

Neighbourhood Nuisance

A guide to your rights and the law



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Introduction

South Gloucestershire Council receives many complaints from residents regarding neighbourhood nuisance problems. The most common complaints relate to industrial and commercial noise, the playing of loud music and smoke emissions from domestic chimneys and bonfires.

The council can take action if the nuisance is defined as a Statutory Nuisance by the Environmental Protection Act 1990 as amended. The council can also take action under the Antisocial Behaviour Crime and Policing Act 2014. Statutory Nuisances and Community Protection Powers are dealt with in some detail in this booklet (see pages 4–7). This booklet also explains how individuals can take private legal action in relation to Statutory Nuisance only (see pages 13–14).

What is nuisance?

You may feel that something that annoys or bothers you is a nuisance. The test in law is quite different and is based on what the ordinary reasonable person should have to suffer.

A balance has to be maintained between the rights of persons complained about to do what they like in their own property and the rights of the complainant to have the peaceful enjoyment of their own premises.

Statutory Nuisance

Statutory Nuisances are those that are defined by the Environmental Protection Act 1990. If it is not a Statutory Nuisance individuals may still have a right under common law to take private legal action.

Statutory Nuisances as defined by the Environmental Protection Act 1990 include:

- ▶ **Any premises** in such a state as to be prejudicial to health or a nuisance.
- ▶ **Smoke including soot, grit or ash** emitted from a 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.
- ▶ **Any dust, steam or smell** arising 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 so as to be prejudicial to health or a nuisance.
- ▶ **Any insects** emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance. (certain premises are exempt).
- ▶ **Artificial light** emitted from premises so as to be prejudicial to health or a nuisance (certain premises are exempt).
- ▶ **Noise (including vibration)** emitted from a premises or noise emitted from or caused by a vehicle, machinery or equipment in the street so as to be prejudicial to health or a nuisance.
- ▶ Any other matter declared by other Acts to be a statutory nuisance, for example:
 - **any well, butt, tank or cistern** used to supply drinking water for domestic purposes which is liable to contamination prejudicial to health
 - **any tent, van, shed or similar structure** used for human habitation which gives rise to conditions that are a nuisance or are prejudicial to health.

Factors for determining whether a problem is a statutory nuisance

Case law and common law guides the council in how it determines what can be considered to be a Statutory Nuisance. The following list outlines some of the key factors that we must consider:

- ▶ Nuisance can only be established in law if there is material interference with the enjoyment and use of the property. The problem must therefore be considerable and not just because the complainant is sensitive to such issues.
- ▶ The problem complained of needs to substantially affect the enjoyment of comfortable living i.e. It must interfere with a person's use, enjoyment or rights connected with their land. In the case of noise complaints, for example the loss of a good nights sleep may be sufficient to meet this criteria. There would, however, have to be consideration for the time the noise occurs, the area in which you live and any precautions taken to minimise the disturbance.
- ▶ Normal household activities are unlikely to constitute a nuisance, e.g. walking up and down stairs, shutting doors, children playing etc.
- ▶ The nuisance has to cross a boundary and affect the person's enjoyment of their property. Visual eyesores including overgrown gardens or problems witnessed whilst out walking may not be actioned as Statutory Nuisances.
- ▶ Isolated acts, unless extreme, cannot be considered a nuisance, for example one off parties or bonfires. The problem must normally be continuous or regularly occurring.
- ▶ The nuisance must be of an unusual nature to the area in which you reside.

- ▶ Trades or businesses have a defence that they have employed all best practicable means to minimise the disturbance.
- ▶ Prejudicial to health means harmful or likely to cause injury to health. This relates to a risk to health from disease and not a physical injury.
- ▶ Light nuisance does not apply to Airports, Harbours, Railway premises, Tramway premises, Bus stations and associated facilities, Public Service vehicle operating centres, Goods vehicle operating centres, Lighthouses, Prisons and premises occupied for Defence purposes.
- ▶ The law does not normally apply to Crown property.
- ▶ Trivia cannot be taken into account when determining nuisance.
- ▶ Insect nuisance does not apply to domestic premises.

