

Milton Keynes Council

Procedure for Neighbourhood Noise Nuisance Complaint Investigation

1.0 Purpose

The purpose of this document is to detail the approach taken and procedure followed by Milton Keynes Council (MKC) in the investigation of complaints of neighbourhood noise nuisance.

It provides members of the public, elected members, partner organisations and other service areas in MKC with information on how complaints of noise are investigated by the Environmental Health Service and what can be expected in terms of complaint investigation.

2.0 Introduction

There is no right to absolute peace and quiet no matter where you live and people must be tolerant of occasional disturbance from noise.

Under the Environmental Protection Act 1990 (EPA) the legal duty of the Environmental Health Service is to investigate allegations of statutory nuisance. The EPA is the main piece of legislation concerning noise disturbance but it is not the only one.

The **Milton Keynes Council Noise Policy Statement** along with this **Procedure** document and the MKC's Enforcement Policy sets out the approach, which the Council will adopt when enforcing noise legislation concerning noise disturbance. Wherever appropriate we work with partner agencies in a joined up approach to proactively manage unreasonable noise.

Where possible, prevention and education will precede legal action. Advice and information for both businesses and residents on a wide range of noise issues and possible solutions are provided via our website. For those without access to the Internet there is the option of contacting officers by telephone during office hours.

3.0 Legislation for the Control of Noise Disturbance

The Environmental Protection Act 1990 (EPA) is the principal legislation controlling noise nuisance and is wide ranging. There are, however, additional pieces of legislation that seek to manage noise in specific situations, namely:

3.1 The Control of Pollution Act 1974 (CoPA)

CoPA has specific requirements in the management of noise from construction sites. In Milton Keynes, the following are the adopted hours for *noisy works* (audible at the site boundary) to be undertaken:

0800-1800 Monday - Friday
0800-1300 Saturday
No works on Sundays or Bank Holiday's.

Under CoPA noisy works are detailed as involving:

- (a) the erection, construction, alteration, repair or maintenance of buildings, structures or roads;
- (b) breaking up, opening or boring under any road or adjacent land in connection with the construction, inspection, maintenance or removal of works;
- (c) demolition or dredging work; and
- (d) (whether or not also comprised in paragraph (a), (b) or (c) above) any work of engineering construction.

3.2 The Licensing Act 2003

The Licensing Act 2003 (in respect of noise) has the objective of preventing of public nuisance from licenced premises. If it is found that a licenced premises is not promoting the licensing objectives the Licensing Act 2003 allows for the review of a premises licence on the grounds of the prevention of public nuisance. The Act also allows Environmental Health to proactively prevent nuisance by asking for restrictions and conditions at the time of the applications and by objections if necessary to temporary authorisations (Temporary Event Notices (TENS))

3.3 The Town and Country Planning Act 1990

The Town and Country Planning Act 1990 may impose planning conditions on premises, some of which may be to control noise either directly i.e. requiring additional sound insulation, or indirectly i.e. stipulating opening and closing times.

3.4 The Control of Noise at Work Regulations 2005

This legislation is concerned with issues of noise affecting employees in places of work, and is made under provisions of the Health and Safety at Work etc Act 1974. It places duties on employers to protect employees from excessive and potentially damaging exposure to noise in the workplace.

3.5 Anti-Social Behaviour, Policing and Crime Act 2014

In certain circumstances a noise disturbance complaint might be just one element of a wider Anti-Social Behaviour (ASB) issue. This is case dependant and the relevant departments in the council, (Environmental Health, Housing and ASB team), will determine the most appropriate investigation and enforcement powers for the given situation.

4.0 Environmental Protection Act 1990

The majority of the complaints of noise disturbance that the Environmental Health Service receive are dealt with as '*statutory nuisance*' investigations under the EPA.

Statutory nuisances are detailed in section 79 of the Environmental Protection Act 1990, of which 'noise' is just one. A definition of statutory nuisance is not given in the EPA, but simply put, it is a legal term, the interpretation of which has been developed over many years through case law and has come to mean a situation which is occurring, or likely to occur, which creates an unreasonable and material interference with the enjoyment of a person's land or property.

In the UK there is no absolute right to silence within your home or garden. Therefore, although you may be unhappy with the level of noise you are exposed to, if an annoyance does not amount to a statutory nuisance you may have to endure it as part and parcel of living next door to neighbours. There are many examples and types of normal everyday sounds which have potential to interfere and cause annoyance but might have to be endured as they do not constitute a statutory nuisance.

