2 February 2021

Complaint reference:
19 014 539

Complaint against:
Exeter City Council

Local Government & Social Care OMBUDSMAN

The Ombudsman's final decision

Summary: The complainants complain about the Council's approach to a noise problem from their upstairs neighbour's flat. They say the Council's poor handling of the case, including, wrongly revoking a Home Improvement Notice, caused them significant distress. They also complain about the way the Council approached their complaints about their neighbour's property management. We find the Council was not at fault for revoking the Home Improvement Notice but is at fault for failing to investigate if the Home Improvement Notice had been complied with after evidence suggested it had not. While the Council was initially helpful, there is also some fault in the general way the Council approached the complaint. We have made recommendations with the aim of providing some resolution.

The complaint

1. The complainants, Ms B and Ms C, complain that the Council:

- wrongly closed their original complaint for no good reason;
- failed to properly test sound insulation works it had required their neighbour, Mr D, to perform under a Home Improvement Notice, ("the Notice") and;
- consequently, wrongly revoked the Notice.

2. Ms B and Ms C also complain that the Council failed to address their neighbour's poor management of his property, which is a house of multiple occupation, currently used by students.
3. They complain about the way the Council has, in general, handled the case and their complaint.
4. Ms B owns the flat and Ms C rents it. Ms B says the value of her flat has been diminished because of the landlord's actions/inaction and the Council's failure to address the issues.
5. Ms C says she has had to vacate the property while Mr D's tenants are in occupation because of the distress the noise levels in the above flat cause. She says she has had to seek medical help.
6. Ms B also says her mental health has suffered because of the prolonged distress she has suffered.

The Ombudsman's role and powers

7. We cannot investigate late complaints unless we decide there are good reasons. Late complaints are when someone takes more than 12 months to complain to us about something a council has done. ***(Local Government Act 1974, sections 26B and 34D, as amended)***

8. We investigate complaints about 'maladministration' and 'service failure'. I have used the word fault to refer to these. We must also consider whether any fault has had an adverse impact on the person making the complaint. I refer to this as 'injustice'. If there has been fault which has caused an injustice, we may suggest a remedy. ***(Local Government Act 1974, sections 26(1) and 26A(1), as amended)***

9. If we are satisfied with a council's actions or proposed actions, we can complete our investigation and issue a decision statement. ***(Local Government Act 1974, section 30(1B) and 34H(i), as amended)***

How I considered this complaint

10. I spoke with Ms C and reviewed the complaint file.

11. I reviewed the Council's response to my enquiries and the relevant legislation.

12. Both the Council and the complainants had the opportunity to comment on draft decisions. I have taken any comments into consideration before issuing this final decision.

13. The Ombudsman does not ordinarily investigate complaints where someone has taken more than twelve months to complain about the issues to us. However, the events in this complaint are tied to decisions and actions the Council took in 2017. Further, the complainants have not allowed the issues to rest, having continually complained to the Council about the same issues prior to 2017. I have not decided to go back as far as 2015, when issues around management of Mr D's property were first raised. But I consider I have good reason to investigate from January 2017 to the date the complaint was made to us.

What I found

Relevant law

14. The Housing Act 2004, ("the Act") sets out that councils have a general duty to take enforcement action where it has identified a 'category 1 hazard' at a residential premises. This is a hazard considered a serious and immediate risk to a person's health and safety.

15. Where a council identifies a 'category 2 hazard', a council has the power to use a number of enforcement powers, including serving an Improvement Notice under section 12 of the Act.

16. Where an owner or landlord agrees to take the action required by the council, it might be appropriate to wait before serving a notice unless the owner fails to start the work within a reasonable time. The authority will need to take its own view of what is reasonable in the circumstances. There may be circumstances, for example, where a category 2 hazard has been identified and the occupants are vulnerable, where authorities do not wish to delay beginning formal enforcement action. ***(2.18 - 2.19 Housing, Health and Safety Rating System, Enforcement Guidance, Housing Act 2004, Part 1, Housing Conditions. ("The HHSRS")***