EXAMPLES

- Accumulations of refuse or rubbish must be considerable and pose some health threat such as the attraction of vermin.
- Smells must materially affect the comfortable enjoyment of a person's property. The smell must therefore be intrusive. Agricultural smells in a country location will not be considered a nuisance unless excessive (usually due to bad agricultural practices).
- Noise in the street relates only to noise from car radios, car alarms, machinery and equipment in the street.
- It is a person's basic right to peacefully enjoy his property, but there is no right to total silence.

Problems that do not constitute a statutory nuisance

The following list outlines some of the common complaints we receive, and either do not deal with, or cannot be dealt with under the provisions of the Environmental Protection Act 1990.

- ▶ **Isolated acts** eg. one off party or bonfire
- ▶ **Animals not under a person's control.**
For example, pigeons, or cats which stray and foul neighbouring gardens
- ▶ **Visual eyesores** e.g. overgrown gardens, accumulations of inert matter (old cars, builders rubble etc). The council's Planning Enforcement Team may be able to assist you with some of these matters. Tel **01454 868004**
- ▶ **Nuisances that affect you while in a public place**
- ▶ **Noise in the street**, e.g. gatherings of people, loud/abusive language and unruly behaviour
- ▶ **General household noise**, e.g. shutting doors, walking up and down stairs, children playing etc. unless extreme in nature or at antisocial hours
- ▶ **Dog fouling in public places.**
The council's Dog Warden Section deals with this. (Tel **01454 868000** and ask for Dog Wardens)
- ▶ **Noise from aircraft and drones.** This is dealt with by the Civil Aviation Authority or the Ministry of Defence. (see page 22 for contact details)
- ▶ **Interference with television or radio signals.**
This is dealt with by the Office of Communication (Ofcom – www.ofcom.org.uk)
- ▶ **Noise from traffic legally using the public highway**

- ▶ **We are often limited in the action we can take to deal with night-time noise associated with essential maintenance and repairs to sections of railway track and embankments.** We suggest that complainants in the first instance speak to the Customer Relations Department at Network Rail in order to inform them of any disturbances, so that they can be given the opportunity to address the situation. Network Rail can be contacted via www.networkrail.co.uk
- ▶ **Environmental Health are unable to deal with issues relating to covenants / deeds relating to a property** e.g. keeping of animals, storage of caravans, TV aerials, and open plan hedges.

How to make a complaint

1. Before registering your complaint with Environmental Health you are advised to approach the persons causing the nuisance. Quite often this informal approach can resolve the problem on an amicable basis, but if this fails you can complain directly to Environmental Health (see useful addresses page 22).
2. On making a complaint you will be asked to give, your name, address, email address if you have one and a daytime contact number, together with the address of the site you are complaining about, and details of the complaint. Anonymous complaints will not normally be taken, as they may be malicious. Your details will be treated in confidence, however, they may be shared with other Council Departments or external agencies who may be better placed to help with your complaint. Should the case end up going to court, you may be required to attend and give evidence.
3. On receipt of your complaint, the case officer will aim to contact you as soon as possible to discuss the matter. In order to succeed, our investigation needs to be undertaken as a partnership.
4. If we cannot assist you with your complaint, we will explain why. If the matter is the responsibility of another agency or Department of the council, we will either refer the matter on your behalf, or provide you with the appropriate information for you to do so yourself.
5. Nuisance is often intermittent, so in most cases we will issue you with nuisance log sheets. You will be asked to complete these detailing the date, time, and nature of the nuisance along with how it affects you. You will normally be asked to complete log sheets for a 3–4 week period, before returning them to the case officer. Log sheets provide vital evidence, and will be used should the case go to court. They also

provide the case officer with information about the best time to visit in order to witness the problem. If you do not return the log sheets by the date specified on them, we will assume that the matter has been resolved, and that you no longer require our assistance.

