

**Report by the Local Government and Social Care
Ombudsman**

**Investigation into a complaint against
London Borough of Barnet
(reference number: 17 000 409)**

14 November 2018

The Ombudsman's role

For 40 years the Ombudsman has independently and impartially investigated complaints. We effectively resolve disputes about councils and other bodies in our jurisdiction by recommending redress which is proportionate, appropriate and reasonable based on all the facts of the complaint. Our service is free of charge.

Each case which comes to the Ombudsman is different and we take the individual needs and circumstances of the person complaining to us into account when we make recommendations to remedy injustice caused by fault.

We have no legal power to force councils to follow our recommendations, but they almost always do. Some of the things we might ask a council to do are:

- > apologise
- > pay a financial remedy
- > improve its procedures so similar problems don't happen again.

Section 30 of the 1974 Local Government Act says that a report should not normally name or identify any person. The people involved in this complaint are referred to by a letter or job role.

Key to names used

Mr C	The complainant
Officer J	A Council officer from Barnet Estates
Officer R	A Council officer from the Community Protection department
Officer T	A Council officer from the Strategy Unit

Report summary

Noise nuisance

Mr C complains about the Council's failure to take action about noise nuisance from events at a community centre next to his home. Mr C says the noise is both a statutory noise nuisance and a breach of the lease agreement with the Council. Mr C also says the Council has not complied with the recommendations made by the Ombudsman in response to his previous complaint about the same issues.

Finding

Fault found causing injustice and recommendations made.

Recommendations

To remedy the injustice caused we recommend that within six months of the date of this report, the Council:

- again seeks legal advice on the procedure to follow to monitor any breaches of the lease at the site, and the standard of evidence required to be satisfied if conditions have been breached and formal action under the lease is justified;
- undertakes unannounced planned visits to the community centre on five dates when scheduled events are taking place to assess whether any noise is in breach of the lease or is a statutory noise nuisance (if the Council is unable to identify five events during the next six months, it will ask us for a time extension);
- writes to Mr C after each visit to tell him the details of the visit and the result of the assessment; and
- writes to Mr C and us, after all five visits have taken place, a decision on whether there is evidence of a breach of the lease or a statutory noise nuisance, and any further action the Council intends to take.

We also recommend that within two months of the date of this report, the Council:

- pays Mr C a financial remedy of £500 in recognition of his distress and uncertainty as a result of the Council's failure to comply with our previous recommendation and carry out the actions it had agreed; and
- pays Mr C an additional financial remedy of £100 in recognition of his time and trouble complaining to the Council and us about the same issues as his previous complaint.

The complaint

1. Mr C complains that the Council has failed to properly investigate and take action about noise nuisance from events at a community centre next to his property. Mr C says the noise is both a statutory noise nuisance and a breach of the lease agreement with the Council. Mr C also says the Council has not complied with the recommendations we made in response to his previous complaint about the same issues.

Legal and administrative background

The Ombudsman's role

2. We investigate complaints about 'maladministration' and 'service failure'. In this report, we have used the word 'fault' to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. We refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. (*Local Government Act 1974, sections 26(1) and 26A(1), as amended*)

Statutory noise nuisance

3. The Environmental Protection Act 1990 gives local authorities the power to take action about 'statutory nuisances' in their area. The Act includes noise as a statutory nuisance.
4. Local authorities must investigate complaints from members of the public about issues which could be a statutory nuisance. For the issue to be a statutory nuisance it must:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises; or
 - injure health or be likely to injure health.
5. Where a local authority is satisfied a statutory nuisance exists in their area, it must serve an abatement notice requiring the nuisance to stop or be limited to certain times. If a person does not comply with an abatement notice they can be prosecuted and fined.

How we considered this complaint

6. We produced this report after making enquiries of the Council, examining relevant documents and discussing the complaint with Mr C. We gave Mr C and the Council a confidential draft of this report and invited their comments. The comments received were taken into account before the report was finalised.

