Report

on an investigation into complaint no 04/B/05253 against the London Borough of Southwark

24 October 2005
Investigation into complaint no 04/B/05253 against the London Borough of Southwark

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Key to names used

- Mr Kelly: the complainant
- Officer A: a tenancy officer
- Officer B: a housing services manager
- Officer C: a tenancy officer
- Officer D: a tenancy officer
- Officer E: a senior anti-social behaviour management officer
- Officer F: the principal complaints officer, housing
- Mrs Jones: a neighbour of Mr Kelly
- Mr Smith: a neighbour of Mr Kelly
- Mr Rogers: a neighbour of Mr Kelly
- Ms Harper: a neighbour of Mr Kelly
Report summary

Neighbour nuisance

Mr Kelly lives in a downstairs maisonette. He complained to the Council’s Neighbourhood Housing Office about noise and other nuisance from a flat upstairs. The Council took no action to deal with this complaint and a subsequent petition about noise nuisance signed by Mr Kelly and two neighbours. One of Mr Kelly’s upstairs neighbours then complained that she had been subjected to racial abuse by a neighbour. Officers decided that Mr Kelly was responsible, although this was not supported by the evidence available, and it later became clear that one of Mr Kelly’s neighbours was responsible.

The Council referred the matter to its anti-social behaviour unit. There was a delay in taking the complaint up. The officer responsible quickly decided that he could not substantiate the allegation of racial abuse and tried to investigate the allegations of noise nuisance. But there was a succession of tenants in the flat upstairs and each time the tenant changed, evidence had to be collected afresh.

The complaint was investigated by the Council’s housing performance and compliance unit. Mr Kelly complains that this resulted in a whitewash. The officer in charge of the unit now accepts that evidence that emerged during my investigation would have led her to change part of her findings.

Finding

Maladministration causing injustice; remedy agreed.

Remedy

The Ombudsman found that Mr Kelly had suffered almost a year of avoidable noise nuisance because of the Council’s failure to investigate his complaints. The Council has agreed to remedy this complaint by:

- paying Mr Kelly £1,000 and apologising;
- removing the allegations of racial abuse from its files;
- providing training to its staff as appropriate in the operation of its procedures for dealing with neighbour nuisance; and
- taking action to investigate Mr Kelly’s complaints of noise nuisance and remedy any nuisance if practical.

I have decided to complete my investigation and issue this report as it illustrates a matter of public interest.
Introduction

1. Mr Kelly complains that the Council failed to take action to deal with nuisance he experienced from his upstairs neighbour and that officers then made false accusations against him. He complains that as a result he has suffered from ongoing noise and other nuisance and that he, his wife and two children have been subjected to stress and harassment and have been prevented from sleeping.

2. The names used in this report are not the real names of the people involved\(^1\).

3. An officer of the Commission has examined the Council's files and interviewed Mr Kelly and officers who have been involved in his complaint. All those who have been interviewed have had the opportunity to comment on a draft of this report and, where appropriate, their comments are reflected in the text.

Legal and administrative background

4. The Council has a general duty to deal with complaints about neighbour nuisance that are reported to it. In its tenancy agreement it requires its tenants not to do anything that would cause a nuisance to other residents, and there is a similar clause in its leases.

5. The Council has procedures for dealing with complaints of neighbour nuisance. When a complaint of neighbour nuisance is reported to the Council, it is the responsibility of the Neighbourhood Housing Office (NHO) to investigate and take action over such complaints in the first instance. The procedures include inviting the complainant to visit the NHO, providing a nuisance diary in which the complainant can record further problems, writing to the alleged perpetrator and reporting back to the complainant.

6. If this proves unsuccessful, or if the problem is particularly complex, the complaint can be referred to Southwark Anti-Social Behaviour Unit (SASBU), a team working in conjunction with the local police.

