

Digest of Cases 2007/08

Section A

Antisocial behaviour

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Antisocial behaviour

Introduction

During 2007/08 we received 704 complaints about the way that local authorities dealt with complaints of antisocial behaviour.

Authorities have a range of powers to investigate and deal with complaints of antisocial behaviour. Options available to them include taking court action to obtain repossession of a property (if they are the landlords), an injunction, or an antisocial behaviour order (ASBO). The cases we have investigated show the importance of a rigorous and balanced approach in collecting evidence and taking appropriate action.

We published a special report in 2005 to provide guidance for local authorities. Many authorities have effective systems in place to collect information and respond to complaints. Often it is in the implementation of procedures that authorities have fallen down.

The most common problems that we find are:

- failures to collect and deal with evidence in a systematic way;
- poor communication within and between departments;
- a lack of clarity of roles and procedures with the council's partners (particularly with arms length management organisations); and
- poor communication with complainants and alleged perpetrators.

We recognise that this can be a difficult area for authorities to deal with. There are often problems based on disputes between neighbours, and many of those making complaints are reluctant to provide direct evidence to assist authorities in taking action.

Some case studies are given below.

A1: Antisocial behaviour order

Unsubstantiated claims of nuisance never put to alleged perpetrator – court action taken

The complaint

Mrs A had lived in her street for over 30 years. She complained that the council applied for an antisocial behaviour order (ASBO) against her based on false allegations made by a woman who had recently moved in to the street. Having never been inside a court, she felt that she was now known in the local community as someone associated with an ASBO, and was known to the police. She said that her health was affected and that she took anti-depressants.

What happened

Following complaints from one of Mrs A's neighbours, including detailed diary sheets alleging persistent noise nuisance and drunken abuse, the council applied to the court for an interim ASBO. These can be made without the alleged perpetrator of the antisocial behaviour having notice of the impending court hearing. In this case the court rejected the application and so the council applied for an 'on notice' ASBO that required the service of papers on the defendant before the hearing. The council served the papers on Mrs A two days before the planned hearing. Although this was over six months after the council had received its first complaint (and more than two months after the council had made an application to the court), it was the first that Mrs A knew of any complaints against her. The court granted an interim ASBO that Mrs A indicated she wished to contest.

The council first received complaints from Mrs A's neighbour in June 2004. The interim ASBO that was granted in December 2004 was discharged in March 2005 and the council's investigation continued until April 2005. In all of this time the council failed to give Mrs A the opportunity to defend herself against the allegations made against her. Once she was aware of the allegations against her, Mrs A was able to produce ample evidence in her defence (22 letters, mostly from neighbours living close by her, confirming that not only was the allegation false but that she had always been a good neighbour).

The council reviewed its handling of the matter in May 2005. By this time the neighbour who had made the allegations had moved. The council considered the evidence that Mrs A had provided and withdrew the case.

The council's response to the complaint

The council initially indicated that although there were some areas where it might have handled matters more effectively, overall the approach taken was appropriate. It offered Mrs A an apology but nothing more.

During the Ombudsman's investigation of the complaint, the council told the Ombudsman that the officer investigating the complaints against Mrs A had contacted other residents who confirmed

that they found Mrs A to be abusive. However, there was no evidence to support the council's claim. In its defence it said that, although it accepted that the failure to give Mrs A the opportunity to defend herself against the allegation was, with the benefit of hindsight, wrong, the nature of the complaints and the possibility of reprisals was a factor in the failure to follow procedures. The council eventually offered to make a payment of £500.

The Ombudsman's view

The council's failure to follow its own procedures led to an antisocial behaviour order being served on Mrs A. It carried out inadequate enquiries and failed to give Mrs A an opportunity to defend herself. The Ombudsman said:

"This is an abuse of power of nightmarish proportions. It should never be allowed to happen again. I call on the council to review its practice and procedures in this important area of public administration."

The council made matters worse through its own defensive attitude to the complaint. The Ombudsman said that the council's grudging acceptance that Mrs A should receive some sort of redress came far too late and rubbed salt in the wound.

