

**Case 200700150: Cairn Housing Association Ltd**

**Summary of Investigation**

***Category***

Housing associations: neighbour problems

***Overview***

The complainant (Mrs C) raised a number of concerns regarding the way that Cairn Housing Association (the Association) investigated her complaints about, what she regarded as, anti-social behaviour from her neighbour (Mr N).

***Specific complaint and conclusion***

The complaint which has been investigated is that the Association failed to take necessary action to ensure Mrs C's safety and comfort (*not upheld*).

***Redress and recommendation***

The Ombudsman recommends that the Association consider offering Mrs C alternative means of dispute resolution outwith the formal complaints procedure.

The Association have accepted the recommendation and will act on it accordingly.

## **Main Investigation Report**

### **Introduction**

1. The complainant (Mrs C) became a tenant of Outlook Housing Association in 2001 which subsequently transferred its engagements to Cairn Housing Association (the Association) in April 2006. Between late 2005 and March 2007 she reported numerous incidences of dangerous and anti-social behaviour by one of the neighbouring tenants in her block of flats. The Association visited Mrs C's property on a number of occasions to investigate her reports but found no evidence of the reported anti-social behaviour and took no action against the neighbour in question (Mr N). Mrs C felt that this failure to take action reflected a lack of thoroughness in the Association's investigation process and a bias toward Mr N.

2. Mrs C outlined her concerns in a formal complaint to the Association. The Association felt that they had acted reasonably when investigating each instance of alleged dangerous or anti-social behaviour and concluded that no further action was necessary. Mrs C was dissatisfied with the conclusions of the Association's investigations and did not feel that they had followed their own complaints procedure. She was disappointed to be denied a meeting with the Association's Committee of Management (the Committee), as per the final stage of the complaints process. Mrs C brought the matter to the Ombudsman in April 2007.

3. The complaint from Mrs C which I have investigated is that the Association failed to take necessary action to ensure Mrs C's safety and comfort.

4. I have not investigated any details relating to the specific incidences of anti-social behaviour reported by Mrs C. I have concentrated solely on the actions of the Association when they investigated and responded to Mrs C's reports. This was explained to Mrs C early in the complaints process.

### **Investigation**

5. In order to investigate this complaint, I have reviewed all of the complaints correspondence between Mrs C and the Association. I have also written to the Association for specific information and have studied their policies and Mrs C's tenancy file on site at the Association's offices.

6. I have not included in this report every detail investigated but I am satisfied that no matter of significance has been overlooked. Mrs C and the Association were given an opportunity to comment on a draft of this report.

**Complaint: The Association failed to take necessary action to ensure Mrs C's comfort and safety**

7. Mrs C moved into her property in 2001. Her flat forms part of a block of eight properties which have been owned and managed by three separate housing associations. The accommodation is unsupported, with the elderly residents receiving no domestic or personal care as part of their tenancy agreements. The Association took over management of the building in April 2006. Mrs C's flat is situated in the building's basement along with one other flat, occupied by Mr N. These flats can be accessed through their own entrance, separate to the main entrance.

8. Between October 2005 and January 2007 Mrs C submitted a number of complaints to the Association regarding Mr N's behaviour. I am aware of further incidents having been reported after January 2007, however, I have only investigated the actions of the Association when responding to complaints received during the period between 2005 and 2007.

9. Mrs C first complained that she was being disturbed by visitors looking for Mr N to recover debts that he owed from his previous property. The Association were unable to intercede in a matter between Mr N and another party but did write to Mr N to alert him to the situation and make him aware that it had affected Mrs C.

10. A number of incidents followed. Mrs C informed the Association on 8 January 2006 that Mr N had been found lying injured in the street by passers by who brought him back to the building. Although Mrs C did not get involved in tending to Mr N's injury, she reported having to clean blood from the communal area, the basement door and Mr N's front door. On 16 February 2006, Mrs C returned home and was met by Mr N outside her flat. She said that he accused her of breaking into and vandalising his flat. A resident from another flat was also present and reportedly accused Mrs C of having keys for all of the flats in the building. Mrs C said that both men had been drinking and that they became abusive toward her. She called the police who attended and interviewed all of those that were involved. Two days later, Mrs C reported further drunken

behaviour from Mr N stating that he had lost his keys and was 'belligerent' and using foul language.

