Report

on an investigation into complaint no
05/B/11901 against
Sandwell Metropolitan Borough Council

18 May 2006
Investigation into complaint no 05/B/11901 against Sandwell Metropolitan Borough Council

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Key to names used

- Mrs Dunne the complainant
- Officer A a Housing Officer
- Officer B a Housing Officer
- Officer C the Area Housing Manager
- Officer D the Senior Neighbourhood Housing Office Manager
- Officer E an Antisocial Behaviour Officer
Report Summary

Neighbour nuisance

Mrs Dunne (not her real name for legal reasons) complains that the Council failed to act upon complaints she made about nuisance from her neighbours over a period of over a year. The Ombudsman found little evidence to suggest that officers had followed the procedures laid down for dealing with complaints about antisocial behaviour made by Mrs Dunne about her neighbours or with counter-complaints by her neighbours about her. Mrs Dunne provided evidence in the form of police crime reference numbers relating to assaults and other offences committed by her neighbours against her but the housing office did not involve the antisocial behaviour team. Eventually the Council reassessed Mrs Dunne’s medical priority and rehoused her elsewhere.

The Ombudsman found maladministration in the lack of documented evidence of an investigation into Mrs Dunne’s complaints, its failure to follow procedures for dealing with antisocial behaviour and the lack of liaison between the housing office and the antisocial behaviour team.

Mrs Dunne also complained that the Council mishandled her claims for Housing Benefit, as a result of which it threatened her with repossession of her property. The Ombudsman found that the Council could have used the figures supplied by Mrs Dunne at an earlier stage, but that there were still underlying arrears of rent on her rent account that may have led the Council to seek repossession.

Finding
Maladministration causing injustice, remedy agreed.

Recommended remedy
The Ombudsman recommended that the Council should pay Mrs Dunne £1,000, part of which should be used to offset any remaining rent arrears, to compensate her for the maladministration identified above. The Council agreed to settle the complaint in this way and the Ombudsman completed his investigation and issued a report because this complaint raises issues of public interest.
Introduction

1. Mrs Dunne complains that the Council failed to take any action to deal with her complaints of nuisance from her neighbours, and that the Council mishandled her Housing Benefit claim, leading to threats of repossession of her property.

2. For legal reasons, the names used in this report are not the real names of the people concerned.¹

3. One of the Commission’s officers has examined the Council’s files, interviewed officers of the Council and visited the complainant.

Legal and Administrative Background

4. The Council has a tenancy agreement. Section 14 requires its tenants not to do anything “which causes a nuisance or annoyance or a criminal offence to other tenants, residents, their family, lodgers, visitors or any other persons engaged in a lawful activity in the locality of the property.”

5. The Council normally grants introductory tenancies in the first instance. An introductory tenancy lasts for 12 months, after which, if the tenancy has been conducted in a satisfactory way, it becomes a secure tenancy. It is easier for the Council to gain repossession of an introductory tenancy than a secure tenancy, should this become necessary.

6. The Council has published procedures for dealing with antisocial behaviour. They set out how the Council accepts a referral of a complaint, how the complaint should be investigated, what action the Council will take and the circumstances in which a case will be closed. Problems with antisocial behaviour are dealt with by housing office staff in the first instance, and the Council has an antisocial behaviour team to which more serious complaints are referred. The procedures are that the Housing Office should visit the perpetrator and send warning letters until there is enough evidence to take legal action, at which point the antisocial behaviour team should develop an action plan with officers.

7. The Council has published procedures for dealing with arrears of rent. These include sending warning letters when tenants owe two and four weeks’ rent and the provision of advice before the Council takes legal action to repossess the property. The Council undertakes to treat vulnerable tenants sensitively.

8. The Local Government Act 1974 provides that the Local Government Ombudsmen may provide such advice and guidance about good administrative practice that they consider appropriate and arrange for it to be published for the information of the

¹ Local Government Act 1974, section 30 (3)
The Commission for Local Administration has produced a Special Report on neighbour nuisance and antisocial behaviour.\(^2\)

**Investigation**

9. Mr and Mrs Dunne were granted an introductory tenancy of a Council flat in a cul-de-sac (the Close) on 24 February 2004. Mrs Dunne has a history of mental health problems and had until then been self-employed. At this time she went onto Incapacity Benefit. Mr Dunne was employed but went off work sick around the time of the move and received Statutory Sick Pay. They applied for Housing Benefit to cover the rent on the flat. Mrs Dunne says that this was because her self-employment projects were not making money and they were worried about being unable to pay the rent.