Investigation

The initial problems

7. Mr Kelly is a former Council tenant who lives in a maisonette he bought in a Council-owned block. He complains that he experienced nuisance for some time before he complained in writing to the NHO on 11 November 2003. He complained about the neighbour living directly above him, Mr Smith, who was sub-letting the maisonette from the leaseholder. He says that Mr Smith dropped cigarette ends and other rubbish into his garden and hung dripping wet washing from his balcony, which

\(^1\) Local Government Act 1974, section 30(3).
meant that he could not use his garden. Mr Kelly did not receive a reply to his letter of 11 November 2003 and sent a reminder letter on 19 January 2004, in which he enclosed a copy of the earlier letter.

8. Officer A, a tenancy officer, was at that time the officer responsible for Mr Kelly’s block of flats. In its original response to my enquiries, the Council stated that Officer A sent a standard reply to Mr Kelly and wrote to Mr Smith and Ms Jones, Mr Smith’s next-door neighbour, about the nuisance. The Council stated that the NHO wrote to Ms Jones as well as Mr Smith because Mr Kelly could not “pinpoint the source of the disturbance”. Mr Kelly’s original letter of complaint, however, refers to Mr Smith’s property but not Ms Jones’s and does not refer to any “disturbance”. There are no copies of these letters on the Council’s files and no evidence that any of them was sent.

9. On 14 April 2004 Mr Kelly brought a petition to the NHO, signed by himself and his next-door neighbours on either side, Mr Rogers and Ms Harper. The petition complained about “appalling noise levels from the two properties above” (i.e. those occupied by Mr Smith and Ms Jones), continuing into the early hours of the morning and depriving the residents of sleep. Mr Kelly states that this matter is separate from his original complaint.

10. On 15 April 2004 Mr Kelly attended the AGM of the local tenants’ association. Officer A and Officer B, the housing services manager at the NHO, were present. Mr Kelly says that he asked why no action had been taken about his complaint, and that Officers A and B were unable to answer his questions. The officers concerned said in interview that Mr Kelly was disrupting the meeting and that they could not understand the point he was trying to make, so they invited him to attend an interview at the NHO. Mr Kelly has provided a statement relating to the meeting from the secretary of the tenants’ association which says that Mr Kelly did not disrupt the meeting and that the officers could not provide answers to Mr Kelly’s questions.

11. In interview, Officer A stated that she did not see the letter of 11 November 2003, which is on Mr Kelly’s file at the NHO, or the letter of 19 January 2004, which was addressed to her but is not on the file. She stated that she only learned of the nuisance problem at the AGM of the tenants’ association. She added that she had written a general letter to tenants about nuisance the previous autumn but that she did not write to Mr Smith or Ms Jones specifically about nuisance.

12. Officer B saw Mr Kelly on 16 April 2004. She said in interview that she did not know who he was prior to the AGM and had no preconceptions about him. She added that Mr Kelly apologised to her and Officer A for his attitude at the AGM. She passed the petition to Officer A to investigate. Officer B states that she offered Mr Kelly nuisance diaries but that he declined, saying that he “couldn’t be bothered” to fill them in. Mr Kelly, however, says that he did not apologise for his attitude at the AGM, he was not offered nuisance diaries at this meeting and only started to keep a log later on. There are no notes of this meeting on the Council’s files.
13. Officer A wrote to Mr Smith and Ms Jones on 16 April 2004, asking them to contact the NHO. In the letter she said that she had written to them in November 2003 concerning "dropping litter through the balcony and hanging your washing on the balcony causing damp to the flat below and playing loud music coming from your flat". She had received a further complaint and reminded Mr Smith and Ms Jones of the terms of their lease relating to nuisance. There is no evidence on the Council’s files to suggest that she contacted Mr Rogers or Ms Harper to get further evidence. Mr Kelly stated in interview that he had not complained about loud music but about other kinds of noise.

14. On 16 April 2004 Officer A wrote to Mr Kelly. She said she was investigating his complaint and she would interview any witnesses he named. She said she enclosed nuisance diaries with her letter and urged Mr Kelly to complete them. Mr Kelly says that he did not receive this letter or the enclosures and only became aware of it when the Council replied to my enquiries. He adds that he would certainly have completed the incident diaries if he had received them, and has sent me copies of one sheet dated 5 April 2004, along with records he kept between July and October 2004 on exercise book paper, detailing noise and objects being dropped into his garden from Mr Smith’s flat. He refers to hammering noises and what sounded like objects being dropped onto the floor. At one point he compares the noise to that of a building site. He records that some of the noise occurred late at night or in the early hours of the morning, and this disrupted the sleeping patterns of his family. Mr Kelly says that he did not show these records to the Council because he had no confidence that the NHO would investigate the noise nuisance.

