



Environmental Protection Act 1990 Potential Statutory Nuisance Advice

People often report to the Council that they are being disturbed by domestic, commercial, recreational or construction activities. Areas of concern raised include dust, noise, smoke from bonfires or chimneys, odours and the keeping of animals. In some cases the Council can take action against those responsible for causing, what is legally termed, a 'statutory nuisance'. This guidance note provides information on how you can try and resolve issues themselves, and, should this fail, how you can ask the Council for assistance.

Note: Noise from intruder and vehicle alarms is a special case as activated alarms can cause problems over a wide area. They have a separate legal process but should still be reported on-line at www.havering.gov.uk using the 'Report' button.

What can you do?

Problems can often be quickly remedied by an informal discussion with your neighbour. In fact, experience shows that involving the Council without this informal approach often serves to inflame neighbourly relations.

We offer the following guidelines;

1. Approach the person causing the disturbance when the problem has stopped. Communications are likely to be calmer and clearer at this time, providing a better opportunity to discuss the issue.
2. Politely explain that they are disturbing you and the impact this is having on your life i.e. you couldn't sleep.
3. If you are not confident enough to approach your neighbour directly you could ask a friend or family member to do this on your behalf, or you could write to your neighbour.
4. If you live in rented property, you could discuss the problem with your landlord. Most tenancy conditions include a requirement that tenants do not cause a disturbance to neighbours. Your landlord may be prepared to take action if serious disturbance is being caused.

Often people are unaware that they are causing a problem and most will be glad to take action to reduce the disturbance. We would advise, however, that you approach the matter carefully if you think that your neighbour might react aggressively to a complaint.

If your neighbour continues to cause a problem and the issue may be classed as a 'statutory nuisance' you may wish to complain to the Council.

What constitutes a statutory nuisance?

Councils have powers to investigate and deal with defined statutory nuisances under Section 79 of the Environmental Protection Act 1990. The Act is very specific about what could be classed as a statutory nuisance. The problem must be coming from a property or land and must affect another property *. These powers apply not only in order to control existing nuisances but also those that are expected to occur or recur.

For a statutory nuisance (noise, dust, odour, smoke, keeping of animals) to exist, it must be shown that the issue is either 'prejudicial to your health' or is significantly interfering with your reasonable enjoyment of your property. It must occur regularly and continue for a period of time that makes it unreasonable. It is not enough for the issue to be merely annoying or disturbing. The Council can only take action if evidence is gathered (in partnership with you) and what is disturbing you constitutes a 'statutory nuisance', within the terms of the Environmental Protection Act 1990.

There are no stated levels or time periods beyond which a situation is judged to be a statutory nuisance; all statutory nuisances are assessed subjectively. Each case must be judged on its merits. We will take into consideration factors such as:

- the time day/night
- the duration
- how often the problem occurs
- its characteristics
- whether there is societal acceptance (for example bonfire night or church bells)
- your activities it is effecting
- where you are affected.

What is NOT a statutory nuisance?

The following are unlikely to be a statutory nuisance:

- a one-off party
- neighbours arguing
- a lawnmower used during the day
- domestic cooking smells
- heavy footfall on stairs
- general domestic noise
- issue is due to poor noise insulation between properties rather than unreasonable behaviour by your neighbour
- a baby crying, children playing or dogs barking occasionally.

The Council has no control over the following:

- road traffic on the public highway
- people shouting/laughing or screaming on a public road or footpath
- aircraft or railway noise

* In the case of noise, vehicles, machinery and equipment in a street are also included

Types of statutory nuisance

Dust

Dust can arise from construction/demolition activities or certain commercial operations, such as the handling of waste.

Noisy neighbours

Noise from neighbours is a common source of disturbance and it can be very upsetting. The main problems are caused by barking dogs, loud music or TV, shouting, banging doors and DIY activities. No house or flat is totally soundproof so everyone can expect a degree of noise from adjoining neighbours. If you are being disturbed by noise from neighbours it may be because:

- the neighbours may be behaving unreasonably, for example, playing loud music late at night or allowing their dog to bark all day.
- the neighbours are behaving normally, but the sound insulation in the floors or walls between you may not be good enough to reduce the sounds of everyday living.
- you have become sensitised and intolerant to noise, particularly if you do not get on with your neighbours. Some people 'tune' into noise from next door and find it 'unreasonable', whilst others would not.

Noise from Commercial Activities

Early morning deliveries, poorly maintained plant/equipment, fork lift truck movements and construction/demolition noise are common examples of noise/vibration issues caused by commercial activities. Reasonable working hours for ongoing construction and DIY is Monday to Friday 0800-1800 and Saturday 0800-1300.

Smoke

Smoke can come from garden bonfires, commercial bonfires, construction/demolition sites, barbecues and chimneys (both commercial and residential).

Keeping of Animals

Animals kept in residential premises can give rise to a number of issues, such as odours, effluent and insects.

