

**Report under Section 21 of the Public Services Ombudsman (Wales) Act  
2005 of an investigation into a complaint  
made against  
Caerphilly County Borough Council**

**INTRODUCTION**

1. This report is issued under Section 21 of the Public Services Ombudsman (Wales) Act 2005 ("the Act"). In accordance with the requirements of the Act the report has been anonymised. The report accordingly refers to the complainants as Mr and Mrs A and their neighbours as Mr and Mrs B.

**THE COMPLAINT**

2. Mr and Mrs A complained that the Council had failed to take appropriate action in response to their complaints about the nuisance caused by their neighbour, Mr B.

**THE INVESTIGATION**

3. The Council provided its formal response to the matters complained of, including all the relevant background papers and I considered these in detail together with the information provided by Mr A in his complaint. I also spoke directly to the Housing Officer, the Housing Manager and the neighbourhood Police Officer. In addition, I obtained copies of police records of incidents reported by Mr and Mrs A. Whilst I have not included in this report every single detail investigated, I am satisfied that no matter of significance has been overlooked.

**THE RELEVANT LAW**

4. Causing a nuisance to neighbours is a ground on which the Council, as a landlord, may instigate proceedings to apply for possession of a tenant's home through the courts. The Council has to satisfy itself that nuisance has

occurred and whether it is sufficient to constitute a breach of tenancy<sup>1</sup>. If so, it then has to consider whether there is evidence that the instigation of possession proceedings is warranted. The first stage of this process is the service of a Notice of Seeking Possession ("NSP"). This states the Council's intention to instigate possession proceedings and the reason for taking this action. A NSP stays in force for a period of 12 months. Often the service of a NSP is sufficient to persuade a tenant to comply with the terms of his/her tenancy and no further action is needed. The NSP lapses after the 12 month period. However, the Council may decide if there is a recurrence, that further action is required and take the matter to court to gain possession of the property. In possession proceedings, a district judge has to be satisfied that there is evidence that a tenancy condition has been breached and that, on the basis of that breach, it is reasonable and proportionate to grant a possession order. It is also open to the Council to consider whether to take proceedings to 'demote' the tenancy. This action is similar to possession action but, if it is granted, results in the security of tenure being reduced.

5. In addition, social landlords have the power to apply for an injunction against persons perpetrating anti-social behaviour in or in the neighbourhood of their properties in order to address and prevent the specific problem behaviour. Anti-Social Behaviour Injunctions (ASBIs) are granted in the County Court.

6. The Environmental Protection Act 1990 includes a list of matters which constitute a "statutory nuisance". This includes noise emitted from premises so as to be prejudicial to health or a nuisance. Where a complaint alleging a statutory nuisance is made to a Council, it has a duty to take such steps as are reasonably practicable to investigate the complaint.<sup>2</sup> Where a Council is

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<sup>1</sup> Housing Act 1985, Schedule 2, Ground 2.

<sup>2</sup> Environmental Protection Act 1990, section 79



satisfied that a statutory nuisance exists it must serve a notice requiring its abatement. The test as to whether the level and extent of noise constitutes a nuisance is one of judgement for the officers involved, but is generally taken to be an activity which causes unreasonable and substantial interference in the use and enjoyment of a person's property. If an abatement notice is served, but is subsequently breached, the Council may take prosecution action against the perpetrator in the Magistrates Court.

### **EVENTS LEADING TO THE COMPLAINT**

7. Mr and Mrs A took up the tenancy of their property in 1995 and subsequently bought their house under the right to buy scheme. Their neighbours, Mr and Mrs B, have been council tenants at their property since 1997.

8. Mr and Mrs A had made complaints to the Council about noise nuisance from their neighbours, Mr and Mrs B. In **January 2005**, the Environmental Health Officer ("the EHO") served a noise abatement notice on Mr and Mrs B due to the noise nuisance caused by their dogs barking. Following this, the Area Housing Officer ("the HO") wrote to Mr and Mrs B reminding them of the terms of their tenancy agreement. A further letter was sent to Mr and Mrs B on **17 February** as it was known that they were keeping more than one dog at the premises. The Council's tenancy agreement specifically states that the Council's written permission must be obtained if more than one dog is to be kept at the premises. It was noted in February 2005 that Mr and Mrs B had 3 dogs at their property.

