

NUISANCE INVESTIGATION PROCEDURE

What is a Statutory Nuisance?

Statutory nuisances are listed in the Environmental Protection Act 1990. The Council is obliged to investigate nuisance complaints and, if appropriate, take action to resolve them. These include nuisance arising from noise, waste, artificial light and smoke from domestic properties, and smells, dust, and insects from business premises.

For a nuisance to be a statutory nuisance it must cause a substantial interference with the use or enjoyment of your property.

How does the Council assess the existence of a Statutory Nuisance?

To determine if the nuisance is substantial enough to be a statutory nuisance the Investigating officer will need to consider the times, duration, regularity, impact and locality of the nuisance, and also consider any motives behind the nuisance, and possible means available to resolve the nuisance.

The investigation of complaints will usually follow the staged approach detailed below but officers retain the discretion at all points in the investigation to bypass stages. This may occur for instance when the nuisance is so blatant that immediate action is warranted, or where evidence from multiple complainants effectively corroborates the nuisance.

STAGE 1

A named officer will be allocated to your case. An advisory letter and a nuisance diary will be sent to you. You will be required to keep a diary for 14 days (this period can include existing diary logs if you have them). The officer can be contacted in confidence at any time to discuss your complaint, or if you think that the keeping of a diary for 14 days is unnecessary, or if there are problems with completing or submitting your diary.

A nuisance diary is provided below - a downloadable version of the nuisance diary is available on the Council's website at: -

<https://www.fenland.gov.uk/nuisance>

If a nuisance diary is not submitted, you will be contacted to review your complaint. Please note, without a completed diary, it is likely that your case will be closed.

STAGE 2

The officer will assess your diary to determine if the nuisance described has the potential to amount to a statutory nuisance.

If the officer considers that the nuisance logged does not have the potential to amount to a statutory nuisance, they will advise you why in writing. The complaint

will be closed and you will be advised that your case will only be reinvestigated if a further nuisance diary is submitted which shows that the nuisance has significantly increased in, for example, the duration or regularity of nuisance episodes.

If the officer forms the opinion that your nuisance diary provides evidence of a potential statutory nuisance they will aim to corroborate this evidence. The officer will discuss how this is to be achieved with you and this may include one or more of the following: -

- the use of recording equipment deployed inside your house
- evidence witnessed by officers visiting your house
- your own audio recordings

For nuisance occurring during office hours, you will be advised to contact the officer who will attempt to witness it during these periods. For nuisance occurring outside office hours, the officer will discuss alternative monitoring arrangements. The officer will usually arrange to visit your property to undertake monitoring on at least three occasions.

If the officer is unable to corroborate the evidence and forms the opinion that the evidence obtained does not amount to a statutory nuisance the Council may decide that it is unable to proceed with the investigation of your complaint. **In this case you will be sent a letter advising you why – this letter will also include details on how to take your own private nuisance action – see advice in Appendix 1.**

STAGE 3

If the evidence is corroborated the officer will write to the responsible person requesting them to control the nuisance to a reasonable level. Although your details will be kept confidential the recipient of this letter may still form their own opinion on who complained. However, the officer will explain that the nuisance has been judged to be unreasonable following the Council's independent review of the evidence.

Almost all cases are resolved informally, although this will depend on the nuisance and the willingness of the person causing the nuisance to adjust their behaviour. The outcome of the monitoring will be discussed with you and the person responsible, and time may be needed for an informal resolution or for alternative measures to be put in place.

STAGE 4

If the nuisance continues and the officer is satisfied that the nuisance amounts to a statutory nuisance a formal abatement notice is served requiring the responsible person to abate the nuisance. At this stage you may be required to produce a witness statement and should be prepared for the possibility of providing evidence in Court. You should also be aware that at this stage the person served with the notice has a right of appeal to the Magistrates Court within 21 days. At this point it may not be possible to maintain your anonymity. However, in the majority of cases abatement notices are not appealed and are complied with without the need to attend court.

If the nuisance continues then further enforcement action may be necessary. At this stage you should continue to inform the officer of any possible breaches of the notice and maintain a nuisance diary. Officers will monitor for compliance with the notice with any breaches being referred to the Council's Legal Section for prosecution.

The officer will consult with you throughout any formal proceedings ensuring that you have all necessary assistance and advice.

