

NUISANCE ADVICE PACK – POLLUTION CONTROL UNIT

Dear Resident

You have been sent this pack because you have made a complaint concerning the activities of a neighbour which you feel are causing you a nuisance.

What is a Nuisance?

Nuisances may be continuous or intermittent, occur during the day or at night. They may relate to noise, vibration, smoke, fumes / gases, light.

Some people need to carry out their activities at times we consider to be 'sensitive', for example carrying out D.I.Y. activities in the evenings or at the weekend. Whether an activity is reasonable will depend on what it is, where, when and how often it happens, whether the least disturbing methods are followed, and sometimes whether you were given sufficient notice to prepare for its effects on you.

You can use any of the following ways to deal with neighbour problems: -

- Talk to your neighbour first.
- Request assistance from Pollution Control (Bolton Council)
- Take your own legal action.

This pack contains advice to help you with all of the above. Please note that the Notice of Intention should only be used if you intend to take your own action.

TALKING TO YOUR NEIGHBOURS

It is always a good idea to speak to your neighbour personally before making a formal complaint. Quite often, talking to your neighbour in a friendly way may be all that is necessary to solve the problem, because sometimes people don't realise that what they are doing is a source of annoyance to their neighbours. If this is unsuccessful or you feel that you can't talk to your neighbour you may wish to try mediation or ask the pollution control unit to investigate.

POLLUTION CONTROL

For the pollution control unit to investigate your complaint we need to understand:-

- The effect of the nuisance on you - is it materially affecting the comfort or quality of your life? Is it having a substantial effect on you?
- The reasonableness of your expectations – people live in different ways and society has to recognise our individuality, but that does not mean we should put up with unreasonable interference.

Before we can investigate:

- You first need to assist us by completing a diary (see pages 7 and 8) **for at least two weeks**. When complete, you should return it to the Pollution Control Unit, Ellesmere House, Mayor Street, Bolton, BL3 5DT.
- When you are filling in the diary sheets for each occasion you should make a note of the affect the nuisance is having on you in material terms
- The completed diary sheet enables the officers to assess your complaint and decide on the next step to be taken. Unfortunately we are unable to investigate any complaint without diary sheets as they form a vital part of your evidence and enable us justify the need to carry out surveillance if that is deemed necessary.
- ***If you do not return your diary sheets within six weeks of your complaint, we will close your complaint and no further action will be taken.***

What we will do

Once you have returned the diary sheets, an officer will contact you regarding your complaint. You can expect to be contacted within 7 working days. If there is insufficient information for us to take further action, you will be advised.

If there is sufficient information, we will write to the perpetrator and inform them of the complaint. We will not divulge who has complained. If there is no improvement up to **three** attempts will be made to assess the nuisance at times when it is most likely to occur. This may be done by officer(s) visiting your premises at appropriate times or by the installation of tape recording equipment in your premises. An officer will then judge whether a statutory nuisance exist or is likely to exist.

The outcome of this investigation will determine the most appropriate action. If there is sufficient evidence that the nuisance is continuing then an Abatement Notice will be served on the person causing the problem. The notice will require the person to stop or reduce the nuisance and give them a period of time to comply. Failure to comply with the notice is a criminal offence and the person could be prosecuted.

There are some instances where an officer may be unable to prove a statutory nuisance, particularly where the nuisance is intermittent. In these instances the Council may be unable to take action, and will advise you of this. You may be able to take your own legal action.

Taking your own legal action

IMPORTANT NOTE

This is intended to provide practical information to help you find a solution to your nuisance problem. It is not intended to serve as independent legal advice or an alternative to taking advice. Legislation, guidance and practical methods are inevitably subject to change. The Council accepts no liability whatsoever for any loss or damages howsoever they may arise from use of this document.

If a friendly approach fails, you can take your own legal action, if you wish. In this case you should: -

1. Write to your neighbour explaining how the nuisance is affecting you and asking for the nuisance to be stopped, or reduced to an acceptable level.

Keep a copy of the letter.

2. Start to keep a written record of nuisance, which in your opinion disturbs you. (Use the diary sheet included).

Keep the diary for three months.

3. If there is no improvement after this time, you may decide to take legal action under Section 82 of the Environmental Protection Act 1990. This will mean taking a case against your neighbour to the Magistrates Court, where it will be heard.
4. However, before this can be done, you must **write** (you could use the Notice of Intention which is attached) to the perpetrator at least **three** days beforehand for nuisance and **twenty one** days before hand for any other nuisance, to tell him/her that you intend to apply to the Magistrates Court for an order, which will require him/her to either stop causing the nuisance, or reduce it to a reasonable level.