Outcome

The council:

- paid £2,000 to Mrs A and offered her a meeting with an appropriate senior officer to discuss her complaint; and
- reviewed its practices and procedures in the administration of its antisocial behaviour responsibilities to ensure that similar failures would not recur.

(Report 06B01231)

A2: Neighbour nuisance

Arms length management organisation – failure to take action following criminal behaviour

The complaint

Mr and Mrs B complained that the council had failed to deal effectively with antisocial behaviour from two households in their street for over three years.

The council's policies

The council had a policy and procedure for dealing with antisocial behaviour that included mediation, where appropriate, and the facility to take possession proceedings against a tenant if someone connected to the property committed an arrestable offence in the property's locality.

The council could also take legal action to seek to demote a tenancy (effectively to remove a tenant's right to security of tenure) or end a tenancy if a tenant breached the terms of the tenancy agreement.

What happened – May 2004 to November 2005

Mr and Mrs B made a number of reports of antisocial behaviour between May 2004 and September 2005. In September 2005 the matter was referred by the council to a local mediation service which reported that the parties involved had agreed to address their differences directly with one another in future to prevent problems recurring.

In November 2005 Mr and Mrs B told the council they had experienced several days of verbal abuse from the two households and that visitors to those households were parking vehicles across the entrance to their driveway. When the council investigated, counter-allegations were made by one of the other households. The police were involved and gave advice to all the parties.

The Ombudsman concluded that, while the council could have taken more decisive action in May/June 2004, and November 2005 – in the latter case by following up advice given in writing to all parties – he could not reasonably conclude that any failure at that time led directly to the situation worsening.

What happened – July 2006 onwards

In early July 2006 one of Mr and Mrs B's neighbours damaged their garden wall and gates (one of which he put through their car window, causing further damage) and kicked their porch. The police were called and the council informed. The council wrote to the neighbour reminding him of the terms of the tenancy agreement. The neighbour pled guilty to causing criminal damage and received a conditional discharge in August 2006.

In response to enquiries made by the Ombudsman's investigator, the council said it had not learned of the outcome of the court case until 28 March 2007, implying that by this time it was too late to do anything. This was untrue. There followed, from August 2006 onwards, a number of reports of comparatively low levels of antisocial behaviour from Mr and Mrs B against their neighbours.

The Ombudsman's view

The Ombudsman was critical of the council for failing to follow up the information it had about the criminal behaviour, particularly in the light of its requirement that serious incidents of antisocial behaviour should be dealt with promptly. He was also critical of the council for providing inaccurate and misleading information to him about when it knew of the outcome of the court case.

Recommended remedy

The council:

- paid Mr and Mrs B £750;
- arranged a meeting with Mr and Mrs B to discuss the way forward, and clearly explain what the council could and could not do in terms of dealing with antisocial behaviour; and
- ensured that its own staff and the ALMO's staff were aware of the relevant procedural requirements for dealing with complaints of antisocial behaviour.

(Report 06B07051)



A3: Neighbour nuisance

Reports of noise nuisance by neighbour – failure to take prompt action – no procedure in place

The complaint

Ms C was a lone parent with three children. She complained about the council's handling of her complaints about noise nuisance caused by her neighbour.

What happened

In September 2004 the council let the property next to her home to a woman and her two sons on a temporary basis. Shortly after they moved in, Ms C experienced noise problems that she raised with the council. She was advised that the officer responsible for temporary housing would liaise with her over the problem. She had a lot of contact with that officer over the continuing problems of noise and antisocial behaviour. It was not until July 2005 that the council applied for a possession order and an eviction notice from the court. Although the council was aware that the woman and her sons had caused problems elsewhere, it agreed that the case should be referred for mediation. No progress was made with that mediation.

In September 2005 the council obtained an injunction with the power of arrest. Despite continuing problems, no arrest was made. Ms C continued to provide information until, in July 2006, she herself was arrested for alleged assault on her neighbour. Although the case was eventually dropped by the Crown Prosecution Service in March 2007, Ms C did not feel confident living in her own home, and she and her children spent most of their time living with her parents. She was advised by the council to keep a diary of her movements, backed by evidence such as shop receipts, in order to defend herself against any similar serious allegations. She told the Ombudsman that her health suffered and her children's progress was seriously affected. The perpetrator was evicted in January 2007 on grounds that had been available to the council for some time.

