

Southampton City Council

Consumer Protection & Environmental Services

Statutory Noise Nuisance Operational Protocol

Southampton City Council Consumer Protection and Environmental Services Statutory Noise Nuisance Operational Protocol

Contents

Purpose.....	2
Scope.....	2
Protocol Commitments	11
Legislative Context and other Related Documents	2
Protocol Statement.....	11
Governance	11

Statutory Noise Nuisance Operational Protocol			
Version	Version 1.2	Approved by	Executive Director – Communities, Culture and Homes
Date last amended	04/12/2023	Approval date	25/08/2022
Lead officer	Gavin Derrick – Service Manager (Environmental Health and Trading Standards)	Review date	03/12/2024
Contact	gavin.derrick@southampton.gov.uk	Effective date	03/10/2022

Version	Section	Amendment	Date
1.1	n/a – original version	n/a – original version	25 August 2023
1.2	Paragraph 25	Text amended to provide discretion to investigating officer on visiting to assess noise, using calibrated noise recorder and using the Noise App.	4 December 2023
1.3	Paragraph 19	New paragraph inserted regarding musical instruments	11 December 2023

Purpose

1. The statutory noise nuisance operational protocol sets out the Council's approach to investigating complaints about noise consistent with the legal duty set out in Part III of the Environmental Protection Act 1990. This document includes the approach to enforcement.

Scope

2. Complaints about noise are investigated by Southampton City Council's Consumer Protection and Environmental Services.
3. The operational protocol covers complaints about noise made by residents and businesses representatives living or working within Southampton City Council and sets out the approach to investigation and enforcement activity.

Legislative Context and other Related Documents

4. The Council has a legal duty to investigate complaints about statutory nuisance and to take action if satisfied that a statutory nuisance exists.
5. The law relating to statutory nuisance is set out in Part III of the Environmental Protection Act 1990.
6. Section 79 of the Act defines the matters that may constitute a statutory noise nuisance as:
 - noise emitted from premises so as to be prejudicial to health or a nuisance,
 - or
 - noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street.
7. The Act does not define 'statutory nuisance' so consideration is given to decisions made by the Courts when determining whether the Council can take action in response to a complaint about an alleged noise nuisance. This means that some complaints about noise do not constitute a statutory nuisance and in these circumstances the complaint will not be investigated by the Council in accordance with this protocol.

8. The Act places a legal duty on the Council to take steps which are reasonably practicable to investigate a complaint about an alleged statutory nuisance which is made by a person living within the Council area. The Council will also investigate a complaint about an alleged statutory nuisance which is received from a representative of a business operating from a premises within the city.
9. If the investigation of a complaint establishes that a statutory nuisance exists, the Council must serve a noise abatement notice on the person responsible for the nuisance.
10. If the statutory nuisance continues after the service of the abatement notice, the Council can take further steps to abate the nuisance and may commence legal proceedings in accordance with this operational protocol. The Council may also take steps to abate the nuisance
11. Complaints about noise will be reviewed by the Council's consumer protection and environmental services (and where appropriate investigated) in accordance with this protocol.
12. The Council has a four-stage process for investigating noise complaints, which is set out below and comprises:
 - Stage 1 – initial receipt and review of complaint
 - Stage 2 – validation of complaint
 - Stage 3 - investigation – evidence gathering and abatement notices
 - Stage 4 – further enforcement action

Stage 1 – initial receipt and review of complaint

13. The Council will investigate a complaint about an alleged statutory nuisance which is received from a person living within the city council boundary or operating a business from a premises located within the city council boundary. (A complaint received from a person living or operating a business outside the city boundary will be referred to the local authority in whose area the complainant lives or operates the business.)

14. A noise complaint may be received via:

- a. The Council website www.southampton.gov.uk/environmental-issues
- b. The Council's customer contact centre by telephone 023 8083 3005
- c. Writing to the Council's consumer protection and environmental services at the Civic Centre, Southampton, SO14 7LY
- d. Email to environmental.health@southampton.gov.uk

15. The complaint will be recorded on the Council's environmental health database (UNI-form service request module).

16. The complaint will be allocated to an authorised officer for initial review. The officer will consider whether a potential statutory nuisance exists. The officer will consider the following factors:

- a. The type of noise
- b. The history of complaints regarding the type of noise associated with the premises which is the subject of the complaint, including complaints from other sources (i.e. multiple complainants)
- c. The impact of the noise on the complainant's enjoyment of their property
- d. The cause of the noise and whether this is unreasonable
- e. The frequency of occurrence of the noise
- f. The time of day or night when the noise occurs
- g. The nature and character of the area in which the noise occurs.