**Rent and housing benefit**

10. In March 2004 the Council sent its first warning letter when arrears of two weeks’ rent had accrued. Mrs Dunne telephoned the Council and said she was awaiting the outcome of her application for Housing Benefit. She then brought proof of her application to the office. The Council sent a second letter two weeks later as no rent had been received. Mrs Dunne contacted the Housing Benefit section who said the claim should be dealt with shortly.

11. On 4 May 2004 an officer carried out a trial calculation of Mrs Dunne’s likely entitlement to Housing Benefit. This found that they were likely to have to pay £16.20 per week of their rent. Mr Dunne agreed to pay £19 per week to offset the arrears that had built up since the tenancy started.

12. On 8 May 2004 the Council determined that Mr and Mrs Dunne were not entitled to receive Housing Benefit. Mrs Dunne believed there had been an error, as she was receiving Incapacity Benefit and Mr Dunne was receiving Statutory Sick Pay. They asked the Council to review its decision.

13. The Council did not change its decision and in September 2004 a welfare rights caseworker prepared an appeal. The outcome was that the Council ruled that Mr and Mrs Dunne did not qualify for benefits at the start of the tenancy, and only for a reduced sum from 19 April 2004. It was only in August 2004, when Mr Dunne’s Statutory Sick Pay ceased, that they qualified for full Housing Benefit. At this point the Council calculated that Mr and Mrs Dunne had rent arrears of £679. Although Mr and Mrs Dunne had agreed to pay £19 per week the Council had only received payments totalling £59 towards the rent.

\(^2\) *Local Government Act 1974, section 23 (12A).*  
\(^3\) *Special Report “Neighbour nuisance and antisocial behaviour: advice and guidance from the Local Government Ombudsmen”.*
14. By this time the Council was preparing to terminate Mr and Mrs Dunne’s tenancy. On 19 November 2004 the Council wrote to them, giving them seven days to make an arrangement to pay. Mrs Dunne states that she was suffering mental health problems at this point and was unable to cope with the situation. She did not reply to this letter and on 9 December 2004 the Council served a notice to terminate the tenancy.

15. On 17 December 2004 Mrs Dunne requested a review board hearing, and this was held on 29 December 2004. Officer C, the area housing manager, chaired the hearing, at which Mr Dunne explained that there had been problems with the Housing Benefit award and that he and his wife wanted a transfer because they had suffered neighbour nuisance from other tenants. The review board decided that the Council should proceed to terminate the tenancy unless Mr and Mrs Dunne’s appeal to backdate their Housing Benefit entitlement was successful. The Council arranged a meeting with its welfare rights officer, but Mrs Dunne cancelled the meeting because she was too ill to attend. However, on 31 January 2005 she wrote to the Council to set out their income from the start of the tenancy and their weekly outgoings.

16. In February 2005 the Council sent the required information to the courts to terminate Mr and Mrs Dunne’s tenancy. There was a delay on the part of the court and by the time the process was complete, Mr and Mrs Dunne’s tenancy was 12 months old and had become a secure tenancy. The Council had to abandon its attempts to terminate the introductory tenancy.

17. In March 2005 the Council reassessed Mr and Mrs Dunne’s entitlement to Housing Benefit, using the information relating to Mr Dunne’s Statutory Sick Pay. The outcome was that the Council accepted that it had underpaid Housing Benefit by about £250. Mrs Dunne complains that the Council was using information she had given it initially. The Council’s position is that it reassessed the award because it exercised discretion in favour of Mr and Mrs Dunne. There is also an email on the file from a legal officer that suggests that the review board’s decision would be questioned in court because it did not appear to take account of the neighbour nuisance problems Mr Dunne had raised at the hearing.

**Neighbour nuisance**

18. Mrs Dunne says that almost immediately upon moving in she suspected that other tenants in the Close were selling drugs. She tried to tackle this problem direct with other neighbours and this appeared for a time to be successful. There was other antisocial behaviour, some of it directed towards her and Mr Dunne. She said in interview with my Investigator that the tenants in the Close seem to have been left to their own devices. Mrs Dunne approached those tenants who appeared to be causing problems and attempted to become involved in the tenants’ association as a way of addressing the problems she found. She fitted CCTV cameras to protect her flat.
19. Officer A, a housing officer, was responsible at the time for the Close. He said in interview that he was aware of problems with a couple of tenants and he had dealt with them according to the Council’s procedures. He had involved an antisocial behaviour officer and was aware that there was drug dealing, which he had referred to the police. He added that he had excellent working relationships with the local police station and, although he had to go through the antisocial behaviour team to get certain information, he dealt direct with the police on many issues.

