

**Bath & North East
Somerset Council**



Nuisance Complaints

Environmental Protection

What is a Statutory Nuisance?

Under the Environmental Protection Act 1990, Bath and North East Somerset Council has a duty to investigate complaints about nuisance. Authorised Officers can take action where they are satisfied that the matter is a Statutory Nuisance.

Statutory Nuisance is generally defined as a nuisance that is significant and has an unreasonable effect on a person's enjoyment of their property. It is much more than something that is merely annoying.

Individual circumstances vary. Each case needs to be assessed and judged on its own merits. There is no fixed limit for an action/ inaction to be classed as a Statutory Nuisance.

Following a complaint, an investigation is carried out to determine whether the problem constitutes a Statutory Nuisance in terms of the law. The determining factors include:

- Time of occurrence;
- How often it occurs;
- How long it lasts for;
- The volume or intensity of the problem;
- The location and characteristics of the area.

Where possible, we try to resolve the nuisance activity informally; by discussion and negotiation, and by providing practical ideas and solutions to remedy the situation.

If the Council is satisfied that a Statutory Nuisance exists, an Abatement Notice can be served upon the person(s) causing the problem. Failure to comply with the Notice within the specified time is a criminal offence and may result in formal action in a Magistrates Court. The Council can prosecute the alleged offender, who may be fined up to £5,000, upon conviction, for a domestic dwelling and up to £20,000 for commercial premises.

Anti-social Behaviour

If the Council is not satisfied that the nuisance activity constitutes a Statutory Nuisance it may be deemed as anti-social behaviour and can

be dealt with under the Anti-social Behaviour, Crime and Policing Act 2014. The behaviour needs to meet three tests before the Council can take further action:

- The behaviour affects the Quality of Life of those in the local area;
- The behaviour is continuous or persistent;
- The behaviour is unreasonable.

The behaviour needs to be witnessed by an authorised officer of the Council, where a Warning Notice will be served. Failure to comply with the Warning Notice within a specified time will result in a Community Protection Notice served. Failure to comply with the CPN is an offence and will result in a Fixed Penalty Notice served. Failure to comply with a FPN is a criminal offence and may result in formal action in a Magistrates Court.

Noise Nuisance

Noise may be irritating, but may not be a nuisance in the legal sense of the word. A Statutory Noise Nuisance is much more than just being able to hear a noise; it has to have an unreasonable effect on a person's use of their home, garden or place of work. One off incidence of noise generally cannot be investigated under Statutory Nuisance.

Noise caused by traffic, any military force or by political demonstrations or demonstrations supporting or opposing a campaign is exempt from being investigated as a Statutory Nuisance under the Environmental Protection Act 1990.

Odour Nuisance

Odours are one of the most difficult nuisance complaints to investigate as they can travel long distances and many factors (such as wind direction) may make it difficult for Bath and North East Somerset Council to identify the source.

Characteristics of the area are taken into consideration when assessing



odour complaints. For example, if you live in a town centre you might expect to smell odour from restaurants or takeaways. In the countryside, it is reasonable to expect smell from farming activities. During the autumn, farmers spread fertilisers or soil conditioners onto the fields (commonly known as muck spreading). This type of odour is normally short-lived, and is considered to be a necessary task. It is unlikely to be a Statutory Nuisance. Farmers have to keep to strict regulations and codes of practice that regulate this type of activity. The Environment Agency is responsible for enforcing those regulations.

Due to legislative exemptions, B&NES Council cannot take any action on odour arising from a domestic (non-business) property, unless the odour is caused by a substantial build-up of material in the garden (e.g. dog mess or rotting waste).

For the odour to be considered to be a Statutory Nuisance from an Environmental Health Officer's professional opinion, and the source needs to be beyond all reasonable doubt the cause of the odour.

Smoke and Dust Nuisances

This often links with odour complaints, for example, smoke from regularly occurring bonfires or chimneys can cause a nuisance to surrounding properties. If B&NES Council receives complaints we will carry out an investigation to see if it causes a problem on a regular basis.



If you live within the city of Bath, which is designated a Smoke Control Area then you are not allowed to burn inherently smokey fuels such as wood and coal. This prohibition relates to an open fire place or a conventional non approved wood burning or multi-fuel stove. If you want to use these, you will need to purchase an authorised Smokeless fuel. For more information please contact the Environmental Monitoring Team: on

01225 396622 or environmental_monitoring@bathnes.gov.uk

Properties within Norton Radstock and Keynsham and the surrounding villages are not located within the Smoke Control Area.

Under the Clean Air Act 1993, it is against the law to produce and release dark smoke from industrial premises (unless it is allowed and limited by Environmental Permitting Regulations).

It is advisable to contact B&NES Council as soon as possible if you witness dark smoke from an industrial or trade premises.

Light Nuisance

Lighting from some premises, such as railway stations and military establishments, is generally necessary and we may not be able to take any action. The Council can investigate complaints about light nuisance created by:

- Residential security lights;
- Commercial premises lighting (e.g. illuminated business signage);
- Perimeter security lighting;
- Lighting for loading / delivery/ collection areas;
- Commercial security lights;
- Sports ground floodlights.

