

Environmental Health - Statutory Nuisance Procedure

1. Introduction

2. The purpose of this procedure is to provide a framework for enforcement officers to follow to achieve a consistent approach in the investigation, prevention, and abatement of statutory nuisance.
3. To achieve this aim, a number of duties are placed upon local authorities by a range of Acts, Regulations and Codes of Practice.
4. These duties include:
 - duty to inspect its area from time to time to detect any statutory nuisance which ought to be dealt with
 - duty to take such steps as are reasonably practicable to investigate a complaint of a statutory nuisance made by a person living in its area
 - duty to serve an Abatement Notice where the local authority is satisfied that a statutory nuisance exists or is likely to occur or recur within the area of the authority
5. The extent of the steps taken will primarily be determined by the nature and seriousness of the matter being investigated. These steps shall be considered in accordance with the Environmental Protection Act 1990 (EPA), relevant codes of practice and the Environmental Health and Licensing Service Enforcement Policy.
6. Issues that are commonly considered a statutory nuisance are set out below. This list is not exhaustive and the relevant legislation should be consulted.
 - noise from premises or from vehicles, equipment or machinery in the street
 - smoke from premises
 - smells from industry, trade or business premises (for example, sewage treatment works, factories or restaurants)
 - artificial light from premises
 - insect infestations from industrial, trade or business premises
 - accumulation or deposits on premises (for example, piles of rotting rubbish)

7. For the issue to be considered a statutory nuisance it must do one of the following:
 - unreasonably and substantially interfere with the use or enjoyment of a home or other premises
 - injure health or be likely to injure health
8. A statutory nuisance must be intolerable, not merely irritating or annoying and one-off events rarely constitute a nuisance. Furthermore, the specific sensitivities of those complaining cannot be taken into account when making an assessment of nuisance.
9. Matters such as location, duration, frequency, severity and times at which the nuisance is occurring are all considered when making a determination of nuisance.
10. In investigating statutory nuisance complaints, a balance must be maintained between the rights of the person complained about to use their property and the rights of the complainant to have no substantial interference with their property.
11. This procedure sets out the standard format of nuisance investigations taking account of the nuisance criteria. However, in some cases more detailed guidance is required and Investigating Officers (IO) shall refer to relevant supporting guidance. Such guidance will only be deployed with the agreement of a Lead Officer.

12. Service Standards

13. Our target is to respond to all standard service requests within 5 working days.
14. The exception to this are serious nuisance incidents that are often reported by more than one complainant, for example:
 - Vehicle/ Premises intruder alarms
 - Vehicle, machinery and equipment noise in the street
 - Smoke pollution, including the burning of commercial waste
15. Our target response time in such incidents is as soon as possible, and in most cases one working day. Serious incidents may also include those where an imminent risk to public health is present.
16. The time taken to investigate and bring a complaint to a resolution will vary depending on the circumstances. However, the IO will keep the complainant informed of key actions taken during the investigation and will adhere to the council's service standards in respect of timescales for responding to letters, phone calls, etc.

17. Regulation of Investigatory Powers Act 2000 (RIPA)

18. In some situations it may be necessary for IO's to monitor for the purpose of establishing a statutory nuisance. This can be done by visits and the use of noise monitoring equipment.
19. Monitoring carried out as part of a statutory nuisance investigation may fall within the definition of surveillance under RIPA. However, monitoring it is not likely to result in the obtaining of private information about a person. It therefore will not be considered 'directed' surveillance.
20. Similarly, any monitoring carried out is not intrusive as it does not involve the presence of an individual or monitoring device at the source premises.
21. Whilst the use of personal visits and noise nuisance recorders are not considered 'directed' surveillance under RIPA, there is Article 8 of the Human Rights Act implications regarding privacy.
22. IO's shall have regard to The RIPA Corporate Policy and Procedures, relevant codes of practice and the Noise Nuisance Recorder Deployment Procedure.

