

Carmarthenshire County Council

Environmental Health - Procedure for Statutory Nuisance investigation and enforcement

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Executive Summary

The role of the Environmental Health section encompasses all of the external factors that affect human health and wellbeing. This ranges from the air we breathe, the food we eat and the water we drink, to the wider impact of human-made hazards on the world around us.

The Council has a statutory duty to investigate complaints relating to statutory nuisance, but it is not always possible for the Authority to take enforcement action or to satisfy the expectations of customers. The aim of this procedure is to establish a framework outlining what the public can expect from the delivery of the Environmental Health section in relation to statutory nuisance investigations, as outlined below:

- Provide an overview of the nuisance investigation, including a summary of what may constitute a statutory nuisance
- Detail the enforcement processes and powers available to the Council
- Identify policies and procedures which set out how Carmarthenshire's Environmental Health section investigates and deals with nuisance complaints in a proportionate, reasonable and consistent manner
- Detail the service standards that we strive to achieve to ensure that complaints are responded to in a timely manner, and that complainants are advised of the outcome of such investigations at appropriate stages. Complaints will be dealt with following a risk assessment process, to ensure resources are targeted in the most effective manner.

1. WHAT IS STATUTORY NUISANCE?

To fall within the definition of statutory nuisance, an activity needs to be:

- Unreasonable and substantially interfere with the use or enjoyment of a home or other premises. It is more than just an annoyance or being aware of something.
- Injure health or be likely to injure health.

Framework and Guidance

The Environmental Protection Act 1990 places a statutory duty on the Council to investigate complaints of statutory nuisance and, where appropriate, take relevant enforcement action.

Types of statutory nuisance, as detailed in section 79 of The Environmental Protection Act 1990.

- any 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; e.g. bonfires
- fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- any accumulation or deposit which is prejudicial to health or a nuisance; e.g. animal waste, waste accumulations, vermin present
- any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- noise emitted from premises so as to be prejudicial to health or a nuisance;
- noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street
- any other matter declared by any enactment to be a statutory nuisance;

Objectives

The Environmental Health section has a responsibility to protect public health. In order to carry out this role, officers must comply with relevant legislation. Environmental Health Officers are the recognised experts in dealing with statutory nuisance complaints, and their professional judgement is very important when determining any necessary actions during each stage of an investigation. All officers within the section are either supervised and / or trained to a level appropriate to their role and responsibilities.

Within this context, the primary objectives of our team are as follows:

- To investigate valid complaints of statutory nuisances, acting proportionately and reasonably
- To remedy nuisances through informal action/mediation etc when appropriate
- Taking formal action where appropriate.

2. WHAT IS NOT CONSIDERED A STATUTORY NUISANCE?

There are circumstances that would not fall into the categories above, examples of a few are listed below:

- A person carrying out DIY during the day and at weekends over a few weeks.
- Noise from children playing in their garden.
- An odour or smell coming from cooking in a domestic property.
- Smoke/odour from cigarettes
- Smoke/odour from barbeque in a domestic property
- Reflected natural light.
- Normal noise from aircraft, roads or railways.
- A party which happened just a couple times a year and finished at a reasonable time in the evening.
- Smoke and noise from a bonfire or fireworks on bonfire night.
- A bonfire that a neighbour has from time to time and isn't giving rise to dark smoke.
- Footsteps, talking, television noise (non excessive) from a neighbouring property that could be heard due to poor/substandard sound insulation between the properties.

In such cases, as we cannot take action, we may be able to give you advice or suggest your best course of action. It is possible for a private individual to take civil action for damages if their quality of life is badly affected.

3. ENVIRONMENTAL HEALTH - REGULATION

The Council has a role for investigating complaints of nuisances as identified above.

Due to the large numbers of complaints received by the team, a procedure has been developed to ensure that each complaint is dealt with in a proportionate, reasonable,

and consistent manner. Officers will follow a risk assessment process, as outlined in Appendix 2.

Anonymous complaints

Complaints that are made anonymously are not pursued because:

- an assessment needs to be made of how the incident / event being complained of affects the person making a complaint.
- should legal action become necessary in relation to a complaint, the Council can state in court that the matter was reported by a local resident.
- We may also need to contact you prior to any site inspection being carried out to seek further information or clarification from you regarding the details of the alleged nuisance.

