



**Dealing with
Noise and Nuisance Problems**

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1. Introduction

1.1 What is a statutory nuisance?

Section 79 of the Environmental Protection Act 1990 lists the issues, which can be dealt with as a statutory nuisance:

- Premises or animals kept in a poor condition
- Noise – such as barking dogs, crowing cockerels, music and stereo equipment etc
- Dust, Steam and Odour (from non-domestic premises) - including muck-spreading, construction sites etc
- Smoke – from bonfires or chimneys (but not from a domestic chimney in a Smoke Control Area; this is controlled under the Clean Air Act 1993)
- Light – such as glare from security lighting
- Insects – such as those associated with sewage works and farms
- Accumulations and deposits of waste materials

A copy of the legislation, including a full list of statutory nuisances, can be found at:

<http://www.legislation.gov.uk/ukpga/1990/43/part/III/crossheading/statutory-nuisances>

These problems become *statutory nuisances* when an officer is satisfied that they could be considered to unreasonably interfere with the use or enjoyment of another property; the problem must occur regularly and continue for a period of time that makes it unreasonable.

Although the above list describes problems that *may* be considered a statutory nuisance, each case is considered on its own merits and a number of things must be taken into account in deciding whether or not the problem is likely to be a statutory nuisance:

- the general benefit to the public of the activity complained of
- whether the interference is a continuous state of affairs rather than a temporary one
- the nature of the locality
- how foreseeable was the harm caused
- any element of malice; was the problem caused deliberately
- whether the complainant has an interest in the land affected.

It is important to prove that the problem **materially** interferes with your comfort and well-being;

i.e. that it amounts to considerably more than annoyance or slight / passing discomfort.

Help with other types of nuisances

It may be that some problems which are not considered to be *statutory* nuisances can still be dealt with by the Council. These may include:

- dark or black smoke from business premises;
- dark or black smoke from a domestic chimney or a domestic bonfire burning business-related waste;
- pest control;
- smoke from a domestic chimney in a Smoke Control Area.

1.2 Noise nuisance

The following noise is unlikely to be considered a statutory nuisance:

- A one-off party;
- Neighbours arguing;
- A lawnmower used during the daytime;
- A baby crying or dogs barking occasionally.

The Council has no legal powers to control the following noise:

- Road traffic on the public highway;
- People shouting/laughing or screaming on a public road or footpath;
- Air traffic noise.

Most noise is not subject to a maximum noise level limit (decibel level). Each case must be judged on its merits taking into consideration factors such as:

- the time the noise happens (noise can be a nuisance at any time of day or night);
- the duration of the noise;
- the frequency of the noise (both the tone/pitch and how often it occurs);
- the type of noise;
- whether there is social acceptance/value (e.g. bonfire night).

The Council officer, not the complainant, decides whether a particular noise may be considered a statutory nuisance. Case law requires the officer to decide if, on the basis of their experience and knowledge, an ordinary 'reasonable person' would also find the noise unacceptable; therefore, officers cannot take into account those who have a different or higher expectation of peace, such as shift workers or people who are studying or ill.

2 How we investigate complaints about noise and nuisances

If you feel that you are suffering unnecessary or unreasonable levels of noise or nuisance there are a number of things you can do. Firstly, it may be helpful to speak to the person responsible for the nuisance before taking any other action. People often do not know that they are causing a problem and this approach may help to solve the problem on a more friendly level.

The Council's Business Compliance and Improvement Section is responsible for looking into some types of complaints of nuisance and can provide advice, information and detailed leaflets dealing with many aspects of nuisance. We aim to investigate and resolve all complaints in an efficient and thorough manner. In most cases, our investigation will involve the following steps:

Step 1

Brief details of the complaint will be noted. In most cases, we need to take the complainant's name and address as anonymous complaints generally cannot be investigated. Although information is treated confidentially, at some stage the source of the alleged nuisance may know who is being affected eg. if it proceeds to court.