23. Data Protection

24. Hastings Borough Council is committed to protecting the privacy of all service users. Officers involved in the investigation of statutory nuisances shall comply with laws concerning the protection of personal information, including the General Data Protection Regulation (GDPR) and the Data Protection Act 2018.
25. As required, advice on the protection of personal information shall be sought from the relevant department.
26. IO's shall not identify the personal details of the complainant to the alleged perpetrator until such time as it is required by formal legal proceedings, or with the expressed written consent of the complainant.

27. Freedom of Information Act 2000

28. The Freedom of Information Act 2000 gives a legal right of access to information which is held by Hastings Borough Council. Anyone can make a request for information held under the Act. Information includes electronic, paper, sound and video records.
29. In cases where a person makes such a request, for example where investigation records are requested, they should be directed to the appropriate section of the council's website.

30. Administration of Service Requests

31. All standard service requests shall be made online through the council's my.hastings.gov.uk service or via the community contact centre. Service requests will be logged on a computer database and a worksheet generated with a unique reference number.
32. Customers making statutory nuisance service requests will receive a diary either via their my.hastings.gov.uk account or in paper format where requested.
33. Customers making service requests that do not require a diary, for example defective drainage will be logged on the computer database, a worksheet generated and allocated directly to the appropriate IO for action.
34. Customers making statutory nuisance service requests are required to retain a diary for a period of 14 days using their my.hastings.gov.uk account and 21 days (to allow for postage) in cases where a paper diary has been requested.
35. The only exceptions to the requirement for diaries are those service requests where there is a clear and immediate wider public nuisance issue. These will be allocated directly to the appropriate IO for action.
36. When a statutory nuisance complaint is first logged through my.hastings.gov.uk a record is automatically generated on the computer data base. The Administration Officer will monitor the complaints received on a regular basis to establish their nature.
37. Standard service requests will be placed on hold for a period of 14 days to allow diary entries to be added.
38. Diaries retained through my.hastings.gov.uk are automatically submitted to the department after 14 days and made available for review.
39. The allocation of a diary for review will be made to IOs based on the ward responsibilities at that time.
40. In cases where a diary is not complete the complaint will be closed and advice provided to the complainant.
41. If the number of diary entries is such that it is unlikely to establish nuisance, for example less than three, the diary will be reset and advice provided to the complainant. In some cases, a limited number of diary entries may still suggest nuisance, for example prolonged duration. Advice shall be sought from a Lead Officer in such cases.

42. Statutory nuisance service requests may from time to time be received directly to the department, for example via the out of hour's service. In such cases the complainant will be sent a letter directing them to my.hastings.gov.uk so that a diary can be completed. The case will then be closed with the appropriate outcome code.
43. Additional complaints received relating to open investigations will be logged on a computer database and a worksheet generated. The complaint will be brought to the attention of the IO.
44. Prior to the allocation of a diary to the IO for review a council tax search will be made by the Administration Officer to establish the occupant's details.
45. Anonymous service requests will not be investigated because, for a statutory noise nuisance to exist, the council must be able to show that the alleged nuisance is crossing a boundary and resulting in the unlawful interference with the use or enjoyment of a person's land.
46. Counter complaints of nuisance are often received from alleged perpetrators. Such complaints should follow the same procedure as standard service requests.

47. Investigation of Statutory Nuisances

48. Upon allocation of a diary the IO shall review the information and aim to contact the complainant within 5 working days to establish the likelihood that a statutory nuisance exists and to identify potential solutions.
49. The information contained in the diary will be used:
 - To help assess the nature and severity of the problem
 - To assist in programming visits to witness the nuisance
 - To help determine whether it is possible to witness the nuisance
 - To corroborate evidence from the IO that the nuisance they have witnessed occurs frequently and/or for extended periods of time.
50. Once the IO is satisfied of a potential statutory nuisance, a Warning Letter will be issued to the alleged perpetrator.
51. A nuisance warning letter should be issued using the council tax information provided. Letters addressed to owner/occupier will be avoided where up to date council tax information is available.
52. Where a nuisance warning letter has been issued, the IO will reset the complainant's my.hastings.gov.uk diary and they will be advised of what to do next. The complaint will be held open for 8 weeks so that any further incidents can be recorded using my.hastings.gov.uk

53. If no further reports are received within the 8 week period the complaint will be closed and the complainant notified.