17. Satisfying the requirements of the current Building Regulations, the supporting Approved Documents and relevant standards and Codes of Practices will usually achieve the ideal for the majority of hazards. ***(4.18, ("The HHSRS")***

18. Section 31 and Schedule 3 to the Act enable authorities to take the action required by an improvement notice itself, with or without the agreement of the person on whom the notice was served…Authorities may have to carry out works without agreement where a notice has not been complied with. ***(5.13, ("The HHSRS")***

19. Councils must revoke an improvement notice if they are satisfied that the requirements of the notice have been complied with. ***(The Act, section 16(1)***

20. It is an offence for a person on whom an improvement notice is served, not to comply with the notice***. (The Act, section 30(1))***

21. A Council 'may' revoke an improvement notice if it considers it is appropriate to revoke the notice. ***(The Act, section 16(2) (b))***

22. Councils can take the same action again if they consider the action taken by them so far has not proved satisfactory. ***(The Act, section 7(3))***

Houses of multiple occupancy

23. Councils must keep the housing conditions in their area under review with a view to identifying any action that may need to be taken by them under the provisions of the Housing Act 2004. ***(The Act, section 3(1))***

24. Councils can prosecute landlords for breaching management regulations. (***6.5, ("The HHSRS"))***

Background

The Council considers serving a Hazard Awareness Notice on Mr D

25. This chronology includes key events in this case and does not cover everything that happened.

26. Ms B has owned her flat ('the lower flat') since the late 1990s. Ms C lives in the lower flat, although she says she has been unable to do so for large periods of time because of the distress that the noise in Mr D's flat above, ('the upper flat') causes her.

27. Ms B has been complaining to the Council about various issues with the upkeep of the upper flat since 2015.

28. In late 2016, a Council officer, Officer P, visited the lower flat. In January 2017, Officer P wrote to Ms B saying she considered the noise hazard from the upper flat to be a band E (noise), Category 2 hazard. She said this meant there was a low likelihood of severe or serious harm, but that stress caused by the noise may result in warranting some medical attention.

29. Initially the Council viewed that a Hazard Awareness Notice would be sufficient. However, upon considering Ms C's protests that the noise was affecting her health, officers conducted further noise monitoring.

30. Around this time, Ms B also informed the Council that she had already undertaken works to reduce the noise on her side of the property.

Mr D undertakes testing – the May 2017 report - and possible other action

31. The Council conducted some further noise monitoring and in March 2017 said it had sufficient evidence to take action. Officer P said it would ask Mr D to undertake a number of actions to remedy the problem. These included completing

works to achieve building regulation standards and testing afterwards, detailing the works undertaken.

32. Officer P said the Council had to give Mr D the opportunity to do the above work by informal agreement first. She said if he did not agree, the Council *may* serve a statutory notice. She also said that if Mr D failed to carry out the works, the Council *may* carry out the works in default.

33. There was some delay. There were tenants occupying the upper flat, which Mr D had to be considerate of. In May 2017, he instructed an acoustic expert to complete the relevant tests, as set out in my para 31 (a) above. Specifically, the expert tested the floor between Mr D's living room and Ms C's bedroom. It did not test the ceiling in Ms C's bedroom.

34. The airborne noise test failed. Following the May 2017 report, Mr D was advised what steps he needed to take to correct the problem. No communication was made with Ms B to suggest that she needed to complete any works following the findings in the May 2017 report.

The Council say it will serve a statutory notice on Mr D and/or complete works in default

35. In June 2017, the Council confirmed in writing to Ms B that Mr D was "..under an obligation to carry out the sound insulation work." In a second email it said, "…if he does not carry out the work the Council will be required to serve a statutory notice."

36. On 22 June 2017, Officer P said that after the initial work was carried out, affecting the bedroom area, it would, "…review the property to determine that the noise hazard has been reduced to an acceptable standard." It said it would do this before considering whether to require sound insulation work to be completed in other parts of Mr D's property.

Council says it will consider next steps

37. However later in the month the Council said it could not confirm whether the Council would carry out the works in default or not. It said this would be considered if the Council decided to serve an improvement notice.