20. Officer A got to know Mrs Dunne through the tenants’ association. He said in interview that installing the CCTV cameras had caused friction with other residents. Mrs Dunne wanted Officer A to take action against tenants in circumstances where he could not do so, for example those who took drugs in their own flats but did not cause a nuisance to other residents. Mrs Dunne says she referred to a neighbour who was putting used hypodermic needles in the communal refuse bins.

21. Mrs Dunne said that she began to keep a diary. Officer A visited her and showed an interest in her records relating to the tenants suspected of selling drugs, asking her if she would go to court. But no other residents seemed willing to take action.

22. On 26 April 2004 Mrs Dunne emailed Officer A about the forthcoming meeting of the tenants’ association and the need to tackle her serious concerns about other residents. Mrs Dunne said in interview that the tenants’ association contained a number of people who were causing difficulties in the Close and that it later fell apart. As a result of the stance she had taken, other residents were approaching her in the street and threatening her.

23. On 30 May 2004 Mrs Dunne wrote to the Council to say that she had been falsely accused of assaulting one of the neighbours. She was due to appear in court on 2 June 2004. She added that she had counter-claimed against the neighbours for harassment. Mrs Dunne was later acquitted of the charge. She also made a formal complaint against the neighbour to the Council.

24. On 8 June 2004 the Council replied to Mrs Dunne’s complaint. An officer replied that Officer A and Officer E, an antisocial behaviour officer, were dealing with the issues about which she had complained and invited her to assist in gathering evidence.

25. On 8 June 2004 Mr and Mrs Dunne visited the Neighbourhood Housing Office to speak to Officer A, who was accompanied by Officer E. Mrs Dunne complained that she was vulnerable and taking medication and that the Council was not doing anything to help her. The notes taken by Officer E suggest that Mrs Dunne said she was unwilling to fill in monitoring forms. Mrs Dunne said in interview that she was on sedatives at the time and was quite ill. The officers did not seem interested in what she had to say, even though charges were pending against one of her neighbours. She felt the officers did not understand the gravity of the situation, which had escalated beyond the point they imagined. Mrs Dunne subsequently made a complaint against the two officers but she says the Council’s reply did not address the points she made.
26. On 9 June 2004 Officer A received a complaint from another resident of the Close alleging that Mrs Dunne had been responsible for antisocial behaviour. Officer A said in interview that he took no action to investigate this complaint because management of the Close was shortly to transfer to a different housing office, a transfer that took place in July 2004. Officer A made a report on the cases with which he was dealing, which went with the property files. This report suggested that he had been working towards securing a possession order on one of the flats about whose occupants Mrs Dunne had complained. In his view the other problems might disappear if this were to happen.

27. On 30 June 2004 the Operations Director replied to Mrs Dunne’s complaint about Officer A and the antisocial behaviour officer. He said that the Council only had records of two complaints Mrs Dunne had made against her neighbours. The Council needed to obtain information about antisocial behaviour and Mrs Dunne’s cooperation would be necessary, and the advice Mrs Dunne was given in the meeting was realistic.

28. Officer B, a housing officer in the second housing office, took over responsibility for the properties in the Close. He had a handover meeting with Officer A, who went through several cases where there were problems, but Officer B said that he did not read through the files. He was unaware of the allegations of drug dealing at this point, but knew that there were general problems in the Close.

29. Mrs Dunne contacted Officer B by email on 17 August 2004, having been given his name by the caretaker. She said that she was being harassed by more than one family who lived in the Close and that the police were involved. They were keeping a log of events and the situation was affecting her and her husband’s mental health. She went into detail about the antisocial behaviour of which she was aware, including drug dealing. She asked Officer B for help. There is no record of this email having been placed on Mrs Dunne’s file.

30. On 26 August 2004 Mrs Dunne wrote to the Council to request a transfer to a larger flat within the Close, which was falling vacant. She said she needed a larger flat as she and her husband hoped to start a family. Officer B replied to this letter to say that a transfer could not be considered while Mr and Mrs Dunne had an introductory tenancy.