54. We endeavour to work jointly with all Registered Social Landlords (RSL) within the borough with regards to the investigation of alleged nuisance caused by their tenants. In such cases the IO will make contact with the appropriate RSL in the early stage of a complaint to establish an appropriate course of action.

55. Continuing Reports of Statutory Nuisance

56. On receipt of a further report of nuisance, the complainant shall be advised to record additional reports of statutory nuisance using their my.hastings.gov.uk diary.

57. Once the IO is satisfied of a continuing nuisance, and allowing time for the alleged perpetrator to have received the nuisance warning letter and any preventative action necessary, they should decide on the most appropriate steps for further investigation, based on the information contained within the diary.

58. Appropriate steps for further investigation include:

- Reactive visits when the nuisance is next occurring
- Installation of noise nuisance recording equipment
- Planned visits at times that the nuisance is likely to occur

59. Reactive and Planned Visits

60. In all cases, it is preferable for the IO to witness the noise first hand. For this purpose, reactive visits shall be undertaken when the nuisance occurs during office hours.

61. Where the IO is unable to witness the nuisance first hand through reactive visits then planned visits should be considered. Planned visits should be arranged with the complainant when the diary suggests that the nuisance is most likely to occur.

62. Noise Nuisance Recording Equipment

63. Where attempts to witness the nuisance first hand have been unsuccessful or not possible at the reported times the installation of noise nuisance recording equipment shall be considered.

64. The aim of noise nuisance recording equipment is to allow the IO to assess the seriousness of the noise reported and consider if it is appropriate to refer the complaint to the council's Out of Hours Service.

65. In most cases it is unlikely that recordings of an alleged nuisance made by a complainant would be sufficient to be satisfied that a statutory nuisance is occurring.

66. Where recordings are being considered for the service of a statutory notice, excluding cases where the IO is satisfied the nuisance is likely to occur, legal advice should be sought.

67. The deployment of noise nuisance recording equipment shall be in accordance with the Noise Nuisance Recorder Deployment Procedure.

68. Anti-social Behaviour

69. Anti-social behaviour can constitute a variety of behaviours that negatively impact upon other people. A definition within legislation is behaviour that causes or is likely to cause harassment, alarm or distress.

70. Complaints of statutory nuisance to the department can also include aspects of anti-social behaviour, for example, where threats are made by an alleged perpetrator. In the first instance all reports of anti-social behaviour should be reported directly to the police by the complainant.

71. Where an IO becomes aware of anti-social behaviour against a complainant during an investigation the risks to that person shall be assessed and a referral made to the Police.

72. Where necessary, the IO should convene multi-agency meetings involving all agencies who either are or should be involved in assisting resolution of the identified risks.

73. Out of Hours Service

74. Complaints referred to the council's out of hour's service will be made where there is a reasonable chance that the nuisance will be witnessed based on the evidence obtained throughout the initial stages of the investigation.

75. Complaints will be referred to the council's Out of Hour's Service for a period of 8 weeks after which the complaint will be reviewed to establish if it is still likely that the nuisance will be witnessed.

76. Resolution and Closure of Complaint

77. The resolution of a nuisance complaint is defined as where this procedure has been followed through to completion and results in one of the following:

- The service request is withdrawn by the complaint in writing
- Informal action (such as the nuisance warning letter) has been taken and the nuisance abated
- Formal action (such as the service of an abatement notice) has been taken and the nuisance abated

- The matter has been referred to an external agency (for example, where the council is not the appropriate enforcing authority)
- The service request has been investigated and it has been determined that the matter complained of is not a statutory nuisance; or
- Investigation of the complaint or effective action is not reasonably practicable due to insufficient evidence to make a determination.

78. The IO shall continue to manage the case, maintain contact with the complainants and keep them abreast of progress until such time as one of the above situations occurs.

