ensure the Council contacted them.
10. Mr X says when the Council contacted them he asked for a home visit to discuss the problems they were having and to show what Mr Y had done to the guttering.
11. Mr X says the Council promised a visit but they received a letter instead saying an officer had spoken to their neighbour about the guttering. Mr X says the officer concerned, officer P, told them he could not decide who had caused the problem and would not help. Mr X says the Council made no mention of the antisocial behaviour which was the major reason for his complaint.
12. Mr X says Mrs X called officer P, again outlined the continuing antisocial behaviour, and again asked for a visit. Mr X says officer P refused to visit. Mr X says they contacted their councillor who represented on their behalf but they were still refused a visit.
13. Mr X says Council officers have been rude to his wife during her telephone conversations. He says he has lost money because he is self-employed and has spent many hours researching legal statutes to be able to challenge the Council's refusal to start action against Mr Y.
14. Mr X says the Council continued to take no action until 20 March 2014 when he gave his councillor an official letter of complaint, and photographs corroborating his explanation of the guttering problem.
15. Mr X says the Council did not answer this until 2 May. He says the officer appointed to investigate his complaint at stage one of the process, officer Q, wasted a further month before responding to his complaint. He says officer Q failed to recognize their main complaint was about antisocial behaviour and Mr Y had deliberately altered the guttering to create a nuisance.
16. Mr X says officer Q did not accept the Council should deal with the guttering dispute using the enforcement route. He says officer Q did offer to put him in touch with a service that could deal with disputes/antisocial behaviour between neighbours.

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17. Mr X was unhappy with officer Q's response to his guttering complaint and asked the Council to consider it at stage two of the complaint process. Mr X says he then asked for a review of his complaint at stage three of the process because he was unhappy with the response provided at stage two.
 18. Mr X was happier with the stage three review of his complaint because the officer, officer R, said the Council should review its decision on his guttering complaint. Officer R suggested the Environmental Protection department should reconsider whether it should its discretionary powers to take action against Mr Y.
 19. Mr X says the Council told him it was taking action against Mr Y in August but nothing had happened before he made his complaint to the Ombudsman.

Guttering dispute - The Council's view

20. The Council provided its Flare record; letters sent to Mr X and Mr Y; HelpDirect's record of contacts with Mr and Mrs X; its complaint correspondence and its antisocial behaviour policy in its response to my enquiries.
21. The Council accepts at first it interpreted Mr X's complaint as one about the guttering defect reported by his councillor. Because of this it was referred to its Environmental Protection team to deal with.
22. The Council accepts it could have considered whether it should use its discretionary powers under Section 79 of the Building Act 1984 to force Mr Y to correct the defective drainage. It says it reviewed its complaint decision at stages one and two and changed the decision not to take enforcement action against Mr Y. The Council says this is evidence it will change its course of action if it feels it is fitting.
23. The Council has provided documents to show it has taken action against Mr Y. It continues to check the process to ensure Mr Y complies with the notice it served in October 2014.

ASB complaint - Mr X's view

24. Mr X says the Council ignored this part of his complaint from the beginning.
25. Mr X says it was not until his formal complaint in March, through his correspondence with officer Q, there was recognition it was an antisocial behaviour complaint.
26. Mr X complains even then officer Q directed him to an agency, HelpDirect, who did not offer the mediation service he said it would. He says HelpDirect told the Council in October 2014 but they have had no contact from anyone since.
27. Mr X says Mr Y's behaviour has affected their health. He says the Council's "*determination not to hear and therefore not take action, for fifteen months*" has caused more stress and anxiety.
28. Mr X says they can never be sure whether they will come home to more antisocial incidents like broken windows or a superglued car door lock again or stolen wheel trims. The stolen wheel trims were reported to the police.
29. Mr X wants the Council to apologize for failing to listen to them, and put them in touch with an organization that will help them with their problem neighbour.
30. Mr X wants the Council to adopt a genuine process for dealing with antisocial behaviour and put it into practice.
31. Mr X wants compensation for the Council's failings and the costs they have incurred supporting their complaint.

ASB complaint - The Council's view

32. The Council says it was only from Mr X's complaint, which it logged in April, it was clear he viewed the guttering issue as antisocial behaviour. It says he told the Council this was just one of several acts perpetrated by Mr Y, which he felt amounted to antisocial behaviour.
33. The Council says this is why officer Q recommended involving HelpDirect. Officer Q felt this was the most suitable help for dealing with the neighbour conflict Mr X was describing.
34. The Council says officer Q discussed with HelpDirect the help it could provide and they confirmed mediation support could be available through them and it would be suitable in these circumstances.
35. Mr X gave his formal approval to the Council and he was referred to HelpDirect.
36. The Council says it is aware HelpDirect cannot provide mediation services itself but it can, and has, provided the information for Mr X to follow if he wishes.
37. In addition the Council says HelpDirect has provided information about the Citizens' Advice Bureau on neighbour disputes and put Mr X in contact with an advocacy service which has helped him progress his complaint.
38. The Council says HelpDirect has kept in contact with it, speaking directly to officer P four times between 2 October and 19 December 2014.
39. The Council says discussions with Mr X's support worker, and the information supplied by HelpDirect shows the main focus of the support he has sought has been about the guttering dispute. It says there has been little about antisocial behaviour.