The counter-allegations

15. Mr Smith did not reply to Officer A’s letter. But Ms Jones replied on 28 April 2004. She said she was shocked at the allegations because she did not cause trouble in the block. She had not received any letter in November 2003, did not have a balcony and did not play loud music. She then referred to an incident the previous month when Mr Smith had knocked on her door late at night, asking whether she was vacuuming. When she asked why, Mr Smith said that he was being harassed by the “couple downstairs” about noise levels. Ms Jones said in her letter that she spoke to the neighbour downstairs, saying that he should not wake people with children at that time of the night and the neighbour downstairs racially abused her. She presumed that it was the neighbour who made the complaint against her. Mr Kelly’s recollection of the incident is that it took place in the early evening and that it was Mr Rogers who racially abused Ms Jones.

16. Officer B stated in interview that she spoke to Ms Jones on the telephone because Ms Jones had been speaking to Officer A and asked to speak to Officer A’s manager. It is not clear whether this was before or after her letter of 28 April 2004 because there is no file note of the conversation. In interview Officer B stated that Ms Jones identified the person responsible for the racial abuse as “the Irishman downstairs”.
17. On 6 May 2004 Ms Harper visited the NHO about another matter. During the interview she complained about the noise of drilling and banging somewhere in the block. The unsigned notes of the officer who interviewed her record “spoke to NHO – no reports of this nature” from the block. The officer advised Ms Harper to contact the Council’s noise team and keep a diary, getting back to the NHO if the noise team could not help.

18. On 7 May 2004 Mr Kelly visited the NHO to find out what was happening with his complaint. He spoke to Officer C, a tenancy officer who was on the front desk at the time. Officer C made a file note that stated that Mr Kelly asked for an appointment with Officer A and was abusive and argumentative. She asked a manager to take Mr Kelly into an office and speak to him. Mr Kelly denies that he was abusive and states that he was misinformed about Officer A’s availability; he had been given a number of contradictory reasons why Officer A was unavailable. The manager who spoke to him explained that Officer A was unavailable because she was being transferred to another office. Mr Kelly believes Officer C’s note of the incident was not contemporaneous.

19. After the meeting the manager sent an email to Officer B. In it he said he had taken Mr Kelly into an interview room to prevent him from causing a commotion in reception. Mr Kelly was dissatisfied with the Council’s failure to deal with “the increasing DIY convention” in the block, Officer A’s failure to communicate with residents about the problem and her failure to deal with the petition. Mr Kelly added that the only time Officer A had showed any interest in the problem was after Officer B had become involved and this was short-lived. The email concluded that Mr Kelly would appreciate a telephone call to discuss the problem. There is a handwritten addition by Officer B stating that she had telephoned Mr Kelly twice later that day but there had been no reply.

20. On 11 May 2004 Officer B wrote to Ms Jones. She recalled their telephone conversation, in which Ms Jones alleged that “the complainant has racially abused you on a few occasions”. She reminded Ms Jones that she had promised to put the allegations in writing and that her complaint could not be investigated until she did so.

21. On 12 May 2004 Officer A wrote to Mr Kelly. She informed him that she was giving him an update on her investigations, but the letter made no mention of this. Instead it informed him that a neighbour had made counter-allegations that would have to be investigated, and that he would be contacted about them in due course. The letter did not say what the counter-allegations consisted of. Mr Kelly’s view is that Ms Jones did not identify him in her letter but that officers concluded that he was responsible.

