

The Ombudsman's final decision

Summary: Mrs X complains the Council has not properly investigated her complaints about anti-social behaviour from her neighbours. She has a number of different complaints about her neighbour's behaviour. The Council is not at fault in its approach to most of her complaints. However, it was at fault for its approach to her complaint about her neighbour's parking, but I do not consider this caused Mrs X an injustice. We have made recommendations to remedy the fault.

The complaint

1. Mrs X complains that the Council:
 - Has not dealt with noise nuisance and anti-social behaviour from her neighbours
 - Has not dealt effectively with her complaint that her neighbour regularly parked in front of her drive.
 - Has been caused an injustice by the Council's ineffective approach as her neighbors' behavior has been allowed to go unchecked.

The Ombudsman's role and powers

2. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. (*Local Government Act 1974, sections 26B and 34D, as amended*)
3. We investigate complaints about 'maladministration' and 'service failure'. I 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. I 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*)
4. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. (*Local Government Act 1974, section 30(1B) and 34H(i), as amended*)

How I considered this complaint

5. I spoke with the complainant and reviewed the photographs and evidence she provided.

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6. I made enquires and further enquiries with the Council. I have reviewed its response in relation to the relevant legislation and policy and guidance.
 7. I gave both the complainant and the Council the opportunity to comment on my draft decision.

What I found

Relevant law

Anti-social behaviour

8. Anti-social behaviour is defined as being:
 - conduct that has caused, or is likely to cause, harassment, alarm or distress to any person.
 - conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
 - conduct capable of causing housing related nuisance or annoyance to any person. (*The Anti-Social Behaviour, Crime and Policing Act 2014, ("the Act")*)

Examples include:

- verbal and physical threats and abuse and harassment
 - animals not being kept under control
 - nuisance, rowdy or inconsiderate neighbours
 - littering, fly tipping, dumping or abandoned vehicles
9. On-going anti-social behaviour may need intervention by organisations such as councils, police, the health service and registered social landlords.
 10. The Act also gives the Council powers to order dog-owners to take steps to handle their dog more responsibly.

Parking at dropped footways

11. The Traffic Management Act 2004 enables authorities with civil parking enforcement power to enforce parking at dropped footways.
12. The law says that cars must not park on the road next to a dropped kerb that has been lowered to help vehicles enter or leave their driveway.
13. There are exceptions to this rule. One of the exceptions is where a car is parked outside a residential premises with the consent of the occupier of the premises. (*Section 86, Prohibition of parking at dropped footways etc, Traffic Management Act 2004*)
14. Local authorities must have regard to the Secretary of State's Statutory Guidance to Local Authorities on the Civil Enforcement of Parking Contraventions. (*Section 87, Traffic Management Act 2004, "The Guidance"*)
15. The Guidance says:
 - Parking policies including enforcement should be proportionate (Para 2.3)
 - Enforcement authorities should design their parking policies with particular regard to a number of factors. One of which is managing and reconciling the competing demands for kerb space. (Para 2.4). In the now withdrawn Operational Guidance to local authorities: parking policy and enforcement document, it also stated that this management should also apply to residents kerb space.

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- Once authorities have finalised their parking enforcement policies, they should publish and promote them openly. (Para 5.2)
16. The now withdrawn Operational Guidance to local authorities: parking policy and enforcement document, also stressed that local authorities should have a clear idea of what its parking policy is. It said it should appraise its policy and its objectives regularly.

The Council's policy on parking across dropped footways

17. The Council's policy on enforcing against contraventions of the above legislation was historically provided by the county council. The Council says the county council previously decided what parking offences the Council would and would not enforce. However, in 2011 it relaxed the rules and allowed district councils, including the Council, to make decisions locally about enforcement of this type.
18. The Council says it does not have a record to show it has ever considered its approach to enforcement. It says it will take appropriate steps to remedy this.
19. However, it says the Council continued not to enforce at dropped kerbs at private properties. It says this is common with other local authorities.
20. It says it expects the decision not to enforce at dropped kerbs at private properties will remain, for the following reasons:
- It would be impossible to resource the parking team to ensure consistent and fair patrols of areas where there are dropped kerbs to private properties.
 - It would be difficult for the enforcement officer, if a vehicle was found to be parked across a private dropped kerb, to ascertain if permission had been granted and therefore to know whether to enforce.
 - As a dropped kerb effectively guarantees a parking space on the highway, because those without permission cannot park next to it, there is a risk that property owners could rent out that space.
 - There is a risk that the authority could become embroiled in neighbourhood disputes.
 - There is a risk that the service could be seen as an 'on demand' service for residents who have a dropped kerb.

