



STATUTORY NOISE NUISANCE – INVESTIGATION PROCEDURE

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Introduction

Central Bedfordshire Council has a duty to investigate complaints about statutory noise nuisance under Part III of the Environmental Protection Act 1990. This document sets out the Council's standard investigation procedure and should be read in conjunction with the policy: 'Neighbourhood Noise Pollution – Statement of Policy'.

Noise is normally thought of as unwanted sound. The sound can be unwanted because it is too loud, too intrusive, happening at the wrong time, or because it occurs repeatedly or unexpectedly. For a noise to be considered a statutory noise nuisance as defined by the Environmental Protection Act 1990, it has to materially interfere with the average persons use of or enjoyment of a premises or be prejudicial to health. This is a higher threshold than a noise that is simply inconvenient or mildly irritating.

Although there is no official time when people are allowed to make noise until, the time of day (or night), does have bearing on whether a noise constitutes a statutory nuisance. For example, a level of noise that during the day would not interfere with watching television or holding a conversation may not be a statutory nuisance; however, if the same level of noise occurred at night preventing someone from sleeping, then it may do.

Examples of the type of noise nuisance that this procedure covers are as follows:

- Loud amplified music or excessive noise from a television;
- DIY activities;
- Shouting and excessive banging from a premises;
- Barking dogs;
- Noise from vehicles, machinery or equipment in the street;
- Noise from business premises including pubs and clubs.

We are unable to deal with general living noise or cases where there is poor insulation and the behaviour is reasonable.

Informal approach – talking to the person causing the noise

Our experience shows that often the person causing the noise is not aware of the impact it is having on others. An informal approach, particularly if it is between neighbours, can resolve the problem at an early stage and prevent it escalating into a bigger issue; it is acknowledged however, that this is not suitable in all cases.

If you are suffering from noise nuisance and considering discussing this with the individual concerned, you may wish to bear in mind the following:

- Make the approach when you are not angry or upset;
- Agree a convenient time to meet;

- Think beforehand about what you wish to say – be clear and precise about your view of the problem;
- Remain calm;
- Allow him/her to express their own views and seek to understand what is being said;
- Be prepared to accept differences in attitudes or ways of life, but be firm about behaviours that are causing harm or stress;
- Take the view that together you can find a resolution;
- Be reasonable – if you are offered concessions see if you can do the same but do not rush to an unsatisfactory agreement.

If this approach does not work then make a note of what was discussed and the outcome. Then put your complaint in writing in polite terms, again requesting a reduction in the noise disturbance. You should allow two weeks for your letter to be considered and action taken. Retain copies of all letters and notes.

As an alternative to making your own approach, and if either you or the other party are a tenant of a social landlord, you have the option of reporting this to that organisation. A social landlord has a legal duty of care to respond to behaviour that adversely impacts on their tenants, or is caused by their tenants and impacts on others.

Mediation

If an informal approach is not successful, both parties may benefit from a mediation service. Most social landlords can provide access to such a service and in limited circumstances so can the Council. The service is designed to assist neighbours to solve conflicts and is free, impartial, independent and confidential. It is more likely to be successful if it is utilised before the situation becomes entrenched and both parties set in their positions.

Making a formal complaint

A formal complaint to the Council about a noise nuisance problem can be made in the following ways:

1. Online at <http://www.centralbedfordshire.gov.uk/environment/domestic-pollution/report.aspx>
2. Telephone customer Services on **0300 300 8302**;
3. E-mail to customer.services@centralbedfordshire.gov.uk
4. By writing to us at:

**Customer Services,
Central Bedfordshire Council,
Priory House,
Monks Walk,
Chicksands,**

**Bedfordshire,
SG17 5TQ.**

The following information is needed in order that a full initial assessment can be made of a case:

- Name, address, and contact number(s) of the complainant;
- Location of where the noise is coming from and the name of the person responsible (if known);
- Details of the type of noise, how long it lasts for and how often it occurs;
- An explanation of the impact the noise is having and where, when, and in what circumstance it can be heard;
- Details of any action taken to try and deal with the problem.

In the initial stages of a case we will seek to protect the identity of a complainant or witness from being revealed to the subject of the complaint. However, depending on the nature of the complaint, this may not be practicable as the source of it may be obvious, or the subject may reasonably assume where it has come from. If a case becomes subject to formal enforcement action, those involved should expect their identity to be disclosed, as it is likely they may be required to give evidence to a court.

Recording a complaint

All complaints will be recorded and a log will be maintained of actions taken and decisions made. Information will be retained in accordance with the Council's documents and records retention policy.

Investigation of a complaint

We aim to provide an efficient and fair service within the Council's corporate Customer Service Standards. Where appropriate the most serious complaints will receive priority. Our investigation procedure can typically be set out in a series of set stages, although each case is different and may require a tailored approach.

Stage 1 - Initial assessment and action

All noise complaints are allocated to an officer for initial assessment. The officer will:

- Aim to acknowledge receipt of the complaint within five working days and make contact with the complainant by phone, email or letter to state initial actions and provide contact details;

- With the complainant's agreement write to the owner/occupier or person responsible for the location where the noise is emanating from to advise them of the complaint; and request they review their activities if they have been causing a noise nuisance.

