Report
on an investigation into complaint no 04/B/02615 against Peterborough City Council

28 July 2005
Investigation into complaint no 04/B/02615
against Peterborough City Council

Table of Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Report summary</td>
<td>1</td>
</tr>
<tr>
<td>Introduction</td>
<td>3</td>
</tr>
<tr>
<td>Legal and administrative background</td>
<td>3</td>
</tr>
<tr>
<td>Investigation</td>
<td>5</td>
</tr>
<tr>
<td>Conclusions</td>
<td>10</td>
</tr>
<tr>
<td>Finding</td>
<td>12</td>
</tr>
</tbody>
</table>

Key to names used

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mr &amp; Mrs Cunningham</td>
<td>the complainants</td>
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<td>Mr &amp; Mrs Brown</td>
<td>the complainants’ neighbours</td>
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<tr>
<td>Officer A</td>
<td>a Housing Officer</td>
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<td>Officer B</td>
<td>a Housing Estate Manager</td>
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<td>Officer C</td>
<td>a Housing Area Manager</td>
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<td>Officer D</td>
<td>a Senior Legal Executive</td>
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<td>PC Robertson</td>
<td>Community Beat Officer</td>
</tr>
</tbody>
</table>
Report summary

Subject

The complainants, Mr and Mrs Cunningham who are owner occupiers, complain about the Council’s response to reports of antisocial behaviour made against their neighbours who were Council tenants. In particular, they complain about the length of time and methods used by the Council to investigate the reports of antisocial behaviour and the Council’s decision to issue and then withdraw a Notice Seeking Possession against its tenants. The decision by the Council to withdraw possession action took place at the same time as the Cunningham’s neighbours pursued an application to purchase their property under the Right to Buy scheme, which later completed. The Cunningham’s neighbours were subsequently convicted of the criminal offence of harassment.

The Ombudsman considers that the Council should have done more to establish the nature and extent of the nuisance and that its decision to withdraw possession proceedings did not take account of all evidence it had available to it. The subsequent conviction of the Cunningham’s neighbours for harassment casts doubt upon the judgment of the Council that a possession action would not have succeeded. The complainants therefore have a justifiable sense of outrage with the Council over its actions.

Finding

Maladministration causing injustice, remedy agreed.

Recommended remedy

The Council has agreed to apologise to the complainants and pay them £2,000 financial compensation for the injustice they suffered.
Introduction

1. Mr and Mrs Cunningham, who are owner occupiers, complain that the Council failed to take effective action to deal with the antisocial behaviour of their neighbours, Mr and Mrs Brown. At the beginning of the events covered by this complaint, Mrs Brown was a Council tenant. In particular, Mr and Mrs Cunningham complain that:

- the Council delayed unnecessarily before issuing a Notice Seeking Possession against Mrs Brown; and

- the Council acted irrationally in withdrawing the Notice Seeking Possession while a criminal prosecution for harassment against Mr and Mrs Brown was proceeding.

2. Mr and Mrs Cunningham say that, as a consequence of the Council abandoning possession proceedings against their neighbours, Mrs Brown was able to complete the purchase of her property through the Right to Buy scheme. Mr and Mrs Cunningham also say that as a consequence of the nuisance they have had to purchase fencing, lighting and cameras to help secure their property. They also consider the value of their property may have been adversely affected by the nuisance as they would need to declare this to any potential purchaser.

3. One of the Commissioner’s investigators has met the complainants and interviewed officers of the Council. He has also examined the relevant files.

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

Legal and administrative background

5. Schedule 2 of the Housing Act 1985, as amended by Section 144 of the Housing Act 1996, says that a landlord may repossess a property where a tenant “residing in or visiting the dwelling house […] has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in lawful activity in the locality.”

¹ Local Government Act 1974, section 30(3).
6. The Council’s tenancy agreement includes a clause that tenants should not cause a nuisance to others around them. It also has a clause that no “illegal activity” should be carried out on its premises. This would include proven harassment against neighbours.

7. The Council has a “Good Neighbour Guide”, which is a policy document that sets a framework for its officers to investigate reports of neighbour nuisance. This states that “evidence should be collated from witnesses and statements taken” (section 3.5) when investigating such complaints.

8. The “Good Neighbour Guide” points out that the Housing Act 1996 enables the Council to have evidence “collected by professional witnesses”. The policy says that such witnesses can be used in investigating complaints of noise nuisance. It says that when investigating such complaints, “there must be a clear plan of action and all efforts made to investigate allegations”.