6. If the nuisance specifically relates to noise, use of the Council's Noise App may be offered.
7. We will not normally contact the subject of the complaint until we have sufficient evidence to support the complaint. Evidence will in most cases be completed log sheets, but may also include corroboration from third parties.
8. The case officer may visit to assess the nuisance a maximum of three times. Visits will be undertaken at the times a nuisance is most likely to be witnessed, based on information from the log sheets. Extra visits may be undertaken in exceptional circumstances. Cases vary but our aim is to complete investigations within 12 weeks. All our staff will carry official photo identification cards. Staff will try to use plain language, avoid jargon and the use of technical terms or abbreviations whenever possible. If you are unsure about something you have been told, please ask the officer to explain or clarify the issue.
9. As part of our investigation, we may undertake monitoring either in person or with the use of specialist equipment in accordance with Human Rights legislation. We may also liaise with other departments or agencies where this is considered helpful to the investigation.
10. It is important to keep the investigating officer up to date with any relevant information. Officers will be investigating many cases, so please do not hesitate to contact them for an update.
11. If the existence of the nuisance has not been substantiated the case will normally be closed and no further action taken. You will be informed of this decision and advised on your rights to consider your own private action (refer to pages 13–14).

Enforcement Action

Community Protection Powers

12. Where conduct is having a detrimental effect on the quality of life of others in the locality, consideration will be given to the use of Community Protection notices.

13. If satisfied on reasonable grounds that conduct:
is having a detrimental effect on quality of life;
is of a persistent or continuing nature and;
is unreasonable.

a Community Protection Warning may be served. If conduct continues after service of the Warning a Community Protection Notice may be served. Failure to comply with a Community Protection Notice is an offence under Section 48 of the Anti-social Behaviour, Crime and Policing Act 2014.

14. In accordance with our enforcement policy, we will take the most satisfactory course of action to resolve the matter and prosecution may be considered.

Failure to comply with the requirements of a Community Protection Notice is an offence that can be prosecuted in the Magistrates' Court. The maximum fine is £2,500 for an individual or unlimited for a body.

Statutory Nuisance Powers

15. If a Statutory Nuisance is substantiated this usually will require the service of an abatement notice under Section 80 of the Environmental Protection Act 1990.
16. The notice may just require the nuisance to be stopped, or may specify the activities or works required to resolve the problem. The notice will give a reasonable time limit for such actions to be carried out although this can be altered pending an appeal.
17. In those cases where the conditions of the notice have not been complied with or the actions taken are ineffective in abating the nuisance, the council must be satisfied that a nuisance still exists. This may be by an Officer witnessing the problem again and may include any evidence supplied from log sheets. In most cases it is likely that you will be required to give evidence on behalf of the council in a Magistrates Court.

The maximum fine for non-compliance with an abatement notice is £5,000 plus £500 for each day the offence continues after conviction or up to £20,000 if the offence relates to a trade or business activity.

Private Action

There are only a limited number of Officers available to deal with all the complaints received and consequently revisits cannot be made time and time again. If, therefore, after a number of visits no evidence of a Statutory Nuisance has been witnessed by an officer you will be advised to consider your own private action under Section 82 of the Environmental Protection Act 1990. You can do this yourself however you may wish to consult a solicitor first.

Procedure for private action

1. Write to the person responsible for causing the problems asking that they abate the problem within a set time. Keep copies of all correspondence sent.
2. If in your opinion the nuisance still exists or is likely to recur then contact the Justices Clerks Department of Bristol Magistrates' Court explaining that you wish to make a complaint under Section 82 of the Environmental Protection Act 1990. Outline the problem and provide any evidence to support your claim i.e. Letters sent, log sheets etc. Please advise the Clerk that Environmental Health has already investigated your complaint.
3. The Clerk of the Court will be able to advise you further but if you wish to proceed then a Notice of Intention must be served on the person responsible for the nuisance. The notice gives details of the complaint and a date after which proceedings may be brought. Keep a copy of this notice.

4. The court may then set aside a date upon which to hear details of the complaint from both sides. You will have to prove to a magistrate beyond reasonable doubt that the problems about which you are aggrieved amount to a Statutory Nuisance. It is therefore important that you keep an accurate record of the times/dates that the nuisance occurs together with a description of how it has affected you. It is also advisable that you encourage other residents also affected by the nuisance to support your complaint rather than having one persons word against another.

Note: This is only available for Statutory Nuisances as defined in the Environmental Protection Act 1990 – see pages 4/5 of this booklet.

