

Bury Metropolitan Borough Council

Noise Nuisance in the Home – an information booklet

For further information on any matters relating to noise please
contact us:

by phone: 0161 253 5353

by e-mail: Nhoods.Enforcement@bury.gov.uk

by post:

Department for Communities and Wellbeing
Environmental Services Division
3 Knowsley Place
Duke Street
Bury
BL9 0EJ



0161 253 5353

INDEX

BURY COUNCIL'S NOISE POLICY

1. General information
2. What you should do
3. What your Council will do
4. When will the Council take action and when will they advise a complainant to take his own case?
5. Action taken by the individual
 - a) The law simplified
 - b) How to proceed - step by step
 - c) Court conduct
6. Alternative to legal action - Mediation
7. Final remarks

BURY COUNCIL'S NOISE POLICY

The Council will fulfil its statutory duty to carry out a reasonable investigation of every noise complaint received.

The Council will make full use of its powers to ensure conformity with legislation and prescribed standards.

The Council will ensure that, when we are unable to take legal action ourselves, full information and assistance is given to individuals on how to take their own action.

This booklet forms part of our commitment to advise individuals on their rights in law.

Details of your name and address will be kept in strict confidence. Occasionally, however, the person you have made a complaint about may guess who has complained, or may approach you to ask if you have made the complaint.

1. GENERAL INFORMATION

This information has been prepared to advise those persons wishing to abate a noise nuisance. It comments on situations which might, in law, amount to a nuisance and the steps necessary to initiate proceedings.

There are many sources of noise and it is not proposed to discuss all of them at length. Examples are given later and the Council's Environmental Health Officers will always give advice when asked.

There are many situations where an officer will take action, but there are instances where he/she will advise a complainant to take his/her own case to the Magistrates Court. This booklet has been prepared with that in mind. It is **NOT** a full statement of the legal or technical aspects of noise control.

For further information please refer to the Council's web pages at <http://www.bury.gov.uk/index.aspx?articleid=2112>

NOTES

(1) Acoustic double glazing to windows and associated works installed as a defence against increased noise from road developments is a separate issue entirely. Information on this is available and applications for assistance are considered by the Highways Agency.

2. WHAT SHOULD YOU DO

- a) Ideally, contact your neighbour/the person causing the disturbance and try to discuss the problems with them, if this is possible. You may find this difficult, but often people are unaware that they are causing a problem. Most will be glad to do what they can to reduce noise. However, approach the matter carefully if you think your neighbour might react angrily to a complaint.
- b) If you cannot resolve the problem in a friendly and neighbourly manner, contact the Environmental Services Division for advice.

3. WHAT YOUR COUNCIL WILL DO

- 3.1 According to Section 79 of The Environmental Protection Act {EPA} 1990 the Council has a legal duty to *'take such steps as are reasonably*

practicable’ to investigate your complaint to determine whether or not the noise constitutes a ‘statutory nuisance’ - see section 3.9 below.

- 3.2 Where action is the responsibility of another Agency or department of the Council, your complaint will be referred to the appropriate authority/department and you will be advised accordingly - e.g. if your complaint is about a planning matter we will refer this to the Council’s Planning Division for their attention.
- 3.3 An officer from the Environmental Health Division will seek to gather full details of your complaint before taking further action and will advise you on your legal rights, as an individual, to make a complaint directly to the Magistrates Court.
- 3.4 You will be advised on what action is to be taken on your behalf.
- 3.5 You will be advised to monitor the situation and to keep a monitoring sheet and to contact the Council further if the noise disturbances continue. The officer dealing with your complaint will keep you advised of any discussions held with the person or persons being complained of.
- 3.6 The officer will normally endeavour to witness the noise and will respond to your requests for service. If the noise occurs during normal working hours (*Monday- Friday, 9.00am - 5.00pm*) then the officer will visit to monitor and assess the noise when you contact him/her, if he/she is available at that time.
- 3.7 If the noise is occurring outside these stated hours then the officer will only be able to call to assess the situation if his/her visit can be programmed in advance to witness the noise if it is occurring on a regular or predictable basis. The noise monitoring sheet that you are using to monitor the noise can be used to assess whether there is any such pattern or regularity to the noises of which you are complaining.
- 3.8 If the noise is occurring intermittently or irregularly, out of normal working hours (*as referred to in item 3.6*) then you may be offered the use of an automatic noise monitor, to record the disturbances that you are experiencing. This recorded evidence will be analysed and assessed by the investigating officer.
You will be advised that it is unlikely that the Council would be able to directly witness these disturbances.
You will also be advised to consider taking your own action under Section 82 of the EPA1990 (*refer to Section 5*).