9. Section 79(1) of the Environmental Protection Act 1990 requires the Council to seek an abatement notice through the courts to prevent, “noise emitted from premises so as to be prejudicial to health or a nuisance” (a ‘statutory nuisance’). Where a complaint of a possible statutory nuisance is made a local authority should take such steps as are reasonably practicable to investigate the complaint. Noise which is not measurably above background levels but is intrusive and out of character with the surrounding area is capable of amounting to a statutory nuisance.²

10. Since 1980, council tenants have enjoyed the “Right to Buy” their council property so long as certain conditions are met. In the event that the Council fails or refuses to convey a property under the Right to Buy scheme, the Housing Act 1996 gives the prospective purchaser the right to seek an injunction through the county court, compelling the Council to do so.

11. The Council can refuse to convey a property under the Right to Buy scheme if it has obtained a possession order against the prospective purchaser.

12. In the event that the Council refuses to convey a property while a possession action is outstanding, case law has established that the court can adjourn any injunction hearing until such time as the possession hearing has been heard. Alternatively, the court can adjourn the possession hearing and hear the case for an injunction.³

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² Godfrey v Conwy County Council, [2001].

³ Bristol City Council v Lovell, [1998].
Investigation

13. On 20 November 2001, Mr and Mrs Cunningham complained to the Council about their neighbours, Mr and Mrs Brown. Mrs Brown was a council tenant. Their complaint was that Mr and Mrs Brown were throwing rubbish in Mr and Mrs Cunningham’s garden and playing loud music. This was not the first time that Mr and Mrs Cunningham had complained about their neighbours, but was the first occasion they had complained after a gap of several months.

14. Mrs Brown was invited to attend an interview at Council offices, which took place on 30 November 2001. A Council Housing Officer, Officer A, interviewed Mrs Brown. She admitted to swearing at Mr Cunningham when he had asked her to turn down music her son was playing, but denied the other allegations. The Officer decided to conduct further investigation with his line manager, an Estate Manager, Officer B.

15. In early December 2001, Mr and Mrs Cunningham began sending the Council antisocial behaviour diary sheets that it had previously invited them to complete. These described earlier incidents, in 2001 and previously, when Mrs Brown was alleged to have played music loudly and verbally abused both Mr Cunningham and his daughter. On 6 December 2001, Officers A and B visited Mrs Brown at her home. They noted the good condition in which Mrs Brown kept her property. Officer A’s notes indicate that he did not consider that Mrs Brown’s stereo was capable of causing a statutory noise nuisance. He also noted that the locality was very quiet and any noise might therefore travel to the neighbouring house.

16. On 9 December 2001, Mr Cunningham wrote to the Council again, stating that he had been verbally abused by Mrs Brown’s father. Officer B replied on 17 December. She said that the Council would be visiting Mrs Brown again, accompanied by an Environmental Health Officer. She gave Mr Cunningham a contact number to contact the Environmental Health Department direct. She also suggested that an approach be made to the Peterborough Mediation Service to try to resolve the dispute with neighbours. Mr and Mrs Cunningham did not pursue mediation at this time.

17. On 7 February 2002 Officers A and B, accompanied by an Environmental Health Officer, visited Mrs Brown again. The Environmental Health Officer established that Mrs Brown’s stereo was capable of being played at such a volume as to cause a statutory nuisance. However, he was unable to confirm whether a statutory nuisance had occurred as no such nuisance had been verified or witnessed.

18. On the same day, Council officers visited Mr and Mrs Cunningham. They made a further complaint that Mrs Brown had been throwing leaves into their pond. Officers A and B again suggested Mr and Mrs Cunningham consider mediation.

19. Before the end of February 2002, both neighbours had made allegations about noise being caused by each other. Officer A interviewed Mrs Brown again. The Council
wrote to both parties again suggesting mediation. Mr and Mrs Cunningham, in a letter dated 13 February 2002, indicated that another neighbour could verify some of the noise nuisance.

20. Mr and Mrs Cunningham made further complaints about Mrs Brown on 1 March and 4 March 2002. They complained about loud music, banging on walls and Mrs Brown pulling faces at them through the window. On 8 March, Officer B wrote to Mr and Mrs Cunningham saying “it was very difficult to resolve disputes where allegations and counter-allegations are made which are difficult to substantiate”. It offered to contact the Peterborough Mediation Service on their behalf. This offer was not taken up.

