

Statutory Nuisance

Residents have a legal right to be protected against statutory nuisance, as defined in legislation. Statutory nuisances tend to be property based issues from one premises to another. Therefore an issue which disturbed a person whilst walking on a public footpath, or whilst a visitor somewhere, could not generally be a statutory nuisance.

What is a statutory nuisance?

A statutory nuisance is 'an unlawful interference with a person's use or enjoyment of land or some right over, or in connection with it' or evidence of a significant impact on the health and/ or wellbeing. It is more than a mere annoyance. Statutory Nuisance is defined by Part Three of the 1990 Environmental Protection Act and includes the following matters:

- **Smoke, fumes or gases:** emitted from premises, or from a vehicle, machinery or equipment in a street and bonfires
- **Odour, dust, stream:** from industrial, trade or business premises
- **Noise:** coming from premises, or from a vehicle, machinery or equipment in the street
- **Light:** from badly adjusted security lights or floodlights illuminating complaints property
- **Insects:** from any industrial, trade or business premises
- **The physical state of any premises:** to be in such a state as to be prejudicial to health or a nuisance
- **Accumulations:** anything which could cause a nuisance or present a health risk for humans, for example an accumulation of rotting food which attracts rats or mice

Issues not covered by statutory nuisance law are:

- Aircraft noise
- Odour from domestic premises
- General road traffic noise
- Neighbor's arguing
- Issues occurring on a premises occupied by the Crown for military or Ministry of Defence purposes.

Assessing a Statutory Nuisance.

Nuisance is assessed as much by the reaction of an average reasonable person as by any technical equipment. An authorised investigation officer from Environmental Health decides whether a particular complaint meets the definition of a Statutory Nuisance. Sometimes measurements may be made to support the officers' assessment of a nuisance, however, there are no specific levels detailed within the legislation. The ultimate assessment is an officers' subjective assessment on the impact. The following points give some guidance:

- The problem must be considerable - for legal action a nuisance needs to be more than an annoyance.
- No account can be taken of particular sensitivities, problems of life-style of the complainant.
- Isolated acts cannot usually be taken into account; the nuisance needs to be regularly recurring.
- The Council (and ultimately the Court) has to be satisfied that the problem is an unreasonable and substantial interference with the enjoyment of the complainant's property.

When assessing the potential for nuisance the investigating officer will need to base their judgement on a number of factors. These include:

- How long it lasts _ noise how loud it is.
- How intrusive it is
- How frequent the intrusion is
- Whether it is a one-off or continuing problem
- The time of day / night
- Whether it is deliberate or not
- The nature of the area you live in (e.g. rural or urban)

- What steps the perpetrator has taken to avoid or reduce the nuisance
- The use of the activity causing the noise to the public

N.B. Relevant guidance documents and standards can be used to support the officer assessment. E.g. When investigating a noise of an industrial nature, noise measurement assessments can be used to help indicate whether there is a likelihood of complaints occurring, which can be carried out to assist the officer in their subjective assessment of a statutory nuisance e.g. 'BS4142 -Method for rating industrial noise affecting mixed residential and industrial areas', 'University of Salford, Procedure for the assessment of low frequency noise complaints. NANR 45- Criteria'.

Action available to the Local Authority.

All incoming complaints received by Herefordshire Council Environmental health are assessed and case history checks made. Generally for first enquiries, the initial action is to inform the person / business responsible for alleged statutory nuisance of the complaint, and advice given. Additionally, the complainants will be requested to provide evidence of any further occurrences of the matter and its impact on them in their property. This is usually requested in the form of a log sheet. The log sheets aim is to provide the case officer with sufficient information to demonstrate the on-going problem (time, duration and impact of problem). On receipt of this additional information an officer will assess the data to establish the next course of action. This log information is essential to the investigation as evidence of the nuisance being experiencing and assist the officer in carrying out a suitable, efficient and effective investigation.

If a full statutory nuisance investigation is deemed necessary, then this may involve the following methods relevant to the investigation; carrying out monitoring visits (personal observations), taking photographs, noise level measurements, sound recordings, using or installing monitoring equipment etc. In addition to any evidence provided by the complainant.

If the Local Authority is satisfied that a 'statutory nuisance' exists, or is likely to exist, then it can issue an abatement notice under the Environmental Protection Act 1990 to require the statutory nuisance ceases from continuing. Hence, the vast majority of cases that are presented to the local authority are on-going issues (rather than one-off issues) where a state of affairs exists.

If a served abatement notice is not complied with and the nuisance continues, further evidence of this breach needs to be established by the Local Authority and legal action would be instigated. If found guilty this will result in a criminal conviction and a fine of up to £5,000 for domestic premises and up to £20,000 for commercial premises (and costs).

The Council on identifying a breach of notice can also take action to stop or restrict the nuisance by:

- carrying out works and making the person given the notice pay for them (this can include seizure and confiscation of equipment)
- applying to the High Court for an injunction (if a prosecution is not adequate)

If, however, the Local Authority investigation identifies no Statutory Nuisance or insufficient evidence of a likelihood of a Statutory Nuisance, then there are no further powers available to insist on any improvements and the case will be closed.

Action available to complainant.

An individual can take their own action direct to the Magistrates Court under Section 82 of the Environmental Protection Act 1990. The Magistrates Court will need to be persuaded that the nuisance problem amounts to a statutory nuisance. For further information on this action it is recommend further legal advice is sort or contact Citizens Advice.

Alternatively mediation may be considered. An independent third party will listen to the views of both parties and can help them to reach an agreed compromise. For a list of local mediation services visit webpage <http://www.civilmediation.justice.gov.uk/> .