9. Further noise nuisance from the dogs was witnessed by the EHO on **20 April 2005**. This was communicated to the HO. It is recorded that the HO spoke to Mrs B over the telephone about the fact that there were 3 dogs at

the property. It is further recorded that Mrs B agreed to write to the Council concerning permission to keep the dogs.

10. Email correspondence confirms that on **27 June 2005** there was an initial court hearing in respect of the breach of the noise abatement notice which had been witnessed by the EHO on 20 April. On **22 August 2005** Mr and Mrs B were subsequently convicted of breaching the notice. It is recorded that the matter was discussed between the HO and the Council's solicitor the following day. The HO's notes on file stated that it was "agreed that a Notice of Seeking Possession should be served on the tenants of the above property."

11. A note on the Council's file indicates that Mr and Mrs A attended the council offices on **15 August 2005** after damage to their property the previous evening, allegedly by Mr B. The Police had been called and Mr B had been arrested. A subsequent decision was made by the CPS (Crown Prosecution Service) that there was insufficient evidence to charge Mr B. Consequently the Council took no further action.

12. Two letters were sent to the Council in **December 2005** from Mr A alleging continuing noise nuisance from their neighbours and that they were still keeping several dogs at the property. The letters also contained references to alleged housing benefit fraud, the incident of damage to their property in August 2005 (mentioned above) and the fact that Mr B's house had been raided as part of a police drugs operation. The correspondence was referred to the Tenancy Enforcement Team and a file note from 9 January 2006 states that an officer spoke to Mrs A. It states:

"Spoke to Mrs [A] – this is primarily a noise nuisance complaint. She stated that she is not intimidated by Mr [B]'s behaviour. There is no

permission for keeping 4 dogs. Housing Benefit fraud are also investigating Mr [B]. Environmental Health has previously prosecuted him for breach of an abatement notice.

This is mainly a complaint about the noise that is from the dogs being kept by Mr [B]. As so, this is to be passed back to [the] housing office for the EMO (Estate Management Officer) to deal with under the facility of the number of dogs at the property etc.”

There is no record of any further action being taken.

13. A further letter was received by the Council on **31 March 2006** from Mrs A concerning an incident on 26 March when Mr B was allegedly seen at the front of her property in a drunken state shouting abuse directed at her family. She called the Police because she was frightened and Mr B was arrested and detained overnight, though no further action was taken by the Police. Following receipt of this letter, Mrs A was again contacted by the Tenancy Enforcement Team on **10 April 2006**. The notes state that Mrs A said that:

“Her neighbour is soon to go to prison for a long time and does not wish any action to be taken at this time because he might retaliate. If he does get a sentence the problem would have been resolved without any CCBC involvement. She will send a letter outlining her wishes that we do not take any action until he is sentenced - then it will be a complaint regarding the number of dogs they have. No action required at the present time in accordance with the complainant’s wishes.”

14. In **July 2006**, the HO sent a further referral to the Tenancy Enforcement Team concerning press reports detailing Mr B’s conviction for involvement in a drugs syndicate. In this referral he cited the previous complaint of



intimidation. On **11 August 2006**, a completed information exchange form requesting information about the offences and the circumstances of Mr B's conviction was sent to the Police. It appears that, despite numerous contacts from the Council, this information was not received from the Police until **25 May 2007**.

### **Police Records**

15. The Police records indicate that Police attended Mr B's property on 5 April 2003 following an allegation of loud music. Police spoke to both Mr and Mrs A and Mr and Mrs B about the situation. No further action was taken and Mr and Mrs A were advised to contact the Council's Environmental Health Department about matters of ongoing noise nuisance.

16. On 14 August 2005 at 23.25, a report was made to Police from Mrs A that her door and window had been smashed. Officers attended and looked at CCTV footage of the time of the incident. The Police records state:

"This video shows neighbour [Mr B] enter the front garden for a short space of time before leaving with a second unidentified male. A house brick and a flower pot from the caller's front garden have been thrown at the caller's front door and front windows, causing 1 smashed front door window pane and 2 smashed front double glazed windows. A sample of the flower pot has been seized for possible forensics? SOCO not called due to no entry gained. Area search for [Mr B] with a negative result."