A statutory noise nuisance is a noise which would be unreasonable and excessive and would have a significant detrimental impact on the health and wellbeing of a reasonable average person with no abnormal sensitivities to sound.

Given this, the Environmental Health Service cannot investigate trivial matters. The law governing noise nuisance does not take 'ordinary living noise' into account, nor does it take into account noise associated with poor sound insulation. A complainant raising an issue of this type will be informed of this at the outset so as not to give false expectations that those annoyances can be dealt with under the law.

4.1 Determining a Statutory Nuisance

This is an assessment which must be made by an Authorised Officer under the Act. Apart from the noise being substantial and unreasonable, numerous other factors are taken into account (although not mutually or exclusively) when determining a statutory nuisance.

These factors are:

- i) **Location.** Is the noise typical for the area? What is the character or nature of the location? For instance, a cockerel crowing in the countryside would be more acceptable than one crowing in an urban residential area. Someone living near a pub can expect to hear revellers and someone living near a shop, industrial or trade site can expect to hear noise from deliveries. Higher density dwellings will attract higher concentrations of people and hence associated sounds.

- ii) **Time of day.** A statutory nuisance can exist at any time of the day, however the effects of noise late at night when most people are sleeping would be given greater weight than the same noise occurring during the day as it has potential for greater impact.
- iii) **Frequency.** How often is a person affected by the noise? Noisy parties every weekend would be viewed differently to one held every now and then.
- iv) **Duration.** How long is the noise disturbance occurring for? A dog barking at the postman and at an occasional cat would be deemed acceptable and a 'normal' noise in the community however, a dog kept in a garden barking continually throughout the day would not be so.
- v) **Intensity.** How loud is the noise? How intrusive is it? We all have different thresholds and tolerances to sounds. In determining statutory nuisance the judgement would be how the noise would affect an ordinary individual, not someone who had a particular sensitivity to sound or the noise complained of.
- vi) **Number of people affected.** Whilst a single residence can easily be affected by a noise source, a view will be taken on the number of people who are, or could be, affected by the noise. It would be an obvious consideration if an entire street of residents are affected by the same sound source. Conversely if only one person complains when a whole street could equally be affected there could be a challenge that the individual making the complaint is unduly sensitive. This links in with point v) above.

Reference might be made to case law rulings in noise nuisance complaint consideration.

In addition methodology and sound levels in documents such as BS 4142, BS 8233, BS 5228 and World Health Organisation 'Guidelines for Community Noise' for instance, might be used as points of reference in cases of noise complaint investigation. These documents do not stipulate at which point a statutory nuisance can be said to occur.

5.0 Statutory Noise Nuisance complaint investigation process (Procedure)

5.1 Investigation

All complaints of statutory noise nuisance should be directed to Regulatory Services at the council where Environmental Health is one of the departments. We will always recommend that residents speak to their neighbours to resolve minor issues in the first instance.

Noise complaint investigation, by its very nature, can be complex and more often than not will take time to investigate, particularly where the noise is occurring intermittently.

After initial contact with Environmental Health, complainants will be requested to maintain a noise nuisance record log sheet over the 7-10 days after receiving a 'noise pack' and be requested to return it to the department for assessment.

Diary log sheets are an important source of evidence and must be used by the complainant to record noise disturbance events throughout the investigation. It is unlikely that a complaint can be investigated or progressed without completed diary sheets being returned.

N.B.

The use of noise packs is not always appropriate for every report of noise disturbance and will be used at officers' discretion.

Certain cases, such as reports of statutory nuisance occurring from a misfiring intruder or vehicle alarm for instance, would be investigated as a priority and not require the use of a noise pack.

Noise packs might also not be appropriate for one off events which have been for a limited duration or where the complainant does not wish the pack to be sent.

Complaints of noise disturbance are also made to MKC's Housing Department from MKC tenants to be investigated by the Housing Department as a potential breach of a tenancy agreement as opposed to a statutory nuisance complaint.

Certain cases of noise disturbance are part of a wider ASB issue where the use of ASB powers is more appropriate. In those circumstances the ASB policy would apply.

5.2 The complainant's role

The person making the complaint has a significant role to play in the investigation by way of providing evidence and information, particularly with more complex cases.

At an early stage in the investigation, we will ask complainants to complete nuisance record diary sheets (from the 'noise pack') detailing each noise incident and how it impacts on their household. Nuisance record sheets have an important role in the investigation and not providing this information will delay the progression of the investigation and in certain situations can lead to the case being closed.