Step 2

We will usually send the complainant log sheets to and ask them to keep a written record of the problem. This record helps the Council decide if the issue is likely to be considered a statutory nuisance and may also be used as evidence in Court at a later date. If a complainant is unable to complete log sheets, the investigating officer will try to arrange another way for the necessary details to be recorded. A Council officer who is competent to assess noise and statutory nuisance complaints will investigate the complaint and try to resolve it informally if at all possible.

Step 3

When completed log sheets are received from the complainant, the officer will contact the person being complained about and advise them that the Council has received a complaint. They will be made aware of the legal powers available to the Council if they cause a statutory nuisance. At this stage the Council will not release the identity of the complainant to the person being complained about, unless by agreement; however, it may be necessary for complainants to attend subsequent Court hearings as a result of legal action by the Council in respect of a statutory nuisance.

Step 4

Complainants will be sent further logs sheets to complete and will be asked to contact the office again if there is no improvement within 14 days. If the information collected indicates there may be a problem that could be a statutory nuisance further investigation will be carried out on site. This will involve an officer visiting to assess the problem on site the timing of the visits will be guided by the information recorded on the log sheets. A number of visits may be needed, normally no more than 3.

2.1 What happens if the problem IS considered a statutory nuisance?

If the officer believes the problem is a statutory nuisance, the Council will consider taking formal action requiring the nuisance to be abated.

It is likely that the person being complained about will be served with an Abatement Notice under Section 80 of the Environmental Protection Act 1990. If the person being complained about does not agree with the Notice and appeals, the complainant and other witnesses will be required to give evidence in a Magistrates' Court.

The officer will take the lead but the complainant experiencing the nuisance will have a key role in any proceedings.

2.2 Defences

Where an abatement notice relates to activities carried on at a trade or business premises, it is a defence in some circumstances to show that the best practicable means (BPM) have been used to prevent or counteract the nuisance. BPM involves having regard to local conditions and circumstances, the current state of technical knowledge, and financial implications. There are also specific defences for complaints of noise and nuisance on construction sites and in areas where there are noise levels approved through the planning process

2.3 What happens if the problem is NOT considered a statutory nuisance or the Council cannot obtain enough evidence to serve an Abatement Notice or to prosecute?

Section 82 of the Environmental Protection Act 1990 gives complainants the power to take independent action through the local Magistrates' Court to deal with noise and nuisances where:

- the Council considers that the problem is not a statutory nuisance;
- the Council cannot obtain enough evidence to serve an Abatement Notice or to prosecute; or
- you do not wish to involve the Council in resolving your complaint.

3 Taking Your Own Action.

There is provision for independent legal action to resolve noise and nuisance problems under section 82 of the Environmental Protection Act 1990.

A copy of section 82 of the Environmental Protection Act 1990 can be found at: <http://www.legislation.gov.uk/ukpga/1990/43/section/82>

3.1 What do I need to do?

As a general guide, taking independent legal action to resolve noise and nuisance problems under section 82 of the Environmental Protection Act 1990 should involve the following steps:

Step 1

If you feel it is safe to do so, approach the person causing the alleged nuisance and politely explain the problem.

Step 2

If the problem persists, write to the person responsible, referring to any conversations or agreements reached and keep a copy of all correspondence. Note: The 'person responsible' for the alleged nuisance is the person causing the problem or allowing it to happen; if he or she cannot be found or the problem is due to a structural defect, this is likely to be the owner of the premises.

Step 3

Keep a diary recording the dates, times and effects of the problems experienced. This may be useful as part of your evidence to describe the nuisance.

Step 4

Write to the person responsible again, informing them that unless the problem is satisfactorily resolved within an appropriate period of time (usually 2 weeks) a formal complaint will be made to a Magistrates' Court. Keep a copy of this letter.

BEFORE Step 5 (making a formal complaint to a Magistrates' Court), the person responsible for the alleged nuisance must be given:

- **at least 3 days' notice** if the problem is caused by noise; and
- **at least 21 days' notice** for any other statutory nuisance.