Analysis

Guttering dispute

40. Mr X's recollection of events does not match the documented record the Council has provided me with. In particular, there are differing accounts of what took place in the various telephone calls between Mr and Mrs X and officers in the Environmental Protection Department. I cannot judge the content of these telephone calls and whether visits were requested, offered or refused. It is not possible for me to accurately decide because of the differing accounts of these calls and because I was not a party to them.
41. At the beginning of the Council's involvement I cannot see how officers could have divined this was a neighbour dispute that could not be resolved by appealing to both parties to work together.
42. I accept the Council had to try and satisfy itself who was responsible for the defective guttering. Evidence from its record shows several departments considered the issue before it decided it was a private dispute.
43. The Council's officers took the obvious route to try and get Mr X and Mr Y to work together to repair the defective guttering, because they viewed it as a private dispute.
44. The evidence from Mr Y, when accused of being responsible for the defective guttering was that it was Mr X who was to blame for the defects. It was not until April 2014, when Mr X provided the Council with photographic evidence to support his view and question Mr Y's that it could confirm who was responsible for the guttering defects.

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45. Neighbour disputes are difficult to deal with and the Council was right to try not to inflame matters by taking 'sides' at the beginning. Officer P was also right to chase Mr Y for his version of events after Mr X provided his photographic evidence.
 46. The Council was not wrong to try and resolve this dispute between the two parties without resorting to enforcement. The thrust of Government policy is that councils should consider lower levels of action, like trying to resolve issues by agreement, before using an enforcement route.
 47. There was a difference in the evidence presented by Mr X and Mr Y. I would not criticize the Council for seeking supporting evidence from both parties involved in the dispute before taking action.
 48. When the Environmental Protection Department was asked to look at the guttering issue again it took legal advice on what it could do. Officer P quickly spoke to Mr Y and updated him on the Council's position. This position was the Council would serve a notice on him to correct the defective guttering if he did not deal with it himself.
 49. The Council has now served that notice and has required Mr Y to resolve the defects.
 50. There have been errors in the way the Council has handled Mr X's complaint about the defective guttering. These relate to the failure to identify there was a route via the Building Act 1984 to require Mr Y to take action to correct the defective guttering. It is right however that this is a discretionary power.
 51. The Council has now chosen to require Mr Y to correct the defective guttering but this does not mean it was at fault from the start. The Council could have upheld its position the guttering was a private dispute between Mr X and Mr Y and expected them to resolve it in the civil courts.

ASB complaint

52. Mr X says his complaint in 2013 was mainly about the antisocial behaviour of Mr Y and not the guttering issue. However, the record of the complaint the councillor made on his behalf to the Council makes no mention of antisocial behaviour. Even if the Council recorded this mistakenly, it was the information the Council acted on until his councillor forwarded Mr X's formal complaint in April 2014. I cannot find fault with the Council for failing to act on something it did not have knowledge of until April 2014.
53. The Council could not have proved Mr X's view Mr Y's action were malicious, even if it had been aware this was the thrust of his complaint in 2013. Clearly all partner agencies, including the police and HelpDirect did not consider what Mr X was complaining about was in fact antisocial behaviour.
54. I accept Mr X may consider Mr Y's actions are antisocial behaviour but the police have recorded he has no evidence to support his allegations. No agency would automatically provide antisocial behaviour support services where it has not identified antisocial behaviour.
55. Mr X has said the referral to HelpDirect was to a service that could not provide mediation. I believe he has misinterpreted the purpose of HelpDirect. The role of this service is to signpost people to other agencies able to provide the service needed. Mr X has accessed HelpDirect and been able to get support and the help he needed. He has not accessed mediation services but that seems to be his own choice.

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56. The Council has agreed to formally assess Mr X's complaints to see if they meet the test for referral to the Antisocial behaviour risk assessment conference (ASBRAC). The ASBRAC is a monthly meeting of all agencies such as the police and fire services, housing, voluntary sector and social care with Council officers. The ASBRAC aims to provide a collective response from all the agencies to victims of antisocial behaviour.
 57. The Council has also provided information about its 'Community Trigger' where Mr X could ask for a review of his antisocial behaviour complaint. This is a procedure that allows anyone alleging antisocial behaviour to demand action is taken, where their case meets the locally agreed threshold.
 58. The Council has accepted it still has issues to deal with after it resolves the gutter dispute. It has appointed a named officer to deal with Mr X's continuing problems.
 59. The Council is developing its antisocial behaviour policy to ensure it meets its legal responsibilities as set out in the Anti-social Behaviour Crime and Policing Act 2014.
 60. I cannot fault the Council's handling of Mr X's complaint about antisocial behaviour. The actions it proposes should ensure it deals with any antisocial behaviour problem Mr X has properly.

Final decision

61. The Ombudsman has found only minor fault with the way the Council handled Mr X's guttering complaint. The Council has redressed any injustice to Mr X by the actions already taken and the actions it proposes to take.
62. The Ombudsman has found no fault with the way the Council has handled Mr X's antisocial behaviour complaint. I have completed my investigation.

Investigator's decision on behalf of the Ombudsman