38. The Council said that when deciding on what 'appropriate action' it should take, it was guided by the HHSRS Guidance. It said policy was to ensure that the work carried out is reasonably practicable at reducing noise. It gave an example of where work carried out is expensive but does not improve anything.

August 2017 to March 2018

39. In August 2017, the works had still not been completed. Ms B's MP wrote to the Council on her behalf. The Council responded to her MP. It said that even though the hazard at Ms B's flat was low level, "…as noise from the upstairs room can be heard in the lower flat presenting a potential risk of harm to health and wellbeing, and the case has been ongoing for a number of years, it was considered that some form of action should be taken."

40. It said that work had been required of Mr D. It said it would review next steps when Mr D received a quote from a soundproofing company.

41. In October 2017, Ms B provided the Council with an inventory of works she said had already been carried out to the ceiling of the lower flat.

42. Following this, the records show Ms B had a conversation with Dr F, an acoustics specialist. He told her he thought soundproofing should be carried out from both above and below.

43. On 16 November 2017, Dr F carried out another acoustics test on the property, following the information provided by Ms B. The Council says it did not receive this report until 3 December 2017.

44. The report said that the floor above Ms B's bedroom, needed sound insulation. It also suggested some work should be done to a bedroom window.

45. It was recommended that Dr F, or a member of his team, should visit the property for a site visit once the carpets were lifted, to check for any other potential issues.

46. On 15 November 2017, a senior officer, Officer Z, sent Ms B a letter saying he had completed a review of the case. In summary he said:

- The issues between the flat were a Party Wall Act issue and the Council could not get involved.
- The Council could not get involved further as it did not have the legislative powers to do so.
- Dr F recommended that the most effective resolution to the issue would be to conduct sound insulation on both sides of the party structure. Officer Z said he agreed with this view.

47. Ms B said she was surprised by this. She said the Council had never before mentioned anything about the Party Wall Act and had in fact said it would serve a statutory notice on Mr D if he did not complete the works as required. She said the Council was reneging on its promise to make sure the work was done and even to do the work in default if it was not carried out.

48. Ms B contacted her local councillor. He wrote to the Council, asking it to explain its apparent change of tack.

49. On 24 November 2017, the Council responded. It said again that the Council could not get involved in the case. Mrs B understood that the case had been closed. The Council refute this. It points to ongoing correspondence about the work that needed to be done in December 2017. I have seen this correspondence and it shows the Council was still considering how to approach the problem in December 2017.

50. It said it wrote to Ms B in January 2017 although Ms B said she did not receive a letter and the Council do not have a copy of that letter.

The Council serves a Notice on Mr D

51. Ms B issued a formal complaint about the Council closing the file in January 2018.

52. In February 2018, Officer Z and other officers met with Ms B and Ms C. Following that meeting, the Council reviewed the case.

53. The Council did not keep any minutes of the meeting. Ms B says, at the meeting, the Council said the sound insulation work Ms B had already carried out on her flat was defective. She said no good reason was given for this view and she insisted it was contrary to the findings in the May 2017 report.

54. The Council says these comments are consistent with the comments made in the later report in June 2018 and by the report commissioned by Ms B at a later stage. I will call it "Ms B's report."

55. I will refer to the findings of these reports in more detail at a later stage in this decision. However, in summary:

- The June 2018 report discussed the likelihood of whether resilient bars had actually been installed in the work previously done on Ms B's side of the party wall. It concluded that the work done was, "consistent with the claim the resilient bars had been installed."
- Ms B's report suggested some works could be done to Ms B's flat as well as the work required by Mr D.

The Council reviewed the case again.

56. It decided to ask Mr D to complete the work.

57. The recommendations it set out varied slightly to those set out previously. There was no longer any specific requirement to carry out testing. But it was stressed, among other things, that Mr D should 'upgrade or replace as necessary to comply with' the required standards.

58. The Notice also required Mr D to produce a "certificate of completion" from an approved acoustic consultant detailing the work undertaken *and* its compliance with the relevant standards.

59. Mr D appealed the Notice. While waiting for the appeal hearing, the Council paid 50 per cent of the costs of a new independent acoustics report in June 2018, ("the June 2018 report"). This report specifically investigated *both* sides of the partition between Ms B's lower flat and Mr D's upper flat.

