

STATUTORY NUISANCE

Taking Your own Private Action

What is a statutory nuisance

A statutory nuisance is something that, under the Environmental Protection Act 1990, affects a person's health or causes disturbance to them in their property. Nuisance can broadly be defined as something that unreasonably affects somebody's use and enjoyment of their home and property.

Noise is the most frequently complained of nuisance issue although there are other things that can be considered as nuisances. These include smoke (e.g. from garden bonfires), dust, odour, and accumulations. The Environmental Protection Act 1990 lists other specific types of nuisance.

Noise as a statutory nuisance

To be a statutory nuisance a noise must occur frequently and continue for a period of time that makes it unreasonable.

The following are unlikely to be a statutory nuisance:

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

The council has no control over the following:

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

Sound levels (i.e. decibel levels (dB)) generally do not apply to statutory nuisance. Each case must be judged on its own merits and the following factors are considered to help decide if the noise is a nuisance:

- the time of the noise (noise can be a nuisance at any time of day or night but is more likely to be a nuisance at night)
- the duration of the noise (how long does it go on for when it happens?)
- the frequency of the noise (how often does it happen?)
- the type of noise (is it high pitched or does it have a particular characteristic)
- the volume of the noise (quiet noise might be a nuisance if it continues for long periods of time)
- is it 'reasonable' for the noise to be occurring when or where it is? (e.g. someone living near to an industrial estate cannot expect the same level of noise as someone living in the countryside).
- is there societal acceptance of the noise? (eg fireworks are generally accepted around bonfire night or church bells accepted on a Sunday)

In all assessments of nuisance the environmental health officer investigating the case, not the complainant, makes the decision on whether the noise is a nuisance. Case law requires the Officer to act as the 'standard person' when reaching the decision. Therefore, those who have a different or higher expectation of peace, such as shift workers or people who are studying/ill, may not always get the result they want.

Why should I consider taking private nuisance action?

To take action on your behalf the Council must witness and experience the nuisance you are complaining about for themselves. They must also be satisfied that they have evidence to show to a court that the disturbance is serious enough to be considered a 'statutory nuisance' in a legal sense.

The Council must take steps as are 'reasonably practicable' to investigate a complaint and has no duty to take legal action unless it is satisfied that a nuisance exists. Whilst every effort is made to investigate a nuisance, there are occasions when Officers do not witness the problem or fail to gather enough evidence to demonstrate that it exists - for example, if the noise is irregular.

In such cases it is possible for those affected by the nuisance to take their own private action directly to a Magistrates Court. This is done using exactly the same law used by Environmental Health Officers – the Environmental Protection Act 1990, but uses a different section – Section 82.

Do I need to have a solicitor to take a private action?

No. Taking your own private action is straightforward. The law is written so that members of the public can use the court system to resolve to their problem. It need not be expensive and you do not need a solicitor. You may, however, wish to consult with a solicitor before taking legal action.

How do I begin to take private nuisance action?

You would be required to show the Court that you have attempted to resolve the problem yourself. To do this you should write to the person concerned and tell them that you believe they are causing a nuisance. You should tell them in the letter that if they do not do something to stop or reduce the nuisance themselves, then you will be considering taking a private action under **Section 82 of the Environmental Protection Act 1990**.

Your letter should state the reason for your complaint – e.g. that nuisance is being caused by excessive dog barking/playing of loud amplified music/smoke from bonfires. You should keep copies of all correspondence sent or received regarding your issue. An example letter is provided at the end of this leaflet.

What evidence do I need?

The letter you send is the first piece of evidence you will need to help persuade the court that you are suffering from a statutory nuisance.

Once you have sent the letter you should begin logging when the nuisance happens by writing down the dates and times on a simple diary monitoring form (example provided). You should record on the form how the nuisance affects you and why it is stopping you from enjoying your property – e.g. you cannot sleep because of the noise or you were not able to sit in the garden because of smoke from a fire.

You may also wish to begin gathering other forms of evidence such as approaching others (e.g. friends or neighbours) who may have witnessed or experienced the problem themselves and would be willing to support you.

Be careful, however, if you decide you want to record or video the nuisance. This type of evidence can be very useful but to avoid any action being taken against you, you should ensure you have told the person you are recording that you may be gathering evidence in this way. You can advise them in your initial letter. If you do take photographic or video evidence you should be sure to only take it of the nuisance occurring and nothing else or they may have a case against you for invasion of privacy.

Don't forget – You must keep copies of all correspondence sent or received regarding your issue.

What do I do if the problem continues?

If the person causing the problem chooses to ignore your letter to them and continues with their action then you should write to them again and inform them that you will be applying to the Magistrates Court for proceedings to be taken. You must give them **at least 3 days** notice of your intention to do this. An example letter is provided with this leaflet. You must keep a copy of this notification for future reference.

If the problem continues then you should gather together all your evidence and contact the Clerk at Oxford and Southern Oxfordshire Magistrates' Court, The Court House, Speedwell St, Oxford OX1 1RZ (tel: 01865 448020).