Some lighting schemes need planning permission, usually as part of a building development of some kind, and may have conditions imposed as part of their planning permission to ensure that no light pollution is created. If such lighting causes concern, you should contact Planning Services for further advice on: **01225 477590**.

Rubbish Nuisance

The Environmental Protection Team has powers to deal with accumulations of rubbish that may be a public health concern. The Council is not able to act when a premises is unsightly.

If an accumulation is likely to harbour or attract rodents, or present a health risk for humans, a legal notice can be served making the owner subject to enforcement action. This action can either be voluntary removal

of the refuse accumulation or legal action in the form of a statutory notice or an Abatement Notice.

The Environmental Protection Team suggests that you may wish to take the following steps before reporting the problem to us, if the rubbish is located on neighbouring property:

- Try speaking to your neighbour in the first instance;
- If the direct approach does not succeed, you may want to consider mediation; an independent third party will listen to both sides and help reach an agreement or compromise to remove the rubbish;
- Speak to your Landlord or Housing Association;



If the rubbish is on your property: use a reputable contractor to arrange for removal of the accumulation, and keep your property free of future rubbish.

If the accumulation is not removed in accordance with specifications of the Notice the Environmental Health Department may carry out one or both of the following:

- Arrange for removal of the accumulation and recover all reasonable costs incurred (including Officer time) from the person on whom the Notice was served, and or;
- Prosecute the person on whom the Notice was served.

What Can You Do?

If appropriate, you could approach the person(s) responsible for the nuisance and explain the problem(s) it is causing to you. It may be that they are unaware that they are causing a nuisance. The informal approach may enable a compromise or acceptable change in the situation.

Taking Your Own Action

If you want to take action yourself there are two alternative options:

1. In a Magistrates' Court under Section 82 of the Environmental Protection Act 1990. Make sure any letter is dated and signed and ensure you keep an accurate copy for your records.
2. In your local County Court for a 'private nuisance'. This is a method which is best adopted after consulting a Solicitor and relies on you proving on the balance of probabilities that your right to reasonable enjoyment of your property has seriously been affected.

Prior to taking any independent court action you are advised to consult a Solicitor.

What We Will Do

Formal nuisance complaints should be made to the Environmental Protection Team, within Public Protection and Health Improvement, at Bath and North East Somerset Council.

Complaints can be made in person to our One Stop Shop, by telephone (on 01225 477551), by letter (to EP, PPHI, Lewis House, Manvers Street, Bath BA1 1JG) or by email: environmental_protection@bathnes.gov.uk

When making a complaint you must include:

- Your name, address and if possible contact telephone number(s) and your email address
- The address you are complaining about and the type of nuisance (e.g. loud music, a barking dog, an extractor fan, bonfires, light pollution, accumulation of rubbish etc.)
- When and for how long the nuisance normally occurs
- The way the nuisance affects you e.g. prevents sleep.

Anonymous complaints will not be investigated

We will take your complaint and investigate. Sometimes investigations can take several weeks or months to gather evidence. A letter will be sent to the person you allege to be responsible for causing the nuisance. It will advise them of the complaint and attempt an informal resolution to any problems that may exist.

Your name and address will not be disclosed to the person complained about. Occasionally, however, the person may guess who has complained or may approach you to ask if you have made a complaint. Also, if the Council decides to take legal action, you may be asked to appear in court as a witness.

A letter will also be sent to you acknowledging receipt of your complaint and including a log form. You will be asked to keep a record of the nuisance you are experiencing for 14 consecutive days. After which, the completed log form should be returned to us. There are three reasons for this:

1. To help us assess whether the case is likely to amount to a Statutory Nuisance;
2. To indicate the times when an officer is more likely to witness the nuisance;
3. With your consent, the log form may be used as evidence should formal action prove necessary.

If the completed log form is not returned within 21 days it will be assumed that the matter has been resolved to your satisfaction and no further action will be taken.

Upon receipt of your completed log form, the officer dealing with the complaint will attempt to witness the nuisance by visiting your property at a time the nuisance usually occurs.

If the officer is satisfied that a Statutory Nuisance exists, an Abatement Notice will be served on the person(s) causing the problem. Failure to comply with the Notice within the time specified is a criminal offence and may result in formal action is a Magistrates' Court.

There are some occasions where the Council is unable to take formal action, either because the nuisance occurs intermittently or a Statutory Nuisance cannot be substantiated. If the Council decides that formal action cannot be taken, you will be advised of this.

Bath & North East Somerset Council Offices

Opening Hours

Bath

Lewis House
Manvers Street
Bath
BA1 1JG

One Stop Shop Opening hours:

Monday to Thursday 8.30am to 5pm;
Friday 8.30am to 4.30pm

Keynsham Civic Centre

Market Walk,
Keynsham.
BS31 1FS

One Stop Shop Opening Hours:

Monday, Wednesday and Thursday 8.30am to 5pm;
Tuesday 8.30am to 6pm;
Friday 8.30am to 4.30pm;
Saturday 9am to 4.30pm

Midsomer Norton

The Hollies,
Midsomer Norton
BA3 2DP

One Stop Shop Opening Hours:

Monday, Wednesday and Thursday 8.30am to 5pm;
Tuesday 9.30am to 5pm;
Friday 8.30am to 4.30pm

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