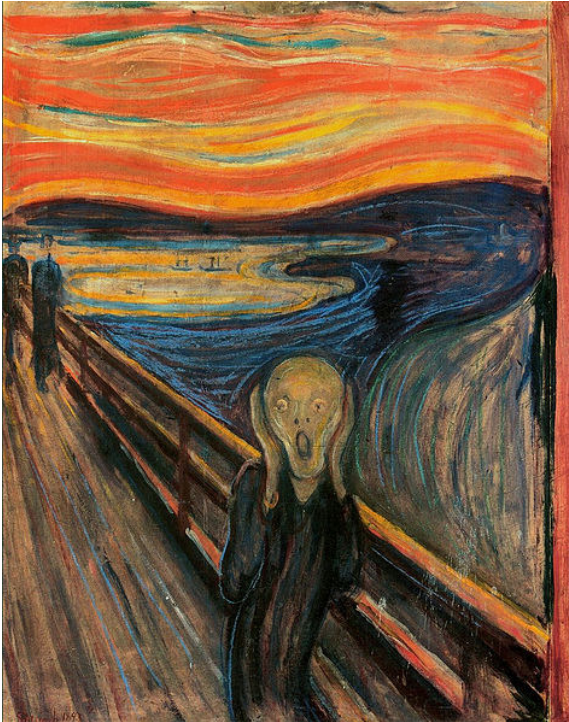


Nelson's Story



The Scream by Edvard Munch

This disturbing account of how one man was forced to fight an 8 year battle against noise pollution has important lessons for housing associations and local authorities across the land

Read this as a cautionary tale.

It outlines eight long, dark years of excessive noise but it also makes positive recommendations of measures housing associations and local authorities can take to ensure that they have a greater understanding of noise and the impact it can have on people; and to minimize the risk of Nelson's story being repeated.

Introduction

This is the story of one man's remarkable eight year battle against noise. But it is not just about an individual rising from the depths of despair to triumph against all the odds. It contains very real lessons for decision-makers across the country; for local authorities and housing associations in particular. For this is also the story of how a well-known housing association singularly failed to understand the impact noise can have on a tenant.

This failure meant it miscast the victim as the villain. It became convinced that the victim was making up, or a least widely exaggerating, the stories about noise. It saw his complaints against fellow tenants not as something to be investigated but as a reason to accuse him of threatening behaviour; a reason to take out legal injunctions and eviction notices against him.

In the end the tenant was one hundred per cent vindicated by the Crown Court. The housing association waved the white flag. Very belatedly, it realized it had got things very wrong. But that took the intervention of lawyers, noise experts, medical practitioners, lobby groups, housing specialists and, latterly, the understanding of a few of the housing association's staff members that they had misjudged the situation.

This may be an extreme case. But not a unique one. Where housing associations, local authorities or indeed other official bodies do not fully understand the impact noise can have on people, they can make wrong and bad decisions.

The start of an eight year battle

I first met Nelson Ajayi in 2004. He had contacted the UK Noise Association about a noise problem he was having with his neighbour. I visited him in his basement flat in South London. It was an old house converted into several apartments. As with many of these converted properties, the sound insulation was poor. You could hear, for example, the upstairs tenant going to the toilet. A report we later commissioned from the noise specialists, Sanctum Consultants, said the insulation was very poor indeed.

Nelson, however, was not complaining about daily living noise but about the excessive noise he alleged the tenants in the flat above were making. The housing association refused to act so he was forced to take the tenants to court. The judge at the County Court asked both parties to sign an undertaking to behave until the case could be heard. Days before the hearing, the housing association transferred the upstairs tenants.

The landlord failed to grasp that noise was the problem; not Nelson

In those early years I had several meetings with officials from the housing association, with Nelson present. I was keen to find a solution. They promised to try and get Nelson a transfer. It never happened.

At some of these meetings Nelson became quite upset. It led the officials to regard *him* as ‘the problem’. That perception was to grow. Years later it was to lead to Nelson being hounded through the streets of South London, pursued by the police, with the apparent blessing of the housing association.