5. If you prove your case the Court can issue an Order requiring the person responsible for the nuisance to take steps as are necessary to abate it and:
 - (a) impose a fine up to a maximum of £5,000
 - (b) make a compensation order sufficient to compensate you for any expenses incurred in the proceedings
 - (c) order the council to carry out such works as are needed to prevent a recurrence of the problem.
6. If the Court Order is not complied with further Court action will need to be taken, if this happens you must continue to keep proper records of the problem and the dates/times the problem occurs. Non-compliance with a Court Order will attract a higher fine plus a maximum of £500 per day that the offence continues after the order was made.

Civil Action

If a nuisance occurs that cannot be classified as a Statutory Nuisance to which neither the council nor you as a private individual can take action under the Environmental Protection Act the alternative is to consider civil action under common law. You will have to approach a County or High Court to present your case and demonstrate that the nuisance substantially affects your health, comfort or convenience.

If the court decides that there is a case to answer it will issue a summons to the person responsible for the nuisance or the owner/occupier of the land on which it occurs, to answer the allegations given.

Civil action can prove to be very expensive and it is strongly advised before you contemplate such action that you seek the advice of an independent solicitor. If successful, the court does have the power to issue an injunction to stop the nuisance and it may be possible to claim damages.

Supplementary information

What the council expects from you

- ▶ Treat our employees politely, and be non-abusive and non-threatening.
- ▶ Give us the appropriate information so we can deal with your enquiry quickly and effectively.
- ▶ Comply with reasonable requests from our staff.
- ▶ Let us know beforehand if you need to cancel or rearrange a pre-arranged appointment.
- ▶ Give us reasonable advance notice if you need a signer, interpreter or translator.
- ▶ Let us know immediately if you are unhappy with the service you have received.

Equal Opportunities

Our equalities objectives aim to

- ▶ encourage mutual respect for all of our residents
- ▶ recognise and work with every diverse group
- ▶ give high quality inclusive services and facilities
- ▶ make sure our employment policies and practices are fair
- ▶ challenge harassment and discrimination.

Data Protection

Everyone has rights under the Data Protection Act of 2018, which incorporates the General Data Protection Regulation (GDPR), to access personal information held about them by the council.

All personal information held by the council will be treated in confidence and held and used only in accordance with the terms of the act and other applicable legislation.

We will keep the minimum amount of personal information needed to perform our duties and will hold that information securely, use it only for appropriate purposes, not disclose it without proper authority and when it's no longer required for the purpose it was obtained we will securely destroy the information.

We will provide any person requesting it in the proper manner a response stating whether or not the council holds personal information about that individual and, if so, the opportunity to see the information and to have it corrected, completed or deleted if appropriate. Also the person may choose to request that our processing of the information is restricted, ask us to share it with another party or to make a complaint.

Persons may only request details about themselves and no other person. Should the request be considered frivolous or otherwise a deliberate waste of council resources, the request may be refused.

More information is available on the councils web site at www.southglos.gov.uk

Freedom of Information Act 2000

A request for information under this Act must be made in writing (letter or e-mail). On receipt of a request, the council has 20 working days to respond. There is normally no charge for making a request, but the law allows a charge to be made in certain circumstances. If a charge is to be made this information will be clearly given to the Applicant. The information may be refused if a relevant exemption applies.

Am I entitled to know who complained about me?

In accordance with section 41 of the Freedom of Information Act, any information we have concerning the person making a complaint would have been made in confidence, and releasing such information could be a breach of that confidence.

On the grounds of confidentiality, such information may be exempt from release.

In accordance with Section 30 of the Freedom of Information Act this information may also be exempt from release on the grounds that it is part of an ongoing or future investigation by the council. A public interest test (will the public benefit more from disclosure or from the council withholding the information) is also required by the Act when applying this exemption. This may prevent us from releasing the information as it may prejudice our investigations.

Environmental Information Regulations 2004

These Regulations give access to information held by public authorities relating to the environment including the state of water or air, fauna or flora, or land where these are, or are likely to be adversely affected. Public authorities have 20 working days to comply with requests for access and a fee can be charged. Requests do not have to be in writing, but it would assist the council if applications are made in writing. All exemptions must be applied only after the council considers the public interest. Further advice on the current regime can be obtained from the Department for Environment, Food and Rural Affairs (DEFRA).

More information is available on the councils web site at www.southglos.gov.uk

Enforcement Policy

Our role is to protect, promote and improve the health and environment of the area and all its people through education, guidance and enforcement.

