

## **QUESTIONS YOU MAY HAVE ABOUT RECEIVING A NUISANCE LETTER**

### **WHY DIDN'T MY NEIGHBOUR SPEAK TO ME ABOUT THIS?**

We always encourage complainants to discuss any issues with their neighbours before contacting the council. However, some people find this daunting for many reasons, and this reluctance to talk may not necessarily be a reflection upon you. There is no legal obligation for them to talk with you before contacting the council, but the council has a statutory duty to investigate all complaints that are made by residents within their area, and that is why you have been contacted.

### **I THINK THIS COMPLAINT HAS BEEN MADE BECAUSE OF A DISPUTE OVER ANOTHER MATTER**

Obviously, we do not want to waste time, resources and council taxpayers' money pursuing a complaint that may not be genuine, or may be undermined by previous events. If we realise at the outset that this is the case we will advise the complainant to discuss taking a private action through his or her own solicitor. However, in many cases we are often unaware of the background until the person complained about points this out to us. In these circumstances we would have to continue to investigate the complaint because it is our legal duty to do so, but if the matter ever did become the subject of a court hearing you would then have the opportunity to present your argument. We do try to filter out those complainants who have an axe to grind over another matter. Our investigation procedure is aimed at gathering evidence to substantiate the complainant's allegations, and only in exceptional circumstances would we consider taking legal action based purely upon the say-so of a complainant. If we are in any way unsure of the integrity of the evidence we will not pursue a complaint further. In cases where there is a breakdown in relations between parties we can recommend a mediation service.

### **WHY IS THE COUNCIL INVESTIGATING ONLY ONE PERSON'S COMPLAINT?**

Current nuisance law does not require more than one complaint to be made before a council becomes involved.

### **I'VE SPOKEN TO MY OTHER NEIGHBOUR AND THIS DOES NOT BOTHER THEM SO HOW CAN IT BE A REAL PROBLEM? I NEVER COMPLAIN ABOUT WHAT THEY DO.**

Perhaps your other neighbour is also disturbed by this problem, but felt too intimidated to mention it to you and is simply telling you what you want to hear. Or maybe they are genuinely untroubled by your actions. It can be difficult to judge reactions to certain disturbances as people have different sensitivities and what bothers one person may not be a problem to another. For example, some people expect total freedom from any extraneous noise sources, but in the type of society we live in today this is an unrealistic expectation. If it's not the neighbour's dog that is barking, another one two or three streets away might be heard. Other people may not be fussed about what noises they hear between say 8am and 5pm, but strongly object to anything outside of these hours, even though legally you can have a noise nuisance at any time of the day or night. In many cases there are always going to be intrusions in our domestic lives; it is an unavoidable consequence of the type of society we live in, and in many cases there is little that can be done to prevent this exposure. Council officers may not be able to help someone who is overly sensitive to a particular nuisance, or has too high expectations of what they should be exposed to at their property. Instead, council officers try to imagine the impact of the nuisance in question upon 'an

average person' and put themselves in their position and ask 'if I was exposed to this problem how would I feel?'

### **I AM ALWAYS CAREFUL NOT TO CAUSE ANY DISTURBANCE AFTER 11PM AND ON SUNDAYS, SO HOW CAN THIS BE A NUISANCE?**

Current nuisance law does not specify any guidelines about whether a particular noise, odour, smoke or other intrusion constitutes a legal nuisance, or is simply an annoyance that a complainant must put up with. The nuisance law does not specify days or times when you can or cannot do something, nor does it prescribe certain decibel (loudness) limits for noise nuisances. This means that you can have a nuisance at any times of the day or night. It can cause problems because people who wish to complain do not know whether or not the problem they are experiencing is against the law, and very often we can't advise them either until we've investigated their complaint further.

### **WHAT DOES THE COUNCIL LOOK FOR WHEN INVESTIGATING A COMPLAINT?**

To determine whether a nuisance complaint is justified council officers have to make an assessment of the evidence relating to the complaint. This usually involves looking at the duration (how long does the nuisance last for), frequency (how often does it recur e.g. daily, weekly, monthly), and the intensity (for example, with regard to noise how loud is it?) of the nuisance. We also take into account the time that the interference occurs as some nuisances, such as noise, will have more impact if they occur late evening or during the night. The local environment is also important and can have an important bearing on the certain types and level of intrusion that a person living in the close vicinity might reasonably expect to experience. For example, a person living next to a farm might reasonably expect to hear noise very early in the morning and also notice a certain amount of farmyard smells! Not every intrusion we may notice in or on our properties constitutes an actionable nuisance under the law, and investigating officers have to distinguish between something that may be irritating and annoying, but not a nuisance in the legal sense, and those that cause a more substantial interference with the average persons use and enjoyment of his/her property.