Background

21. Mrs X and her husband Mr X say that they have been experiencing anti-social behaviour from their neighbours, Mr and Mrs P, for some time. In October 2017, the Council offered mediation. However, Mrs X says this did not help.
22. They say that they experienced various types of anti-social behaviour from Mr and Mrs P, including:
- their dog jumping into their garden on a number of occasions over the past three years;
 - The making of false complaints to social services about Mr and Mrs X;
 - Them banging on the party wall between the two houses;
 - Physical violence (which they accepted there was no proof of); and
 - Parking across Mr and Mrs X's dropped kerb
23. There is evidence in the records that the Council responded to Mrs X's complaints about her neighbours. At one point Mrs X was given a number of a rescue service

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- that would take Mr and Mrs P's dog away. The Council provided diary sheets for Mrs X to record her concerns and I have seen evidence that the Council considered the diarised incidents recorded.
24. However, Mrs X said the poor relationship between her and Mr and Mrs P escalated. Her case was transferred to the Councils anti-social behaviour team.
25. Other neighbours wrote to the Council in September 2018. They also complained about Mr and Mrs P's behaviour. The neighbours sent their complaints to the Council in the form of a petition. The petition alleged:
- "..uncultured behaviour including mentally torturing, threatening, annoying, loud shouting...breaking law and order (with no evidences behind) physical and verbal aggression (leaving no evidence behind) with us."*
26. The Council wrote to each of the neighbours who had complained on 27 September 2018. It asked for further information and for this to be provided by 12 October 2018.
27. The Council received three responses. The responses referred to parking issues, some of which referred to parking complaints in 2015 and 2016. One of the neighbours said that they felt sorry that the complainants had to live in such close proximity to Mr and Mrs P.
28. The officer who reviewed the responses said: *"The above is nowhere near the level of activity that I could justify taking action on neither is it proportionate to that."*
29. In October 2018 the Council granted Mr and Mrs P retrospective planning permission for a dropped kerb. It says it has not received any complaints this year about parking contraventions.
30. In November 2018 a police officer, PC1, visited Mrs X. She suggested to the Council that it might be advisable to work together to address the issues.
31. The Council responded to PC1, saying it had decided not to investigate. It said that while Mr and Mrs P had parked in front of Mrs X's drive on occasion, she had not actually been blocked in.
32. The police also decided to close the case. They explained that the parking issue could be relieved by the fact that Mr and Mrs P's application for a dropped kerb had been successful, meaning they should not have to park outside Mr and Mrs X's house again.
33. On 28 December 2018 the Council wrote to the complainant, officially closing the complaint. It explained that it did not have enough evidence to take any action. It said that, if Mrs X had any robust evidence to support her claims, she should inform the Council and it could re-open the case.
34. Mrs X complained again. Mr and Mrs P are council tenants. She asked for them to be moved. The Council responded that they could not do that but if Mr and Mrs X would like to move, they could provide some assistance with that.
35. Mr and Mrs X did not want to do that. They continued to complain about anti-social activity by Mr and Mrs P.

Findings

Anti-social behaviour

36. The records I have seen show the Council investigated Mr and Mrs X's complaints. It responded to their complaints by sending officers out to have

discussions with their neighbours. It invited comment from other neighbours. However, the Council has to conduct proportionate investigations. Both Mrs X and the other neighbours who complained about Mr and Mrs P accepted they did not have evidence of the anti-social behaviour they complained of, some of which had taken place over a year previously.

37. While I have seen video footage of Mr and Mrs P's dog jumping into Mrs X's garden, this is not evidence this occurred on a regular basis. I consider it was reasonable of the Council to conclude that it did not have enough evidence to take enforcement action against Mr and Mrs P. That is not to say that Mr and Mrs X were not subject to anti-social behaviour, but that the Council did not have sufficient evidence to take action. The Council said, that if the complainants were able to produce some evidence, they should contact the Council again. There is no fault here.

Parking enforcement

38. The Council does not have a record of the consideration it gave to the decision-powers the county council gave it in relation to dropped kerb parking enforcement. This is fault. It should have a policy and that policy should be openly available to residents. I have made a recommendation to remedy this.
39. However, I cannot say its failure to have such a policy resulted in Mr and Mrs X suffering an injustice. The evidence suggests that, on the occasions when Mr and Mrs P parked in front of Mr and Mrs X's driveway, they were not blocked in as their car was not on their driveway at the time. I cannot say whether the Council would have decided it was proportionate to enforce if it had been. Therefore, I do not consider I can find that Mr and Mrs X suffered any injustice by the Council's failure to have a policy.

Recommended/ agreed action

Within three months of my decision, the Council should review its enforcement policy in relation to residents dropped kerb parking enforcement. It should provide evidence of its review to the Ombudsman.

Final decision

40. I found some fault in relation to the Council's approach to the complainant's complaint about parking but in general, I have not found the Council at fault I have now completed my investigation.

Matters I have not investigated

41. The complainant has raised issues about other continuing complaints she has against the Council's approach to the allegations she makes against Mr and Mrs P. These are issues raised after the beginning of Mrs X's complaint to the Ombudsman and do not therefore form part of this investigation.

Investigator's final decision