I believe that this mind-set which developed had its roots in the fact that officials didn't understand – and it seems with many of them couldn't be bothered to find out - the devastating impact that constant noise can have on individuals; on their emotional state; and on their behaviour.

And Nelson *was* suffering noise. The kitchen of the upstairs flat was directly above his bed. He could hear the washing machine vibrating, bouncing. One tenant regularly used it in the early hours of the morning. It was only with marked reluctance that the landlord agreed to restrict the hours the machine could be used, arguing restrictions would unduly curb the tenant's freedom.

**No action was
being taken.
Nelson felt
trapped.**

Nelson felt increasingly trapped. The landlord was doing nothing. I remember at one meeting, when Nelson pointed to the dents in his ceiling allegedly caused by the noise from the upstairs flat, his housing officer brusquely dismissed it as down to heavy lorries passing by his front door. She added the barbed comment that the tenant they had moved just before the court hearing was turning out to be “the perfect tenant.”

On another occasion, an officer brought somebody he introduced as their expert in sound insulation. This little man took me on a quirky tour of the building pointing to particular floorboards and bits of ceiling. I think this was meant to prove that the property was properly insulated. A surveyor's report would have been a lot more convincing.

‘What’s the UK Noise Association?’

I think part of the problem – and I return to this in the recommendations – was that the housing association didn’t seem to understand what the UK Noise Association did or how to relate to us. They were more comfortable dealing with people they knew: medical practitioners, social workers and lawyers. There was no sense that we might have a professional expertise which could assist them. As a result, in the early years, our representations on Nelson’s behalf did not seem to be taken seriously.

I wrote several letters to them, all stressing that the basic problem was the noise:

“The noise Mr Ajayi is having to endure at present is clearly unacceptable. It seems that the neighbours, knowing the sound insulation between the properties is poor, are making no attempt to modify their behaviour.

I see no alternative but for the Association to act to improve the situation for Mr Ajayi which is becoming intolerable. I would suggest that, in the short-term, the neighbours upstairs are asked to modify their behaviour to take account of the poor sound insulation between the properties.

In the longer term Nelson Ajayi needs to be offered a property where the sound insulation is of sufficient standard where neighbour noise is not a problem. I suspect that only then will he have the chance to enjoy a reasonable quality of life.”

But the housing association’s mind had been made up. Nelson was the problem not the noise.

Tragedy Strikes

Nelson Ajayi was in his mid-thirties when I first met him. He had had an interesting and varied life. Born in Nigeria, he had spent time in New York and many years in London. A man of high intelligence, he had trained in computer technology and now had gone back to university to study housing management. Ironically, he became more qualified than some of the housing officers he was dealing with.

He had become ever more isolated. The housing officers refused to return his calls.

Tragedy had struck shortly after he moved into the South London flat when he was involved in a fatal car accident just outside the property in which a local boy was killed. Although he was not the guilty party, the boy's relatives would each year on the anniversary of his death bang on Nelson's door before leaving a wreath.

Most independent observers would take the view that the housing association should have moved Nelson after the accident had happened. Instead he was left in the property with his flashbacks, his tablets, his visits to the psychiatrist and the incessant noise.

As the years went on, he became even more isolated. Believing *him* to be the problem, the housing officers became more and more obstructive. They regularly refused to return his calls. I wrote to one of them:

“As I'm sure you are aware, when somebody is in Mr Ajayi's position, it is very important that he is able to communicate with your office. He is having to contend with a desperate situation as far as the noise is concerned

and he needs some hope and reassurance that the situation will be resolved. This will not happen if you are reluctant to communicate with him.”

To no avail. They stopped communicating with me. They found transfers for other tenants on a regular basis. They offered Nelson only one: a tiny flat with no bath or shower. It wasn't a serious offer; nor was it meant to be. They refused Nelson his right to see his tenancy file. He had to go to law before they would release it. Twice they tried to evict him for what seemed trumped up reasons. It appeared to us that at least some of the officers were colluding with the other tenants, in an attempt to provoke Nelson into reacting.