The June 2018 report:

- said the work done appeared to be in agreement with the list of work Ms B had provided. The work assessed was consistent with the claim that resilient bars had been installed.
- recommended works be completed from Mr D's side of the partition
- recommended some work could be done to Ms B's side of the partition as there was a 'possible sound flanking path' at the top of Ms C's bedroom window.

60. The report was not shared with Ms B or C until March 2019.

The Tribunal hearing and determination

61. On 14 August 2018, Mr D's appeal against the service of the Council's Notice was heard.

62. The Tribunal decided the Notice should be varied. It accepted Mr D had already completed testing. It provided more time "for the need to involve Dr [F] in assessing the works as they progress." Otherwise, the terms of the Notice remained the same.

63. Ms B says she understands Dr F was not handed a copy of the Tribunal judgment.

64. The Tribunal stated that the June 2018 report, 'showed the way forward.'

65. Mr D accepted that the Category 2 hazard at the premises was 'by reason of the transmission of airborne noise from the [upper flat] to the [lower flat] by reference to the living room area of the ground floor.'

66. While the June 2018 report clarified other work that needed to be done, the Council's view was that earlier reports revealed 'unacceptable airborne noise'. The Council said Mr D had an obligation to complete the works.

67. The Council said testing of the party walls would not address, 'the expert evidence already obtained about the cause of the noise transmission.' The Council submitted that, "There is now certainty about the work required" and, "there is no further testing required."

68. The Tribunal judge said that '[Mr D] has been identified as the person primarily responsible for the removal of the hazard…"

69. He also said:

- The Council had been a "very helpful third party in seeking solutions".
- There was a need to involve Dr F in "…assessing the works as they progress."
- The June 2018 report confirmed the nature of the works required in essence. The Judge commented that, "Patience must be limited when a person's health is at risk."

After the works were allegedly completed

70. On 7 January 2019, Ms B told the Council that in her opinion the work had not been completed in line with the Improvement notice. She asked for confirmation it had received a completion certificate and plans as per the Notice. She said she would wait to hear from the Council if it needed access to the flat for the final sound test.

71. Officer P responded, saying that she had received confirmation that the works had been completed in accordance with the ACT specification and she would be visiting the property the same day to look at the work done.

72. The records show the Council received confirmation from Dr F that the works had been completed 'as per our specification'.

73. However, Ms B says that Dr F told her he had not been able to visit the property during the works and could not confirm if the works had been completed or completed correctly.

74. On 21 January 2019, the Council revoked the Notice, stating it was satisfied the terms had been complied with.

75. Ms B again asked for a copy of the June 2018 report, the completion certificate and a plan showing the areas where the work was completed. She also asked for confirmation that Dr F had been involved.

76. Officer Z did not immediately respond to this request but on 7 February 2019 wrote to her, saying:

77. Mr D's side of the property now met regulation standards and the Council therefore had no further legal action it could take against Mr D.

78. The Council said it had reached its determination by:

- receiving full documentation from Mr D, and
- conducting an inspection of the work completed. (In response to our enquiries, the Council said that as the works are specialist, it was not an officer's role to certify them. When the Council officer visited, as the carpets had been relayed, it was not possible to check the works had been done but the Council instead relied on photographs provided by the contractors.)

79. It did not initially respond to Ms B's request for a completion certificate.

80. The Council said that the failure of the airborne noise test suggested that the work Ms B had done to the property had not been successful. Officer Z suggested Ms B complete her own survey.

81. Ms B said she needed to see the June 2018 report to ascertain what needed to be done. She reminded Officer Z that the Tribunal judge had said the June 2018 'showed the way forward'. Ms B says that the fact the Council did not provide her with a copy of the report until *after* the works were supposed to be completed is a clear indication that the Council only expected works to be completed by Mr D.

82. Ms B says she received a copy of the June 2018 report about two weeks later.

Ms B instructs acoustic experts

83. In May 2019, Ms B commissioned her own report. ("Ms B's report"). The author of the report did not conduct an assessment from both sides of the party structure.

