

Environmental Protection

A guide to statutory nuisance



What is a Statutory Nuisance?

There are two types of nuisance defined by law: **private** and **public**.

- A **private** nuisance is defined as unlawful interference with a person's right to enjoy their property and compensation or damages might be sought. Some damage or effect must happen.
- A **public** nuisance is something which endangers or interferes with the lives and/or safety of the general public.

Generally, a statutory nuisance may be described as an unreasonable interference with the enjoyment of your property. It must happen regularly and continue for long enough for it to be unreasonable.

There are some things that are unlikely to be a statutory nuisance such as a one-off party, arguing neighbours or a baby crying or a dog barking occasionally.

By law the council has to investigate allegations of statutory nuisance but has no control over:

- Road traffic or engine noise on a public highway
- People shouting or screaming on a public road or footpath

- Air traffic noise
- Dust, steam or smells from a railway locomotive steam engine

There is no maximum noise limit and council officers will take into account the:

- Time of the noise (either day or night)
- Duration of the noise
- Frequency of occurrence of the noise
- Type of noise
- Intensity of the noise
- Whether there is a social acceptance of the noise such as church bells or fireworks on Bonfire Night.
- Location of the noise
- Motive for the noise



What's the law on Statutory Nuisance?

It's covered by part III of the Environmental Protection Act 1990 which has been amended over the years.

Section 79 of this Act defines statutory nuisance as any:

- a) premises in such a state as to be prejudicial to health or a nuisance;
- b) smoke emitted from a premises so as to be prejudicial to health or a nuisance;
- c) fumes or gases emitted from a premises so as to be prejudicial to health or a nuisance (from private dwelling only);
- d) dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- e) accumulation or deposit which is prejudicial to health or a nuisance;
- f) animal kept in such a way as to be prejudicial to health or a nuisance;
- f) (a) insects emanating from relevant industrial, trade or business premises being prejudicial to health or a nuisance;
- f) (b) artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- g) (a) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;
- h) other matter declared by any enactment to be a statutory nuisance.



Some nuisance action must be taken under different Acts, for example dark smoke from industrial premises falls under the Clean Air Act 1993.

What should I do about something I think is a nuisance?

In the first instance it's best to try and contact the person responsible for the nuisance directly. They may be unaware of the problem and might take action voluntarily to prevent the nuisance.

If this doesn't work the council will take steps to reasonably investigate the complaint. If you don't want to involve the council, or if the council doesn't take action you can take action privately (see Private Nuisance Action).

What action does the council take once I report a nuisance allegation?

(1) Once a complaint has been received by the Environmental Protection Group the team will try and contact the person believed to be responsible for the nuisance.

This is usually done in writing where the council advises them on the complaint and the legal position. We will not release the identity of the person who complains (the complainant) at this stage.

We will also ask the complainant to keep and return a monitoring diary in case the problem continues.

(2) Once the monitoring diary has been completed over a period time (advice will be given at time of complaint) the council will assess whether the allegation is a statutory nuisance. The complainant will be asked at this stage whether they would be willing to give evidence in court if required.

(3) In most cases the investigating officer will then need to get evidence to confirm the nuisance as outlined in the monitoring diary. This might involve visiting and experiencing the nuisance or installing monitoring equipment. Generally we make up to three attempts to record or witness the nuisance. If no evidence is gained by this time the investigation will be closed. If circumstances change it may be possible to re-open the investigation.



(4) If the investigating officer finds evidence of a nuisance the council will serve an Abatement Notice on the person responsible or the owner of the land if that person can't be found. Any appeal can be made within 21 days.

(5) Where the person fails to comply with the Notice, the council has the power to take enforcement action. This might involve seizing equipment where necessary or taking action to stop the nuisance such as disconnecting a burglar alarm. However this is not always possible and in most cases the next step will involve prosecution.

(6) The final step is legal action and taking the person responsible for the nuisance to court. The investigating officer will need to gather together all the evidence from the investigation and this will include statements from people affected by the nuisance. Monitoring diaries will also be used. The complainant will usually be expected to give evidence in court in order to prove the case and at this stage they must be willing for their name to be made public. If found guilty the person responsible will be fined and other restrictions may be put on them to prevent the nuisance re-occurring.

Private Nuisance Action

If the Council does not take action or you do not wish to involve us, a Magistrates Court may act on a complaint if it's proved to be a nuisance. If they're satisfied a nuisance exists the court can make an Order for one or both of the following:

- Requiring the person causing the nuisance to stop in a specific time;
- Not allowing the nuisance to start again.

The court may also fine the defendant up to a maximum of £5,000. If the person then causes a nuisance without reasonable excuse after an Order has been made by the Court, they have committed a further offence and may be fined again. Only one person need make a complaint.

What should I do if I want to pursue private nuisance action?

You might want to speak to a solicitor who will be able to advise you on your case if how successful court action might be. Alternatively you can proceed without legal help.

How do I proceed without legal help?

1. Write to the person involved, telling them about the disturbances and that you intend to seek legal advice if the nuisance continues. Ensure the letter is dated and keep a copy.
2. Start recording evidence of the nuisance (e.g. noise) including:
 - A description of the nuisance, where it comes from and what is causing it;
 - When the nuisance happens and how long it lasts;
 - How much the nuisance interferes with the use of your property ie how much of a nuisance it is to you;
 - Details of any other people disturbed by the nuisance who will appear in court as witness on your behalf.

The nuisance monitoring forms previously sent to you during the council investigation may be used.

3. If you decide to take formal action on this evidence you must write to them giving them at least three days notice of your intention to proceed to

the Magistrates Court. You must clearly state what you are complaining about. Ensure the letter is dated and keep a copy.

What happens at the Magistrates Court?

Firstly, contact the Clerk to the Justice and explain that you wish to make a complaint under Section 82 of the Environmental Protection Act 1990.

(1) Arrange to visit the Court when asked to do so by the clerk and show the Magistrate your evidence. If they decide you have an arguable case, a summons will be served on the person responsible for the nuisance, giving the date and time of the Court hearing.

(2) You must then attend the Court on this date together with any witnesses you have. You can either employ a Solicitor or present the case yourself. If you choose the second option the Clerk of the Court will give you advice and guidance.

(3) The Magistrate will listen to evidence from yourself and the defendant and decide if a nuisance is proven. They will make any appropriate Orders and penalties or dismiss the case. Whatever decision is reached, they may apportion costs incurred in bringing the case eg solicitor's fees, as it sees fit. It is a good idea to know your costs before the hearing.

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If you would like a copy of this document in another format such as large print, Braille, audio or in a different language, please call **0845 050 4434** or email **customer.services@southlakeland.gov.uk**



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