

Complaint reference:
15 018 266

Complaint against:
Fylde Borough Council

The Ombudsman's final decision

Summary: The Council was not at fault in the way it dealt with a number of noise nuisance complaints against Ms X. However, the Council is at fault for failing to deal with Ms X's noise nuisance complaints about her neighbours in a timely manner. It should apologise to Ms X for this.

The complaint

1. Ms X complained the Council:
 - harassed her because of her neighbours' noise nuisance complaints against her; and
 - did not properly look into her noise nuisance complaints about her neighbour.

The Ombudsman's role and powers

2. 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)*)
3. 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

4. I have spoken to Ms X and considered the information she provided.
5. I have considered the information provided by the Council. This includes a copy of the Council's Anti-Social Behaviour Policy and Community Protection Notice (CPN) procedures and the log sheets taken from the noise recordings. I have also spoken to the Council's Principal Environmental Protection Officer.

What I found

The law and council policy

6. The role of the Ombudsman in anti-social behaviour complaints is to consider whether a council has complied with its policy and procedures and the law. I would expect the council to consider all the relevant information and take action proportionate to the complaint.

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7. Councils have a responsibility to deal with statutory nuisance, including noise nuisance, under the Environmental Protection Act 1990.
 8. Under the Anti-Social Behaviour, Crime and Policing Act 2014, councils can issue a CPN for anti-social behaviour, including noise nuisance, which does not amount to statutory nuisance.
 9. The Council is required to investigate complaints of noise nuisance. It will gather evidence to establish whether or not the noise is a statutory noise nuisance or an anti-social noise nuisance.
 10. If the Council finds the noise is at a level that is anti-social, it may issue a CPN. CPNs can be issued where there are reasonable grounds to believe the subject's conduct is:
 - having a detrimental effect on the quality of life of those in the locality;
 - unreasonable; and
 - creating an effect which is of a persistent or continuing nature.
 11. Before issuing a CPN, the council must issue a warning letter. Failure to comply with a CPN can result in court action and a fine.

What happened

12. Ms X lives in a privately owned, first-floor flat in a detached house. The flat beneath her is rented by Mr and Ms Z who moved in around the beginning of 2015. Mr and Ms Z began complaining to the Council and then the Police about the noise Ms X was making shortly after they moved in. Mr and Ms Z said Ms X was regularly making unacceptable levels of noise very early in the morning, sometimes from 3:00am.
13. An attempt at mediation took place in April 2015 which did not succeed. Following this, between 17 and 23 April 2015, the Council installed recording equipment in Mr and Ms Z's flat. The officer's notes show noise described as *"loud thuds, bangs and stomping"* in the early hours of the morning coming from Ms X's flat on at least 24 occasions.
14. Following this, the Council met with the management company of the flats in an attempt to resolve the noise issues. This did not result in any improvements.
15. Mr and Ms Z continued to complain to the Council and on 4 June 2015, the Council emailed Ms X and said:

"This letter is a final warning advising you to consider your actions and desist from making noise at unsociable hours that are disturbing other residents. If further complaints are received and evidence gathered to confirm the allegations then a noise abatement notice will be served."
16. After receiving this email, Ms X responded to complain about a *"banging door"* in Mr and Ms Z's flat which was disturbing her. She did not receive a response from the Council.
17. On 24 June 2015, Ms X's solicitors emailed the Council. They said Ms X had complained to them about *"excessive noise"* made by Mr and Ms Z. Although the Council responded to this email on 26 June 2015, its response related to the complaints against Ms X and it made no reference to Ms X's complaint against her neighbours.