Enclosed is an example of a form that can be used to tell the subject they are causing a nuisance **'Notice under section 82(6) of the Environmental Protection Act 1990 of intention to bring proceedings'** (Example 1). Keep a copy.

Step 5: Making a formal complaint to a Magistrates' Court

If the problem continues, use a solicitor, or make a complaint to the Magistrates' Court. You will need to complete a Complaint Form and you may find the enclosed **Complaint** (Example 2) of use when drafting your complaint. Keep a copy. Please note that this form must be taken to the Magistrates' Court named on the form together with four copies of a Summons on Complaint.

The enclosed **Summons on Complaint** (Example 3) may assist you with drafting your Summons. In the Wigan and Leigh area, these should be taken to:

The Clerk to the Justices
Wigan and Leigh Magistrates' Court
Darlington Street
Wigan
WN1 2DW

Enquiries : 01942 405 405

Fax: 01942 405 444

Full details can be found at:

<https://courtribunalfinder.service.gov.uk/courts/wigan-and-leigh-magistrates-court>

Further advice on Court procedures can be obtained from a solicitor or the local branch of the

Citizens Advice Bureau:

<http://www.citizensadvice.org.uk/index/getadvice.htm>

After the complaint has been made, the justice or the justices' clerk will consider it and go through the judicial exercise of deciding whether or not to issue a summons. They will check that the court has the power to make the order requested and that the complaint is within any limitation of time. Please note that the complaint must be made within six months from the time when the matter of complaint last occurred.

If satisfied, the court will list a hearing date, issue the summons and return signed copies to you for service on the Defendant. Effective service on an individual must be by one of the following methods:

- by delivering it to the Defendant; or
- by leaving it for the Defendant with some person at his/her last known or usual place abode; or
- by sending it by post in a letter addressed to him/her at his/her last known or usual place of abode. It is advisable to keep a written record of the date, time and method of service, as you will be required to prove to the court that the summons has been properly served.

You and the Defendant will then be required to attend the hearing to present each case. At court, you will need to prove to the Magistrates that, on the balance of probabilities, the noise/nuisance you are complaining about amounts to a statutory nuisance. Both you and the Defendant may give oral evidence yourselves; call witnesses to give oral evidence and submit any written evidence, including the diary discussed in Step 3, to support your respective cases.

If, after hearing the evidence, the court believes that a statutory nuisance exists, it can make an order requiring either:

- that the Defendant abate the nuisance, within a time specified in the order and execute any works necessary for that purpose; and/or
- that a recurrence of the nuisance is prohibited and that the Defendant, within a time specified in the order, execute any works necessary to prevent the recurrence. The court may also impose a fine on the Defendant of up to £5,000 and make a Costs Order if it deems appropriate. If the Defendant ignores the order without reasonable excuse s/he will commit a criminal offence and be liable on summary conviction to a fine up to £5,000 together with a further fine of up to £500 for each day on which the offence continues after conviction. Again you will need to prove this to the court, so it is important to continue to keep your diary if there is no improvement.

Defences

Where an abatement notice relates to activities carried on at a trade or business premises, it is a defence in some circumstances to show that the best practicable means (BPM) have been used to prevent or counteract the nuisance. BPM involves having regard to local conditions and circumstances, the current state of technical knowledge, and financial implications. There are also specific defences for complaints of noise and nuisance on construction sites and in areas where there are noise levels approved through the planning process

3.2 Costs

Taking independent legal action to resolve noise and nuisance problems should be relatively simple and low-cost.

You do not need to employ a solicitor, but it is advisable to obtain independent legal advice.

Following conclusion of the case, the court has a discretion to make an order as to costs as it considers just and reasonable; this applies both to the amount of costs to be paid and also who should pay them. What the Court will think just and reasonable will depend on all the relevant facts and circumstances of the case. It may think it just and reasonable that costs should follow the event, in other words, that the Defendant pays the complainant's costs if the complaint is successful or, alternatively, that the complainant pays the Defendant's costs if the complaint is dismissed. This is entirely at the discretion of the Court, however, and a different order may be made.