31. On 5 September 2004 Mrs Dunne replied by email, asking Officer B to look at the history of her tenancy. She said that she and her husband had “cleaned up the Close and done the Council’s work for them” since moving in. She offered to meet Officer B to discuss the situation and urged him to reconsider the question of a transfer.

32. On 30 September 2004 Mrs Dunne wrote to Officer B following a meeting with him. In the letter she referred to harassment she had been subjected to by a neighbour, which resulted in the neighbour being convicted on 21 September 2004. She reported further abuse in the letter, saying that this, too, had been reported to the police. She referred to antisocial behaviour, drug dealing and burglaries in the Close.
and requested a transfer. She added a further document she had supplied to Officer A in May 2004, most of which referred to outstanding repairs.

33. Officer B said in interview that when he received a complaint about a tenant the procedure was to interview the alleged perpetrator and keep records of this contact on the file. The Council says here that it gave Mrs Dunne antisocial behaviour sheets and visited the neighbour about whom she had complained. There is no record on the file to suggest that Officer B interviewed any of the tenants of the Close following this contact from Mrs Dunne, or that this was followed up with warning letters, as the procedure requires. Officer B said that he tried to make contact with the police on numerous occasions once he was given crime reference numbers by Mrs Dunne. He says he left messages asking officers to return his calls, but the police did not reply. As a result it was difficult to take action against other tenants under the tenancy agreement. There is no record on the files of any contact with the police at this time. He also stated that he found difficulties in dealing with the antisocial behaviour team over this case. Some of the information he required from the police could only be obtained by the antisocial behaviour team, but the team would not open a file on the case without evidence. There is no record on the file of any contact between the Housing Office and the antisocial behaviour team other than the record of the joint interview on 8 June 2004.

34. On 11 October 2004 Mrs Dunne wrote to the Council about the general behaviour of another tenant. She updated Officer B on the ongoing problems that she had reported before. On 27 October 2004 Officer B wrote to say that steps had been taken to address this matter and other issues on the estate. No further details were given.

35. On 8 November 2004 Mrs Dunne emailed another officer to follow up the complaints she had made previously. She went into some detail about more recent developments, but there is no evidence to show that this was passed to the Housing Office.

36. On 11 November 2004 Officer B arranged to visit Mrs Dunne in response to another transfer request. He carried out an assessment which was put before a medical panel and Mr and Mrs Dunne were given priority for a transfer subject to their rent arrears being cleared. Mrs Dunne says she was not informed of the outcome of this.

37. In December 2004 there is a file note showing that a neighbour made a complaint against Mrs Dunne. The Council says that the neighbour was given diary sheets to complete, but there is nothing to show that the Council investigated the allegations, or even told Mrs Dunne that they had been made.

38. On 1 January 2005 Mrs Dunne was assaulted by a neighbour and a relative of another neighbour and had to go to hospital. She says she emailed officers later that day to let them know. The matter is still awaiting trial. There is no trace of the email either in Mrs Dunne’s complaint or on the Council’s file but Mrs Dunne reported it on a nuisance diary in March 2005.
39. On 3 February 2005 Mrs Dunne wrote to Officer D, the Senior Neighbourhood Housing Office Manager. She complained that she wanted an independent review of the decision to terminate her tenancy (see paragraph 14), which she thought she had been promised. She referred to the ongoing problems she was experiencing with her neighbours. She stated that she was involved with the Crown Prosecution Service, which was prosecuting three neighbours for harassment, assault and criminal damage to Mr and Mrs Dunne’s car. She said she had informed Officer B at the time but no action had been taken.

40. On 11 February 2005 Mrs Dunne wrote to a customer relations officer to complain about these matters. She added that the Crown Prosecution Service had offered assistance in getting a transfer. The complaint was referred to Officer C, the Area Housing Manager, who replied on 21 February 2005. She explained in her letter why the Council was applying for possession of Mr and Mrs Dunne’s property and said that Officer B had addressed issues of neighbour nuisance with the neighbours about whom Mrs Dunne had complained and that they, in turn, said they were being subjected to harassment from Mrs Dunne. Mrs Dunne wrote to the Council to ask for her complaint to be progressed to the next stage of the Council’s complaints procedure.