21. On 5 April, Officers A and B visited Mrs Brown again, this time accompanied by the local Community Beat Officer, PC Robertson. PC Robertson had recently been called following an altercation between Mr Cunningham and Mrs Brown's father. Mrs Brown’s father had been warned by the police about his conduct.

22. On 30 April 2002, Officer B wrote to Mr and Mrs Cunningham stating it was “difficult to take action” where allegations could not be substantiated and where there was no evidence from third parties to support their allegations. Officer B said that she had also taken advice from her line manager, the Area Housing Manager, Officer C, who confirmed that the Council felt mediation was the best approach. She also stated that the police considered that mediation should be tried.

23. Mr and Mrs Cunningham made one telephone call to the Council in July 2002, the contents of which were not recorded, but did not complain about Mr and Mrs Brown again until October 2002. Officer C and PC Robertson visited both neighbours, who agreed that the matter could be referred to Peterborough Mediation Service.

24. Mediation continued until March 2003, without success. While it was ongoing, Mr and Mrs Cunningham sent further diary sheets to the Council. Complaints were about noise, garden waste being thrown over the hedge and Mr Brown blocking in the Cunningham's car.

25. On 24 February 2003, Mr and Mrs Cunningham were again visited by Officer C and PC Robertson. Mrs Brown’s tenancy was discussed. Officer C’s notes record him saying that “clear, supported evidence of a severe and continuing nuisance” would be required for the Council to take action against Mrs Brown under the terms of her tenancy agreement. At the meeting Mr Cunningham stated that there had been witnesses to certain incidents. PC Robertson offered to contact witnesses and take statements.

26. On 3 March 2003, Officer A interviewed Mr and Mrs Brown. They made detailed counter-allegations about Mr and Mrs Cunningham’s behaviour. Mr and Mrs Brown were warned that substantiated evidence of a breach of Mrs Brown’s tenancy would result in the Council taking further action.
27. On 12 March 2003, Mr and Mrs Cunningham reported an incident where Mrs Brown was alleged to have barged Mrs Cunningham with a wheelie bin. This was reported to the police. On 13 March 2003 Mr and Mrs Cunningham sent in another diary sheet, detailing this incident and another allegation of verbal abuse from Mrs Brown's father.

28. In April and May 2003 further diary sheets were sent by Mr and Mrs Cunningham to the Council. These made reference to some video evidence being collected by them. Incidents again included reports of banging on walls, items being thrown into the garden and damage to a new fence Mr Cunningham had erected. Mr Brown contacted the Council with counter-allegations about Mr Cunningham. In June 2003 more allegations and counter-allegations were made between the neighbours.

29. On 2 July 2003, Officer A visited Mr and Mrs Cunningham. He watched three video recordings they had made detailing alleged nuisance from their neighbours. At interview he commented to my investigator that he felt the evidence these contained was insufficient to justify taking action against Mr and Mrs Brown. His notes record that he visited Mr and Mrs Brown after watching the films. She either denied that the incidents depicted on the video were of herself or Mr Brown, or provided an innocent explanation for what was seen.

30. On 4 July 2003 Officer A wrote to Mr and Mrs Cunningham advising that after discussion with Officer C, the Council would serve a Notice Seeking Possession on Mrs Brown “if it is felt the evidence […] is strong enough to justify a possession action”.

31. On 23 July 2003 Mr and Mrs Cunningham sent more diary sheets to the Council. These alleged more banging on walls, items being thrown over the fence between the properties and damage to the fence. On 30 July 2003 Officer A visited but could not identify any damage to the fence, which he had inspected on a previous visit.

32. On 1 August the Council received a lengthy letter from Mrs Brown making allegations about Mr and Mrs Cunningham, going back to 2001. On 4 August Officer A visited Mr and Mrs Cunningham again, accompanied by PC Robertson. PC Robertson advised that he was sending his file to the Crown Prosecution Service to consider the possibility of bringing criminal charges against Mr and Mrs Brown. PC Robertson agreed to share the information he had gathered with the Council, which included witness statements.

33. Between 26 August and 15 September 2003 the Council received more diary sheets from Mr and Mrs Cunningham (on five occasions), alleging incidents of antisocial behaviour. They again mentioned that some incidents were recorded on video.

34. On 17 September 2003 the Council served a Notice Seeking Possession on Mrs Brown. When interviewed by my investigator, Officers A and C explained that the timing of this was influenced by the decision of the Crown Prosecution Service to bring charges of harassment against Mr and Mrs Brown. The officers explained that
they considered a possession action would have a greater chance of success if a
criminal prosecution was successful. Any criminal prosecution would rely on a higher
standard of proof.