The officer may contact the complainant to gather further information about the noise which is the subject of the complaint.

17. If the officer determines that the noise which is the subject of the complaint **does not** constitute a statutory nuisance, the Council will take no further action and the complainant will be advised accordingly, either verbally or in writing. Some types of noise are not considered to be statutory nuisance. The law allows people to go about their lives making normal amounts of noise without having to worry about the impact of that noise on their neighbours, even if this noise causes some disturbance. Some types of noise are inevitable due to the propagation of sound through the structure of a building (for example impact noise).

The following types of noise from the activities described below will not be investigated as they do not constitute an actionable statutory nuisance in law:

- a. Noise from children playing (either inside, or in gardens, or in playgrounds)
- b. Babies or children crying
- c. Neighbours talking (either inside a property or in a garden)
- d. Snoring or sexual activity
- e. Objects being dropped
- f. Impact sound from footsteps, doors closing and switches operating in adjacent premises or communal areas in residential blocks
- g. Toilet flushing
- h. Washing machines, kitchen equipment and other domestic appliances operating during daytime hours (typically 0700 – 2200 hours)
- i. Garden equipment operating (e.g. lawn mowers, leaf blowers, shredders)
- j. 'One off' party
- k. Engine noise from cars starting or warming up
- l. DIY, building or property maintenance tasks carried out during daytime hours (typically 0700 – 2200 hours)
- m. Traffic noise*
- n. Aircraft noise*
- o. Fireworks*
- p. Audible reversing alarms on vehicles
- q. Noise in the street which does not arise from a vehicle, machinery or equipment (for example, noise from people in the street does not constitute a statutory nuisance).
- r. Noise which arises within a premises, such as noise caused by a person living in shared accommodation and affecting a person living in the same accommodation.
- s. Wind chimes and hot tub equipment in a private garden
- t. Noise from wild animals (such as seagulls)

It is recognised that the types of noise specified above can cause disturbance, and may be stressful to individuals who are sensitive to noise, but the Council must have regard to the decisions of the Courts and balance the rights of the person who is the subject of the complaint to use their property in a reasonable manner, against the desire of the complainant not to be disturbed by noise. The test for a statutory nuisance must consider the response of the 'average person' to the noise, rather than the sensitivity of the complainant, particularly where the complainant is particularly sensitive to the noise.

The investigating officer will consider whether to refer a complaint to another agency, where controls on activity may be intended to control noise. For example, a premises licence may control hours of operation; planning permission may restrict construction work or hours of operation; housing providers may have tenancy conditions which restrict pet ownership.

18. There may be exceptional circumstances where a type of noise identified in paragraph 17 does require further investigation and in these exceptional circumstances the service manager may direct that the complaint is progressed to Stage 2.
19. The noise from musical instruments being played in residential properties can be the subject of complaints. In deciding whether to validate a complaint relating to musical instruments, the investigating officer should have regard to the decision of the Court which found that noise from musical instruments can constitute a statutory nuisance, but that it is reasonable for instruments to be played for up to five hours per day between the hours of 9.00 am and 9.00 pm (or three hours per day between 9.00 am and 5.00 pm on Sundays) providing that a playing session does not exceed one hour. [Carrabino v Royal Borough of Kensington & Chelsea (2015)].
20. If the officer determines that the noise which is the subject of the complaint **could** constitute a statutory nuisance, a Stage 2 investigation will commence.

Stage 2 – validation of complaint (The Noise App or diary records)

21. The investigating officer will determine whether the alleged noise nuisance can be validated. The Council has adopted the Noise App allowing complainants with access to a suitable mobile phone to record incidents of noise and upload them via the Noise App for assessment by the investigating officer. The complainant will be sent details explaining how to access and use the Noise App.

If the complaint is validated (i.e. recordings indicate that statutory noise nuisance may exist and evidence may be gathered to support enforcement action) a Stage 3 investigation will commence.

