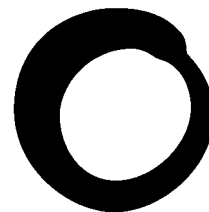


May 2008



**Friends of
the Earth**

Statutory Nuisance

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What is Statutory Nuisance?

Statutory nuisance is a branch of law which might help you when dealing with problems such as air pollution, dust and fumes from a local factory, and unacceptably loud noise. It has its roots in public health law, but nowadays the aim is for it to provide a relatively quick and easy way to achieve environmental health protection.

How can it help?

There are two main ways that Statutory Nuisance can help to protect you.

First, a local authority has a legal duty to investigate statutory nuisances. If it finds a nuisance exists then it **must** issue court proceedings against the polluter. This means that if you find yourself faced with a potential statutory nuisance the first thing that you should do is write to your local authority asking them to investigate and to take action.

In addition, it is open to members of the public to act as prosecutors and to bring the statutory nuisance to the attention of the Magistrate's Court and ask them to serve an abatement notice. If you discover that a statutory nuisance exists in your area then you can take legal action against the polluter. This can be done by first serving a formal notice on the polluter and then, if the nuisance still continues after 21 days you can apply to the magistrate's court.

The idea behind these proceedings is that they are reasonably simple for members of the public to use. They are also much less expensive than other types of litigation. That is because there is generally no risk of having to pay the legal costs of the defendant if your claim is unsuccessful. In addition your own legal costs should be much smaller. Although the process is intended to be relatively simple there are a number of procedural complexities and it is certainly worth your while to contact a solicitor to advise you.

How is statutory nuisance defined?

To fall within the definition of statutory nuisance, an activity needs to be, or be likely to be:

- a nuisance, or
- prejudicial to health.

A nuisance is defined in the legislation as *the unacceptable interference with the personal comfort or amenity of neighbours or the nearby community*. There is also case law defining nuisance in particular contexts.

An especially vulnerable person cannot claim in statutory nuisance for an activity which would not ordinarily affect most people. However, if a nuisance which would affect the ordinary public has particularly severe effects on particular people, then the fact that they are more vulnerable than most will not prevent them bringing a claim.

What type of activity might be regarded as a statutory nuisance?

Activities which might be caught by the definition of statutory nuisance are things that are or may be injurious to health or a nuisance and arise as a result of:

- The physical state of premises (in some cases the definition of premises includes land, although contaminated land is dealt with under a separate regime)
- Smoke, fumes or gases emitted from premises, or from a vehicle, machinery, or equipment in a street (eg factory fumes)
- Dust, steam, smell etc. on industrial, trade, or business premises
- Any accumulation or deposit which is prejudicial to health or a nuisance (eg rubbish)
- Noise coming from premises, or from a vehicle, machinery, or equipment in a street
- Any other matter declared by statute to be a nuisance

Who is responsible for dealing with statutory nuisances?

District Councils, London Borough Councils and Unitary authorities.

What steps should a responsible body take to investigate a statutory nuisance claim?

Investigating bodies have two types of responsibilities:

- A general duty to inspect their areas for statutory nuisances from time to time. In practice, local authorities rely on information from the local community about possible problems.
- A specific duty to take reasonably practicable steps to investigate complaints of statutory nuisance made by individuals in that area.

There are also powers for the Secretary of State to take action if local authorities are not carrying out their duties.

How will a local authority decide whether a statutory nuisance is occurring?

The local authority (in practice an environmental health officer) must decide whether or not a statutory nuisance is occurring or is likely to occur. As explained above, this will involve looking at whether the matters complained of are a nuisance or are/are likely to be damaging to health.

When making a decision about whether a nuisance exists, the environmental health officer will need to balance a number of factors such as:

- The nature and the location of the nuisance
- The time at which the nuisance occurred and its duration
- The utility of the activity concerned

In order to adequately consider whether a nuisance is prejudicial to health, an Environmental Officer should have suitable training, though a medical qualification is not necessary. Indirect effects on health, such as sleeplessness, can fall within the definition of “prejudicial to health”.

In order for a local authority to act, it must decide that it is more likely than not that:

- the statutory nuisance exists or
- that it is likely to occur or recur

What can a local authority do if it decides that a statutory nuisance is being caused?

If a local authority is satisfied that a nuisance exists, it **must** issue an abatement notice against “the person responsible”. This can include anyone from a landlord/owner, to a local authority or a tenant.

If a local authority finds that a statutory nuisance exists and decides not to take enforcement action (by issuing an abatement notice) they will be acting unlawfully and you can make an application for judicial review of their failure to take action.