79. Where one of the above resolutions occurs, it shall be clearly documented under the relevant action code by the IO on the complaint database so that it can be referred to if future enquires are received. The complainant shall be notified of the resolution justification soon after the decision is made.

80. Upon closure of a statutory nuisance complaint the IO should advise the complainant of the individual right to take independent action by complaining direct to the Magistrates' Court under Section 82 of the EPA. It may also be appropriate to suggest the complainant seek assistance through a professional mediation service.

81. If no nuisance is witnessed after all reasonable attempts, the IO will review and consider all the evidence before deciding whether or not to close the service request. There is no legal requirement for the IO to witness the nuisance first hand if they are satisfied that it is likely to occur. However, the cogency of evidence must be sufficient and Legal advice should be sought.

82. Formal Action

83. Hastings Borough Council's Environmental Health and Licensing Service Enforcement Policy will be referred to at all stages of enforcement action taken in relation to securing the abatement of statutory nuisance and other related complaints.

84. If the IO is satisfied that a statutory nuisance exists, is likely to occur or recur, an Abatement Notice will be served on the person(s) responsible for the nuisance if previous informal approaches by the IO to abate the nuisance have failed.

85. Section 86 of the Clean Neighbourhoods and Environment Act 2005 amended section 80 of the EPA enables the council to defer the service of an Abatement Notice for noise nuisances for a period of up to 7 days to persuade the appropriate person to abate the nuisance. This power is discretionary and may not be appropriate depending on the seriousness of the nuisance.

86. This discretionary power applies only to noise nuisances under section 79(1) (g) and does not apply to any other nuisances under section 79.

87. Where works are required to meet the terms of the Notice, then a suitable period of time will be allowed in order for this work to be carried out. There may be a need for the complainant to continue to keep diary sheets during this period.

88. Defence of “Best Practicable Means” (BPM)

89. Where a statutory nuisance exists at industrial, trade or business premises, a ‘best practicable means’ (BPM) defence may apply (EPA 1990, s79 (9)). It can be raised by the recipient of an abatement notice at two stages:

- When appealing against an Abatement Notice; or
- As a defence in a prosecution for non-compliance

90. It is up to the alleged perpetrator to prove that BPM has been used to prevent or to counteract the effects of the nuisance. The IO must have regard to the following matters in their investigation of the nuisance:

- The provisions of any codes of practice and guidelines issued. Industry and professional trade body guidelines are also relevant.
- The need for ensuring the ‘best practicable means’ are employed to minimise nuisance;

91. Primary Authority Scheme

92. Where any investigation and /or enforcement action is being considered against a commercial premises or business, the IO shall be mindful of any businesses signed up to the Primary Authority Register and any requirement to consult the Partnership Authority.

93. Powers of entry

94. Powers relating to the power of entry to deal with statutory nuisances are provided in Schedule 3 of the EPA.

95. Authorised officers of the council, upon producing their authority, may enter premises at any reasonable time to see whether or not a statutory nuisance exists or to execute works. Unless in an emergency, 24 hours’ notice of entry is required to the occupier of residential premises.

96. Where admission is refused or apprehended, where premises are unoccupied, in an emergency, or where application for entry would defeat the object, application may be made to the Magistrate’s Court for a warrant.

97. Obtaining a warrant to enter

98. If an officer intends to seize noise-making equipment it is reasonable to anticipate that access will be refused and a warrant should be applied for.
99. An application to obtain an entry warrant from a magistrate is made by sworn information in writing. Entry to residential premises can normally only be demanded on 24 hours' notice unless the giving of notice will defeat the object of entry, entry has been refused or is anticipated, the premises are unoccupied or it is an emergency.
100. The authorised officer must attend before a magistrate with written information and a pre-prepared warrant and must swear an oath that the contents are accurate. The information should set out the statutory basis of the power of entry and the reasons why entry is required. The grant of a warrant is discretionary and the reasons why it is needed should be stated clearly in the information.
101. On expiry of the notice the officer applying for a warrant must be in a position to satisfy a magistrate that there are reasonable grounds for entry into the premises, and that of one of the following conditions apply:
 - (a) admission to the premises has been refused; or
 - (b) refusal of admission to the premises is anticipated; or
 - (c) the premises are unoccupied; or
 - (d) the occupier is temporarily absent; or
 - (e) the case is one of emergency; or
 - (f) an application for admission would defeat the object of the entry