If the complainant has been unable to provide recordings to demonstrate that the noise which is the subject of the complaint may constitute a statutory nuisance within 28 days of being given access to the Noise App, the Council will take no further action to investigate the complaints and

the investigating officer will advise the complainant accordingly in writing. (This includes situations where recordings are provided but do not demonstrate the likely existence of a statutory nuisance; AND situations where no recordings are provided).

22. In exceptional circumstances, where a complainant is unable to access a suitable mobile phone with which to upload recordings to the Noise App, the investigating officer may provide log sheets for the complainant to complete and return within 28 days. Written diary records are less satisfactory than a recording as it is difficult to assess the impact of a noise without an audio recording. The log sheets will be used to determine whether to commence a Stage 3 investigation or take no further action, as set out in the preceding paragraph.
23. A complaint which does not progress from Stage 2 to Stage 3 due to insufficient information (such as Noise App recordings) being provided to within the 28 days period will not be reinvestigated for a period of three calendar months from the date that the complainant is notified that the investigation will not progress to Stage 3.
24. Complaints about noise from **commercial premises** (licensed entertainment venues, industrial premises etc) may be resolved more effectively by early engagement with the operator of the business, particularly where licensing or planning conditions are in place to control noise. The investigating officer will consider liaising with other regulators (such as licensing services, development control service, or the Environment Agency) and arranging to engage with the business at an early stage to discuss the complaint; to offer advice on controlling the noise and to allow the business the opportunity to resolve the matter avoiding the need for further action

Stage 3 investigation – evidence gathering and abatement notices

25. The investigating officer will notify the person who is the subject of a complaint in writing that noise from their premises or activity is causing a disturbance and may constitute a statutory nuisance. The written notification will advise the subject of the complaint that an investigation will be undertaken and that surveillance may be carried out which may demonstrate the existence of a statutory nuisance. The written notification will also set out the legal consequences of causing a statutory nuisance and offer to provide advice on request on controlling any noise from their premises or activity.
26. The investigating officer will analyse the information provided by the complainant and determine the appropriate steps to gather evidence to support enforcement action. In some circumstances,

this will require an authorised officer to visit the complainant at home (or in their commercial premises) to assess the impact of the noise on the complainant's enjoyment of their home (or their commercial premises). The investigating officer may use other techniques to assess the impact of the noise, such as the review of Noise App recordings; or the installation of a calibrated recording device in the complainant's home; or observations carried out in close proximity to but outside of the complainant's home.

If the investigating officer is satisfied that a statutory nuisance exists, the investigating officer will arrange to serve a noise abatement notice on the person (or persons) responsible for the noise in accordance with the provisions of the Environmental Protection Act 1990, normally within seven days of being satisfied that the statutory nuisance exists, except where the noise arises on business or commercial premises – see paragraph 22.

The abatement notice may be served where the investigating officer is satisfied that on the balance of probability, a statutory nuisance exists. The notice will be served by delivering to the appropriate address of the person responsible for the nuisance either by hand delivery, or by first class Royal Mail post.

27. If the investigating officer has been unable to gather evidence that a statutory nuisance exists within 3 months of the Stage 3 investigation commencing, the officer will contact the complainant to advise that the Council is unable to take any further action to investigate the complaint. (The investigating officer must be satisfied that all reasonable steps have been taken to gather evidence, including observations outside of normal working hours where the noise occurs at night or at weekends).
28. The investigation of noise which arises on commercial or industrial premises must be given additional consideration as the law provides a defence for a person responsible for a noise nuisance where it can be shown that the 'best practicable means' have been taken to prevent or counteract the effects of the noise. Where noise arises on commercial or industrial premises, the investigating officer must discuss the measures taken to control the noise to determine whether 'best practicable means' are being employed.

If the investigating officer is satisfied that best practicable means are being used, no further enforcement action will be taken by the Council and the complainant will be advised accordingly.

If the investigating officer is satisfied that a statutory nuisance does exist, but the 'best practicable means' are not being taken to control noise from a commercial or industrial

premises, the investigating officer will contact a senior representative of the business to provide the business with the opportunity to control the noise through the implementation of best practicable means before serving the abatement notice. The investigating officer will not serve the abatement notice in the seven-day period following contact with the senior representative of the business. If the investigating officer is not satisfied with the response of the business after the seven days have elapsed, the abatement notice will be served.