All details provided by a complainant will remain confidential, unless the information is required for use as evidence in court. If this does happen, the Council will make all reasonable efforts to inform you before disclosing any information.

Resolve informally where possible

Many people do not realise that they may be causing a nuisance. Before you make a complaint we recommend that you try to talk to the person and politely tell them about the problem. Only do this if you feel it is safe and appropriate to do so.

Investigation process

If you are making a complaint, your details will not be disclosed to the 'perpetrator'. However, it is important to note that your details may have to be provided in the event that a case ends up in court.

We will make an assessment of the facts known about the case, including any evidence provided by the complainant and obtained through monitoring. Officers will make a reasoned judgement on whether the issue being complained of amounts to a statutory nuisance, and have regard to the Council's Enforcement Policy during the case.

As part of this process, officers will triage complaints to ensure the higher risk cases are prioritised. This procedure outlines the investigation stages that the team will follow for consistency. The Authority will always seek to ensure decisions are taken in an effective and timely manner.

In the majority of cases, even where breaches are identified, we will seek to resolve these informally, which may include: -

- Informal negotiation with an owner / developer to resolve an issue,
- Warning letters to bring about a change,
- Enforcement Notices if informal action is not successful in resolving a problem and it is considered necessary.

4. UNREASONABLE COMPLAINTS OR UNREASONABLY PERSISTENT COMPLAINTS

In a minority of cases people pursue their complaints in a way that is unreasonable. They may behave unacceptably or be unreasonably persistent in their contacts and representations. This can impede the investigation of their complaint (or complaints by others) and can cause significant resource implications for departments. These actions can occur either while their complaint is being investigated, or once an investigation has been concluded. In such circumstances Carmarthenshire County Council (the Council) must reserve the right to bring the complaint to a close once the procedure has been exhausted. Equally, we reserve the right not to continue to deal with repetitive complaints from the same person on the same matter.

Any such issues can be managed through the Unacceptable Actions by Complainants Policy, and advice on this can be sought from the Complaints Team.

5. WHAT IF I AM DISSATISFIED WITH THE WAY THE CASE WAS MANAGED?

If you are dissatisfied with way the investigation is/has been managed (rather than being unhappy with the outcome if it has been decided that no action can be taken), you should, in the first instance, raise these concerns with the relevant manager within the Environmental Health team. If, having done that, you are still dissatisfied with the team's handling of your enquiry; you may submit a complaint using the [Council's corporate complaints procedure](#) which is set out in two stages.

Complaints and Compliments Team
County Hall
Carmarthen
SA31 1JP
Click to copy email address: complaints@carmarthenshire.gov.uk
01267 224488

If, having received the Council's final response to your complaint, you are still not satisfied with the outcome; you can refer the matter to Ombudsman Wales via [Public Services Ombudsman for Wales](#). Please note The Ombudsman will not investigate any complaint until the complainant has first followed the Council's own corporate complaints procedure and sought resolution directly with the council in the first instance.

6. PUBLICITY OF THIS PROCEDURE

This procedure will be available on the Council's website. Hard copies and other formats and languages can be requested in writing.

7. REVIEW AND MONITORING OF THIS PROCEDURE

In formulating this procedure the Council recognises the need to make sure that it is reviewed periodically and updated as necessary to ensure that it remains fit for purpose in the future. The Environmental Health section will therefore undertake

a review of the procedure every time there is a significant change in the legislation (including caselaw).

APPENDIX 1

HOW YOU CAN REPORT A PROBLEM

You may make a service request:

- Verbally by calling the Council's Customer Services Team on: 01267 234567
- Visiting a Council's customer service Hwb
- Via email: publicprotection@carmarthenshire.gov.uk

All service requests received must include :

- full name,
- phone number,
- postal address and / or
- email address.

To help us deal with your case as soon as possible it is important to provide as much information as you can. Below is a list of the type of information that would assist us in dealing with your complaint:

- An accurate description of the location or address for the particular site;
- A detailed description of the activities taking place and why they are cause for concern;
- Names, addresses, phone numbers and email addresses of those persons responsible for the alleged breach or the land owners;
- The date and times of when the alleged breach or incident took place;
- Any other information or evidence (including photos) that may be able to assist;
- Your name and contact details as set out above.