The Role of the Local Authority

You may wonder where the local authority was in all this. It has to be said that they were a weak, largely absent player. They did once install a noise meter in Nelson's flat but refused to show him the results, giving them instead to the Housing Association. We learnt years later that they had tentatively concluded the noise recorded was coming from Nelson's own flat but that they couldn't be certain. You would have thought that such an indecisive verdict would warrant further investigation. But not by these environmental health officers at this local authority. They refused further dealings with Nelson arguing that any noise problem should be referred to his landlord. A strong, involved, motivated local authority could have helped solve the case years before the final Crown Court verdict exonerated Nelson.

**It was a weak,
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player**

Nelson was at one of his lowest points. Neglected by a hostile housing association, abandoned by a weak local authority, and with a new tenant upstairs taunting him and deliberately making excessive noise – playing loud music, ‘stomping’ on the floor, dropping heavy objects, often late into the night – it was a dark, dark period. He told me he would spend days curled up in the corner of his flat, tears flowing down his cheeks, with no escape from torment of the constant noise.

If you have money, you can usually escape, if just for a period. If are struggling to find the spare cash for a cup of coffee or a bus ride to the nearest park, you are well and truly trapped.

I felt the only option was for the UK Noise Association to bring in independent consultants. We commissioned a noise insulation study from Sanctum Consultants. Their report was devastating. It slammed the condition of the property. In their letter to us accompanying their report, Sanctum wrote:

Nelson was at his lowest point. He would spend days curled up in the corner of his flat, tears flowing down his cheeks, with no escape from torment of constant noise.

“I would also advise that in view of the considerable stress that Mr Ajayi is under and the intolerable conditions in the dwelling that consideration is given to pursuing legal proceedings against the landlord sooner rather than later.”

We engaged a top barrister, Simon Butler, then of Ely Place Chambers. But we were unprepared for what happened next. While we were in the process of discussing a possible case with the barrister, the

housing association issued proceedings against Nelson. They had applied for an injunction against him, alleging that he was harassing the tenant upstairs.

The Housing Association Gets an Injunction against Nelson

It was short notice. We had to attend court without our barrister. The judge gave the housing association a temporary injunction, accompanied by the power of arrest, until a full hearing could be scheduled. Nelson felt that even the courts had abandoned him.

And things were about to get much worse. When Nelson arrived home after the court case plain-clothes police officers were waiting in the flat above with the tenant and, we think, his housing officer. It seemed they wanted to arrest him. He evaded them by running through the streets and the adjoining estates. He stayed with friends. He rarely went back to his flat. There was the ever-present fear of arrest on some unspecified charge.

His housing officers celebrated as a studious man was being pursued by the police through the streets of London like a common criminal

All the time the housing association was rejoicing. We understand that on the day they got their injunction and this studious man was being pursued like a common criminal through the streets of South London, the officers of the association were toasting the new housing officer for having 'got him' at last.

We spoke with our barrister who advised we seek an injunction against the upstairs tenant for harassment

and noise nuisance. Our success in obtaining it shocked the housing association. This was not part of their plan, nor did it fit with their mind-set. They couldn't get their head round the fact Nelson might not be the problem.

Nelson, though, was still under real pressure. The threat of arrest was still present. The upstairs tenant continued his campaign of noise. Nelson stayed with friends most of the time. But we ensured that people were in his flat to witness the noise. We also hired a high-quality noise meter to measure the noise. It recorded some noise levels nearly 50 decibels above the background level. Under any criteria, this is noise nuisance. It asks even more questions about the earlier efforts of the local authority.

We recorded noise levels in his flat nearly 50 decibels above the background noise

We turned up to the next court hearing. Both cases were to be held at the same time. However, the judge postponed the hearing because insufficient time had been set aside. Both injunctions remained in place. Crucially, though, the power of rest was lifted. A critical blow to the housing association. Within days, the officer, so feted just months previously, left the company.

We discovered that the housing association had set up an anti-social behaviour unit. We complained about the tenant upstairs. Although the unit's investigation didn't accept we had proved anti-social behaviour, it did recognise that a noise problem existed. An important break-through. We also met probably the first officer in eight years who was prepared to engage with the fact that Nelson might not be the problem.