You will be required to visit the Court in person with your evidence. The Court is open weekdays from 9am and you should aim to visit around this time. You should go to the Counter and explain that you want a Summons served under Section 82 of the Environmental Protection Act 1990. You should be prepared to produce your evidence to show the Magistrates that you have an arguable case.

If the Magistrates are satisfied that you have a case that should be answered, you will be given the time and date of the hearing. The Court officers will serve the Summons requiring the defendant to turn up at Court at that time to defend the case. A charge is made by the Court at the commencement of proceedings – you should speak with the Court and ask what these charges are. After the Summons has been issued, you should continue to keep a record of evidence as described above which you can bring to the Court on the date of the hearing.

What happens at court?

On the date of the hearing you should arrive for the time allocated with your evidence and any witnesses you may have. You will be required to explain to the Magistrates your side of the problem and will need to produce your evidence to show when and how it occurs, and how it affects you. You, and your witnesses, will be cross examined by the person you are accusing or by their legal representative.

Going to Court is a serious matter and there is a high degree of court etiquette which you will be expected to follow if you want to be taken seriously and have your problem considered respectfully by the Magistrates.

- When attending court, you should bear in mind the following points.
- Arrive in good time for your

case

- Be quiet until your case is called
- Be polite and courteous to the judge, to other court users and court officials
- Dress in a manner that suits the serious nature of the business conducted in court
- Do not attend court under the influence of drink or drugs
- Do not smoke, eat or drink in the courtroom
- Do not make audio or video recordings or take photographs in the courtroom
- Do not read in the courtroom, unless you are asked to do so

You should bear in mind at this point that, whilst it is not essential for you to have a solicitor, the defendant may employ one to defend the case. The defendant will have an opportunity to put forward their side of the case, and **you should be prepared for them to produce contradictory evidence to yours**. You will have an opportunity to cross examine them.

If at any time the defendant or their witnesses resort to shouting or swearing at you, you should remain calm. In this way you will gain a lot more respect for your problem.

Once all evidence and arguments have been presented the Magistrates will retire and consider the facts before passing a judgement. If you win your case then the Court will make an order requiring the nuisance to be abated and/or prohibit the recurrence of the nuisance. The Court also has the power, at the time the order is made, to impose a fine on the defendant. If the order is ignored and the defendant continues to cause a nuisance, then you will need to return to the Court where a substantial fine may be imposed if you can again satisfy the Magistrates that the nuisance is being allowed to continue.

How much will taking private action cost me?

Taking private action under section 82 of the Environmental Protection Act 1990 can actually cost very little and the only necessary charge is the fee imposed by the Court for the handling of your case.

You can represent yourself and in the event that you win your case you may be able to recover any costs you may have incurred during the process.

If you do decide to use a solicitor, make sure that you understand the basis on which you are being charged (normally an hourly rate) if you do not qualify for legal aid.

You should also bear in mind that you may be liable for your opponent's costs if your action does not succeed. This may be costly.

A point to consider is that if you genuinely believe you are being caused a statutory nuisance then you should be confident in winning the case. If you have any doubts then you should reconsider that what you are experiencing is probably not a nuisance in the legal sense.

Home insurance policies can cover private legal action. This may be already written into your policy or it may be possible to add it. You should speak directly with your insurance provider regarding this.

ENVIRONMENTAL PROTECTION ACT 1990

Section 82 - Summary proceedings by persons aggrieved by statutory nuisances

(1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.

(2) If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order for either or both of the following purposes—

(a) requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;

(b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence; and may also impose on the defendant a fine not exceeding level 5 on the standard scale.

(3) If the magistrates' court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, to render premises unfit for human habitation, an order under subsection (2) above may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court, rendered fit for that purpose.

(4) Proceedings for an order under subsection (2) above shall be brought—

(a) except in a case falling within paragraph (b) or (c) below, against the person responsible for the nuisance; (b) where the nuisance arises from any defect of a structural character, against the owner of the premises;

(c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises.

(5) Where more than one person is responsible for a statutory nuisance, subsections (1) to (4) above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

(6) Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.

(7) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is—

(a) in the case of a nuisance falling within paragraph (g) of section 79(1) above, not less than three days' notice; and

(b) in the case of a nuisance of any other description, not less than twenty-one days' notice;

but the Secretary of State may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.

(8) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.

(9) Subject to subsection (10) below, in any proceedings for an offence under subsection (8) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.

(10) The defence under subsection (9) above is not available—

(a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;

(b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney;

(c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above; and

(d) in the case of a nuisance which is such as to render the premises unfit for human habitation.

(11) If a person is convicted of an offence under subsection (8) above, a magistrates' court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates.

(12) Where on the hearing of proceedings for an order under subsection (2) above it is proved that the alleged nuisance existed at the date of the making of the complaint, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.

(13) If it appears to the magistrates' court that neither the person responsible for the nuisance nor the owner or occupier of the premises can be found the court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court would have ordered that person to do.

Example letter to person causing the problem

Addressee

Your address

Dear Neighbour, (*state their name if you know it*)

For some time I have been disturbed by < type of problem – e.g. noise, smoke, dust etc > coming from your property.