22. On 17 May 2004 the NHO received another letter from Ms Jones. It was the same as the letter of 28 April 2004, with the addition of the specific terms of racial abuse she had heard.
23. On 17 May 2004 Mr Kelly wrote to Officer A, complaining about her lack of action and response in dealing with his complaint over the previous six months, compared to the urgency with which she was investigating the counter-allegations that had been made against him. He pointed out that although Officer A had written to him, she had not said what the counter-allegations were or given him the chance to respond.

24. At the start of June, Officer D replaced Officer A as a tenancy officer. On 4 June 2004 he wrote to Mr Smith’s landlord to give him an appointment on 16 June 2004 to respond to Mr Kelly’s complaint about noise. He also wrote to Mr Kelly on the same date, fixing an appointment with him for 17 June 2004.

25. On 10 June 2004 Officers C and D interviewed Ms Jones. The notes of the interview record that Ms Jones went over the incident in which she was racially abused. She said she had seen a man and a woman downstairs whom she had never spoken to. The man started to racially abuse her and the woman joined in. Officer C stated in interview that she was not sure how Mr Kelly was identified as the person who abused Ms Jones; she may have seen him come out of his maisonette. An allegation of this nature would normally have been referred to the hate crime team, but Officer C did not believe that Ms Jones wished to pursue the matter and Ms Jones moved out two months later.

26. Officer D confirmed in interview how upset Ms Jones was. He believes that Ms Jones said that the person responsible was the one who lived at Mr Kelly’s maisonette. Mr Kelly’s comment on this is that a number of downstairs neighbours were outside when the incident took place but his wife was not. He said in interview that he had gone back indoors and then heard Mr Rogers shouting racial abuse and Mr Smith remonstrating. He was unaware that Ms Jones was present until he received a copy of the Council’s reply to me.

27. On 17 June 2004 Officer D interviewed Mr Kelly about the counter-allegations. Mr Kelly states that no attempt was made to deal with his complaint of neighbour nuisance during this meeting. He says he found Officer D and his colleague, who was present for part of the meeting, physically intimidating. He says that Officer D lost his temper and eventually revealed that the counter-allegations were that he had used racial abuse, which was the first time he had been told this. He says no names were mentioned. He denied that he was responsible and warned Officer D of the seriousness of the allegations. He believes that Officer D stereotyped him as an aggressive Irishman and that officers at the NHO were “framing” him for something he did not do. He complains that Officer D’s notes were not contemporaneous and mention matters he only referred to the Council at a later date.

28. Officer D’s notes and recollection of this meeting are different. He said in interview that he found Mr Kelly aggressive and asked a manager to attend the meeting as a witness. He denied losing his temper or intimidating Mr Kelly and said Mr Kelly had been similarly aggressive when interviewed by other officers. Officer D’s notes record that when the counter-allegation was put to Mr Kelly he swore and denied it, saying that he had no problem with Ms Jones; his complaint was about Mr Smith.
conclusion Officer D informed Mr Kelly that the complaint would be referred to SASBU. This is the only point in the meeting on which Officer D and Mr Kelly agree.

29. Mr Kelly wrote to Officer D after this meeting to complain about the way in which it had been conducted. Officer D replied on 19 July 2004 to say that the case had been referred to SASBU and to ask Mr Kelly to be patient.

30. On 3 September 2004 Mr Smith wrote to the NHO. He said in his letter that it was Mr Rogers and not Mr Kelly who had racially abused Ms Jones. Officer D said that he referred this letter on to SASBU, which was now dealing with the matter. This was the first contact the NHO had had from Mr Smith.

The formal complaint

31. On 7 June 2004 Mr Kelly contacted the Council’s Housing Performance and Compliance Unit to make a formal complaint. It was dealt with at stage 2 of the Council’s complaints procedure.

32. On 23 June 2004 Mr Kelly and a witness attended a meeting to discuss his formal complaint. The officer who was dealing with the complaint called Officer F, the principal complaints officer, housing, into the meeting. Mr Kelly complains that he was not interviewed about his complaint, but the notes of this meeting, taken by Officer F’s colleague, show that he outlined the nuisance he had experienced from Mr Smith and described his attempts to contact the NHO for action. It was not clear where Mr Kelly’s file was, and Officer F wanted evidence that Mr Kelly had complained to the NHO.