35. On 6 October 2003, Mrs Brown’s solicitor wrote to the Council stating that they would
contest possession proceedings and requesting that the Council defer possession
proceedings until such time as the criminal case was concluded.

36. Mr and Mrs Cunningham continued to send in diary sheets to the Council throughout
October 2003, alleging a similar pattern of nuisance as before. On 8 October,
Officer C referred the Housing Department’s file to the Council’s Legal Services
department for advice. His memorandum advised that the police had video evidence
and that a criminal case was proceeding.

37. On or before 21 October 2003, Mrs Brown made a request to purchase her property
under the Right to Buy scheme. Officer C advised Legal Services of this.

38. On 4 November 2003, a legal executive for the Council sent a memorandum to
Officer C commenting that “the evidence on file, while bulky, is poor”. It asked for
video evidence from the police and the addresses of witnesses who had given
statements in connection with the criminal prosecution. On 12 November, Officer C
confirmed that the Council had been given a copy of the video evidence that had
been considered relevant by the police.

39. On 20 November 2003, Mr Cunningham sent the Council a letter, alleging further
noise nuisance from Mr and Mrs Brown. Officer C forwarded this to Legal Services.
In an accompanying memorandum he stated that Mr Cunningham had been “advised
to obtain third party evidence [of noise nuisance] but he is unable to do so”. He
advised that Officer A had contacted the Environmental Health Department to make
enquiries about installing noise monitoring equipment.

40. On 20 November 2003, in an internal email to the Council’s Legal Executives, the
Council’s Head of Legal Services gave her view that “possession proceedings are
inappropriate in this case”. She stated that she considered a court would not allow
the Council to delay the Right to Buy application “on grounds that seem to be very
much a neighbour dispute”.

41. On 24 November 2003 Officer A forwarded to Legal Services the names and
addresses of the witnesses who had given statements to the police in connection
with the criminal prosecution.

42. On 27 November 2003 the Council’s Legal Executive wrote to Officer C
recommending that the possession action against Mrs Brown be discontinued. She
stated that the Court was unlikely to grant possession as this was a case of
neighbours “not seeing eye to eye, not true nuisance”.

04/B/02615
43. On 8 December 2004, Officer C replied to the Legal Executive, acknowledging the advice and concurring that “the severity of the nuisance/harassment was in our opinion insufficient for a possession action”.

44. When interviewed by my investigator, both Officers A and C said that the possession action only progressed as far as it did due to the persistence of Mr and Mrs Cunningham.

45. My investigator interviewed Officer D who was the Council’s Senior Legal Executive and who was party to discussions within Legal Services surrounding the case. Officer D confirmed that Legal Services issued its advice without viewing video evidence, contacting those witnesses who had given statements to the police in connection with the criminal prosecution, or consulting directly with the police or Crown Prosecution Service. Officer D advised that the department was not in the habit of consulting directly with the police or Crown Prosecution Service and that this was done through local housing officers. Commenting on a draft of this report the Council has said that housing officers were informed at one stage by PC Robertson that the Crown Prosecution Service was to drop criminal proceedings and this information was influential in the decision to drop repossession action against Mrs Brown.

46. Council officers told my investigator that the Right to Buy application was not, in their view, a decisive factor. For them, the key factor was that the evidence was not strong enough to lead to a successful possession action. First, the type of harassment alleged was not of a serious enough nature. Second, there were counter-allegations from Mrs Brown and this weakened the case.

47. Officer D told my investigator that in a possession action, the Council has to persuade the Court of two factors. First, that there had been a breach of tenancy conditions. Second, that it was reasonable to grant a possession order. If the Court accepted a dispute was of a “tit for tat” nature then this would be a relevant consideration in assessing the “reasonableness” aspect of making a possession order.

48. At an interview Officer A said that he used various tactics to try to verify Mr and Mrs Cunningham’s complaints. He visited Mr and Mrs Brown unannounced, and was always careful to approach the house from the direction that made it less likely they would see him arriving. He says that he listened out for, but never heard, any disturbance while he was with Mr and Mrs Cunningham. He looked carefully for signs of any hammering activity in Mrs Brown’s home, but could see none. He commented that Mrs Brown always kept her home clean and tidy, both inside and out and he would consider her a ‘model tenant’ in this regard. Officer A says that he did not have access to professional witnesses or CCTV equipment. He also said it was not practice for him to approach neighbours unless specifically asked to by a tenant or complainant. Officer A recalled having some discussion with the Environmental Health Department about the possibility of installing recording equipment in the
Cunningham home, but could not obtain any equipment that would prove the source of any noise being recorded. He, therefore, rejected this.