The problem is from < source of nuisance – e.g. your dog barking regularly while you are out / the regular fires in your garden / the sawing of wood etc. >

I shall be grateful if you would cease this disturbance and inform you that if you do not I am prepared to take action under section 82 of the Environmental Protection Act 1990.

I regret the necessity for this letter, but your actions are causing me considerable distress and discomfort.

Yours sincerely

Your name

Example letter notifying of action being taken under section 82

Addressee

Your address

Dear Neighbour, (*state their name if you know it*)

I wrote to you on < insert date > and informed you that < insert details of problem > was causing disturbance to me in my property. I asked if you would take action to stop the nuisance.

It would seem that, despite this request, I continue to be disturbed and so I must now inform you that I have no alternative but to commence action under section 82 of the Environmental Protection Act 1990. This letter is giving you three days notice of my intention to do this.

Yours sincerely

Your name

NUISANCE RECORD FORM - STATEMENT OF WITNESS

(C J Act 1967, s.9; M.C. Act 1980, ss.5A(3)(a) and 5B; M.C. Rules 1981, r.70)

Name and address of complainant:	
Telephone number:	
Address of property from which nuisance is emitted:	
Type of nuisance:	Name of person responsible for nuisance (if known):

DETAILED LOG OF OCCURENCES CONSIDERED TO BE CAUSING A NUISANCE

DATE	START TIME	FINISH TIME	NATURE AND DURATION	TYPE OF NUISANCE AND OTHER RELEVANT INFORMATION	HOW DOES THE NUISANCE AFFECT YOU?

This record of nuisance incidents, signed by me, is true to the best of my knowledge and belief and I submit it knowing that if it is tendered in evidence, I shall be liable for prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed: _____ Dated: _____

ADVICE ON COMPLETING NUISANCE MONITORING FORM

This form should not be used to record every occasion that you are aware that the problem is happening. You should only use this form to record occasions when the problem is causing a nuisance to you in your property; i.e. – when the noise, smoke, odour etc is interfering with or seriously affecting your enjoyment of your property, home, garden etc in a way that might be judged to be unreasonable.

Please use a separate line for each occasion that the nuisance occurs (see example given below).

This form may be used as evidence in Court and care should be taken in completing it so as to give as accurate a description as possible of each particular occurrence of the nuisance.

Example completed form

Please be aware this form has been completed using a variety of complaint types to show how they might be recorded

NUISANCE RECORD FORM - STATEMENT OF WITNESS

(C J Act 1967, s.9; M.C. Act 1980, ss.5A(3)(a) and 5B; M.C. Rules 1981, r.70)

Complaint Reference number: OX/123456789	Investigating Officer: A. Nyone
Name and address of complainant: Mr S. Talldate, 2 Any Street, Anytown OX1 2AB	
Telephone number: 0123456789	
Address of property from which nuisance is emitted: 3 Any Street, Anytown OX1 2YZ	
Type of nuisance: Dog barking, loud amplified music, bonfire smoke, loud tv etc	Name of person responsible for nuisance (if known): Dog owner, pub landlord, property owner, tenant etc

DETAILED LOG OF OCCURENCES CONSIDERED TO BE CAUSING A NUISANCE

DATE	START TIME	FINISH TIME	NATURE AND DURATION	TYPE OF NUISANCE AND OTHER RELEVANT INFORMATION	HOW DOES THE NUISANCE AFFECT YOU?
8/9/16	4.00 <i>am</i>	5.00 <i>am</i>	<i>Barked every 4-5 mins approx</i>	<i>Loud bursts of barking. Mostly several repeated barks with brief pause between.</i>	<i>Woken up. Stopped me from going back off to sleep</i>
9/9/16	10.00 <i>am</i>	12.30 <i>pm</i>	<i>Continuous</i>	<i>Smoke very thick and dark. Wind blowing directly towards our house</i>	<i>House full of smoke. Had to go out to get away from it.</i>
10/9/16	7.00 <i>pm</i>	11.30 <i>pm</i>	<i>Continuous all evening</i>	<i>Loud dance type music</i>	<i>Couldn't hear TV, had to turn it up. Also, wanted early night but couldn't sleep until it stopped.</i>

11/9/16	2.00 pm	4.00 pm	Runs for approx 10 mins then stops for approx 5 mins	Fan drones when running, also has intermittent squeaking noise.	Was in garden with friend when noise started, disturbed conversation, had to go inside. Very sunny day.
12/9/16	10.30 am	12.00 pm	Intermittent	Fine layer of dust, noticed it on car and could see it in the air.	Had to wash car and windows
12/9/16	2.00 pm	4.00 pm	Continuous	Dust could be seen in air. Was causing thick layer on surfaces	Only washed car this morning!
13/9/16	7.00 am	7.30 am	Continuous	Fumes from exhaust - vehicle left running again this morning	Woke me up - this is my day off! Had to get up when vehicle had gone and open windows.

This record of nuisance incidents, signed by me, is true to the best of my knowledge and belief and I submit it knowing that if it is tendered in evidence, I shall be liable for prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Signed: S Talldate Dated: 1st April 2017