11. The Association wrote to Mrs C on 20 February 2006 to organise a meeting with her to discuss the incidents that she had reported. These were discussed on 22 February 2006 along with another incident that Mrs C said occurred on 21 February 2006: Mr N had reportedly accused Mrs C of stealing his flat keys and newspapers. The file note made by the Association's representative (the Officer) following this meeting recorded Mrs C's account of events and her opinion that the Association's allocations policy (deciding who should be allocated to each of their properties) should have been stricter. The note also detailed what advice the Officer had given Mrs C in response to her complaints. The Officer noted that there was very little that she could do other than speak to the other residents of the building regarding their responsibilities as tenants, as she had received conflicting versions of events from different tenants and was unable to verify exactly what had taken place. Mrs C was advised that for matters to be taken further, substantial, consistent reports would have to be made, backed up by police reports. The Officer said that the Association could only take action if there was clear evidence that the behaviour of other tenants was inappropriate and in breach of their tenancy agreement.

12. Mrs C made a note following the meeting on 22 February 2006 stating that she was not given sight of the Officer's meeting notes and that any records of statements were the Officer's interpretation of what was said and were not counter-signed by her. Mrs C considered this a failure to adhere to the Association's complaints procedure, which states:

'If you have made a complaint by telephone or in person, the member of staff who notes the complaint will check with you that they have taken a correct record, and you will normally be asked to sign it if you are present. In this way everyone is clear on what the complaint is about.'

13. Mrs C reported further incidents of anti-social behaviour during March 2006. These included alleged drunken behaviour, foul language and soiling of communal areas by Mr N. Mrs C said that she, and the building's cleaner, had to clean faeces and urine from the communal area outside her and Mr N's flats.

14. Mrs C also had concerns about the safety of the building. On three separate occasions, between May and September 2006, the fire alarms were

set off and smoke was seen coming from Mr N's flat. Lothian and Borders Fire Rescue Service were called and attended on each occasion. Mrs C said that during one call out on 5 May 2006 Mr N became belligerent and physically pushed her aside when leaving the building. This was reported to the police who later referred Mr N to the Social Work Department. The Officer visited Mrs C on 11 May 2006 to discuss her ongoing concerns, however, she declined to proceed with this meeting, as she had started a formal complaint against the Association.

15. Mrs C raised concerns over the thoroughness of the Association's investigations into the fire alarm problems. It was her belief that each episode was caused by Mr N leaving food on his cooker for too long. This, she attributed to Mr N being unsuitable for allocation to unsupported accommodation. Although the Association had had the fire alarm system checked and serviced, with no faults being found, Mrs C felt that this did not address the cause of the call outs: Mr N's cooking habits. Mrs C approached Lothian and Borders Fire Rescue Service with her concerns. They offered her general advice on the situation.

16. Mrs C wrote a further letter to the Association on 6 October 2006, detailing the various complaints that she had about Mr N's behaviour and her concern over his impact on the building's fire safety in light of the three separate fire-related incidents. The Association responded on 2 November 2006. In their response, they explained that each fire alarm had been logged by the fire brigade as a 'false alarm' and noted that any individual smoke detector that is set off will activate the fire alarm for the whole building. An extractor fan was fitted in Mr N's Kitchen to minimise the likelihood of similar problems occurring and he was reminded by the Association of his responsibilities when cooking.

17. The Association also responded to Mrs C's comments on their allocations policy in their letter of 2 November 2006. They explained that tenant allocations were processed using a citywide system and that they could not discriminate on any grounds against an individual being allocated to a particular property. They noted that, on occasion, tenants' different lifestyles would conflict, however, they could only take action against an individual if a clear breach of tenancy conditions could be proven. Although Mr N's name was not mentioned in the Association's letter, they did make reference to Mrs C's complaints of anti-social behaviour. They explained that they had seen no evidence to support assertions made by Mrs C and said that comments made by other residents of

Mrs C's building had suggested that she was guilty of anti-social behaviour toward tenants herself.

18. Mrs C did not feel that the Association's letter resolved the problems that she had reported and, in a response to the Association dated 8 November 2006, disagreed with many of the statements made. She reiterated her concerns over the building's fire safety and Mr N's suitability to be allocated unsupported accommodation. She said that she did not believe that he was capable of caring for himself in a way that was appropriate to an independent tenancy.