17. Mr B was later arrested. The Neighbourhood PC has confirmed to me that the CPS made a decision not to proceed with a prosecution on the basis of the evidence available. This, he understood, was mainly due to the fact that no-one actually witnessed Mr B breaking the door or window.

18. The Police records detail a further incident on 26 March 2006 when Mrs A contacted the Police. It is recorded that:

“Attended [Mr and Mrs A’s property]. Viewed footage of [Mr B] outside the address acting in threatening and harassing manner. Caller [Mrs A] stated that they have been ongoing problems for over 12 months. CCTV footage seized. Attended [Mr and Mrs B’s property] and arrested [Mr B] for harassment. Initially it looked like he would viciously resist arrest but he was calmed down by his wife and was compliant.”

19. A further police entry concerns a call from Mrs A about the ongoing noise and nuisance problems with their neighbours. It details that Mr and Mrs A had been woken at 5am the past two mornings by the noise of the dogs next door. It was also stated that Mrs B had threatened them with ‘friends’ of her husband. It is further recorded that Mrs A said that she did not want the police to speak to Mrs B due to the ongoing problems. The Police log records that the Housing Officer was contacted to update him and that he was “well aware of the previous problems”.

20. Subsequent records indicate that Mr A’s car was damaged on the evening of 25 September 2006 by someone with a baseball bat. All the windows were smashed. Whilst there was CCTV footage of the incident, it was impossible for police to identify the perpetrator.

#### **WHAT THE COMPLAINANT HAD TO SAY**

21. Mr and Mrs A complained that the Council had failed to take any action against their neighbours despite numerous complaints. Mrs A provided her notebook which detailed complaints between 2002 and March 2006. The entries consisted mainly of noise nuisance related to the dogs barking, though there was also an entry in August 2005 concerning the damage to their

property, allegedly by Mr B, and one in March 2006 which detailed Mr B shouting abuse outside the house. Mrs A confirmed that the notebook had been seen by the EHO when she visited in April 2005, but, whilst she said that the HO was aware that she was keeping a record of incidents, he had never seen it. Mr A also said that the Council had never asked him for any details of CCTV evidence or names of Police Officers who had attended. He said that he felt that there had been no investigation into his complaints.

22. Mr and Mrs A said that subsequently Mr B had been convicted of drugs offences and that the Council were aware of this. However, they said that there had been no subsequent action taken by the Council in respect of Mr B's conviction. Mr and Mrs A said that they knew that the Council had contacted the Police for information but they had heard nothing since then. They felt that this represented an unacceptable delay during which time they were worried about what would happen when Mr B returned to the property.

23. Mr A stated that he and his family had suffered due to being frightened by the situation with their neighbours. He said that they had feared retaliation from their neighbours when they made complaints and the Council was aware of this. Mr A cited the fact that the damage to their house occurred a week before the court case concerning the noise nuisance. He said that he had had to buy CCTV equipment to put his family at ease and that the stress had caused him problems with his job. He also cited the damage to his car and the costs of moving home. Mr A confirmed that the family had now moved house.

#### **WHAT THE COUNCIL HAD TO SAY**

24. As part of its response, the Council produced a chronology of events. In this chronology it states as follows:



“26/07/05 – case adjourned until 22/08/05 – legal advice sought on NSP for breach of tenancy. Diary sheets/nuisance report form issued to Mr/s [A] – no record of any completed forms being returned.

22/08/05 – Prosecution for breach of Abatement Notice heard at [the local area] Magistrates Court – guilty verdict

Legal advice sought with view to serving NSP for breach of tenancy conditions – following discussion with legal department and consideration of action taken to date it was the opinion of the Area Housing Manager that no further action would be justified as the matter had already been dealt with through the court, otherwise it could be considered as double jeopardy. Nevertheless, diary sheets were issued, as mentioned above, which if the nuisance recurred may be further evidence to consider actions required.”