84. It said:

- Ms B's ceiling construction was not as had been assumed in the June 2018 report. Ms B will need to upgrade the ceiling construction before sound insulation testing.
- Mineral wool insulation had been 'omitted in all areas investigated'. This was the responsibility of Mr D and should be installed before testing.
- The Improvement Notice had not been complied with in full.
- Testing compliance is normally demonstrated by undertaking testing.
- It was expected that the Council had been 'premature' in issuing a revocation of the Improvement Notice.
- Because of the omission of mineral wool insulation, the party floor may not achieve the minimum performance standards, even if the work recommended to Ms B's flat was completed.

85. In other correspondence, the Council said that:

- "…there is no such thing as a completion certificate" but the Council was satisfied the improvement notice had been complied with. The Council later described the use of the phrase, 'completion certificate' as 'clumsy'.
- Dr F "…has been involved in liaising with [the Council] on behalf of Mr [D] up until we were satisfied that the notice had been complied with".
- There was no requirement for a final noise assessment.
- An officer took photos of the work during a site visit to confirm it was done. (Later, the Council said that an officer did not take photos but was given copies of the relevant photos).
- The acoustics report said that mineral wool should be installed across both properties but it did not say by whom.

86. In its stage one response to Ms B's complaint, the Council said it was not necessary to complete a post work survey because it was probable that the noise would not improve until Ms B completes improvement work from her side.

87. The Council added that in hindsight, it should have served an Improvement Notice on Ms B as well.

88. It offered Ms B permission to apply for a grant of up to £5000 to carry out improvement work. It says this is the maximum amount of grant available under

the policy for these purposes. Usually, to qualify for this grant, it is required that there be a category 1 hazard. The Council says it has waived this requirement because of the circumstances of this case.

Analysis

89. The Council did not have to intervene to address the category 2 hazard at Ms B's flat. Initially, it viewed that only a Hazard Awareness Notice was appropriate. However, it took account of the way in which Ms C was being affected by the prolonged noise hazard at the property. It had the discretion to take action and it decided to do so.

90. Ms B seems to be under the impression that the Council was always clear that it would complete the works in default if Mr D failed, but this was not the case. Initially, the Council said it *may* serve a statutory notice on Mr D and it also only said it *may* complete the works in default.

91. However, after the May 2017 report, the Council's communication was initially more reassuring for Ms B. She was told that if Mr D did not undertake to make sound insulation improvements, as recommended by the Council, the Council *would* serve a statutory notice. Ms B said she was also told that if Mr D completed the works, the Council would 'review' the property to determine if the work had been effective.

92. However, this was only to determine if work was necessary across the whole of the property. And later in the month, the Council reverted to being less forthcoming in its offer of help. It said it could not confirm if the works would be carried out upon default or not. And it noted that it had not decided to serve an improvement notice at that stage.

93. The Council was right to try and negotiate informally with Mr D before serving a Notice. The Guidance says it might be appropriate to wait before serving a Notice. Mr D had agreed to pay for a report testing the acoustics in the flats. It would not have been appropriate to move to serve a formal notice on him at that stage. There was some delay, but Mr D had taken steps to resolve the problem.

94. Ms B's councillor had concerns about the Council's correspondence with Ms B and Ms C. I understand his concerns. At the least, its communication, about whether it would provide support, was very confusing. This is fault, but while I understand Ms B and Ms C were frustrated, I do not consider this amounted to a significant injustice. But the Council's sudden decision to seemingly retract from involvement in the case in November 2017, did.

95. The Council says it had not closed the case. I have seen records that support this. However, it did give Ms B that impression. This view was understandable, given the Council told Ms B it could not get involved in the case.

96. This approach did not make sense to Ms B in the light of what the Council had said up to that point. This was the first time the Council had said that it was unable to help the complainants because of the Party Wall Act. It was also not correct to say it could do nothing to help her. It had, rather, taken a decision to withdraw its open support.

97. The Council told the local MP in September 2017 that it was awaiting a quote from acoustics specialists before considering next steps. The Council said that, because of the potential risk to health and wellbeing and because of the case having been ongoing for a number of years, 'some form of action should be taken.' Then, suddenly the Council seemingly withdrew its support, saying that it

had no legal right to get involved, (which was not, in any event, correct). This is fault.