The Noise Pack (available online or in hard copy) will assist complainants with gathering evidence. This evidence supports the investigation of a complaint but on its own does not solely determine what constitutes a statutory nuisance; this is for the investigating officer to assess using their professional judgement.

5.3 Contacting the noise source

Once a complaint of noise nuisance is received (discluding exceptions in 4.0 and 5.1) we will contact the alleged perpetrator by letter to inform them that a complaint has been made, but not identifying who has made the complaint. Contacting the alleged noise source is a legal requirement and allows Environmental Health to monitor or install covert sound recording equipment at a later date. It also gives an opportunity for officers to be contacted by the source address to discuss the allegation and allows them to potentially alter their behaviour.

Diary sheets returned to the department can also indicate whether the initial contact to the source has had any effect.

5.4 Mediation

The Environmental Health Department advocate mediation between neighbours as a constructive way to reach mutual agreement and acceptance of issues affecting both parties. We will always recommend that residents speak to their neighbours and have dialogue with each other to resolve minor issues.

Statutory nuisance cases revolve around 'reasonableness'. It will be looked upon favourably if either party can demonstrate that they have been reasonable in their handling of the issues. Attending mediation is a big step towards being able to demonstrate that you are calm and reasonable.

5.5 No response to Noise Pack

If after having sent out a noise pack we receive no further contact from the complainant concerning the matter, within 4 weeks from the date of letters being posted, then we will assume our letter to the person/s allegedly causing the nuisance or mediation has rectified the situation and we will close the complaint.

5.6 On receipt of completed diary sheets

Once the diary sheets have been returned an assessment will be made of the information which has been recorded to see what effect the letter to the source has had. If there is an indication of a statutory noise nuisance from the diary sheets, we will:

- (a) arrange a visit to the complainants home when the noise is likely to occur; and/or;
- (b) make arrangements for a visit to be made during office hours on receipt of a call from the complainant indicating that the noise nuisance is taking place; and/or;

- (c) arrange to install noise monitoring equipment in the complainants home.

N.B. see 5.13 re out of hours service

5.7 Complainant Co-operation

An investigation may involve visits to the complainant's home to enable officers to witness the noise complained of and/or install specialist noise monitoring equipment. Complainants who unreasonably refuse these measures will prevent their complaint being investigated and progressed further and it will result in the case being closed.

The Environmental Health Department are experienced in investigating nuisance allegations and as such must be allowed to conduct an investigation in an appropriate manner in line with this procedure.

Statutory noise nuisance relates to the effect of sound on the occupants of a premises, if a request is made and a complainant is not willing to allow access to premises to make an assessment, be it in person or with the use of monitoring equipment, then it will not be possible to investigate the matter to the degree which will satisfy the courts as to the prevalence of a statutory nuisance.

Without co-operation of the complainant the Environmental Health Department will direct the complainant to section 82 of the EPA (see section 9.0 below) which allows any person to take their own nuisance action directly in the courts, without the further involvement of the council.

5.8 How many times will Environmental Health attend?

It is our policy to undertake 3 visits or install the equipment 3 times, or a combination of those measures. If it is found following this assessment that a statutory nuisance does not exist, then we will inform the complainant of the outcome and close the investigation.

If there is any significant change in the circumstances of the complaint then the Department will consider instigating a further investigation.

5.9 If a statutory nuisance is established

If sufficient evidence is gathered to demonstrate that a statutory noise nuisance exists, or is likely to occur / recur, the council shall either:

- Serve a Statutory Nuisance Abatement Notice under the Environmental Protection Act 1990. This is a legal direction to the recipient not to cause further nuisance. Recipients of an abatement notice can find Appeal details attached to the notice.

A breach of a statutory nuisance abatement notice is a criminal offence.

Or

- Take such other steps as it thinks appropriate for the purpose of persuading the appropriate person to abate the nuisance or prohibit or restrict its occurrence or recurrence.

5.9.1 If a statutory nuisance is not established

Once a complaint has been properly investigated and the evidence gathered does not demonstrate that the threshold for the existence of a statutory nuisance has been met, then the complainant will be informed. At that stage, further investigations are unlikely unless there has been a change in circumstances which would prompt the reinvestigation of allegations.

5.10 Enforcement Policy

Where we are satisfied that a significant noise disturbance or statutory nuisance exists or is likely to occur or recur, we will take the appropriate enforcement action.

This will be in accordance with MKC's Enforcement Policy available online at <https://www.milton-keynes.gov.uk/environmental-health-and-trading-standards>

A paper copy is also available upon request.