19. Over the following months Mrs C reported further abusive behaviour by Mr N. On one occasion, she recounted an incident whereby she heard Mr N being abusive to another resident and then shouting threateningly outside her front door. The Association investigated this incident with Mr N and the other resident. They learned that there had been an argument between both men and that Mr N had been assaulted. The Association's investigation led them to conclude that Mr N was not responsible for the incident. The other resident was subsequently warned about his behaviour.

20. On 3 January 2007, Mrs C wrote to the Association asking that her complaint be escalated for review by the Committee. The Chairperson of the the Committee (the Chairperson) reviewed Mrs C's complaint and responded to her in writing on 25 April 2007. Between 3 January and 25 April 2007, Mrs C lodged further complaints about Mr N's behaviour and fire safety. The Chairperson decided that these new issues could not be considered as part of Mrs C's initial complaint and, therefore, did not pass comment. Accordingly, although I was presented with details of these further complaints, I have not considered them in relation to this complaint.

21. In the Association's final response to Mrs C, dated 25 April 2007, the Chairperson explained that all of Mrs C's complaints had been investigated objectively and that the Association's staff had been fair and reasonable in their approach. The Chairperson was satisfied that the Association's allocations policy had been executed appropriately and could find no evidence to support Mrs C's allegation of anti-social behaviour against Mr N or of any breaches of tenancy agreements by any of the building's residents. She concluded that the problems reported by Mrs C were the result of different tenants' conflicting lifestyles rather than breaches of tenancy arrangements. In response to

Mrs C's concerns over fire safety, the Chairperson noted that neither the police nor fire authorities had contacted the Association in relation to any unmet legislative or regulatory responsibilities in this regard. As such, no action was deemed necessary by the Association in relation to Mrs C's complaints.

22. The final stage of the Association's formal complaints procedure allows complainants to lodge an appeal with the Committee. The appeals process provides the opportunity for complainants to meet with the Committee to present their concerns in person. Mrs C wrote to the Association on 6 April 2007 to chase a response from the Chairperson. In this letter she indicated that she had obtained the required paperwork to submit her complaint to the Ombudsman. In her response of 25 April 2007, the Chairperson acknowledged the fact that Mrs C was seeking a final determination on her complaint so that she could bring the matter to the Ombudsman. She explained that in her capacity as Chairperson of the Committee, she had reviewed the details of the complaint and was able to confirm the Association's final position that there had been no failure in their duty as landlords to her. With this in mind, Mrs C was not invited to present her case to the Committee and the matter was referred to the Ombudsman.

23. Mrs C was unhappy to be denied the opportunity to present her complaints in person. She also felt that the Association had failed to adhere to their formal complaints procedure in other ways. She complained that the procedure said that all complaints would be acknowledged in writing within three days, with a full response being provided within fourteen days unless the complaints officer advises otherwise. This was not Mrs C's experience and she questioned the purpose of having the procedure if it was not followed.

24. At the time of Mrs C's original complaints in 2001, Outlook Housing Association did not have a formal procedure for investigating or assessing anti-social behaviour, although their tenancy agreements did list the type of behaviour that would be considered a breach of the tenancy agreement. It was also stated that the consequences of such a breach could be termination of the tenancy and eviction. Taken at face value, all of the reports that Mrs C made about Mr N could be considered to be anti-social behaviour under the terms of the tenancy agreement. The former Outlook Housing tenancies had the Association's anti-social behaviour policy and procedures applied in March 2007 following a one-year integration period after the Association took over the stock in April 2006. Although this policy was not relevant at the time of Mrs C's

complaints, it does represent a sensible, logical approach to the assessment of anti-social behaviour and I have, therefore, used this as a benchmark when considering whether the Association's procedures were reasonable when investigating Mrs C's allegations against Mr N.

25. When investigating this complaint, I visited the Association's offices and reviewed Mrs C's tenancy file. The file showed a complex history of claims and counter claims made by, and against, Mrs C. There is clear evidence within the file to show that the Association investigated each allegation made by Mrs C. Investigations were not restricted to asking those parties involved in the reported incidents, but also included discussions with other residents, the police and fire brigade.