The Ombudsman's investigation

In response to the Ombudsman's enquiries, the council fully accepted that there had been failings, which it attributed to the way its temporary housing team had been set up. The team had no procedure in place at that time for dealing with antisocial behaviour and neighbour nuisance. The council put in place a wide-ranging review of the operation of the team to ensure that similar problems did not occur. The council was not consulted or involved in the action taken by the police when they arrested Ms C following the false allegations. However, if the council had acted more promptly when the problems occurred, the situation that gave rise to the false allegations may have been avoided. This is particularly important in circumstances where people are known to have caused similar problems elsewhere.

Outcome

The council apologised to Ms C and paid her £3,500 in recognition of 21 months' avoidable distress. It also agreed to review its procedures, particularly those relating to temporary accommodation. This complaint was resolved without publication of a report.

(Case reference confidential)



A4: Neighbour nuisance

Arms length management organisation – nuisance from neighbour with seven children – catalogue of failures – no-one took responsibility

The complaint

Mr D lived with his parents, who were in their 80s, in a privately-owned semi-detached house where they had lived for 40 years. Following an unofficial exchange between council tenants, a woman and her seven children moved into the property next door. There followed problems of noise, abuse, trespass and damage to property. Mr D said he lived in fear of the neighbours, and the investigation established that other residents did too. He complained about the response to these problems by the council and the arms length management organisation (ALMO) that managed the council's homes.

The Ombudsman's investigation

The Ombudsman's investigation found a catalogue of failures in communication between the council and the ALMO, failure to follow procedures, failure to take action and failure to maintain records. Although the council had a service level agreement with the ALMO, no-one took responsibility for pursuing action. As a result, the perpetrators received several warnings, cautions, acceptable behaviour contracts and parenting contracts, but no-one was in the 'driving seat' knowing where they were going.

There was a failure to present to legal officers the history, information about an antisocial behaviour order (ASBO), breaches of the ASBO, a drugs raid and a conviction, with a request that they advise on the viability of tenancy enforcement proceedings. Five detailed diary records kept by Mr D and handed to the antisocial behaviour unit were lost. Staff in the council's antisocial behaviour unit and the ALMO blamed each other for the failures, and no-one took responsibility for taking action and resolving the situation.

Outcome

There were serious failings in the functioning of the council's antisocial behaviour unit and, as result of what was found, there was a complete overhaul of the unit and the way complaints of antisocial behaviour were dealt with. The council sent Mr D an explanation of the changes to be introduced, and a review of other antisocial behaviour complaints was carried out to establish whether others had suffered as a result of the failures.

The council paid Mr D £20,000 in recognition of seven years of disruption and distress that he and his parents had suffered, and the considerable time and trouble they had taken in seeking to resolve the problems.

(Case reference confidential)



A5: Neighbour nuisance

Failure to follow procedures – noise and abuse – application for emergency housing transfer

What happened

In this case, the failure to keep proper records seriously inhibited a council's ability to respond to the Ombudsman's enquiries about what it had done in response to a request for an emergency housing transfer due to antisocial behaviour by a neighbour. The behaviour took the form of loud noise late at night, shouting and screaming abuse at the complainant and other residents.

The council accepted that it had not followed its own procedures, because no case file had been opened and no interviews had taken place with either the complainant or the alleged perpetrator. There was also no contact with the police or other agencies to investigate the alleged behaviour.

It appeared that the application for housing was dealt with, but the allegations of harassment and antisocial behaviour, although discussed with the antisocial behaviour unit, were not followed up.

Outcome

When the complaint was drawn to the council's attention by the Ombudsman's investigator, the council was quick to identify and rectify its failings and agreed to pay £1,000 to the complainant in recognition of the effect of the nine-month delay in taking positive action.

(Case reference confidential)