GUIDE TO USING *NUISANCE RECORD SHEETS

1. WRITE DIRECTLY on to the Nuisance Record Sheet at the time the nuisance occurs, or when this is not practicable, as soon as possible afterwards.
NB MUST BE THE SAME DAY AS THE NUISANCE OCCURS.
DO NOT note your record elsewhere and then transfer to the Nuisance Record Sheet, as this is then not admissible as evidence.
2. NOTE the DAY, MONTH, YEAR in the Date Column e.g. 2 August 2005.
2. NOTE the time the nuisance commences. Use 24-hour clock (e.g. 8pm = 20.00).
3. NOTE type of nuisance and exact source of nuisance.
NB it is very important to fully describe the nuisance in detail (for example, with noise nuisance: e.g. mechanical hum: crane noise: fan noise: music (type and if tune, words etc. distinguishable) etc. DO NOT just describe the noise as LOUD! UNBEARABLE! etc.
4. NOTE the effect the nuisance has on you: i.e., in the case of noise, disturbed sleep; could be heard over TV; woke children; interfered with speech.
5. NOTE the time that the nuisance ceased (use 24-hour clock).
6. Initial each entry and sign each page.
7. Finally, send it to Environment Health, Fenland District Council, Fenland Hall, County Road, March, Cambs. PE15 8NQ.
8. NB it is very important to use these forms correctly as they may be used in Court as evidence.

*Complaint being Noise/Odour or Smoke

Complaint Ref:
Subject Address:
Name of Complainant:

NUISANCE LOG SHEET

DATE, TIME AND DURATION OF EVENT			WHAT HAPPENED? Include a description of the event, what you saw/heard and how it affected you. Also include details of any relevant letters/conversations.
DATE	START	FINISH	

Please confirm if you are willing to provide a witness statement YES
NO (Please circle)
Are you prepared to give live evidence in Court? YES
NO (Please circle)

Please continue on extra sheet or request another sheet from Environmental Health, Fenland Hall, March, Cambs, (01354 654321).



INFORMATION ON TAKING YOUR OWN LEGAL ACTION
REGARDING ALLEGED NUISANCE
SECTION 82- ENVIRONMENTAL PROTECTION ACT 1990

Some types of nuisance occur only occasionally and if it's not possible for an Environmental Health Officer to witness the nuisance, he or she may not feel able to take any action on behalf of an individual who have lodged a complaint about it. Similarly the Council may investigate your complaint but be of the opinion that their investigations show that your complaint does not warrant enforcement action under the terms of Section 80 of the Environmental Protection Act 1990.

Should this be the situation in your case, **or if you do not agree with the Council's opinion**, then you can take independent action by complaining direct to the Magistrates' Court under section 82 of the Environmental Protection Act 1990. To do this is quite simple and it need not cost much; it is not necessary to employ a solicitor. Prior to approaching the court it is a good idea to write to your neighbour/commercial operator saying that unless the nuisance is abated and by a certain date (say two weeks) you will complain to the Magistrates' Court. Keep a copy of all correspondence between you and your neighbour/commercial operator. If the perpetrator ignores either a verbal or written request from you to abate the nuisance, then you should contact the Justices' Clerk's Office at your Local Magistrates Court explaining that you wish to make a complaint under section 82 of the Environmental Protection Act 1990. The Clerk of the Court will be able to advise you further. He or she will tell you for example, that if you intend to complain direct to the Magistrates' Court then you must give at least three days notice to the person considered responsible for the nuisance that that is what you intend to do. You will need to follow this procedure even if you have written to the neighbour/commercial operator already along the lines outlined above. The notice should provide details of the intended complaint and may be delivered to the person by hand or by normal post. A solicitor could do all this for you (his or her letter to the perpetrator would show you mean business) but solicitors do make a charge for their services.

You would need to prove to the magistrate beyond reasonable doubt that the nuisance, you are complaining about amounts to a substantial interference in the material comfort of your home. The diary you keep therefore will be important evidence. Also, although the law says that only one person needs to be affected for there to be a nuisance, in practice the evidence of other witnesses will strengthen your claim. If the Court is of the opinion that you have a strong case to be answered a date will be set for the hearing and the person about whom you are complaining will be summoned to attend Court. You will be required to explain you view of the problem and should provide evidence – your diaries and any independent witnesses – about the disturbance. You will have to give evidence, and cross-examine your own supporting witnesses to draw out their evidence.

The neighbour/commercial operator will be able to cross-examine you and your witnesses and may produce their own evidence to contradict yours. Again, a solicitor can help, but there is no reason why you cannot take action on your own.

* Please note: **The law relating to business premises is slightly different, as they can defend themselves by proving that they are using the “best practicable means” to prevent the nuisance.**

If you prove your nuisance case the Court will make an order requiring the nuisance to be abated, and/or prohibit a recurrence of the nuisance. The Court also has the power at the time the nuisance order is made to impose a fine on the defendant (currently not exceeding £2,000). If this order is ignored further Court action will need to be taken; you must therefore continue to keep records of noise nuisance in case it proves necessary to return to Court. If you fail to prove your case you may have to pay some of the defendant's expenses in coming to Court.