5.11 Education

Where possible, prevention of issues and education will precede legal action. Information relating to different types of noise nuisance can be found on our website;

<https://www.milton-keynes.gov.uk/environmental-health-and-trading-standards/noise-nuisance>

Those businesses and residents without access to the Internet can telephone (01908 252398) and speak to an officer or request the online advice and information will be printed and posted to them.

5.12 Gathering Evidence of a breach of the abatement notice

If after the service of an abatement notice the noise issue persists the Environmental Health Department must gather further evidence which can be presented to the courts to demonstrate that the abatement notice has been breached. Complainants will be required to maintain diary sheets of disturbance detailing the continuance and extent of the problem.

In order to gather evidence of a persisting noise issue in breach of an abatement notice we will visit or install monitoring equipment in combination on 3 occasions.

5.12.1 Disclosure of evidence at court

In prosecution proceedings Court rules require that a prosecutor must disclose all of their evidence to the defence prior to any hearing. This means that if the authority has visited and a nuisance has not been established or a breach of the notice has not been established at a visit, this information must be disclosed.

The issue with this is that a prosecution case can be undermined if the Environmental Health Department has visited numerous times at the request of the complainant and there was no issue witnessed.

5.13 Reactive observations and monitoring

Where we receive notification from a complainant that the noise being complained about is occurring at a specific time, we will endeavour to visit the complainant's property to meet with the complainant and to verify their complaint. Where a statutory nuisance is found to be occurring we will collect evidence to support further action.

The Council does not have a reactive noise monitoring service outside normal office hours (9 am-5 pm Monday to Friday - excluding public holidays). However, our website does provide specific advice on what to do out of office hours including how complainants can gather evidence of the nuisance.

5.14 Evidence Gathering: Sound monitoring equipment protocol

Sound monitoring equipment is available to be installed in a complainant's home to allow the complainant to record instances of noise disturbance which are typically being experienced, usually over the course of a week. The Environmental Health Department can use the evidence gathered in this manner for legal action. The Environmental Health Department will not notify the alleged source of when the monitoring equipment would be installed. Recordings made by complainants on mobile phones or other devices would not be able to be used as the sole basis for legal action, but may be used as colloquial evidence.

The monitoring equipment available through the Environmental Health Department is very sensitive to sound pressure variations and will be able to pick up sounds which are audible to a human, allowing an assessment to be made of the impact of the sound.

It is not necessary for the complainant to move equipment once it is installed. From analysing recordings, officers are experienced to identify when the equipment has been moved or recordings made maliciously. A complainant tampering with or moving the monitoring equipment or attempting to falsify recordings will not be tolerated. If we are satisfied that the equipment has been intentionally interfered with or reactions are being provoked from a neighbour we will close the investigation.

In some situations, evidence gathered on monitoring equipment, might not be sufficient to demonstrate a breach of the law and officer attended visits might be necessary in conjunction.

5.15 Proactive observations and monitoring

We may visit to undertake observations and monitoring of sites where we have served a nuisance abatement notice to determine compliance or otherwise with the conditions of the notice in absence of a notification from the complainant.

5.16 Independent evidence

As part of an investigation we might also use witness statements produced by independent professional witnesses, such as the Police and Housing Officers, to support investigations and enforcement action.

5.17 Partner involvement

In nuisance investigations officers from the Environmental Health Department may work in partnership with other teams within the Council, where appropriate, for example Planning Enforcement, Licensing, Anti-Social Behaviour team, Housing and Community, and the Community Safety Team, as well as external agencies, to proactively manage unreasonable noise.

Our principal external partners are:

Thames Valley Police.

Officers from Regulatory Services are responsible for the investigation and enforcement of noise nuisance, not the Police. However officers in Regulatory Services liaise with the Police on a variety of noise investigations particularly where there is an antisocial behaviour concern.

Housing Associations.

There are a number of Housing Associations that operate within Milton Keynes and we will discuss relevant ongoing cases with them. To do this we will look at tenancy agreements, and if necessary provide statements to help the Housing Associations enforce their conditions relating to the prevention of nuisance of neighbours.

5.18 Best Practicable Means (BPM)

This specifically relates to trade and business premises. There is a defence in law for trade or business premises against a statutory nuisance abatement notice when it can be demonstrated that Best Practicable Means have been employed in the conduct of the business, having regard to the current state of technical knowledge, the local conditions and circumstances and financial implications (not an exhaustive list). The implication of this is that there are

potential circumstances in which the existence of a statutory nuisance would not be a prosecutable offence

6.0 Breach of nuisance abatement notice

If evidence of a breach of an abatement notice is gathered by an officer then there are the following options open for consideration to the Department:

i) Simple Caution

A simple caution is a formal notice, issued by a senior council officer, once someone has admitted a low level offence. It is a criminal record but there is no fine.

ii) Prosecution in the Magistrates' Court

The Department will prepare a prosecution case against the perpetrator which will bring the matter before the Magistrates' Court. The Magistrates' will determine the guilt of the party before them and if found guilty they will issue a fine.