An abatement notice must require:

- The nuisance to be prohibited or its occurrence/recurrence restricted

and/or

- Works or other steps to be carried out to comply with the notice

It will also set out a time limit for compliance with the notice.

What happens if a defendant does not comply with an abatement notice?

Failure to comply with an abatement notice without reasonable excuse is a criminal offence.

The test for a reasonable excuse seems to be whether a reasonable person would think that the excuse given fits in with a reasonable standard of conduct. If the abatement notice is breached deliberately through circumstances within the defendant’s control, then they are unlikely to be able to argue that they have a reasonable excuse. It is for the prosecution to show that the excuse is not reasonable.

The maximum penalty for breaching an abatement notice is a £20,000 fine for industrial, trade or business premises and a £5,000 fine and £500 daily penalty for other premises. If a complaint was initially made by an individual to a local authority, then the court has a power to award compensation to the person concerned.

Can a defendant appeal against the service of an abatement notice?

A defendant can appeal to the magistrates court within 21 days of being served with an abatement notice. The grounds of appeal include lack of justification for the notice; a defect in the notice; unreasonable time limits; the use of best practicable means to prevent or counteract the effects of the nuisance; unreasonable refusal by the local authority to accept

compliance with alternative requirements; service of the notice on the wrong person/s; and (for noise cases) requirements of the notice being more harsh than those already in force under relevant noise legislation.

When an appeal against an abatement notice is lodged at court the notice is normally, but not always, suspended.

Defences

Where an abatement notice relates to activities carried on at a trade or business premises, it is a defence in some circumstances to show that the best practicable means (BPM) have been used to prevent or counteract the nuisance. BPM involves having regard to local conditions and circumstances, the current state of technical knowledge, and financial implications.

There are also specific defences for complaints of noise and nuisance on construction sites and in areas where there are registered noise levels.

What other powers does a local authority have?

If a local authority takes the view that criminal proceedings for breaching an abatement notice would not be enough, or that the abatement procedure notice would not be effective, it can apply to the High Court for an injunction. The court has discretion as to whether to grant an injunction, and the particular nuisance will need to be of a sufficient weight and/or urgency to justify this course of action. Breaching an injunction is contempt of court which can result in a two year prison sentence or an unlimited fine.

Can an individual make a complaint of statutory nuisance directly to a court?

Yes, if they give notice in writing to the intended defendant of their intention to proceed with such a complaint.

If a court is satisfied that a nuisance is genuine and likely to recur, it can issue an abatement order, which has the same effect as an abatement notice. A fine of up to £5,000 may be imposed, with further fines of £5,000 plus £500 per day for a continued failure to comply. The defences against an abatement order are the same as those against an abatement notice.

Contacts (for environmental law matters)

Friends of the Earth Rights & Justice Centre is able to take on a small number of important public interest legal cases each year. We will usually act for free and will try to help to find a way to minimise your risk of costs. If you would like to talk to us about a case then please contact us on Freephone 0808 800 1111 or email legal@foe.co.uk and we will see whether we can help.

The Environmental Law Foundation (www.elflaw.org) provides a very good referral service for community groups and members of the public to put them in touch with specialist environmental lawyers around the country who will provide you with some initial free advice and may then be able to act for you. You can contact ELF by telephone on 020 7404 1030 or by email at info@elflaw.org

Further information and guidance:

Friends of the Earth – Telephone 020 7490 1555, Website: www.foe.co.uk

Planning

Email: planning@foe.co.uk

Website: www.YourPlanningRights.co.uk

Right to Know

Email: RightToKnow@foe.co.uk

Website: www.RightToKnowOnline.org

Rights and Justice Centre

Email: legal@foe.co.uk

Useful web sites

Government

Office of the Deputy Prime Minister

<http://www.odpm.gov.uk/>

The Planning Inspectorate

<http://www.planning-inspectorate.gov.uk/>

Environment Agency

www.environment-agency.gov.uk/

Information Commissioners Office

www.ico.gov.uk

Planning Portal

www.planningportal.gov.uk

Non Governmental Organisations (NGO)

Campaign to Protect Rural England planning site

www.planninghelp.org.uk

Environmental Law Foundation

www.elflaw.org/

Liberty

www.liberty-human-rights.org.uk/

Neighbourhood Initiatives Foundation

www.nif.co.uk/

Planning Aid

www.planningaid.rtpi.org.uk

Wildlife and Countryside Link.

www.wcl.org.uk

Specific reading

Community Rights Resource Pack:

<http://www.foe.co.uk/resource/local/planning/resource/index.html>