98. This fault caused Ms B and Ms C an injustice. They were understandably distressed and felt it necessary to complain to bring the Council back to its previous position.

99. I accept however that the Council was, in the background, continuing its work on the case. It was in communication with Mr D and it was making efforts to find resolution. As Mr D raised queries about the Council's approach, it was correct that the Council should consider its position before proceeding. It is regrettable that through this period, Ms C says she find it so hard to cope that she had to sleep on a friend's sofa. But I do not find the Council at fault for delaying action.

100. There was another period of delay while Mr D appealed the March 2018 improvement notice. This was not the fault of the Council.

101. The works were then, the Council was told, completed. The HHSRS says that councils may revoke a Notice if it considers it appropriate to do so. The guidance therefore recognises this is a matter of judgement.

102. It also says that satisfying the requirements of current building regulations, will usually achieve the ideal for the majority of hazards. This provides a guide to what councils might consider appropriate.

103. In this case, the Council considered it appropriate to revoke the Notice because it was, it says, satisfied that the requirements of the Notice had been met. I have to decide if it came to that conclusion reasonably. I consider that it did.

104. It was reasonable to expect the only way one could be satisfied there had been compliance as required by the Notice, was if compliance had been tested. But Dr F told the Council he considered the work done at Mr D's flat had been completed in line with the specification.

105. The law says the Council only had to consider it was appropriate to revoke the Notice. It would have been preferable for Dr F to have been given a copy of the Tribunal judgment, to have been more aware of the emphasis the Judge had placed on his involvement, "…in assessing the works as they progress.". But, ultimately, he provided the Council with his professional opinion that the works had been done. The Council was not at fault for revoking the Notice. It was reasonable to expect the required works had been completed and that the terms of the Notice had been satisfied.

106. But the Council was at fault in other ways. It should not have said its officer took photos of the work, rather than merely accepting copies of photos from Mr D. This could have given the impression that its officer had properly inspected the works when this was not the case. In saying that Dr F was involved in liaising with [the Council] up until we were satisfied that the notice had been complied with", it may have given the impression that, post the Tribunal hearing, Dr F was in regular contact with the Council during the completion of the works. I have not seen evidence this was the case.

107. When the Council was given evidence, which suggested Mr D had not completed the works in the Notice, it chose to insist this was because Ms B had failed to complete works. It should have investigated whether it had been too quick to revoke the Notice and whether it needed to consider issuing another Notice. It should have done so particularly because it had accepted the work had been undertaken, very much on face value.

108. The Council says the only way the matter could have been conclusively investigated would have been to take up the floorboards in Mr D's flat or take down the ceiling in Ms B's flat. But if the Council had shown the Tribunal report to Dr F, he would have understood that the Judge had said there was a need to involve him in "…assessing the works as they progress." If that had been done, it would have been possible to ascertain if the work was being done in full during the process. Further, while the Home Improvement Notice did not specifically require testing to be completed, it did state, clumsily as it turns out, that a certificate of completion would be produced. It was within the Council's gift to determine that Dr F's communication satisfied this requirement. But, when evidence was produced that showed some of the work might not have been completed, the Council should have investigated.

109. The Council has pointed out that Ms B's report was conducted without having access to Mr D's side of the party structure. But even so, the author of that report concluded that the mineral wool installation had not taken place. The Council should have been interested in that information. There were options open to it. The HHSRS is clear that councils can take the same action again if they consider the action taken by them so far has not proved satisfactory.

110. The Council did not have to get involved in these issues at the start. But it did. Having recognised the potential damage to Ms C's wellbeing, it had given Ms B and Ms C confidence the issues would be addressed with its support. Having done so, it should have followed through on its involvement. It showed consideration for the position Ms B found herself in by offering her access to grant funds. But, Ms B should not have to take a risk on completing work that may still not alleviate the noise issue if Mr D failed to adhere to the Improvement Notice. It is understandable that Ms B would expect Mr D to comply with the Improvement Notice *first*, before undergoing the significant disturbance that would be brought about by actioning works to her side of the party wall. The Council's failure to ensure the Improvement notice has been complied with is fault.