25. In respect of the delay in gaining information from the Police following Mr B’s conviction for a drug-related offence, the Council has explained that it was advised by the Police that the delay in providing the information requested was as a result of the operation concerned being a regional rather than a local case.

26. The Council’s response stated:

“The information provided confirms that [Mr B] was convicted of conspiracy but there is insufficient evidence to link the commission of the offence with the property. The Police evidence tracks [Mr B]’s movements to and from the property but does not prove that any elements of the offence actually took place at the property or within the locality. It may be possible to infer from the evidence that at some point [Mr B] was in possession of controlled drugs at the property but it is

impossible to say what, when or the quantities involved. Further, prior to [Mr B] being imprisoned, the Housing Division had not received any serious allegations involving drugs.

Having sought advice from the Authority's Legal Department and being of the opinion that, on the balance of probability, the Authority would not be able to prove in court that [Mr B] did breach his tenancy conditions by using the premises for illegal purposes nor that it would be reasonable for a possession order to be granted, no further action can be taken. We have also considered whether an injunction would have been appropriate but again cannot be satisfied that there is sufficient evidence to prove either a breach of tenancy or the use of the property for an illegal or immoral purpose. However, it is our intention, upon his release from prison, to monitor the situation and should we then receive any further reports of drug related activity at the property we will gather further evidence and may follow this up with possession proceedings or other appropriate tenancy enforcement action. We are also of the opinion that, even if we had received the information from the Police as soon as it was requested, no action would have been taken for the reasons set out above."

27. In respect of the previous complaints about noise nuisance from Mr B's dogs, the HO stated that this had been taken forward by the Environmental Health Section. He said that he had spoken to Mr and Mrs B on several occasions informally about the fact that they had more than one dog, and had advised that they should seek the written permission of the Council. However, Mr and Mrs B had failed to do this. After the prosecution for breach of the noise abatement notice, the HO said that to some extent the complaint had been overtaken by the complaints of anti-social behaviour in respect of the alleged criminal damage, and not noise from the dogs, and that these had



been handed over to the Tenancy Enforcement Team to deal with. He said that allegation of criminal damage was a matter for the Police and having viewed the evidence, including the CCTV footage, the Police had felt that it was inconclusive and took no further action. Therefore, the Housing Office did not pursue the matter further. The HO stated that he had not viewed the CCTV footage himself and had not spoken to the Police as to why they had felt that the evidence was inconclusive.

28. The Area Housing Manager said that no further action had been taken following the prosecution for breach of the abatement notice as there had been no further complaints from Mr and Mrs A about the noise from the dogs as the complaints had somewhat moved on to issues of anti-social behaviour rather than noise. She was also aware that there had been no diary sheets returned from Mr and Mrs A detailing further incidents of noise nuisance. She said that there had been no complaints from any other neighbours in relation to noise. In addition, she had visited the area with the HO in an attempt to witness what was happening and whilst she had witnessed dogs barking at other properties in the area, she heard no noise from Mr and Mrs B's property.

### **CONCLUSIONS**

29. I turn first to the manner in which the Council dealt with Mr and Mrs A's complaints to it. It is appropriate that the Environmental Health Department deal with complaints of noise nuisance and in this case, noise nuisance was witnessed, an abatement notice was served and subsequently court action taken when a breach of this notice was witnessed. This action was appropriate. However, I note that there was no action taken by the Housing Department following the successful court action by the Environmental Health Department. It was open to Housing staff to serve a Notice of Seeking Possession (NSP) on Mr and Mrs B because there had been two proven



instances of a breach of tenancy. Indeed the note by the HO states that the Council's legal department felt that a NSP should be served. However, this was not done. Whilst I note the Council's response states that the Housing Manager felt that it was in effect "double jeopardy" to serve a NSP, given that Mr and Mrs B had already been prosecuted for the breach of the noise abatement notice, this is not a relevant consideration. The two issues are totally separate. The matter under consideration was whether the tenant had breached the terms of their tenancy and if so was this sufficient to warrant the service of a NSP. In this case there were two instances of proven statutory noise nuisance. There was also the possibility that the situation could recur given that the tenants had allegedly increased the number of dogs at their premises to four. I cannot see that the Council has provided an argument against serving a NSP on its tenants at this particular point. With hindsight, it is unlikely that the service of a NSP, given the course of subsequent events, would have had an effect on the eventual outcome, but I cannot rule out the possibility that it may have succeeded.

