



## What is a Statutory Nuisance?

Statutory Nuisances are a list of issues which local authorities have a duty to deal with using powers provided to them in law. This duty and powers are set out in the Environmental Protection Act 1990. The statutory nuisances listed in the Act are:

- **premises** in such a state as to be prejudicial to health or a nuisance;
- **smoke** emitted from premises so as to be prejudicial to health or a nuisance;
- **fumes or gases** emitted from premises so as to be prejudicial to health or a nuisance;
- **dust, steam, smell** etc. from industrial, trade or business premises being prejudicial to health or a nuisance;
- any **accumulation or deposit** which is prejudicial to health or a nuisance;
- any **animal** kept in such a place or manner as to be prejudicial to health or a nuisance;
- any **insects** emanating from relevant industrial, trade or business premises being prejudicial to health or a nuisance;
- **artificial light** emitted from premises so as to be prejudicial to health or a nuisance
- **noise emitted from premises** so as to be prejudicial to health or a nuisance;
- **noise** that is prejudicial to health or a nuisance and is emitted **from or caused by vehicle, machinery or equipment in a street** (NB this does not include noise from traffic).

The most common types of statutory nuisance which are complained about are: noise, smoke and smells.

### Prejudicial to Health

The term “prejudicial to health” is defined in the Act as being “injurious, or likely to cause injury, to health”. This term has been further clarified by the Courts to exclude things which might give rise to physical injury; for example an accumulation containing glass or sharp objects which could give rise to injury would not be covered. An accumulation of rotting waste which could attract rats and has the potential to spread disease would be included. The vast majority of complaints are dealt with as a potential “nuisance” rather than proving the more difficult alternative “prejudicial to health”.

### Nuisance

There is no set definition of the term “nuisance”, but over many years and hundreds of cases the Courts have considered what constitutes a nuisance, which has helped shape an objective test that can be followed in practice.

When Council officers are considering if something is a statutory nuisance or not, they are applying the objective standards set out by legal precedent rather than what someone might consider to be a “nuisance” or “annoyance” in everyday language.

For something to be a statutory nuisance it must be considered to be unreasonable to the “average person” and something that is more than an annoyance. Things that will be taken into account when deciding if something is a nuisance or not include:

- **Impact** – the problem must have a real effect on how a person can reasonably use or enjoy their property, for example noise from a neighbour may be audible, but it would have to be loud enough to impact on sleep, conversation, watching TV etc. for it to be a nuisance. For something to be a statutory nuisance it must also have an impact directly on a person (such as noise affecting sleep; dust getting into eyes or hair etc.): if the effect is on property – e.g. dust on cars or window ledges, then this may not be a statutory nuisance (although an aggrieved person may take civil action for damages or an injunction).
- **Frequency** – something happening just once or twice might not be a nuisance, for example a celebration event with music during the day or early evening, but if the same thing occurred more frequently, for example every other week or month, then it could be a nuisance. A one off event could be a nuisance if it was so loud as to cause an impact on other resident(s) in particular if it goes on late into the evening and their sleep is being affected.
- **Duration** – if something happens for a relatively short period of time it may not be a nuisance, for example a neighbour's dog barking when someone comes to the door, but if the same noise went on for longer, for example a dog barking when the owners are out all day, then this could be a nuisance.
- **Time of day / night** – this is similar to impact, because something that might be a problem through the night, might not necessarily be a nuisance when happening in the day.
- **Everyday activity** – things which are part and parcel of everyday normal life, for example flushing toilets, footsteps, talking, closing doors, babies crying, will not amount to a nuisance because there is little the person can do to prevent it. This is sometimes an issue with poor sound insulation between properties, but statutory nuisance can only be used to change unacceptable behaviour and not to require people to do over and above what they should be reasonably expected to.
- **Sensitivity** – statutory nuisance must be considered in the context of an average person, in a reasonable state of good health and having a normal pattern of everyday activity. Statutory nuisance cannot be used to make people do more than might reasonably be expected of them because someone else may be more sensitive than the average person, for example if a night-shift worker trying to sleep during the day, or someone with respiratory problems being more sensitive to dust or smoke (NB – we would also encourage people to have regard to the impact they are having on more vulnerable neighbours, but statutory nuisance powers should not be used to require people to do more than would be reasonably be expected of them).
- **Public benefit** – something might cause an inconvenience, but because it is essential to the wider public benefit it may not be considered to be a nuisance – for example temporary road works, harvesting of crops, sirens on emergency vehicles etc. Although best practice should be followed to minimise disturbance.
- **Motive** – if someone deliberately does something to cause a nuisance then this could be a nuisance, for example deliberately slamming a door or banging on a wall.
- **Best practicable means** – only applicable to some types of statutory nuisance which occur on business premises, but if a Company is doing all they reasonably can to prevent or counteract the effect of a nuisance then they will have a defence against

any statutory nuisance action. Officers will therefore consider if a business is doing all it can when deciding if something is a nuisance or not.

#### **Examples of things that have been found to be a nuisance:**

- Music being played every week during the early evening and into the night which was so loud that neighbours could not hear their TV without turning the volume up.
- Dogs left at home on their own all day and barking frequently throughout the day.
- A business installing a new machine without noise insulation.
- Smoke from a regular garden bonfire which meant neighbours had to close their windows.
- Outdoor light shining directly into a neighbour's bedroom making it difficult to sleep.

#### **Examples of things that have been found not to be a nuisance:**

- A person carrying out DIY during the day and at weekends over a few weeks.
- Noise from children playing on a trampoline in their garden.
- A slight smell coming from a take-away, which had all proper extract ventilation and odour control in place.
- A party which happened just once a year and finished at a reasonable time early in the evening.
- Smoke from a bonfire on Bonfire Night.
- Dust from a construction site where reasonable control methods were being used.
- Footsteps from a neighbouring flat that could be heard due to poor sound insulation.
- A dog barking intermittently when people visit the house.

#### **How will an officer establish if something is a Statutory Nuisance?**

The Council has trained officers, usually qualified Environmental Health Practitioners, who are authorised to investigate complaints of statutory nuisance. These officers will investigate cases which are not able to be resolved informally to determine if the issue being complained about amounts to a statutory nuisance.

Officers will need to gather evidence and will use a combination of the following:

- Officers witnessing the problem themselves,
- Witness statements from those who are affected, or from professional witnesses such as police officers or housing officers.
- Written nuisance records from people affected.
- Using measuring devices, such as noise meters and light meters.
- Leaving specialist noise recording equipment in the property of people affected.
- Inspecting premises and talking to those that are the subject of complaint.
- Expert evidence from specialists, e.g. odour consultants.

#### **Reporting a Statutory Nuisance**

If you wish to make a complaint to the Council about something which you think is a statutory nuisance then contact us:

- Telephone: 03458 506 506
- E-mail: [ep@wakefield.gov.uk](mailto:ep@wakefield.gov.uk)
- Visit the Council website for more information. Web: [www.wakefield.gov.uk](http://www.wakefield.gov.uk)