33. Officer F stated in interview that her colleague had asked her to join the meeting because it was difficult; it was rare for her to be asked to sit in on a meeting with a complainant. This meeting, in her view, constituted a formal interview. She decided to deal with this complaint herself and later spoke to Officer A and interviewed Officers B and D. Mr Kelly states that he believed the officers had agreed to have a further formal meeting with him at a later date but this meeting was never held. The investigation was concluded without any further involvement on Mr Kelly’s part.

34. Officer F concluded in her decision letter of 31 August 2004 that, on the balance of probabilities, the NHO had taken appropriate action in November 2003. In interview she agreed that she would now uphold this part of Mr Kelly’s complaint, having heard Officer A’s evidence (paragraph 11). She did not uphold the part of the complaint about Mr Kelly’s dealings with staff at the NHO. She said in interview that officers at the NHO had said that Mr Kelly’s behaviour at the NHO had been difficult, and this coincided with her own experience. It was not part of her remit to investigate the way in which the staff at the NHO had investigated the counter-allegations.

35. On 6 July 2004 Mr Kelly complained to me. Initially I waited for Officer F to complete her investigation. But when it became clear that Mr Kelly was dissatisfied with the outcome, I investigated the complaint myself.
36. Mr Kelly continued to correspond with staff at the NHO. He also complained to the Chief Executive, the Borough Solicitor and the Head of Housing. The replies he has received refer him to SASBU.

The role of SASBU

37. On 1 July 2004 Officer B referred Mr Kelly's complaint to SASBU by email. Officer E, a senior anti-social behaviour management officer, received it. He said in interview that it was not on a standard form. In August 2004 Officer D chased the referral up and Officer E received a bundle of documents from the NHO. It was not clear to Officer E what the NHO wanted him to investigate as the documentation included extraneous material, such as an old arbitration tribunal report. He added that the case was not given a high priority because of the poor quality of the information supplied. SASBU has tightened its procedures and would now have referred this case back to the NHO to conduct a fuller investigation.

38. It was not until 19 October 2004 that Officer E met Mr Kelly, and he apologised in writing for this delay. Mr Kelly says he showed Officer E some of the objects that had been thrown into his garden and photographs he had taken. At this point he gave Mr Kelly nuisance diaries to complete. He said in interview that Mr Kelly seemed pleased to receive them. Mr Kelly said in interview that this was the first time he had been offered diaries.

39. Officer E wrote to Ms Jones, who had by this time moved out. He also wrote to Mr Smith, without getting a reply. He wrote to the leaseholder of Mr Smith's flat and established that Mr Smith was a tenant of the leaseholder who had been placed there by a Housing Association. He decided quite quickly that he would be unable to substantiate the counter-allegations, and wrote to Mr Kelly on 15 January 2005 to say that no further action was justified on this point. Mr Kelly does not feel this is the total exoneration he wished to receive.

40. Mr Smith moved out in December 2004. Initially the noise problems ceased, but since then there has been more than one new tenant in the maisonette directly above Mr Kelly’s, and noise problems have resumed, particularly at unsocial hours. Officer E said in interview that it was difficult to take action to prevent noise when each time there was a change of tenancy he had to start gathering fresh evidence against the new tenants. However, he hoped to arrange mediation between Mr Kelly and the Housing Association that rents the upstairs maisonette, so that the Housing Association can intervene when there are problems.

Conclusions

41. The Council has provided two conflicting versions to account for its actions in relation to Mr Kelly’s original complaint on 11 November 2003. Its response to me was to say that it pursued the matter at the time, but that there were no records on any of the relevant files to substantiate this. Officer A then said in interview that she, as the officer responsible for that block, did not have sight of Mr Kelly’s letter or follow-up
and was unaware that there was a problem until April 2004. In the absence of any
evidence to the contrary, I conclude that the NHO took no action to deal with
Mr Kelly’s letter of complaint of 11 November 2003, which was in his file during this
time, and this was maladministration.