What we found

Background to Mr C's complaint

7. Mr C lives in a flat next to a community centre. Mr C is a Council tenant. The centre is owned by the Council, but leased to a community association.
8. The lease for the centre contains the following clauses:
 - The user should not do or allow anything which may be or become a nuisance or annoyance to tenants of any neighbouring property.

-
- The hours of use are restricted to no later than 11 pm, with the use till midnight allowed on 12 days a year.
 - No music or announcements from the centre should be audible outside the centre.
9. Mr C says he has been complaining about noise from events at the community centre since 2009. In 2014 the Council issued an abatement notice due to unacceptable noise from the community centre.
 10. In August 2015 Mr C complained to us about the Council's handling of his reports of noise nuisance from the community centre. Mr C complained about the lack of enforcement action by the Council both under the terms of the lease and under statutory noise nuisance powers.
 11. We investigated the complaint. In its response to our enquiries the Council said it was clear the reactive approach was not resolving the matter, as the nuisance was finishing before an officer could attend the site. The Council said it would now consider planned proactive visits to Mr C's property on days when the noise was likely to occur and also prioritise Mr C's calls to the noise monitoring service.
 12. In [our decision](#) we found the Council was not at fault for the way its Environmental Health department responded to Mr C's reports of noise nuisance from the community centre. But, we found the Council was at fault for the way it responded to potential breaches of the lease agreement. Specifically, we said:

The community centre lease contains straightforward clauses, which do seem to have been breached by the leaseholders and would be much easier to monitor. i.e. officers visiting at 11 pm could check the hall was not in use and listen at the boundary to see if noise from the centre is audible.

From the evidence we have seen, it does seem the Council has not done enough to consider whether action should be taken over breaches of the lease conditions.

So, we recommend the Council monitors the site for breaches of the lease conditions and/or collates the evidence it already has to enable it to take a decision on whether to take action over breaches of the lease. This may involve the Council getting legal advice and considering whether the building is suitable for the use it is being used for. It seems to us that late night functions with loud music are problematic in a building with no air conditioning so the doors and windows are always likely to be opened.
 13. The Council agreed to this recommendation and in early 2016 we made our final decision on the complaint.
 14. In early 2017 Mr C contacted us again because he did not consider the Council was properly investigating noise nuisance he reported or that our recommendations had been followed.
 15. This report deals with our investigation of events since we decided Mr C's previous complaint in early 2016. We have not re-visited the matters which we previously investigated.
- What happened after our decision on Mr C's previous complaint**
16. After reporting four incidents of noise nuisance in early 2016, Mr C told the Council the noise was now louder. He said he had reported noise nuisance to the noise team, which took too long to attend.