102. Works in default

103. Under section 81(3) of the EPA a local authority may, where an abatement notice has not been complied with and whether or not it also takes proceedings for an offence, abate the nuisance themselves and do whatever may be necessary in execution of the notice.
104. This power includes the provision to seize and remove any equipment which appears to the local authority is being or has been used in the emission of the nuisance.
105. Any expenses reasonably incurred by the council in doing so, may be recovered by them from the person on whom the notice was served. The council will take steps to recover their expenses in relation to any works in default that are undertaken by it.

106. Power to seize equipment

107. A council's power to seize equipment is contained in section 81(3) of the Environmental Protection Act 1990 and supplemented by section 10(7) of the Noise Act 1996

108. 'Equipment' is not defined in the Noise Act 1996 and should be interpreted as including anything which could be described as 'equipment' in normal usage. Common examples of equipment include televisions, Hi-Fi's, radios, speakers, musical instruments, portable generators and power tools.

109. The power to seize noise making equipment may be appropriate where an Abatement Notice has been served regarding noise from equipment and there have been one or more serious breaches.

110. Officers are not justified in removing equipment that they do not reasonably believe to have been used in making the noise referred to in the notice.

111. Before taking a decision to seize noise making equipment there must be adequate support available to carry out the seizure. This is likely to include:-

- Adequate Police presence to prevent a breach of the peace
- Two Officers to dismantle and seize equipment
- A locksmith if entry has to be forced
- Suitable vehicle to transport the seized equipment
- Somewhere to store the seized equipment securely

112. When equipment is seized, each item must be logged, noting the make, model and serial number, condition and any identifying marks. Photographs of the seized equipment shall be taken. The IO will leave a form listing the equipment seized with the owner of the equipment.

113. Retention of seized equipment

114. Once seized, the provisions of the Noise Act 1996 allow the local authority to retain seized equipment for up to 28 days.

115. Equipment can be retained beyond 28 days only if it is equipment relating to proceedings for breach of a Noise Abatement notice that are started within 28 days.

116. In most circumstances when equipment is seized, a prosecution will be taken for a breach of the Abatement Notice. If no prosecution is taken, the seized equipment will be returned to the owner within 28 days of seizure.

117. Before returning seized equipment, the council can require the owner to pay reasonable charges for the seizure, removal and retention of the equipment. Recovery of costs will be pursued in these circumstances and payment must be made before the equipment is returned.

118. Where no application for forfeiture is made and the owner has not paid any amounts owing for recovery, the equipment seized will be kept for a period of one year before being disposed of.

119. Forfeiture of seized equipment

120. The Noise Act 1996 provides that where a person is convicted of a noise offence the court may make a forfeiture order in respect of any 'related equipment'. The court can only make an order on conviction and it is up to the local authority to request the order. As a rule, this course of action will be pursued where there are reasonable grounds for believing that returning the equipment to the owner would result in its being used again to breach the abatement notice.

121. Where a forfeiture order in respect of any 'related equipment' has been granted by the court the equipment shall be retained for a period on six months before being disposed of.

122. Private Action Procedure

123. In some circumstances, the council may be unable to obtain sufficient evidence to act on behalf of a complainant. Should this occur, an individual can take independent action by complaining directly to the Magistrates' Court under Section 82 of the EPA. Information for individuals considering this action is available on the council's website.

124. Departures from this procedure

125. Departures from this procedure will only be made after due consideration of the particular service request and if the situation requires it. For example, potential nuisances that affect a significant number of people will follow an accelerated procedure to bring about a swift resolution of the nuisance.

126. Complaints about the service

127. The council has adopted a Formal Complaints Policy and information is available on the council's website.