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# Noise control



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## What is Statutory Nuisance?

The Council has powers under the Environmental Protection Act 1990 to take action with regard to noise which amounts to a statutory nuisance.

A statutory noise nuisance is something which significantly interferes with the complainant's life or the reasonable occupation of their property. For a noise to constitute a statutory nuisance it needs to be shown that the noise is not just audible or annoying, but that it is unreasonable and preventing the ordinary person from continuing their normal activities.

The everyday meaning of the word 'nuisance' is not always the same as the legal term. Sometimes a noise may be annoying but it may not constitute a statutory nuisance in law. A statutory nuisance depends on a number of factors which include: intensity of the noise, duration of the noise, frequency of occurrence, time of day, and locality.

It should be noted that abnormal sensitivity is not a factor - the law of nuisance considers only what would be unreasonable for an average person. If you have increased sensitivity to noise due to illness or shift work this is unlikely to be taken into account when assessing nuisance.

## Helpful examples

Unlikely to be a statutory nuisance	More likely to be a statutory nuisance
A dog barking several times a day for short periods when people pass or approach the property.	A dog howling most of the day or repeatedly during the night.

Music faintly audible from a premise that finishes around midnight and only occurs infrequently.	Music from a premise that occurs regularly often at unsocial hours preventing neighbours sleeping.
The occasional bang of a door, or raised voice, a child crying.	Frequent shouting and general boisterous behaviour particularly late at night.

Environmental health does not have power to deal with all types of noise, for example noise from aircraft or traffic on the highway.

### **What happens when I complain?**

Ideally before you complain to Boston Borough Council you would have spoken to your neighbour (or business) causing the noise to try and resolve the problem. Often a cordial approach can resolve an issue and maintain neighbourly relations.

Where the matter complained of is not, in the opinion of the officer concerned, either a statutory nuisance or a matter that can be better dealt with by other legislation you will be advised verbally or in writing. For example a car repair business being operated from a domestic premise without appropriate planning consent may in the first instance be referred to planning enforcement.

On receipt of a complaint in most circumstances the alleged perpetrator will be contacted by letter or visited to advise them that a problem has been reported and they will be given advice. If they are in a rental property the landlord or managing agent may also be contacted. The alleged perpetrator will be offered the opportunity to moderate their behaviour and discuss the matter with Environmental Health.

You will be sent a letter advising you what initial action has been taken and a diary sheet on which you should record any further incidents. If the problem continues and we receive your completed diary sheets an

assessment of the problem will be made and an appropriate course of action determined.

Officers may make visits to your home to try and witness the problem and, where considered necessary, visits may take place outside normal working hours. Noise monitoring equipment may also be installed in your property to help collect evidence of the noise problem. It is an offence to cause a Statutory nuisance, therefore when the Council carries out an investigation we have to operate in a similar way to the Police, we must gather sufficient evidence to take action against someone, otherwise the case would collapse.

### **What should I do if I am complained about?**

The person who has had a complaint made against them is encouraged to contact the Council to discuss the issue. Environmental Health will offer guidance and advice on practical solutions once the officer has taken an objective view of what the problem might be. You will also have the opportunity to state your case. We recognise not all complaints are justified.

### **What formal action can be taken?**

In a statutory noise nuisance investigation, the first formal action would be the service of a noise abatement notice. The noise nuisance must have been witnessed by the officer for them to serve a notice and/or there must be enough evidence to ensure that the officer can defend an appeal against the notice in the Magistrate's Court. The notice will require the person responsible for the nuisance to reduce the impact so that the nuisance no longer exists. This will not necessarily stop the activity altogether, the requirement of the law is to abate the nuisance and bring the impact down to a reasonable level.

If the premises or person does not comply with the notice, the officer will require the complainant to collect further evidence. The officer will then need to witness the breach of the notice, to determine whether an offence has been committed.

This can sometimes take time to establish and gather sufficient evidence to satisfy the legal team that a prosecution in the Magistrate's Court is appropriate.

If the Council decides to take the case to court, all the evidence the complainant has collected will be used and the complainant will be expected to appear in court as a witness. In certain circumstances the council may seek a Magistrate's Court warrant to enter a premise and abate a nuisance by seizure of equipment/disarming equipment. Formal action is the last option.

## Contact us

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