If a case reaches this stage it may be necessary for a complainant to provide a witness statement and also attend Court hearings, however, this would be discussed at the point that the situation arose.

iii) Seizure of noise making equipment

The Department might consider that the breach of the notice warrants seizure of noise making equipment from a perpetrator. This will be determined on a case by case basis, and is a measure which isn't taken lightly. An equipment seizure requires a court order to be made in advance of this action.

These measures are reserved for serious offences where the perpetrator has shown a complete disregard for their neighbours and for the Statutory Nuisance Abatement Notice and where further breaches are likely to occur imminently.

Where a warrant of entry is obtained from the court to undertake a seizure of equipment, the occupier of the premises is not notified beforehand. Warrant applications are made on the grounds of gaining access by force if necessary and will be executed with the support of Police Officers.

iv) Carry out works in default.

If necessary the Department will undertake works in default of a notice to resolve ongoing nuisance from audible alarms for instance.

v) Criminal Behaviour Orders (CBOs).

These may be pursued immediately following a successful prosecution, where we believe there is a realistic possibility that the criminal conviction will not act as a sufficient deterrent against a further offence being committed and where there has been, or likely to be, harassment, alarm or distress.

vi) County Court Injunction.

An injunction may be pursued for serious and persistent breaches of statutory notices where proceedings in the Magistrate's Court have failed to ensure compliance with a statutory notice.

vii) Licensed Premises (Licensing Act 2003)

Where a statutory or public nuisance case is associated with a licensed premises the department will make an assessment as to whether the licence holder is promoting the objectives of Licensing Act 2003 in respect of the prevention of public nuisance.

If it is deemed appropriate the department may seek a review of an authorisation in place. Environmental Health will also consider objecting to Temporary Event Notices where noise disturbance is deemed likely.

viii) Community Protection Notices (CPN's)

CPN's can be served under the Anti-Social Behaviour, Policing and Crime Act 2014 on an individual, or a body, if MKC is satisfied on reasonable grounds that the unreasonable conduct of an individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality.

7.0 Anonymous complaints

An anonymous complaint will not routinely be investigated but a record of the details of the complaint will be kept.

8.0 Unreasonable complaints and unreasonably persistent complainants

The Council recognises that there are a small number of individuals who make unreasonable complaints or who are unreasonably persistent complainants. This is defined as "Those complainants who, because of the frequency or nature of their contacts with an authority, hinder the authority's consideration of their, or other people's, complaints".

An unreasonable, or unreasonably persistent complainant, would normally be identified as a result of a repeated and obsessive pursuit of either:

- Unreasonable complaints and/or unrealistic outcomes repeatedly requested; and/or

- Reasonable complaints in an unreasonable manner, including abusive or threatening language and/or behaviour.

Those complainants classified as unreasonable or unreasonably persistent will be handled in accordance with the Council's corporate complaints procedure.

9.0 Complainants taking their own legal action

There are occasions where complainants may wish to pursue their own legal action on statutory nuisance grounds. This course of action can be taken at any time and without the involvement of Environmental Health Department.

Section 82 of the Environmental Protection Act 1990 makes provision for any individuals to take their own action in the Magistrates' Court if they are aggrieved by the existence of a statutory nuisance. The Court can issue an Order requiring the abatement of the nuisance and can also issue a fine. Breach of such an Order is a criminal offence, punishable by a further fine.

10.0 Customer Service Standards

MKC is committed to continually improving our services to provide our customers, the best possible service we can. Details on our customer care standards are available at <https://www.milton-keynes.gov.uk/your-council-and-elections/customer-services>

10.1 Complaint procedure

MKC takes feedback from customers, including complaints and other expressions of dissatisfaction with our services very seriously. The Council are committed to viewing complaints as a valuable source of information, which can be used to improve Council processes and service delivery.

An expression of dissatisfaction about the service provided will be dealt with as a complaint. Details on the Council's Corporate Complaints Policy is available at <https://www.milton-keynes.gov.uk/a-to-z/site/C/164>

11.0 Procedure Review

This procedure will take effect on 26 June 2018 and shall be kept under review and revised as appropriate and in any event more than every five years.