All parties will be advised of the existence of this procedure and related policy; should they wish to view it they will be sign-posted to the Council's website, or on request receive a copy through the post.

Very often this initial approach is sufficient to resolve matters and no further action is necessary by the Council.

The case will then be closed. The complainant will be advised to contact the Community Safety Operations Team if the noise does not abate after 10 – 14 days.

During this first stage complaints relating to dog barking are allocated to the Council's dog warden, who will if practicable complete an advisory visit to the owner of the dog(s) and cases are managed by Waste Services.

Stage 2 – Issue and assessment of diary sheets

If a complaint is not resolved at Stage 1, the complainant will contact the Community Safety Operations Team and the case will be reopened.

The officer will write to the owner/occupier of the property where the noise is emanating from to inform them that further complaints have been received and that we are now actively monitoring the situation.

Diary sheets are issued to the complainant to complete for a minimum of 2 weeks and a maximum of 4 weeks.

If the diary sheets are not returned after 4 weeks the case will be closed.

The diary sheets aim to record the complainant's experience of the noise that is problematic. It is essential that as much information as possible is included. They provide valuable evidence for the case officer about the nature and severity of the problem, the number of incidents, their frequency, duration, time of day, and the impact upon those involved. Diary sheets can be completed by more than one individual in a household and by more than one household.

For a minority of complainants who, for good reason, cannot keep a log of the

noise, the officer will consider alternative arrangements in order to find the best way of collecting the information we need.

The evidence contained in the diary sheets will be reviewed by an officer along with any other evidence obtained to that point and the overall circumstances of the case within 2 weeks of receipt (unless otherwise notified by the investigating officer). In conducting such a review the officers will have in mind the following considerations:

- Some issues which give rise to complaints are unavoidable, particularly noise between properties that are attached to each other and flats - we will therefore not be able to deal with noise nuisance, which is the consequence of the ordinary use of a property, even where standards of noise insulation between dwellings are poor. Examples of this might be the use of domestic equipment such as washing machines and vacuum cleaners during the day, the sound of doors closing and toilets flushing, or children playing inside or outside a property;
- It can be difficult to deal with noise nuisance emanating from communal areas as we may not be able to identify who is making the noise;
- We cannot take into account any special sensitivities of a complainant such as ill-health, or a night worker trying to sleep during the day;
- If the noise is emanating from an industrial, trade, or business premises and it can be shown that the 'best practicable means' is being utilised to prevent or counteract it, a defence in law may exist.

If a statutory noise nuisance is unlikely to exist the officer will close the case and:

- Confirm this in writing to the complainant setting out the reasons why, and provide information as to how he/she could take their own legal action – see **taking your own action**;
- Write to all other parties notifying closure of the case.

Stage 3 – Further Investigation

If the evidence collated indicates that there is a reasonable potential for a statutory noise nuisance to exist, a more detailed investigation will be carried out to ascertain this and be assigned to a case officer. The case officer will:

- Confirm this in writing to the complainant setting out the next steps and provide an approximate timescale;
- Contact the subject of the complaint to advise him/her of our findings to date and that further monitoring will take place.

The case officer will determine the most appropriate form of evidence

gathering methods for a case. This may include the following:

- Completion of additional diary sheets

To be completed for a minimum of 14 days.

- Monitoring visits to the complainant's property

The case officer will, with agreement of the house-holder, seek to witness at first hand the nuisance, by carrying out monitoring visits inside the complainant's house. Visits will be based upon the times and days when the diary sheets have indicated the noise nuisance is most acute; the visits typically last up to an hour. Alternatively the case officer may be able to respond to a notification that the nuisance is happening now – this will clearly be dependent on a number of factors including his/her availability, time of day, and distance to travel. The case officer will explain the arrangements for contacting him/her in office hours. As a general rule and having regard to the resources available and the evidence required to assess noise to the level of a statutory noise nuisance, a maximum of three visits will be made over a 1 week to 4 week period.

- Deployment of digital audio recording equipment

With agreement, digital noise recording equipment may be installed in the complainant's home. In most cases it is deployed for a seven day period. Each time the noise complained of is heard, the house-holder is required to activate a simple trigger: this will provide up to three minutes of audio recordings; once triggered the equipment will record all noise, including normal conversations in the property. There is also a pre-trigger facility that records all noise one minute prior to the trigger being activated. The loudness of sound is measured in decibels; however there is not a defined decibel level that will indicate whether a sound is of such a level as to form a statutory nuisance – the loudness will be taken into account alongside other factors.

- Documentary evidence

This will vary from case to case but may include witness statements or a letter from an expert witness e.g. a general practitioner or Police Officer.

Stage 4 - Evidential review

The case officer will review all the evidence obtained and make an assessment as to whether a statutory noise nuisance exists, or is likely to occur or recur. Such an assessment will be specific to each case and may include the following factors:

- Frequency;
- Time and duration;

- Intrusiveness;
- Necessity of the noise;
- Loudness;
- Whether it is expected;
- Period over which it occurs;
- Type of noise;
- Characteristics and locality of the area and expectations;
- Cumulative impact;
- Medical evidence;
- Defences in law.