42. But once officers at the NHO had been made aware of the problem, there is little
evidence of any effective action on their part to investigate it. The assumption was
made that the noise consisted of loud music, even though this was not specified in
Mr Kelly’s letters. Officer A wrote to the two upstairs residents, but did not approach
the co-signatories to the petition, even though there is a note on Ms Harper’s file to
show that she made a further complaint about noise in early May. Officer B met
Mr Kelly but did not keep a note of the discussions they had. So there is nothing to
substantiate her statement that she offered to supply Mr Kelly with nuisance diaries
but he refused. And the investigation of the original complaint of nuisance appears to
have been overtaken by the investigation of the counter-allegations. All these failures
were maladministration. The Council has procedures to deal with complaints of
neighbour nuisance but officers did not follow them.

43. Turning to the way in which officers investigated the counter-allegations, the first
major omission is any file record of Officer B’s telephone conversation with
Ms Jones, in which she allegedly identified Mr Kelly as the man who racially abused
her and nothing, therefore, to substantiate the claim made by officers at that stage
that he was responsible. Then there was Officer B’s letter of 11 May 2004, in which a
single allegation is escalated into “a few occasions”, which does not correspond to
the allegation that was made. The evidence provided by Ms Jones when she was
interviewed was noted on file, but officers could not explain clearly in interview how
Mr Kelly was identified as the perpetrator when Ms Jones did not apparently
recognise him herself. The two accounts of the meeting between Officer D and
Mr Kelly are so disparate that I do not believe I can draw any firm conclusions from
them. But, in my view, if Officer D found the meeting difficult it would have been
better for him to have informed Mr Kelly in writing of the nature of the allegations
against him and given him the opportunity to respond in writing. And finally, there
was Mr Smith’s letter of 3 September 2004, in which he named the perpetrator as
Mr Rogers. I attach significant weight to this letter, not least because Mr Kelly had
complained about Mr Smith, and so Mr Smith had no reason to come to Mr Kelly’s
defence. The information in this letter was never tested, although by this time, of
course, Ms Jones had moved out. So, while the Council was absolutely right to
investigate Ms Jones’s complaint, it should have done so more professionally. It
appears that officers concluded at an early stage that Mr Kelly was guilty without
sufficient evidence to support their convictions, and this conclusion was not
supported by SASBU when it started to deal with the referral. This, again, was
maladministration.

44. There was then delay on the part of SASBU in dealing with the NHO’s referral.
Officer E agreed that this delay was not acceptable, and it was maladministration.
But part of the problem still lay with the NHO, whose referral to SASBU did not use
the standard form and was not clearly set out. By the time SASBU took any action on
the referral, Ms Jones had left and was not traceable, and Mr Smith did not respond to Officer E. So the delay undoubtedly contributed to the frustration felt by Mr Kelly. However, I do not criticise Officer E for inaction after Mr Smith moved out. It is clear that there have been changes of tenant, and each time that has happened it has been necessary to start gathering evidence afresh.

45. What injustice has this caused Mr Kelly? The petition and complaint by Ms Harper (paragraph 17) tend to substantiate his complaints of noise and other nuisance from tenants in the flat directly above him. On balance, I conclude that this persisted several months longer than might have been the case if the Council had dealt with his complaint when it was first made. And he has been accused by the Council of racial abuse on evidence that has subsequently been called into question and is likely to have been wrong.

Finding and recommendation

46. The maladministration I have described in paragraphs 41 to 44 has caused the injustice to Mr Kelly that I describe in paragraph 45.

47. The Council has agreed to take action to settle the complaint as follows:

- to pay Mr Kelly £1,000 to compensate him for nuisance he has suffered as a result of inaction by the Council, and send him a written apology for failing to deal with his initial complaints;
- to remove the allegation of racial abuse from the Council’s files;
- to provide training to its staff as appropriate on the operation of its procedures to deal with neighbour nuisance; and
- to take action to investigate Mr Kelly’s complaints of noise nuisance and remedy any nuisance if practicable.

48. I am grateful to the Council for agreeing to remedy the injustice to Mr Kelly in this way and I have issued this report because Mr Kelly’s complaint illustrates a matter of public concern.