Put the date on the letter and keep a copy.

You may deliver the letter by hand or via the normal postal service, but it is recommended that you send it by recorded delivery.

5. If there is no improvement after a few days visit the Administration Office in Bolton Magistrates Court, The Law Courts, Blackhorse Street, Bolton, BL1 1SU (Tel. 01204 392881).

Take all your diaries, letters etc. with you.

6. At the Magistrates Court, the procedure will be explained to you. If there is enough evidence to support your case, a summons will be issued to your neighbour.
7. The summons will require your neighbour to appear in court at a specified time and date. **You must also attend court on this day.**

8. You do **not** need a solicitor to represent you at the hearing, but you may do so if you wish. Legal Aid is not normally available, but legal advice, prior to the proceedings may be available, depending on your financial circumstances.

If you present your own case, the Clerk of the Court will give you advice and guidance, or you can contact the **CITIZENS ADVICE BUREAU**, 1 Victoria Plaza, Oxford Street, Bolton, BL1 1RD (tel. 0844 826 9707) for advice.

9. If the Magistrate decides in your favour, the court will make an order requiring your neighbour to stop the nuisance.

The court can also impose a fine on the nuisance maker at the same time.

If you win the case, you will probably be able to recover your costs, but this is at the Magistrate's discretion. If you are not successful the court may order you to pay the defendants costs.

10. After the hearing, you should still keep your diary in case the Court Order is ignored, and it should prove necessary to return to court.

Pollution Control Unit
Bolton Council
Tel: 01204 336500
Email : environmental.health@bolton.gov.uk

NOTICE OF INTENTION

ENVIRONMENTAL PROTECTION ACT 1990: SECTION 82 (6)

To:

Date:

Of:

Dear

Re: Nuisance from _____

You have failed to respond to my requests to abate the nuisance from your premises. I am therefore giving you **3 days notice** of my intention to apply to the Magistrate's Court, under Section 82 of the Environmental Protection Act 1990, for an order requiring you to abate the nuisance and prevent it from recurring.

(Signed)

(Name and address)

FILLING OUT DIARIES & LEGISLATION

This sheet is designed to help you understand what information we need: Environmental Protection Act 1990 Section 79 (g) noise emitted from premises so as to be prejudicial to health or a nuisance

NUISANCE: where the actions of the defendant are "causing a substantial and unreasonable interference with a claimant's land or his use or enjoyment of that land"

In terms of assessment we are governed by the above legislation and each case is reviewed on its individual circumstances.

Frequency, duration, volume and time are the key factors when assessing a case. What one person feels is an issue may not bother another. For this reason alone we have to be consistent in our approach to investigating nuisance.

When filling in a diary sheet please record precise details, **BELOW IS AN EXAMPLE, do not copy this.**

Date	Type of Nuisance	Start time	Finish time	Effects of Nuisance
1/12/14	Barking Dog	12:05	All day	Loud barking

Better EXAMPLE of a Diary Sheet

Date	Type of Nuisance	Start time	Finish time	Effects of Nuisance
1/12/14	Barking Dog	12:05	12:10	Could not hear TV
"	Barking Dog	12:31	12:36	Had to turn TV up
"	Barking Dog	22:37	22:42	Woke me up

Do not record any incidents if they do not disturb you, just because you can hear it may not necessarily mean it is a nuisance.

If you're listening to the television and you have to turn it down or off to hear the noise, this is not the sort of issue we want recorded. We don't want people to stop doing things in order to record incidents. You should carry on as you would normally.

As it states above unreasonable interference is the key.

If you have any questions please feel free to contact Environmental Health on 01204 336500.

FLARE Ref:
(PCU Office use only)

DIARY OF EVENTS

Your Name & Address:
Tel no.

Address of Nuisance Source:

DATE	TYPE OF NUISANCE	START TIME	FINISH TIME	EFFECTS OF NUISANCE

Note: Please complete the above as a record of when you experience the problem. Show the start and finish times and give a brief description of how the nuisance affects you. You **must** fill in the declaration below (in BLOCK CAPITALS).

I (Name) _____ confirm that the above list is a true record of events recorded from (Date) _____ to (Date) _____ by persons residing at

(Your Address) _____

Date: _____ Signature: _____

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& Address:

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