(In a limited number of cases it may be necessary for the case officer to seek further evidence and return to Stage 3. It should be borne in mind, that the longer it takes to obtain significant evidence of a noise problem, this may make it less likely that a statutory noise nuisance as defined by law can be shown to exist.)

If a statutory noise nuisance cannot be established the case officer will close the case and:

- Confirm this in writing to the complainant setting out the reasons why, and provide information as to how he/she could take their own legal action – see **taking your own action**;
- Write to all other parties notifying closure of the case.

Stage 5 – Service of an abatement notice

Where it is found that a statutory noise nuisance exists, or is likely to occur or recur, an abatement notice shall be served on the person responsible. This is a legal notice that describes the nuisance and directs that it be abated – reduced or diminished.

A covering letter will be sent with the notice that may give separate advice on how to comply with it; this is intended to be without prejudice and does not form part of the notice.

The recipient of a notice has twenty one days to appeal to a magistrate's court against the serving of it.

The case officer will contact the complainant and:

- Confirm in writing that a notice was served, provide an explanation of its provisions including any relevant timescales, and give guidance about reporting a potential breach.

Stage 6 – Breach of an abatement notice

Breaching of a requirement in an abatement notice is a criminal offence. The case officer will need to verify the breach by gathering the necessary evidence, and if sufficient is found, an appropriate evidential file will be forwarded to the Council's legal team for their consideration.

In certain circumstances the Council may additionally be able to seize the noise making equipment, including televisions, radios and computers. This would usually be for an initial period of one month, but with the option of seeking a permanent forfeiture if further nuisance is detected.

If we decide that prosecution is the most appropriate course of action, or the subject of the complaint decides to appeal against a notice, complainants may be asked to provide formal witness statements and may be required to appear in court. In some rare circumstances, it may be decided that further action is not justified or practical, even if a nuisance is shown to continue. Our decision making must have due regard to the Council's own enforcement policy and relevant national guidance.

Where appropriate, evidence of a breach of an abatement notice will be passed to a social landlord, so that they may consider taking action to seek possession of a property on the grounds that the nuisance is a breach of a tenancy agreement.

The case officer will contact the complainant and:

- Confirm the outcome of the Council's decision, provide an appropriate explanation, and where relevant set out the next steps and any timescales.

Taking your own nuisance action

The law recognises that in certain cases of noise nuisance and despite a proper and effective investigation being made within the resources available, it may still be difficult for the Council to obtain the requisite amount or quality of evidence needed to take formal action (outlined above). For this very reason, Section 82 of the Environmental Protection Act 1990 gives a complainant the right to make a complaint directly to the local magistrate's court. If a complaint is successful, the court will make an order upon the person responsible to abate the noise nuisance.

You do not need a solicitor to act for you and can present your own case. However you will need to support your allegations with evidence. This can be verbal, but your case will be stronger if you can show a written log of events (diary sheets) and you have the support of other neighbours or witnesses.

Complaints about the Service

Complaints about the service provided should be made by contacting the Council's Customer Relations Team:

Telephone: **0300 300 4995**

E-mail to: customer.relations@centralbedfordshire.gov.uk

By writing to us at:

**Customer Relations
Business Transformation
Central Bedfordshire Council
PO Box 1395
Bedford
MK42 5AN**

Alternative Legislation

In certain situations it may be necessary to use alternative legislation in responding to complaints of noise nuisance. This can be used in conjunction with the Environmental Protection Act 1990.

Control of Pollution Act (COPA) 1974

Section 60 – Control of noise on construction sites

This section of the COPA legislation in the main refers to commercial sites. However, where building works at a domestic premise are significant this legislation may be appropriate in certain circumstances.

An example of this would be where a homeowner was building a 2 storey extension and they were working out of hours on a regular basis. The work may not reach the threshold for statutory nuisance but is causing problems for the neighbours in what are considered unsocial hours and having an impact on the enjoyment of their homes.

The Section 60 notice may specify conditions such as:

- The machinery which is not to be used;
- The hours during which the works may be carried out;
- The level of noise which may be emitted from the premises or at any specified point on those premises or which may be so emitted during specified hours.

Anti-Social Behaviour Crime and Policing Act 2014

Community Protection Notice Warning (CPW) and Community Protection Notice (CPN)

Section 43 and 48 – Power to issue notices and offence of failing to comply with notice

A CPN can be issued if an officer is satisfied, on reasonable grounds, that the conduct of an individual is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality and the conduct is unreasonable. A CPN can be issued for behaviour that constitutes a statutory nuisance and can be used in conjunction with abatement notices. Issuing a CPN however does not discharge the Council from its duty to issue an Abatement Notice.

The issuing of a CPW at the start of a case providing the threshold has been reached can be very useful in preventing further instances of nuisance, thus alleviating suffering for neighbours. To follow the statutory nuisance procedure can be long and drawn out, if the threshold for a CPN is reached it can defer behaviour. If a nuisance persists and following a thorough investigation that a statutory nuisance exists, primary legislation should be used and an Abatement Notice issued.