Making a complaint to the Council

In order to help us decide if we can assist you further we need you to complete the attached questionnaire and diary sheets as fully as possible, providing details of the problem and how you have attempted to resolve it to date. Please would you complete the diary sheets over a period of 21 days and return them with the questionnaire, either by email or post. We would strongly recommend that you retain a copy of the diary sheets for your own records or in case they get lost in transit. Unfortunately, we will be unable to assess your case without this information.

We recognise that sometimes a problem is so frequent that a shorter period of time may be appropriate, whereas there are other times when a problem may be infrequent and a longer period of time may be more appropriate. It is important that the record of incidents demonstrates that there is a potential statutory nuisance and at the same time provides sufficient information to permit a meaningful investigation to begin.

If we do not hear from you with all of the required information within 28 days (4 weeks), we will presume that you no longer need our involvement and the case will be closed. If we subsequently receive your records and they are still pertinent to your original complaint, we will re-open your case.

Why do I need to keep diary sheets and complete the questionnaire?

Diary sheets and the questionnaire are an important source of evidence. They enable an investigating officer to establish some basic facts about the problem, (for example, when and how often it occurs and how it affects you) and the action you have tried to take yourself.

If you are unable to complete the diary record sheets, please contact us to discuss the way forward.

What happens once I have returned completed diary record sheets and questionnaire?

On receipt of your completed questionnaire and diary sheets we will;

- assess them to determine if there is sufficient information to indicate the likely existence (or not) of a statutory nuisance.
- If we cannot assist, you we will advise you of this verbally and/or in writing. You can then consider whether you wish to take your own action, details of which are included at the end of this pack.
- If we can assist you, we will write to you confirming this. At this point in time we will also write to the person/address that you identified as the source of the nuisance.

Your identity will not be revealed but the evidence you have provided will be put to the person you have identified. We will then seek their co-operation to resolve to resolve the matter informally. This is often successful; therefore, if we do not hear from you 35 days after receiving our letter confirming we are writing to the other party we assume this is the case and the matter will be closed.

- If the informal approach does not resolve the matter, then the case will be allocated to an officer to investigate.
- Please note that during the busy summer period we may need to operate a waiting list for investigations to begin and you will be informed if this is the case.

What happens during an investigation?

- Arrangements will have to be made for an officer to witness the statutory nuisance in person, and/or to install noise-monitoring equipment before we can take formal action.
- This may involve a number of visits if the problem is irregular or intermittent. Without these visits there is a strong possibility that we will have insufficient evidence to take the matter forward.
- If, after an investigation, no statutory nuisance is substantiated, the complaint will be closed. This decision will be confirmed verbally and in writing.
- If a statutory nuisance is determined it is likely that an 'Abatement Notice' will be served on the person causing the problem. This is a legal document requiring the activity causing the problem to stop or reduce. This often successfully resolves the matter. Therefore, if we do not hear from you within 3 months, your case will be closed. If you subsequently report that the statutory nuisance is continuing then we will re-open your case.

Will the perpetrator know who made the complaint?

We do not tell the perpetrator who has made the complaint. However, it may be necessary for you to attend court hearings as a result of legal action by the Council in respect of a statutory nuisance. Further, when taking formal legal action following a breach of an Abatement Notice, it may be necessary to include your address within the legal documents submitted to all the defence's solicitors. The chances of a successful prosecution may be seriously weakened if you do not agree to disclosing your identity at this stage or giving supporting evidence in the Magistrates' Court.

What if the problem continues after the abatement notice has been served?

If you are still bothered following the service of an abatement notice then;

- Please notify the investigating officer.
- The officer will arrange further monitoring and/or visits to witness the breach of the Abatement Notice.
- You will be asked to continue keeping a written record on the diary sheets to provide further evidence that the statutory nuisance continues.
- If the investigation proves that the requirement(s) of the Abatement Notice have not been met, the investigating officer can apply to the Magistrates' Court for a warrant to enter the perpetrator's premises. The Council can then seize and detain any equipment used to cause a statutory nuisance i.e. iPods, cd's,

speakers, stereos.

- The officer will also send evidence of the breach of the Abatement Notice to the Head of Legal Services requesting legal action against the perpetrator. Any equipment seized can be held by the Council until the court hearing. The Council can request that the equipment is not returned to its owner at the hearing.
- People found guilty of breaching an Abatement Notice can be fined.
- At all times during the investigation, the investigating officer will keep you informed of any significant action taken in relation to your complaint.

Out of Hours

The Council does not operate an Out of Hours service that responds to new complaints. However, we are able to make visits outside of normal working hours where the Council is satisfied there is a likely nuisance based on information provided within diary sheets.



Public Protection Nuisance Questionnaire & Diary Sheets

What is your name?	
What is your address?	Tel no. Mobile Email
What is the name and address of the person that you are complaining about? (Where is the problem coming from?)	Name: Address:
What is it that is disturbing you? (eg Noise, Dust, Smoke etc. If noise; what kind of noise is it. music, TV, shouting etc)	
Approximately how often does it disturb you? (per week, per month for instance?)	
How long has this been going on for?	
Have you spoken or written to your the person who is causing the problem about this? Please include date(s) and enclose copies of all correspondence.	
Was speaking/writing to the person causing the problem, effective, even if only for a while?	