49. On 6 January 2004, the Council wrote to Mr and Mrs Cunningham confirming that the Council had dropped the possession proceedings.

50. On 4 February 2004, Mr and Mrs Brown were both found guilty of harassment by Peterborough Magistrates Court and fined £750 each. Commenting on a draft of this report, PC Robertson says that the evidence gathered against the Browns also included photographs and in total 96 separate exhibits were presented to the Court.

51. Since February 2004, Mr and Mrs Cunningham have continued to report incidents of nuisance from Mr and Mrs Brown and Mrs Brown’s father to the police. The Council has had no further involvement in investigating these.

52. In October 2004, the Council transferred its housing stock to an independent housing association, Cross Keys Homes.

Conclusions

53. I have considered carefully the Council’s responses to Mr and Mrs Cunningham’s complaints about nuisance. It is clear that the Council did not ignore complaints. I am satisfied that its officers made reasonable efforts to explain to Mr and Mrs Cunningham their view as to why the complaints did not appear to be serious enough to warrant servicing a Notice Seeking Possession prior to September 2003.

54. However, I consider the Council could have done more to establish the nature and extent of the nuisance being caused to Mr and Mrs Cunningham before this date. In particular it should have involved its Environmental Health Department more extensively in the investigation of Mr and Mrs Cunningham’s complaints. While an officer from the Department was involved in the investigation of the complaints in February 2002, it does not appear that further consideration was given to using this source of expertise until November 2003. Nor does it appear that the complainants were reminded of the noise recording service that the Environmental Health Department could offer in the interim. This was maladministration.

55. In addition, the Council failed to follow up on Mr and Mrs Cunningham’s claims that a neighbour had witnessed an incident in February 2002. Nor did it ever contact those witnesses who gave statements to the police in connection with the criminal investigation of Mr and Mrs Brown. This was contrary to the Council’s policy and was also maladministration.

56. I do not consider the Council ever had a clear ‘plan of action’ to investigate Mr and Mrs Cunningham’s complaints as its policy recommends. Had it done so and pursued those lines of enquiry set out in paragraphs 54 and 55, then the Council might have been in a position to commence possession proceedings sooner. It would
certainly have been better informed in deciding whether or not to initiate such proceedings.

57. But I reserve my strongest criticism for the Council’s decision to discontinue possession action against Mrs Brown in November 2003. The Council says it received inaccurate advice from the police that the Crown Prosecution Service was to drop criminal proceedings against Mr and Mrs Brown. But given that the Council’s case would rely upon the lower civil burden of proof, rather than the criminal standard, I do not consider this alone could justify the Council’s decision to drop possession proceedings.

58. That decision was based upon legal advice that was taken without reference to all available evidence. The Council’s Legal Services department failed to view video evidence that was available or contact potential witnesses. This was maladministration.

59. I am satisfied that the Council was not influenced to drop the possession action by Mrs Brown submitting a Right to Buy application. So I make no criticism of the Council on this point.

60. But I am satisfied that the combined impact of the maladministration set out in paragraphs 54 to 58 above has been to cause an injustice to Mr and Mrs Cunningham. No-one will ever know whether the Court may have made a possession order against Mrs Brown or if it would have forced the Council to convey the Right to Buy purchase. But the outcome of the criminal case must cast doubt on the Council’s judgement that a possession action was destined to fail. Mr and Mrs Cunningham may reasonably suppose that, had the Council built a stronger case for possession, or taken the matter to Court, their neighbours may have been evicted or made subject to a suspended possession order. They have a justified sense of outrage with the Council’s actions, and have to live with the knowledge that had the Council addressed their concerns properly they might not have endured antisocial behaviour for as long as they did.

Finding

61. Following consideration of a draft of this report I am pleased to report that the Council has made an offer of settlement of this complaint that I find acceptable. So the Council will now:

- apologise to Mr and Mrs Cunningham for the failings identified in this report;
- pay Mr and Mrs Cunningham financial compensation of £2,000 for the injustice they have suffered, set out in paragraph 61 above.

62. However, I have gone on to complete my investigation and issue this report because the facts of this case raise matters of public interest.
J R White
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28 July 2005