### *Conclusion*

26. Mrs C's fire safety concerns were understandable following a number of incidents originating in Mr N's flat. I am satisfied that the Association were proactive in fulfilling their responsibilities in terms of routine maintenance of the fire alarm system. Although Mrs C's own enquiries with the fire service provided additional useful fire safety information, I do not consider the Association's approach toward fire safety to have been neglectful. They liaised with the fire service following each call out and took steps, over and above their routine maintenance, to minimise further alarms by introducing adaptations into Mr N's flat. The fire service at no point raised any concerns over the Association's practices, despite the specific concerns raised directly with them by Mrs C.

27. Mrs C complained that the Association did not follow their own complaints procedure by failing to acknowledge and respond to her letters within the stated time and by denying her the opportunity to present her complaints before the Committee. She also had concerns about the accuracy of their investigations. Having reviewed the Association's formal complaints procedure, it is apparent that the process is designed to handle single, non-complex complaints. In Mrs C's case, although there was one main issue (the complaint about Mr N's behaviour) she raised a number of separate incidents, often reporting new complaints before the earlier ones had been responded to. Given the nature and volume of the complaints, I do not consider the standard complaints procedure to be an appropriate method of investigating Mrs C's concerns. Whilst she did have a single complaint, each individual incident within that complaint would have to be investigated fully and I find it reasonable that this should be done on an ongoing basis with responses being sent to Mrs C when



the findings of each investigation were known. Similarly, I do not consider it unreasonable for the Chairperson of the Committee to use her discretion to waive the final stage of the complaints process if she is in a position to speak on behalf of the Committee and is confident that the Association's final decision has been established.

28. It is clear from Mrs C's tenancy file that each report that she made to the Association was followed up by a member of the Association. The allegations made by Mrs C were, in many cases, serious and the thoroughness of the resulting investigations reflected this. Following the first recorded report of Mr N's behaviour, the Association were unable to become involved. They did, however, contact Mr N to ask that he considered Mrs C's position. As the relationship between Mrs C and Mr N began to deteriorate, the Association arranged meetings with both parties to discuss their concerns and also sought evidence of any problems from other residents. They liaised with the police and fire services following reports concerning fire safety and physical assault. On each occasion, the investigations were followed up with a written response to Mrs C detailing the Association's findings.

29. Although the Association were adequately thorough in their investigations, the nature of the complaints is such that without the investigator being present at the time of the incident, or being provided with corroborative evidence, such as witness accounts, it is almost impossible for the complainant to prove anti-social behaviour. The Association, understandably, adopt a policy of taking no action against a tenant without proof of a clear breach of the tenancy agreement. Mrs C reported a number of incidents that would be considered breaches of the tenancy agreement, however, no witnesses were available to confirm her account of events. Indeed, interviews with neighbouring tenants appear to have defended Mr N.

30. The Association, having not witnessed the events described by Mrs C, would have to base their decisions on the evidence available to them. In most cases they had conflicting versions of events from the parties involved and comments from other residents and authorities that did not support Mrs C's allegations. The implications of a breach of tenancy are quite severe, therefore, I consider the Association's requirement for the breach to be conclusively proved before action is taken to be reasonable. I am unable to comment on the conclusions reached by the Association following their investigations, however, I am satisfied that each complaint was investigated thoroughly enough to ensure

that the Association had as much information available to them as possible before making a decision. With this in mind, I do not uphold this complaint.

*Recommendation*

31. Although I did not uphold this complaint, I commented in paragraph 29 on the anti-social behaviour investigations process and the problems that complainants potentially face when trying to prove the alleged behaviour. Mediation or another form of dispute resolution may have been a more successful avenue for Mrs C to resolve the issues that obviously existed between her and Mr N.

32. The Ombudsman, therefore, recommends that the Association consider offering Mrs C alternative means of dispute resolution outwith the formal complaints procedure.

33. The Association have accepted the recommendation and will act on it accordingly. The Ombudsman asks that the Association notify her when the recommendation has been implemented.

**Explanation of abbreviations used**

Mrs C	The complainant
The Association	Cairn Housing Association
Mr N	A neighbour of Mrs C
The Committee	The Association's Committee of Management
The Officer	An employee of the Association
The Chairperson	Chairperson of the Association's Management Committee