### **WHAT HAPPENS NOW?**

The case officer will take such steps as are reasonably practical to investigate the complaint. The person making the allegation will have been asked to keep a diary of times and dates when they claim the problem is occurring. If the diary is returned the case officer will consider whether it is necessary to investigate further, typically by making monitoring visits or by using remote monitoring equipment.

### **WHAT POWERS DOES THE COUNCIL HAVE TO STOP NUISANCES?**

If the results of this monitoring confirm the complainant's allegation you could be served with a legal abatement notice requiring you to stop the nuisance. If you fail to comply with the requirements of the abatement notice, and the nuisance is again witnessed, legal proceedings may be taken against you in a Magistrates' Court, which could lead to you being fined. In addition, in certain circumstances, the council can also do whatever may be necessary to enforce the notice and stop the nuisance, without having to go to court and claim from you the costs of any other works done to stop the nuisance. In noise cases this can involve seizing and removing any noise making equipment, including CDs; tapes etc. and apply to the magistrates' court to permanently keep these. The council can also claim back expenses incurred in the seizure, removal and storage of noise making equipment. Our aim in many cases is not necessarily to stop something outright, but to control it so it is no

longer excessive and causing a statutory nuisance, but is reduced to a level that the 'average person' would find acceptable.

### **SO IF THE COUNCIL DON'T WANT TO DO ANYTHING, I AM NOT BREAKING THE LAW?**

Not necessarily! Our decision not to get involved may be based on a failure to get any suitable evidence to determine whether or not a nuisance existed, or perhaps some other reason that prevented us from concluding our investigation. Consequently, we can't guarantee that we won't get involved again if we receive another complaint in the future, as we are legally obliged to investigate all complaints that are made by residents. However, if the original complainant approached us we will try and ensure that their reasons for wanting to re-open the case are reasonable. You should also be aware that there is a provision in the same nuisance law for a person to take their own action through a magistrates' court. A resident may wish to do this if they were dissatisfied with the decision that the council made in investigating their original complaint, or perhaps they may have particular reasons for not involving the council in their own action from the outset.

### **DOES THIS MEAN THAT I CAN'T EVEN ENJOY MYSELF ON MY OWN PROPERTY?**

The law is not intended to be totally restrictive, and recognizes that in certain circumstances our actions may well impinge upon our neighbours. In fact case law has ruled that the ordinary domestic use of a dwelling is incapable of amounting to a nuisance to other residents. For example, in many properties with shared walls a certain amount of unpleasant noise is going to come across at some point such as DIY work, and other noise occurring as part of everyday lives. Similarly, there is currently nothing in the law to prevent isolated occurrences such as a one-off garden bonfire that is smoky or one-off party or celebration that is noisy. However, even in these examples, and also in other cases where our behaviour might affect other residents, it is incumbent on us all to take reasonable steps to minimize the impact that our actions might have on other residents. Current nuisance law does not necessarily require a Council to completely stop a particular nuisance, but it might require the level of nuisance to be controlled so that it is not causing a significant interference to another resident. For there to be a possible breach of the law there has to be something unusual or excessive in the way that a property is used, or something unreasonable and/or malicious and/or excessive being done by a person at that property that is affecting another resident at their property for a nuisance to be considered. If you are concerned that something you are intending to do might cause a nuisance, and want to avoid any repercussions, contact the council for guidance beforehand.

### **WHAT ADVICE CAN YOU GIVE ME ON AVOIDING CAUSING A NUISANCE TO OTHER RESIDENTS?**

The council has a range of leaflets on different topics that contain advice on the subject and ideas for you to consider and apply as appropriate. They are not legal requirements intended in any way to control how you behave in certain circumstances, but guidelines that will hopefully help you to enjoy your own life whilst respecting the right of your neighbours to live their own lives without too much disturbance from your activities. The recommendations on the leaflets are not exhaustive, and in many cases you might be able to think of more effective ways of minimising the impact of your activities.

Leaflets are available on,

- Garden bonfires
- DIY noise

- Barking Dogs