We believe that carrying out these functions in a fair, consistent, independent and practical manner will help to promote a thriving local and national economy.

We are committed to these objectives in our approach to enforcement action, which is intended to:

- ▶ ensure that we enforce the law in a fair, equitable and consistent manner
- ▶ assist businesses and others in meeting legal obligations without unnecessary expense or time
- ▶ focus on prevention rather than cure
- ▶ take firm action against those who flout the law or act irresponsibly

We will consider the following factors when deciding whether or not to prosecute:

- ▶ the failure to carry out action required in a notice within the time specified
- ▶ the recovery of outstanding fines resulting from a fixed penalty notice
- ▶ previous advice has been ignored
- ▶ flagrant/reckless disregard for the law or repeated breaches
- ▶ the seriousness of the offence
- ▶ the attitude of the offender towards the offence
- ▶ the offender's history of previous behaviour
- ▶ the deterrent effect of a prosecution, on the offender and others
- ▶ whether a Simple (previously Formal) Caution would be more appropriate

Please contact us or see our web site

www.southglos.gov.uk/envpro

for a full copy of our enforcement policy.

Making a complaint against the Environmental Protection Service

Sometimes we do make mistakes, so if you are not happy with the standard of service, please let us know. We aim to resolve your complaint as quickly as possible.

1. If you have a complaint you should raise it first with the member of staff that you have been dealing with.
2. If your complaint has not been resolved in this way, or if you do not want to raise it with the person you have been dealing with you can contact the Environmental Protection Team Leader on **01454 868001**.
3. If we still cannot resolve the complaint to your satisfaction, we will send you information on our complaints procedure. Further information is available on our web site www.southglos.gov.uk or by emailing the Departments Complaint Representative ecsfeedback@southglos.gov.uk You may also make a formal complaint on line.
4. The councils complaints procedure applies if you are dissatisfied with a service e.g In relation to the manner in which an issue was investigated or the procedures that were followed and not merely that you do not agree with the outcome.
5. Formal complaints require a response to be given to the complainant within set time scales. Each investigation must be carried out by a senior manager and if you are still dissatisfied the complaint can be heard by a complaints panel.

Help us to get it right

All our customers have the right to be treated with understanding and fairness.

Have you made a complaint to or been the subject of a complaint investigated by the Environmental Protection team?

- ▶ How easy it was to get in touch?
- ▶ How well was the complaint dealt with?
- ▶ Were you happy with the quality and clarity of the information given?
- ▶ Were you happy with the Officer who dealt with the complaint?
- ▶ Were you happy with the overall level of service?
- ▶ Did you have any difficulties in accessing our service?
- ▶ Were you dealt with in a fair and non-discriminatory manner?
- ▶ Did you find our web site useful?

In order that we may continually improve the quality of the service we provide, your views would be greatly valued. Please contact the Environmental Protection Team Leader with your views on **01454 868001** or contact us on line at **www.southglos.gov.uk/envpro** or via email on **environmental.protection@southglos.gov.uk**

Useful addresses

South Gloucestershire Council, Department for Environment and Community Services

PO Box 1954, Bristol BS37 0DD

01454 868001

Text phone **01454 868010**

Email environmental.protection@southglos.gov.uk

www.southglos.gov.uk/envpro

For all South Gloucestershire Council Departments

01454 868009

and ask for the relevant department.

Environment Agency (Water Pollution, Waste Regulation)

General Enquiry Line: **03708 506 506**

Emergency Hot Line: **0800 807 060**

www.environment-agency.gov.uk

Police Authorities

In an emergency phone **999**,
101 for all other enquiries.

www.avonandsomerset.police.uk

Wessex Water (Sewage)

0345 600 4 600

www.wessexwater.co.uk

Bristol Water (Drinking Water)

0345 600 3 600

www.bristolwater.co.uk

Civil Aviation Authority

0330 022 1500

www.caa.co.uk

Useful addresses Continued

Ministry of Defence

020 7218 9000

MOD Public Enquiry Helpline

This service is available from

Monday – Friday,

9am – 5pm

www.mod.uk

Bristol Magistrates Court

Marlborough street, Bristol BS1 3NU

01179 302 400

www.southglos.gov.uk/envpro