111. Further, when presented with Ms B's expert report, which showed the absence of mineral wool, the Council said the previous report had not been clear about whose responsibility it was to install the mineral wool. The records I have seen indicate this part of the work was understood to be Mr D's responsibility. To give the impression that this was not the understanding is fault.

112. The Council said it did not consider a post work survey was necessary. It said this was because it was probable the noise would not improve until Ms B completed her works. That would be the case if there was no question that Mr D had completed the works. When questions were raised about that, the Council should have investigated. This was fault.

113. This fault has caused Ms B and Ms C injustice. Ms B and Ms C have no reasonable recourse against Mr D because the Council revoked its Notice. They have produced evidence to say that because of the difficulties with noise between the flats, the value of the lower flat has reduced by £10,000. Ms C says she has not been able to live at the lower flat while the upper flat is occupied.

Property management issues

114. I am only considering the Council's response to issues raised about the management of Mr D's property and how the complainants say that affected them, from the end of 2018. I do not consider there is good reason to investigate further back.

115. In late 2017 the complainants provided photographs of the outside of Ms B's property. She was concerned about an issue with Mr D's fence, with weeds and with other matters. The Council says officers visited and at one point helped a neighbour clear some detritus. In June 2018, the Council responded that this was a civil matter. It said that the issues Ms B had described were not a sufficient nuisance for the Council to act on.

116. The Council offered to refer Ms B to the Community Safety Partnership's Neighbour Dispute Service. This offer was not taken up. Ms B says that Mr D refused to engage in mediation.

117. In November 2018, the Council asked Mr D to take action about the falling fence. Ms B says Mr D did not do so and the Council took no further action.

118. In March 2019 Ms B sent the Council photographs of the collapsed fence. Officer Z then said this was not the Council's responsibility and referred Ms B to the Borough Council. The Council says it referred Ms B to the Highways Authority, which was the appropriate authority to address that issue.

119. In May 2019 Ms B made a Community Trigger application to deal with all the issues she had raised about her neighbour.

120. In June 2019, the Community Trigger team responded to her application. It said that the issues she had raised were already subject to the complaints process with the Council, which it said was the most appropriate way to address her issues.

Analysis

121. It is a matter for the Council's professional judgement to ascertain whether the issues Ms B and Ms C raised about the condition of Mr D's property, were significant enough to warrant action or not.

122. The Council referred Ms B to the appropriate authority with regard to the issue around the fence. While Ms B and Ms C considered the state of the property to be distressing, the decision to act or not is one that the Council can take, so long as due consideration has been given. The evidence shows that officers did visit and did not consider the condition of the property was so significant it warranted the Council taking action. I cannot criticise that decision.

123. When Ms B tried to complain using the Community Trigger procedure, she was told her issues were already being considered by the Council. This could not have been correct since she had been told by Officer Z that the Council had no authority to consider the complaints she had made. This must have been very frustrating for Ms B and Ms C. However, the Council was not at fault for this communication.

Recommended action

124. Within one month of my final decision (and in the case of 124 (d)) as soon as possible, the Council should:

a) Apologise to Ms B and Ms C for the fault identified in this decision.

b) Pay Ms B the sum of £500 for the distress involved in pursuing these matters.

c) Pay Ms C the sum of £500 to acknowledge the prolonged distress she suffered while living in a property with unacceptable noise levels, acknowledging the prolonged distress caused by the Council's refusal to engage with Ms B and

Ms C after they produced evidence in May 2019 that indicated the works in the Notice may not all have been completed.

d) Reconsider the information provided by Ms B's expert report in May 2019. The Council should instruct an expert to assess if it agrees with that report, that the Notice was not complied with. If it is found that the Notice was not complied with, the Council should consider what its next steps are. It should, in any case, provide a report to Ms B, Ms C and the Ombudsman, clearly explaining the course of action it decides to take, based on the evidence.

Final decision

125. I have found the Council at fault and made recommendations to address the injustice caused by that fault and to bring about some resolution. I have now completed my investigation.

Investigator's final decision on behalf of the Ombudsman