30. Mr and Mrs A did make a further complaint in December 2005 and, whilst I note that they did not provide completed diary sheets, the Council's own notes from the Tenancy Enforcement Team state that the matter was to be referred back to the Housing Office to deal with the number of dogs at the property. I have seen no evidence from the Council that an attempt to follow this up was ever made by staff at the Housing Office. I note that the HO had previously written to Mrs B and spoken to her on the telephone about the number of dogs at the premises (at that point she had 3) in May 2005. Mrs B was asked to write to the Council to explain the situation. She did not and the matter was never followed up by council staff even when they became aware that she may have acquired yet another dog. It should have been. It is further recorded in July 2006 that the HO was contacted again concerning this issue;

this time by the Police. Yet the matter was not investigated further nor were attempts made to address it.

31. In respect of the complaint about criminal damage, I note that this was dealt with by the Police who subsequently found the evidence to be insufficiently conclusive to take the matter further in a criminal case. This does not mean that the Housing Department may not take civil action against the tenant on the grounds of breach of tenancy or anti-social behaviour if it feels that it has evidence to do so. This is because the burden of proof required for civil action is lower than that required by the Police for a criminal conviction (balance of probability as opposed to beyond reasonable doubt). It seems to me that there was a lack of appreciation of this by housing staff.

32. The HO has stated that he did not view the CCTV footage nor is there evidence that any attempt was made by housing staff to consider this serious incident further. There was evidence available which would have helped housing staff in deciding whether further action was necessary but this was not sought from the complainants or the Police. From the papers I have seen, I am concerned that Mr and Mrs A's complaints were not taken seriously by housing staff. I have also seen no evidence that there was ever any review of the overall level and nature of complaints against Mr and Mrs B over a prolonged period and whether intervention by the Housing Department was justified. It was open to the Housing Department to consider taking action against Mr and Mrs B, if it had evidence to do so, in the form of instigation of possession action or an anti-social behaviour injunction to prevent a recurrence. The Council's failure to adequately investigate Mr and Mrs A's complaints and give appropriate consideration to whether further action was warranted amounts to maladministration. I therefore uphold this part of their complaint.

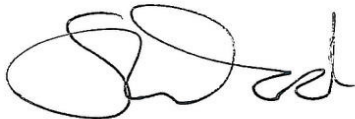


33. Whilst I appreciate Mr and Mrs A's concern about the conviction of their neighbour for drug-related offences, it remains the case that the Council can only take action for a breach of tenancy if it can prove that the incident in question took place at or in the vicinity of the property. It is for this reason that it was necessary for the Council to approach the Police for further information, which it did. Whilst it is regrettable that there was delay in the Police providing this information, this is not the fault of the Council who did make attempts to chase up the information. As it stands, the Police have been unable to provide the Council with any evidence which actually links the commission of the offence with the property and in that respect, I would agree with the Council's view that it would be unable to prove a breach of tenancy. I therefore do not uphold the part of Mr and Mrs A's complaint about delay and a failure to act on this issue.

#### **RECOMMENDATIONS**

34. Mr and Mrs A have now moved house. The matters complained of are therefore no longer ongoing. However, I accept that the Housing Department's failure to appropriately investigate and deal with Mr and Mrs A's complaints of anti-social behaviour and noise nuisance from August 2005 onwards caused stress and uncertainty for them as they felt that their complaints were not being taken seriously. I am also satisfied that it reduced the prospect of an improvement in their situation and contributed to their decision to move house. In recognition of this, I recommend that the Council makes a payment of £1000 to Mr and Mrs A. I further recommend that the issues and concerns raised in this report should be shared with all council staff who deal with such cases so that more appropriate action may be taken in future.





Sam Ward

Investigator

[Signed under the authority delegated to me by the Ombudsman]

Date: 7 January 2008

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