The Tide Begins to Turn

The noise continued unabated. At times Nelson was forced to walk the streets at night to escape it. His physical and mental health was suffering. He was losing weight. He had regular bleeding of the nose and eyes. He was seeing the psychiatrist again. He called the police several times. Their attitude varied but it was becoming clear that some of the police, particularly the community constables, began to understand that Nelson was the aggrieved party.

In our view, the upstairs' tenant was breaking the terms of his injunction. So we took a risk. We went to court. It was a risk because, to prove an injunction has been breached, requires a higher standard of proof. It requires evidence "beyond reasonable doubt". The judge ruled that we had not proved it to his satisfaction. We lost that case.

The main cases, though, were still to come. The Housing Association's case against Nelson and his case against the tenant upstairs. We were gathering more evidence. Nelson's psychiatrist wrote:

"Unfortunately Nelson has, over the course of this year, deteriorated and is now in quite a depressive state. Currently he is getting extremely poor sleep, loss of appetite.....losing hope for the future....and generally feels he is getting to the end of his tether. As was the situation before, unfortunately his housing accommodation is not helping the situation. He is still in the same housing association flat and tells me that the resident above him continues to harass him. He also continues to feel persecuted by the landlords who are the housing association....."

A psychiatric social worker and an independent officer from another housing association met with the anti-social behaviour officer. There were signs that some attitudes within the housing association might be changing. But nothing prepared us for their capitulation on the day of the trial in the Court. They brought just a barrister and a white flag. They were prepared to surrender. They said they would drop all their allegations against Nelson if he agreed to abide by the terms of his tenancy. That was merely their face-saver as all tenants agree to this when they sign their tenancy! They also said they would progress his desire for a transfer. Nelson agreed!

With Simon Butler representing Nelson, we then pursued our case against the tenant upstairs. The judge found in our favour. He imposed an indefinite injunction on the tenant, awarded costs against him and ordered him to pay Nelson £1500 in compensation.

Nelson had been totally vindicated.

On the day of the court hearing the Housing Association dropped its case against Nelson. And he won his case against his noisy neighbour upstairs. The judge imposed an indefinite injunction on the neighbour and awarded Nelson costs and compensation.

He had been totally vindicated

Six Recommendations

1. The first and most striking feature of the story is the way a failure to understand the impact of noise led to wrong assumptions and poor decision-making. This housing association is not unique. Noise can be very subjective. Too often people base decisions about noise annoyance on their own subjective reaction to it. Nelson's story highlights the need for people who make decisions about noise annoyance to have received some basic training in the subject.

2. This follows on from the first point. A lack of understanding of the impact noise has on a person can lead to a failure to grasp how it can affect their behaviour. We have seen cases of officials, magistrates, family members even, concluding that the noise complainant is simply a "difficult" person when very often the behaviour is caused by the stress they are under because of the noise.

3. There may well be a case for housing associations and local authorities to build "quiet" houses into their developments in the same way that it is now common practice to build homes for older or disabled people. The statistics show that about 10% of the population is particularly sensitive to noise. Wouldn't it make sense to try to ensure that "quiet" houses make up 10% of any development?

4. A feature of this case was the difficulty the housing association had in working with the UK Noise Association, a group based in the campaigning/advocacy sector. It took them the best part of seven years to recognise that the UK Noise

Association may have professional expertise which could assist them. This would suggest that experience of working in the campaigning/advocacy sector could usefully form part of the training of housing officers.

5. The local authority comes out of this story very badly indeed. We know that many other local authorities would have acted very differently. This does raise questions for the Government's localism agenda. If more power is to be devolved to local authorities, mechanisms need to be put in place to try to ensure that their Environmental Health Officers provide a competent service.

6. Finally, Nelson had the determination not to be worn down by the authorities and the intelligence to know how to marshal his case against them. He also received considerable financial backing. Without his personal attributes and the financial support, he would not have been able to fight on. There is, we would argue, a strong case for residents who don't agree with the verdict of their housing association and/or local authority to have the right to seek independent adjudication. This is different to the role of the ombudsman whose remit is to investigate whether a local authority has followed correct procedures. The role of the adjudicator would be to look at whether the housing association/local authority had made a correct assessment of the noise the tenant had complained about.

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