-
17. The Council responded to Mr C in early April saying it had asked for legal advice from its legal team and was waiting for this.
 18. The Council said it would ensure its Property Services team told Mr C of its intentions once instructions had been received from the Legal Team. The Council also said it would be visiting the centre in the next week or so to:
 - check the status of the noise limiter (which turns the power off once music exceeds a set volume);
 - re-iterate the importance of keeping the windows closed; and,
 - encourage the centre to install air conditioning (to prevent the opening of doors and windows during events).
 19. A few days later an officer from Barnet Estates, Officer J, sent an email to the community centre. Officer J sent the centre a copy of our decision and said it was necessary to increase the monitoring and recording of events, and suggested an informal meeting. Officer J added that the Council was seeking legal comment on the introduction of procedures to monitor breaches, including noise, to comply with our recommendations. In an internal email sent before the meeting took place, Officer J said the meeting would also involve the preparation of an agenda for a formal meeting with the directors of the community centre, Environmental Health, Property Services and possibly Legal Services.
 20. The informal meeting went ahead as scheduled in mid April. After the meeting the Service Director for Regulatory Services sent an email to an officer, Officer R, in the Community Protection department. The Service Director asked Officer R to:
 - write to Mr C to again outline the details of the noise service;
 - find out what bookings the community centre has over the coming weeks and arrange for the out of hours service to make a number of proactive visits when there are bookings to see if there is any noise to witness or any potential nuisance; and
 - ensure that Mr C is told by email the dates and times of any visits where no nuisance is witnessed, so Mr C knows the Council has made proactive visits.
 21. Later that month Officer J prepared a schedule of lettings to help monitor noise complaints and shared this with the Service Director for Regulatory Services. Officer R asked Officer J for bookings for May so they could arrange a proactive visit. Officer J sent this information in mid May. A few days later Officer J sent another email to Officer R with further information about the latest noise complaint made by Mr C and included the community centre's comments in response.
 22. The Council says during this period it received legal advice which Officer J had asked for in early April. The Council cannot now find a copy of this advice and says Officer J left the Council's employment shortly after making this request. But, the Council says the advice said for there to be a breach of the lease, it would need to be demonstrated that noise exceeded statutory levels on a regular basis.
 23. Mr C says he did not hear from the Council for a while, so he assumed they were investigating the noise. Mr C also says because of a family bereavement he did not contact the Council for a while and there were a couple of noise incidents in 2016 which he did not report. The Council says it offered Mr C proactive visits in early autumn 2016, but for personal reasons Mr C refused these.
 24. Mr C says at the start of 2017 the noise nuisance started again. Mr C reported noise nuisance to the Council on two occasions in March.

-
25. On the first occasion the Environmental Health Officer told Mr C he would not be able to visit because Mr C would not allow access to his property.
 26. On the second occasion the Environmental Health Officer witnessed the noise from inside Mr C's property.
 27. The Council's notes say the noise was not a nuisance but was audible, so the Officer spoke to the community centre's caretaker to reduce the noise.
 28. In early April the Council sent an email to Mr C with an update. The Council said it had been monitoring the noise levels at the community centre and would issue a written warning to the tenant of the community centre to comply with the terms of the lease. The Council also said it would endeavour to implement 'no noise and nuisance' signs at the premises as soon as possible.
 29. Three days later Mr C again reported noise nuisance. An Environmental Health Officer visited the community centre but did not witness a nuisance.
 30. The next day Mr C made a complaint to the Council about its management of the lease for the community centre. Part of Mr C's complaint was that he did not consider the Council had followed our recommendation in response to his previous complaint.
 31. On the same day an officer from the Council's Strategy Unit, Officer T, sent an email to officers involved with responding to Mr C's complaint. In the email Officer T said there was no evidence that the Council had consistently done what it agreed with us it would do to enforce the lease and reduce noise nuisance. Officer T said they had not seen any evidence that Environmental Health had done what they agreed to do, and the evidence from Property Services did not extend beyond April 2016. Officer T identified the need for a lead officer to work with Mr C to prioritise his calls, anticipate when noise may occur, and visit the community centre at these times.
 32. The next day the Council sent an email to the community centre about three noise complaints (made by Mr C) in late March and early April. The Council told the community centre it found the noise and nuisance at the premises unacceptable and not in compliance with the terms of the lease. The Council told the community centre to accept the email as a written warning to comply with the lease and stop nuisance behaviours at the premises.
 33. A few days later Mr C phoned the Council with a person from the community centre present. The Council says the officer he spoke to gave advice on how to ensure a nuisance was not being caused.
 34. In early May the Council provided its stage one response to Mr C's complaint about the Council's handling of the management of the lease for the community centre. The Council did not uphold the complaint. The Council said:
 - Since our decision, officers had visited the vicinity of the community centre on many occasions to assess noise levels in response to Mr C's complaints and several proactive visits had been undertaken.
 - Officers decided that the level of noise did not constitute a statutory nuisance, so no further proactive monitoring was scheduled, but Mr C could continue to report noise nuisance.
 - Over the summer period, Property Services would visit the site every two months for a period of six months to ensure compliance with the terms of the lease.