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18. Ms X emailed the Council on both 26 and 27 June 2015 to complain about the noise from Mr and Ms Z's flat. Again, even though the Council responded, it did not address this complaint.
19. Between 17 and 22 June 2015, the Council once more installed recording equipment in Mr and Ms Z's flat. The officer's notes show noise described as *"loud thuds, bangs and stomping"* in the early hours of the morning coming from Ms X's flat on at least 25 occasions.
20. Between 30 June and 15 July 2015, Mr and Ms Z complained four more times about the noise from Ms X's flat.
21. On 16 July 2015, the Council issued Ms X with a warning letter. This said Ms X should:
- stop making *"heavy impact noises"* which woke up Mr and Ms Z; and
 - not carry out her exercise routines until after 7:00am.
22. The letter also said:
- "If you continue to partake in the above conduct the Council may serve a Community Protection Notice on you requiring you to undertake the above steps."*
23. Mr and Ms Z told the Council things seemed to improve after it issued the warning letter. However, in August 2015, they told the Council the early morning noises had started again.
24. Ms X complained again about Mr and Ms Z's door on 21 July 2015 and again on 4 August 2015, after receiving no response from the Council about her complaint. On 5 August 2015, the Council emailed Ms X and said it would speak to Mr and Ms Z about the door. On 28 September 2015, Ms X contacted the Council and said the situation was *"alot better. Wont bother you unless it gets several times a night and a few days in a row."*
25. Between August 2015 and February 2016, Mr and Ms Z complained to the Council 11 times about the early morning noise coming from Ms X's flat.
26. Between 4 and 8 February 2016, the Council installed sound equipment in Mr and Ms Z's flat for the third time. The officer's notes show noise described as *"v. loud banging, loud thuds and stomping"* in the early hours of the morning coming from Ms X's flat on 15 occasions.
27. The Council has taken no further action against Ms X in relation to Mr and Ms Z's complaints.

My findings

The Council harassed Ms X

28. Ms X complained the Council harassed her during its investigation into Mr and Ms Z's noise complaints. In its response to her Stage 3 complaint, the Council said:

"[Our] email correspondence and other contacts with [Ms X] were in the context of seeking to understand the factors that contributed to your neighbour's complaints of excessive noise and trying to help you manage these factors that lay within your control. In short [the Council] was attempting to find a solution that did not involve formal action."

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29. From the emails Ms X and the Council have sent me, I can find no evidence of harassment by the Council. Some of the email correspondence to Ms X was in response to emails she had sent, some of which asked the Council for advice. At other times, the Council emailed her to tell her it had received further complaints from her neighbours.
30. On 4 June 2015, the Council gave Ms X prior warning that it would start formal action if she did not reduce the early morning noise. It also installed recording equipment once again in the downstairs flat before finally issuing a CPN warning letter to her on 16 July 2015.
31. It is clear the Council first tried to resolve the matter informally. This is something I would expect to see and the correspondence between the Council and Ms X forms part of this. As a result, I do not find any fault in the Council's actions.

The Council did not investigate Ms X's noise nuisance complaints

32. Ms X complained to the Council that Mr and Ms Z repeatedly banged their bathroom door, which disturbed her. She complained about this on 4 June, 24 June (through her solicitors), 26 June, 27 June, 14 July and 21 July 2015. Although she received some email correspondence from the Council, it did not address her complaint. It was not until 5 August 2015 the Council emailed her and said it would talk to Mr and Ms Z. On 25 September 2015, the Council said it had contacted them about the bathroom door. On 28 September 2015, Ms X said she was satisfied with the steps her downstairs neighbours had taken.
33. In its response as part of my investigation, the Council said:
- "At the time of her complaint regarding her neighbour's bathroom door banging [we were] in receipt of a number of complaints against her from the said neighbour. [We] did not feel it appropriate to proceed at that time due to risk of creating a tit for tat situation and in [our] opinion would aggravate the neighbour.*
- However once the situation with [Ms X] had, at that time been resolved as informed by [Mr Z] [we] advised him that she had complained about the door banging."*
34. The Council's Anti-Social Behaviour Policy says officers will contact the complainant within three working days of receiving a complaint. While it is clear Ms X's complaints formed part of a larger, ongoing matter, I would expect the Council to treat her complaints in the same way it treated Mr and Ms Z's complaints. The Council did not acknowledge her concerns; nor did it investigate them or explain to Ms X what action it was, or was not, proposing to take and why. Ms X had to complain six times over a three month period before the Council addressed her concerns. It then took the Council a further six weeks to tell Ms X it had spoken to Mr and Ms Z about the matter. This is fault.
35. Once the Council did take the appropriate action about Ms X's complaints, the matter was resolved to her satisfaction.

Agreed action

36. The Council has agreed to apologise to Ms X because it did not deal with her complaints in a timely manner.

Final decision

- 37. There is no fault in the Council's treatment of Ms X when it investigated a number of noise nuisance complaints against her.
- 38. However, the Council is at fault for failing to address Ms X's noise nuisance complaints about her neighbours in a timely manner. The Council has agreed to apologise to Ms X for the delays it caused. That is a suitable remedy. Therefore, I have completed my investigation.

Investigator's decision on behalf of the Ombudsman