Have you attempted formal mediation? (Please enclose copies of all correspondence relating to the mediation process)	
Formal action to resolve statutory nuisance often ultimately ends in action in the Court(s), and it is therefore impossible to protect complainants' identities at that time. Have you considered this and are you prepared to provide evidence that may end up in court?	
Would you be prepared to give evidence in court in person if required?	

Date	Time (24hr clock)		Description of Problem	How it affected you	Wind Direction
	Start	Finish			
20/07/2005 Example	14:00hrs	15:30hrs	Smoky bonfire	Ash and smoke throughout house	
20/07/2005 Example	23:30hrs	02:30hrs	Loud music	I couldn't sleep	

This statement consisting of page(s) signed by me is true to the best of my knowledge and belief and I make knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Name

Signed

Dated the day of201...

LOGSHEET NO:of.....

Continue Overleaf

Once completed, please return to the address below together with your completed diary sheets:

Public Protection
London Borough of Havering
Town Hall
Main Road
Romford
RM1 3BD

We are unable to consider your case without this, and supporting diary sheets, so please ensure that you have completed all parts as fully as possible.

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Public Protection

Private Action Against Statutory Nuisance

The Council's Public Protection staff are the recognised experts in assessing the existence of a statutory nuisance and their professional judgement is very important. If they consider a statutory nuisance is being caused, a magistrate will usually accept their view. However, it is not always possible for the Council to establish the existence of a statutory nuisance. This may be because the nuisance occurs only occasionally and it is not possible for council officers to witness the nuisance. In other cases the officer may feel the matter could not be classed as a 'statutory nuisance' and, therefore, cannot take any legal action on behalf of a complainant. In these situations you can take independent action by complaining directly to the Magistrates' Court under Section 82 of the Environmental Protection Act 1990. This is easy to do and need not cost much. It is not necessary to employ a solicitor, as the Clerk of the Court is responsible for guiding you through the process in court.

What you should do

Firstly, discuss the problem with the person causing it. Many problems can be resolved informally, with a little co-operation on both sides. Sometimes neighbours do not realise they are causing a problem. Try to be reasonable, otherwise discussions could end in further arguments and deterioration in neighbour relations.

If this fails to resolve the issue, you may wish to consider mediation. Mediators are independent, non-legal people who listen to both sides of the dispute and help those involved to reach agreement. Further details on your nearest Mediation Service can be found at <http://civilmediation.justice.gov.uk/>.

If attempts to resolve the matter informally fail, you may complain directly to the Magistrates' Court.

How to complain directly to the Magistrates' Court

The magistrate must be satisfied that the issue amounts to a statutory nuisance. The following will help you to put your case:

1. Keep a detailed written record of the problem and its effects. The record must be accurate, stating each date and time the problem occurred, and describing how it affected you (for example, could not sleep, could not hear TV)
2. Do not exaggerate any effect or times – stick to the facts. Remember, there must be an unreasonable interference with the enjoyment of your property.
3. Provide as much evidence as possible to support your allegation of a nuisance.

4. If you decide to take action under Section 82 of the Environmental Protection Act 1990, you must give the perpetrator at least three days notice for noise issues, and at least 21 days' for all other nuisance issues.

What do I need to include in the Notice to the perpetrator?

The notice should include details of the complaint. It can be delivered to the perpetrator by hand or post. Make sure your letter is dated, and keep a copy. It is likely to strengthen your case if you have acted in a reasonable manner, and given the perpetrator the opportunity to rectify the situation before resorting to legal measures.

What if there is still no improvement?

The next step is to contact the Clerk of the Magistrates' Court. Tell them you wish to make a complaint under Section 82 of the Environmental Protection Act 1990. They will probably make an appointment with you to discuss the procedure and ask you to produce evidence that you have an arguable case. You must also let them know if the Council's Public Protection team has been involved in the investigation. Subject to the evidence being satisfactory a summons will be issued and served on the perpetrator, stating the date and time arranged for the court hearing. They will probably come to Court to defend themselves and may even make counter-accusations.

You may want a solicitor to represent you at the hearing, but this is not essential. Legal Aid is not usually available towards the cost of proceedings in the Magistrates' Court, but legal advice prior to the proceedings may be available under the Green Form Scheme, depending on your financial circumstances.

If you present your own case, the Clerk of the Court will give you advice and guidance.

At the court hearing, both parties will be given the opportunity to present their case to the Magistrates, who will then decide the outcome of the case, based on the evidence heard. If they are satisfied that a nuisance exists, or may start again, they will make one or both of the following:

1. An Order requiring the person causing the nuisance to stop it within a specified time
2. An Order preventing the nuisance being started again.

The Magistrates may also fine the perpetrator up to **£5,000** if they feel this is necessary. If the Magistrates are not satisfied that a nuisance existed, exists or is likely to occur, no formal action will be taken.

Useful Contacts

Haverling Magistrates' Court

Main Road
Romford
Essex
RM1 3BH

Tel: 020 8437 6529/70