-
- If any issues of concern were not addressed by the tenants, the Council would consider increasing the number and/or frequency of visits.
 - Property Services would only consider taking action against the tenant in circumstances involving a statutory nuisance.
 - Property Services considered it would be unreasonable to take action against the tenants in cases where noise was audible outside the premises but not at a level that would unreasonably affect nearby residents.
 - The Council had complied with all the recommendations we had made.
35. The Council says in May it contacted the community centre about Mr C's concerns that the noise limiter was not working.
36. Mr C reported noise nuisance on four occasions during May and June. The Council says on two occasions the noise had stopped before an officer attended the site. On the other occasions the officer did not witness any noise.
37. In mid July Mr C again reported noise nuisance to the Council. The Council says the officer witnessed noise and noticed that the doors and windows at the centre were open. The officer asked for the noise to be turned down and the windows to be closed.
38. In late July Mr C put in a stage two complaint to the Council about the management of the lease.
39. At the start of August Property Services sent an email to the community centre to arrange a visit to the site. On the same day an officer from the Council's complaints department sent an internal email to officers involved with the investigation of the issues Mr C had complained about. In the email the officer said 'it is likely the Ombudsman will again find fault in this case, however we still have the opportunity to turn this around before the stage 2 goes out to him [Mr C]'.
40. In early September the Council provided its stage two response to Mr C's complaint about the management of the lease. The Council summarised the actions it was taking to work with the community centre to monitor its compliance with the lease. The Council did not uphold Mr C's complaint.
41. In early September the community centre replied to the Council's email of 2 August. In a further email sent to the community centre the Council said the three unresolved issues were:
- the noise limiter;
 - signs in the car park and inside the centre advising visitors to leave quietly; and,
 - the caretaker visiting at inappropriate times and making unnecessary noise.
42. The Council said proactive measures were needed to mitigate the disturbance and a meeting was needed.
43. In mid September an Environmental Health officer contacted Property Services saying they had spoken to the community centre and they intend to install a new noise limiter in two to three weeks. They noted the new signs were now on display around the site.
44. In late October Mr C again reported noise nuisance. The Council says an officer made an assessment in Mr C's garden for 10 minutes but did not witness any noise.

-
45. Mr C was not satisfied with the Council's response to his complaint, so he complained to us.
46. The Council's responses to our enquiries included the following comments.
- In 2017 officers visited frequently in a reactive capacity and have been able to attend quickly and as a result have witnessed some noise from the premises, however on all occasions this has been assessed as not being at a level to be a statutory nuisance.
 - Further proactive visits are not required as officers have been able to witness examples of the noise Mr C has been complaining about.
 - The signage placed both in and outside the centre – including the car park signage – is deemed adequate.
 - The Council has offered Mr C suitable alternative accommodation, but Mr C has not accepted these offers and chose to stay at his current accommodation.
 - Property Services does not consider the tenant is in breach of the lease.
47. We asked the Council to provide information about the visits it said it would undertake during the summer of 2017. The Council said some visits took place but this was not as often as anticipated. This was because of changes to officers managing the case.
48. We asked the Council why it did not uphold Mr C's complaints in light of the comments of Officer T and the Complaints Officer in the emails mentioned above. The Council said the complaints were not upheld because the Council did not find evidence of a breach.
49. Mr C disputes the Council's claim that it offered him alternative accommodation. Mr C says he did not receive any letters about this and an Environmental Health Officer just mentioned this was a possibility during a visit to his home. We asked the Council to provide information about these offers. The Council replied by saying its Officers must have verbally suggested to Mr C that he consider alternative Council accommodation. The Council said there is no written evidence, which is likely to be because Mr C has always said he did not want to move.