41. On 2 March 2005 Mrs Dunne wrote again to the customer relations officer. She gave details of the harassment she had experienced from several neighbours and the steps the police and Crown Prosecution Service were taking to deal with them. She followed this up with a letter to Officer D on 9 March 2005, in which she complained that her complaints had not been investigated properly. On the same day she wrote to the customer services officer to provide further information in support of her request to customer services.

42. On 1 April 2005 Mrs Dunne emailed Officer C to invite her to visit her and discuss the problems she was facing with her neighbours.

43. On 8 April 2005 the Council received a letter from the Crown Prosecution Service supporting Mr and Mrs Dunne’s request for a transfer. The writer appeared to be unaware of the action the Council had taken on Mrs Dunne’s complaints.

44. On 20 April 2005 Officers C and D visited Mr and Mrs Dunne with Officer E. In interview, Officer C said she had invited Officer E to the meeting to illustrate the difficulties the Housing Office had experienced in trying to involve the antisocial behaviour team over this case. Mr and Mrs Dunne’s MP was also present. Officer C says that officers explained the Council’s procedures for dealing with antisocial behaviour. Mrs Dunne asked why she had not been offered a transfer, and officers noted that she had only asked for the immediate area and advised her to widen her areas of choice.

45. Officer C made a further home visit in early June 2005 and delivered a warning letter to one of the neighbours. At the meeting Mrs Dunne gave further details of her mental health history and Officer C subsequently contacted the Council’s
Community Care Unit, which recommended moving Mrs and Mrs Dunne to a larger property. The Council offered a two bedroom house on 14 June 2005, and the tenancy started on 7 July 2005. Before she moved Mrs Dunne was assaulted by one of the neighbours, who was subsequently convicted of actual bodily harm.

Conclusions

46. The Council has a clear procedure for dealing with complaints about antisocial behaviour. But there is little concrete evidence to show that it has followed any of it in this case. That applies both to the complaints made by Mrs Dunne and those made about her. The Council’s records do not demonstrate that officers, particularly after the property transferred to the second housing office, worked with the complainant, interviewed any of the alleged participants, recorded what was said or gave Mrs Dunne any meaningful feedback about what was being done. All these points are specified in the Council’s procedures. By the time the Council served its first warning letter Mrs Dunne had been complaining about her neighbours for over a year. This failure to follow the Council’s procedures was maladministration. And I am particularly concerned that any actions the Council took were not recorded. I cannot conclude that officers did not investigate Mrs Dunne’s complaints. But the lack of any recording gives weight to her complaints that they did not.

47. I acknowledge that it is always more difficult to proceed where there are counter-allegations and little independent evidence to substantiate either set of complaints. But the impression that is given here is that the Council decided that in these circumstances there was little it could or should do. This is a counsel of despair, and is not supported by the Council’s procedures.

48. The Council says that it had difficulty in getting information from the police in this case. Housing Officers say that it also proved hard to involve the antisocial behaviour team, which would not open a file on the case without the kind of information that the police could provide. But here Mrs Dunne provided the Council with crime numbers of incidents where the police were investigating her complaints. And some of her allegations were sufficient to cause a court to convict her neighbours. This should have been sufficient for the antisocial behaviour team to open a file and contact the police, taking subsequent action as appropriate. Either this evidence was not considered or information was not supplied to the antisocial behaviour team, and in either case this was maladministration.

49. On the question of the Housing Benefit, it does seem that the Council could have used the figures supplied by Mrs Dunne at an earlier stage. But I am not persuaded that this would have prevented the Council from trying to terminate her tenancy. I say this because once the Housing Benefit entitlement had been resolved, there remained significant arrears on her rent account.

50. What injustice has the Council’s maladministration caused Mrs Dunne? She can feel a justified sense of outrage that her complaints of neighbour nuisance did not appear to be acted upon. And if they had been investigated in a timely fashion there
is a chance that problems would have reduced in the Close. I welcome the Council’s decision to offer Mr and Mrs Dunne a transfer. But if the Council had taken effective action at an earlier stage this might have been unnecessary.

**Finding**

51. The maladministration I have described in paragraphs 46 and 48 has caused the injustice I describe in paragraph 50. The Council has agreed to compensate Mrs Dunne by paying her £1,000 to be partially offset against any outstanding rent arrears and to include issues arising from this complaint into its manual training plan for officers on antisocial behaviour. I have completed my investigation and issued this report because I believe it raises matters of public interest.

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18 May 2006