



Statutory Nuisance Information Leaflet

Hull & Goole Port Health Authority - Who we are

Hull and Goole Port Health Authority is a Joint Board Authority, funded, in part, by a levy raised against its three riparian Authorities, Hull City Council, East Riding of Yorkshire Council and North Lincolnshire Council. We have a responsibility for enforcement within the boundary of the port estates and wharves within our area of jurisdiction.

Port Health Authorities are the regulators for the nuisance provisions within the Environmental Protection Act 1990 (other than in respect of artificial light and noise nuisance, which fall under the remit of the relevant Local Authority). Noise and artificial light complaints which are related to ship operations or port estates may be the subject of a joint approach by the local authority and the PHA, with any ensuing legal enforcement being undertaken by the Local Authority.

What is a Statutory Nuisance?

A statutory nuisance is a legal term in UK law that refers to specific types of problems or conditions that can seriously affect people's health or significantly interfere with the enjoyment of property. These are defined under section 79 of the Environmental Protection Act.

Types of Statutory Nuisance

- premises in such a state as to be prejudicial to health or a nuisance.
- smoke emitted from 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.
- dust, steam, smell etc. 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 insects emanating from relevant industrial, trade or business premises being prejudicial to health or a nuisance.

Issues unlikely to be a Statutory Nuisance

Some issues may be unpleasant but not legally classified as a statutory nuisance, such as:

- Temporary building noise
- Noise from people (unless it's linked to a premises)
- Traffic noise from roads or aircraft
- Normal domestic activities

How will the Authority establish if something is a Statutory Nuisance?

Port Health Inspectors (Environmental Health Practitioners) are trained and authorised to investigate complaints of statutory nuisance. To establish whether something is a Statutory Nuisance under UK law, the PHA must determine whether the issue meets specific legal tests, including (not exhaustive):

- Is it 'prejudicial to health' or a 'nuisance'?
- Is it continuous or recurring?
- Would it affect an ordinary person?
- Is there evidence?

Officers will need to gather evidence and will use a combination of the following:

- Talking to the business that is the subject of complaint, and those who are affected.
- Officers witnessing the problem themselves. (This is a vital step in any formal action).

- Written records from the people affected (diary logs).
- Inspecting commercial premises and checking compliance with any enforceable controls e.g., premises conditions, environmental permits.
- Expert evidence from specialists e.g., consultant reports.
- Evidence from partner agencies such as police officers, planning enforcement officers,

Prejudicial to Health

Legally, 'prejudicial to health' means injurious, or likely to cause injury to health. Deciding the meaning of this definition is complicated. Over time, legal decisions, known as case law, have determined that this term excludes things which might give rise to physical injury, for example a pile of rubbish containing glass or sharp objects which could give rise to injury would not be a Statutory Nuisance. A similar accumulation of rotting waste, which is likely to attract rats and has the potential to spread disease, would be included.

Most complaints we receive about the types of issue listed above are dealt with as a potential 'nuisance' rather than proving the more difficult alternative 'prejudicial to health'.

Nuisance

There is no set definition of the term 'nuisance,' but case law has, over many years and hundreds of cases, shaped what is considered by Courts to be a nuisance, in law. This is known as 'legal precedent.' When making decisions, officers consider relevant legal precedent and guidance, rather than what someone might think to be a 'nuisance' or 'annoyance' in everyday language.

Legal precedent says that, for something to be a statutory nuisance, it must be unreasonable to the 'ordinary/average person' and something that is more than just an annoyance or unpleasant; it must cause material harm or interference.

During the course of any investigation, the following matters will be considered:

Impact

The problem must have a real effect on how a person can reasonably use or enjoy their property (normally their home). For something to be a Statutory Nuisance it must also have an impact directly on a person (such as dust getting into eyes or hair etc.) If the effect is on property, for example dust on cars or window ledges, then this may not be a statutory nuisance, although the person(s) affected may take civil legal action themselves, under section 82 of the EPA. Please see the section at the end of this leaflet.

Frequency

Some things which happen only occasionally might not be a nuisance. However, if the same thing occurred more often, for example every week or month, then it could be a nuisance. One-off events may be a nuisance if they affect residents late into the evening or nighttime and affect sleep.

Duration

If something happens for a relatively brief period of time it may not be a nuisance, dependent upon the impact caused.

Time of day/night

This is similar to 'impact,' because something that might be a problem through the night, might not necessarily be a nuisance when happening in the day. Some commercial and industrial activities are restricted, or prohibited, on Sundays.

Sensitivity

Statutory nuisance must be considered in the context of the 'ordinary/average person', in a reasonable state of good health and having a normal pattern of everyday activity. Statutory nuisance cannot be used to make people or businesses do more than might reasonably be expected of them because someone else may be

more sensitive than the average person. e.g. a night-shift worker trying to sleep during the day, or someone with respiratory problems being more sensitive to dust or smoke. We would encourage businesses to have regard to the impact they are having on more vulnerable neighbours, but statutory nuisance powers should not be used to require businesses to do more than would be reasonably be expected of them.

Public benefit

Works essential to wider public benefit may cause an inconvenience but may not be considered a nuisance. For example, temporary road works, harvesting of crops, construction/demolition activity, certain works on critical infrastructure.

Context

Legal precedent has determined that some activities are considered more, or less likely to be deemed a statutory nuisance, according to their context. The context is sometimes referred to as the 'character of the area.' An area's established character can evolve and may be affected by planning decisions.

Best Practicable Means

If a business is doing all they reasonably can to prevent or counteract the effect of a nuisance, then they will have a defence in law against any Statutory Nuisance action. Officers will therefore consider the effectiveness of any procedures and/or equipment being used to mitigate a potential nuisance. The investigating officer will consider if a business is doing all it can when deciding if something is a nuisance or not. What is considered 'practicable' can be based on several things, including available technologies, reasonable cost, and site-specific factors.

Taking Private Action in the Magistrates Court

Under section 82 of the Environmental Protection Act 1990, individuals can take their own action independently through the Magistrate's Court on the grounds that they are aggrieved by the existence of a Statutory Nuisance.

You should contact a Solicitor for advice if you are considering pursuing your own legal action.

How To Contact Us

Our Hull office is open from 8.30am - 4.30pm Monday - Friday to receive calls/emails. All email communications related to reports of nuisance should be directed to admin@hullandgoolepha.gov.uk

For ongoing complaints, we provide an out of hours emergency response enabling individuals to contact an Officer if they are experiencing a substantial disturbance outside of office hours. This service can be contacted by telephoning 01482 324776 and following the instructions to contact the duty Officer.