Analysis

50. We are satisfied the Council was taking appropriate steps to investigate the matter between February 2016 and May 2016. During this period Officer J was fully aware of our decision on Mr C's previous complaint and undertook a range of actions including seeking legal advice and meeting the directors of the community centre.
51. Also during the period, the Service Director for Regulatory Services requested the out of hours service to make a number of proactive visits when there were bookings to see if there was any noise to witness or any potential nuisance. The Service Director also asked for Mr C to be notified after planned visits had taken place where no nuisance was witnessed.
52. The Council was not at fault during this period.
53. But, after May 2016 there is no evidence of any further action by the Council until March 2017. The Council did not undertake any planned visits despite clearly intending to do so.

-
54. The Council offered Mr C planned visits to his property in early autumn 2016 but this was declined by Mr C due to a family bereavement. However, the Council did not need to enter Mr C's property to assess whether the community centre was breaching the conditions of the lease. Also, the Council's notes for this period say Mr C asked the Council to assess the noise from the side of his house. So, the Council should have undertaken planned visits during this period.
 55. In response to our draft report the Council referred to several site visits it undertook during 2018. But, the Council's records do not suggest these visits were planned visits when the Council knew events were taking place. The failure to undertake any planned visits to the site after our decision on Mr C's previous complaint is evidence of fault.
 56. The Council says the legal advice it received said for there to be a breach of the lease, it would need to be demonstrated that noise exceeded statutory levels on a regular basis. The Council says it would not be reasonable to take action under the lease about noise which is not a statutory noise nuisance.
 57. The lease makes it clear that noise only needs to be audible outside the premises for a breach of the lease to have occurred. So, we can understand why Mr C feels aggrieved that the Council says the noise has to be a statutory noise nuisance under the Environmental Protection Act to justify action under the management of the lease.
 58. The Council should have a record of the legal advice. This would allow us to scrutinise the legal advice in more detail, particularly as the Council's comments suggest the advice it received required a higher standard of evidence (a statutory noise nuisance) than stated in the lease conditions.
 59. We also note that according to an email sent by Officer J, the legal advice request also asked for comment on the introduction of procedures to monitor breaches to comply with our recommendation. Without a record of the legal advice we do not know if the Council received (and followed) advice on how to monitor the alleged breaches. The failure to keep a record of the legal advice is evidence of fault.
 60. Officer T identified several failures, in the detailed email referred to above, about the way the Council responded to our decision on Mr C's previous complaint. But, despite the highly critical views of Officer T, the Council did not accept it was at fault when it responded to Mr C's stage one complaint. In response to our enquiries the Council said this was because there was no evidence of a breach (presumably of the lease). But, this is not a good reason for not accepting fault in the stage one response. The complaint was about the Council's actions since our decision on Mr C's previous complaint and not just whether there had been a breach of the lease or not. In any case, the Council's comments are not supported by the fact it had recently issued a written warning to the community centre which said the centre had not been complying with the lease.
 61. In addition, the response said several proactive visits had been undertaken. This was not correct.
 62. The Council was at fault for the way it responded to Mr C's stage one complaint about the management of the lease. The Council should have accepted its handling of the matter had been affected by fault and that it had not undertaken any planned visits to assess the noise.
 63. As part of the stage one response, the Council said over the summer period Property Services would visit the site every two months for a period of six months to ensure compliance with the terms of the lease.