APPENDIX 2

HOW WILL THE COUNCIL DEAL WITH YOUR SERVICE REQUEST?

Stage 1: Registration and information gathering.

Upon receiving a service request with supporting evidence, the Authority will:

- Register the complaint in the Council's data base
- Check that we have all the necessary information to investigate the service request and, if not, make further contact with the complainant if possible

In most circumstances we will ask you to keep a nuisance log for a period of time, which will need to include details of the issue affecting you, such as the date, time, duration and location. You may also be asked to supply photographs / videos if it is possible and safe do so, as this often helps illustrate how you are being affected.

The nuisance logs are essential as the information will help officers with targeted monitoring, so they have the best chance of witnessing the issue affecting you. We may also use the information as evidence in court.

If the information you provide does not indicate an issue which officers can assist you with, you will be advised and the case will be closed.

Please be honest and accurate as magistrates do not look kindly on exaggerated or inaccurate evidence and may throw the case out of court.

As part of our investigation procedures, officers will risk assess all complaints received, and priority will be given to the higher risk cases to ensure their time is used where it has the most impact. Lower priority cases, which are of limited public health significance, will be recorded on our systems and dealt with by officers when time permits. Complaints will be logged, and an officer will contact the client to discuss at the earliest opportunity.

To help with this process, officers will follow a risk assessment template for the specific type of complaint received.

The following complaints cannot be dealt with by the environmental health department and will not be progressed:

- anonymous complaints;
- complaints where access to the complainant's premises to assess nuisance is necessary and is not allowed by the complainant;
- complaints of a very short-term, irregular, or unpredictable nature

Stage 2: Investigation Phase

If we do investigate your complaint we will contact the person you have complained about. This will inform them that a complaint has been made and ask them to consider ways to prevent their actions from being a nuisance. Details of who has made the complaint are not disclosed at this stage.

Where necessary, an officer will make a number of site visits / assessments to determine whether or not the issue represents a statutory nuisance. Visits may be made at times when the nuisance is likely to occur including outside office hours. For noise complaints, noise recording equipment may be installed in your house. In most cases it will be necessary for an officer to witness the nuisance before formal action can be taken.

In the majority of cases, officers will undertake a total of 3 visits in line with the information provided as part of the evidence gathering process, so it is important that accurate information is provided on the nuisance log you may have been asked to complete.

As part of this investigation, officers will have regard to :

- Duration of the nuisance

- Intensity of the nuisance
- Nature of the locality: this forms an important element of assessing for nuisance, e.g. if you live near a working farm it would be reasonable to expect agricultural odours / noises, and therefore would not be considered a nuisance
- Frequency of the nuisance
- Consideration of best practical means: if the source of complaint is using all reasonable means to control or minimise the issue, further enforcement may not be possible

If there is a lack of evidence from the visits, the case will be closed. Officers may wish to undertake further visits at their discretion should it be considered necessary.

Officers will use various types of monitoring (subjective and/or using monitoring equipment). Additional monitoring visits may be necessary but will be at the discretion of the investigating officer and be determined by the circumstances of the case.

Stage 3: Enforcement Stage

If we are satisfied that a statutory nuisance exists an Abatement Notice will be served. However, we may take informal action to try to solve the problem first. If the notice is not complied with, prosecution may follow if considered appropriate.

It may be difficult to solve the problem to everyone's satisfaction. However, we will keep you informed of our progress.

Stage 4: Closure of Case

If officers are unable to gather evidence to support formal action, or if you do not want to involve us, you can complain direct to the magistrate's court under section 82 of the Environmental Protection Act 1990. Your nuisance logs / diaries will be a valuable source of evidence when taking this action. For further information, please see statutory nuisance - taking your own private action, by following the link below.

<https://www.carmarthenshire.gov.wales/home/council-services/environmental-health/noise-complaints/>

We may also be able to put you in touch with a mediation service which can help settle problems between neighbours.

Please note that if a case has been investigated and concluded in the last 6 months and that there are no major changes in circumstance, the case will not be reopened.

Date : 19th February 2025