Stage 4 – further enforcement action

29. The Council recognises the importance of ensuring that all enforcement decisions are consistent, proportionate to risk, clearly explained and relate to common standards to ensure the public is adequately protected.
30. The decision to use enforcement action will depend on the severity of the non-compliance. Factors that will be taken into consideration include:
- a. The seriousness of the offence, including the impact on the complainant;
 - b. The previous history of the defendant, including the response to advice or other enforcement action, such as the service of the abatement notice;
 - c. Any aggravating factors, such as obstruction of an officer or aggression towards the complainant
 - d. Any explanation offered by the defendant;
 - e. The availability of a defence in law, e.g. 'reasonable excuse' or 'best practicable means';
 - f. The ability and willingness of important witnesses.
 - g. The willingness of the defendant to put matters right;
 - h. The probable public benefit of prosecution and the importance of the case;
 - i. The defendant's age and state of health (see paragraph 26).
31. Failure to comply with the requirements of a noise abatement notice is a criminal offence is likely to lead to formal enforcement action, such as prosecution.
32. A defendant may have a severe or profound learning disability and / or a severe and enduring mental health diagnosis which means that they are unable to regulate their behaviour to control any associated noise. In these circumstances legal proceedings are not appropriate and the investigating officer should explore other action which will mitigate any noise impact to complainants. This will require the investigating officer to engage with other stakeholders, such

as housing providers or support workers, to communicate the impact of the noise and to consider other remedial action which may resolve the complaint. It is recognised that noise caused by a person with a mental health diagnosis may not be fully resolved to the satisfaction of the complainant.

33. Where admissible evidence is obtained to demonstrate that there is a failure to comply with an abatement notice, the investigating officer will prepare an offence report for the Council's legal services. The offence report will include evidence of the offence, a copy of the abatement notice, copies of any correspondence with the offender and statements from any witnesses. The offence report will consider this enforcement protocol and recommend the appropriate enforcement outcome, which could include:

- a. No Action, Verbal or Written Warning will only be appropriate for minor offences or technical breaches that are immediately remedied.
- b. Simple caution provides an alternative to prosecution. The defendant must admit to the offence and the caution will be disclosable in any further criminal proceedings for a period of three years. A caution can only be considered where the factors for a full prosecution are met; there is not a lesser test. A caution may be considered where there is an acceptance of guilt and remorse is shown. Cautions should be used under the same guidelines for prosecution (see below).
- c. Prosecution - the decision to prosecute is significant and is related to the seriousness of the offence. In general, it is reserved for those a person who blatantly disregards the law.
- d. Fixed penalty notice – a fixed penalty notice may be used as an alternative to prosecution where there is non-compliance with an abatement notice. The fixed penalty is set at £150 for non-commercial premises and £400 for commercial premises.
- e. Seizure of equipment – where an abatement notice has not been complied with the local authority may take action to abate the nuisance, which can include the seizure of equipment. The investigating officer shall consider this action where there is evidence that there has been a failure to comply with an abatement notice on three separate occasions, where legal proceedings are being prepared and where the non-compliance is likely to recur.

34. Where a decision to prosecute is made, this decision will be taken in accordance with the Code for Crown Prosecutors and this operational protocol. The officer will need to ensure that there is sufficient evidence to provide a realistic prospect of conviction and that any relevant Code of Practice is followed. Prosecutions should be brought without unnecessary delay.
35. All legal proceedings are subject to the requirements of the Police and Criminal Evidence Act 1984 and the Code of Practice made under Section 66 of that Act.
36. The Council will ensure that officers who take enforcement action are competent by training, qualification and/or experience and suitably authorised in writing in accordance with the Council's Scheme of Delegation
37. Although the investigating officer will endeavour to follow this protocol, there may be circumstances where it is appropriate to deviate from this. In such cases, the officer will still be under a duty to act reasonably.

Protocol Commitments

36. This protocol is consistent with the duty placed on Southampton City Council by Part III of the Environmental Protection Act 1990 to investigate noise complaints

Protocol Statement

37. Authorised officers (senior environmental health technical officers and environmental health officers) will follow this protocol when investigating noise complaints.

Governance

38. The service manager – environmental health, trading standards and community safety will ensure investigation of noise complaints is consistent with the operational protocol
39. Any revision of this operational protocol will be communicated to the Head of Consumer Protection and Environmental Services and the Cabinet Member for the service area.

[END]