-
64. The Council says some visits took place, but we have not seen records to show this happened. The Council's failure to undertake all the agreed visits, or record those which it says it undertook, is also evidence of fault.
65. The Council's response to Mr C's stage two complaint again did not accept any fault, despite the previously referenced comments of a complaints officer.
66. Again, the Council has not provided good reasons for the apparent change in the Council's position on whether its handling of the matter was affected by fault.
67. The Council's responses to Mr C's complaint did not give fair consideration to the issues Mr C complained about.
68. The evidence shows the Council has been trying to work with the operators of the community centre to:
- improve the signage at the centre;
 - ensure the noise limiters are working;
 - investigate noise being emitted from the gap under the fire exit door; and,
 - encourage the installation of air conditioning.
69. Ultimately it is for the operators of the community centre to comply with the conditions of the lease. For example, the community centre has said it cannot afford to install air conditioning. But, if this results in a breach of the lease (because doors and windows are opened during events) the Council should take action.
70. As was the case when we investigated Mr C's previous complaint, the Council's investigation of potential breaches of the lease agreement has been affected by fault.
71. Environmental Health was not at fault for the way it responded to Mr C's reports of noise nuisance. The Council's records strongly suggest it has responded promptly to incidents of noise nuisance reported by Mr C.
72. The Council has undertaken noise assessments both in Mr C's garden and in the street, as it understands Mr C is not comfortable with assessments taking place in his home. As was the case when we investigated Mr C's previous complaint, there have been occasions when Mr C has reported noise nuisance but the noise has stopped by the time an officer has attended the site. This emphasises why it was so important for the Council to undertake several planned proactive visits at times when it knew events were taking place.
73. The Council's initial claim it offered Mr C alternative accommodation is disputed by Mr C. The information does not suggest this was anything more than a conversation about the possibility of Mr C moving house. But, even if the Council did make such an offer, this does not remove the Council's responsibility to properly investigate the issues Mr C reported. Mr C is entitled to expect a thorough investigation into the noise issues he has reported before deciding whether to move out of his home. Also, the fact the Council issued a written warning to the community centre management shows that Mr C's concerns are well founded.
74. Mr C has suffered a significant injustice as a result of the fault we have identified. It is not possible to say what the outcome would have been if the Council had undertaken the planned visits to assess the noise that it intended to undertake in May 2016 and again during the summer of 2017.

-
75. The Council's failure to undertake these noise assessments has caused Mr C some distress and uncertainty, as he continues to be affected by noise from events at the community centre. It is also unlikely Mr C would have been put to the time and trouble of complaining to us again if the Council had accepted fault and taken appropriate action in response to his complaints to it.

Conclusions

76. The Council's handling of the noise nuisance reported by Mr C since February 2016 was affected by fault. The Council:
- did not comply with the recommendation of our previous investigation by undertaking planned visits to the site to monitor compliance with the lease;
 - wrongly told Mr C that several proactive visits to the site had been undertaken;
 - did not keep a record of the legal advice it received;
 - wrongly did not accept any fault when it responded to Mr C's complaints; and,
 - did not undertake visits to the centre every two months during the summer of 2017 despite telling Mr C it would do so.

Recommendations

77. To put right the injustice suffered by Mr C as a result of fault by the Council, we recommend that within six months of the date of this report, the Council:
- again seeks legal advice on the procedure to follow to monitor any breaches of the lease at the site, and the standard of evidence required to be satisfied if conditions have been breached and formal action under the lease is justified;
 - undertakes unannounced planned visits to the community centre on five dates when scheduled events are taking place to assess whether any noise is in breach of the lease or is a statutory noise nuisance (if the Council is unable to identify five events during the next six months, it will ask us for a time extension);
 - writes to Mr C after each visit to tell him the details of the visit and the result of the assessment; and
 - writes to Mr C and us, after all five visits have taken place, a decision on whether there is evidence of a breach of the lease or a statutory noise nuisance, and any further action the Council intends to take.
78. We also recommend that within two months of the date of our final report, the Council:
- pays Mr C a financial remedy of £500 in recognition of his distress and uncertainty as a result of the Council's failure to comply with our previous recommendation and carry out the actions it had agreed; and
 - pays Mr C an additional financial remedy of £100 in recognition of his time and trouble complaining to the Council and us about the same issues as his previous complaint.
79. In addition, the Council must consider the report and confirm within three months the action it has taken or proposes to take.

-
80. The Council should consider the report at its full Council, Cabinet or other appropriately delegated committee of elected members and we will require evidence of this. (*Local Government Act 1974, section 31(2), as amended*)

Decision

81. We have completed our investigation into this complaint. There was fault by the Council which caused injustice to Mr C. The Council should take the action identified in paragraphs 77 and 78 to remedy that injustice.