If the nuisance is not proven, you will normally have to pay your own costs and may incur the costs of the other party.

Example 1

PRIVATE ACTION FOR A STATUTORY NUISANCE
**NOTICE UNDER SECTION 82(6) OF THE ENVIRONMENTAL PROTECTION
ACT 1990 OF INTENTION TO BRING PROCEEDINGS**

To (*name*):

Of (*address*):

EXISTENCE OF A STATUTORY NUISANCE

I (*name*),

Of (*address*)

Hereby give you this notice of my intention to bring proceedings against you under the provisions of Section 82 of the Environmental Protection Act 1990. I have made repeated complaints to you about (*specify the nature of the complaint*):

in relation to the premises known as (*name/address*):

and no action has been taken by you.

I am of the view that the (*specify the nature of the statutory nuisance*):

is prejudicial to my health / a nuisance (*delete as appropriate*) because (*describe the substance of the complaint; times, levels etc.*):

Unless I am satisfied that this statutory nuisance has been abated by (*specify a date at least **21 days**, or **3 days** in the case of noise, from the date of this Notice*) _____,

I will issue proceedings against you in the Wigan and Leigh Magistrates' Court to seek an Order to abate and/or prohibit a recurrence of the nuisance. I reserve the right to take that action without further notice to you.

Name (block capitals):

Signed:

Date:

Example 2

Complaint

(MCA 1980, ss51, 52; CPR 2005, r 7.1)

Wigan and Leigh Magistrates' Court (1749)

Date:

Defendant: *(name of the person responsible for the statutory nuisance)*

Address: *(address of the person responsible for the statutory nuisance)*

Matter of complaint:

(particulars of the statutory nuisance & statute, see the example below)

That on (date) a statutory nuisance, namely (nature of and short particulars of the statutory nuisance), as defined by section 79(1) of the Environmental Protection Act 1990 existed at (specify the address of the premises) and [continues to exist] [is likely to recur] AND THAT (name of person responsible) is responsible for the statutory nuisance.

Order requested:

(delete as appropriate)

That (name of person responsible) is required to abate the nuisance within (time limit) and execute any works necessary for that purpose; and/or

That a recurrence of the nuisance is prohibited and that (name of person responsible) is required within (time limit) to execute any works necessary to prevent the recurrence.

The complaint of:

Address:

Tel:

who [upon oath] states that the defendant was responsible for the matter of complaint of which particulars are given above.

Taken [sworn] before me,

Justice of the Peace
(Justices' Clerk)

Example 3

Summons on Complaint (MCA 1980, ss 51, 52; CPR 2005, r 7.7)

Wigan and Leigh Magistrates' Court (1749)

Date:

To the Defendant: *(name of the person responsible for the statutory nuisance)*

Address: *(address of the person responsible for the statutory nuisance)*

You are hereby summoned to appear on *(date and time to be agreed with the court)* before the Magistrates' Court, Darlington Street, Wigan, WN1 1DW (Tel 01942 405 405/Fax 01942 405 444) to answer to the following complaint.

Matter of complaint:

(particulars of the statutory nuisance & statute, see the example below)

That on (date) a statutory nuisance, namely (nature of and short particulars of the statutory nuisance), as defined by section 79(1) of the Environmental Protection Act 1990 existed at (specify the address of the premises) and [continues to exist] [is likely to recur] AND THAT (name of person responsible) is responsible for the statutory nuisance.

Order requested:

(delete as appropriate)

That (name of person responsible) is required to abate the nuisance within (time limit) and execute any works necessary for that purpose; and/or

That a recurrence of the nuisance is prohibited and that (name of person responsible) is required within (time limit) to execute any works necessary to prevent the recurrence.

The complainant is:

Address:

Tel:

Date of complaint:

Justice of the Peace
(Justices' Clerk)