- 3.9 Usually, a maximum of three visits, or three installations of the automatic noise monitor, or a combination totalling three of either monitoring methods will be made by the investigating officer. If the (alleged) noise nuisance is not confirmed by these efforts or, in the officer's opinion, the noise is not considered to be a statutory nuisance, then you will be advised as such.
- 3.10 In the case of barking dogs, and because of the nature of this type of unpredictable noise and the practical difficulties involved in gathering sufficient evidence in barking dog cases, if 3 or more households are willing to provide witness statements, AND are prepared to go to Court as witnesses then consideration will be given to proceeding to formal action without the need for independent evidence from the investigating officer.
- 3.11 Evidence may also be accepted from independent witnesses such as Police Officers if they have witnessed the noise and are prepared to provide a formal Witness Statement detailing their involvement.
- 3.12 If the officer is of the opinion that the noise amounts to a 'statutory nuisance' then a Statutory Notice would be served on the person responsible for that nuisance in accordance with Section 80 of the EPA 1990, which would require the person to abate the nuisance/carry out any work which may be done within a time period specified by the officer.
- 3.13 If the noise disturbances continue after the service of this Notice then further monitoring would be done by the officer to witness the disturbances. If the officer again confirms that the noise is causing a statutory nuisance and contravenes the Notice then the matter would be considered for enforcement action, including prosecution.

Failure to comply with the Notice is a criminal offence and the person or persons responsible for the nuisance can be prosecuted. If the Notice specifies the carrying out of work and this is not done the Council can do it itself and recover the costs from the person(s) who should have done it.

If the Council decides to take legal action you may be required to appear in Court as a witness.

You have the right at any time during the Council's investigation of your complaint to proceed with your own action under Section 82 of The EPA 1990 - we would ask that you advise the officer of your decision if you proceed on this course of action – see Section 5 of this booklet

4. WHEN WILL THE COUNCIL TAKE ACTION AND WHEN WILL THEY ADVISE A COMPLAINANT TO TAKE HIS OWN CASE?

The EPA 1990 provides for the Local Authority, or an individual, to take a case before the Magistrates.

Complaints of noise are varied and each case has to be decided on its own merits.

The crucial point is whether the officer dealing with the case is satisfied that the noise amounting to a statutory nuisance exists.

There is no fixed level of noise which constitutes a statutory nuisance; individual circumstances differ and each case needs to be judged on its merits.

In deciding whether or not a noise is sufficient to amount to a statutory nuisance the Environmental Health Officer has to consider what would be the likely reaction of an average, reasonable person to the noise, taking into account not only its loudness but also such factors as when, how often and for how long the noise occurs.

The level and type of the noise are obviously important.

Another factor is the time the noise is created. What is acceptable at 8.00pm on Saturday night has, by 2.00am Sunday morning, become decidedly unacceptable.

The volume of the noise, its nature, duration and when it occurs are all factors which have to be borne in mind. The crucial point for the Environmental Health Officer is whether the Council, represented by him/her, has sufficient evidence for himself/herself to be satisfied that noise amounting to a statutory nuisance exists. This same judgement has also to be exercised by the Magistrate. An investigating officer cannot simply take the word of the complainant.

The occasional “blast” from a radio, whilst it can be very annoying, is not likely, in law, to constitute a nuisance. A ‘one-off’ noise is unlikely to constitute a nuisance. The noise may have occur on a number of occasions and the officer might have to witness or monitor the noise on a number of occasions in order to establish the existence of a nuisance.

This is often not practicable and so the EPA 1990 specifically allows for one person to take his/her case to the Magistrates Court without the Council being involved. It is stressed, however, that this does not relieve the Council of its duty. It must investigate any complaint of noise made to it.

What this booklet goes on to explain is how the complainant can help himself/herself in cases where the Council advises him/her to do so.

5. ACTION TAKEN BY THE INDIVIDUAL

If the Council cannot gather sufficient evidence of a noise nuisance (when for example the noise occurs occasionally or at night) then the Council is not able to take action on behalf of someone who has made a complaint. If this happens you can take independent action by complaining direct to the Magistrates' Court under section 82 of The EPA 1990. This is quite simple and you do not need to employ a solicitor if you choose not to.

You may also decide that the action being taken by the Council is taking too long to resolve the matter, in which case you may want to consider taking your own action through the Court.

5.1 The Law Simplified

The law relating to the control of noise is contained in The Environmental Protection Act 1990. The provisions relating to action by one individual against another are contained in Section 82.

In general terms;

- (i) A Magistrates Court may act on a complaint from an occupier of premises aggrieved by noise amounting to a nuisance.
- (ii) You need to prove to the Magistrate, beyond reasonable doubt, that the noise you are complaining about amounts to a nuisance. The diary you keep will be important evidence. Although the law says that only one person needs to be affected for there to be a nuisance, in practice the evidence of other witnesses will strengthen your complaint.
- (ii) If a Magistrates Court is satisfied that a noise nuisance exists, or may start again at the same place, the Court must make an Order for one or both of the following:
 - (a) requiring the person causing the nuisance to stop it within a specified time; or
 - (b) preventing the nuisance being started again.

(The reason for the two types of case is to allow for the situation where, having made your complaint, by the time you go to Court the nuisance may have stopped but you feel it may well start again.)

- (iii) The person you should take your proceedings against is the person causing the nuisance. If you cannot find that out you can still proceed,

but against the owner or occupier of the premises. An example of this is noisy parties. You might not know who actually turns on the music but it is not usually difficult to find out who is the owner or occupier. The Council's list of electors is available for public scrutiny at the Electoral Registration Office, Town Hall, Bury, at the Public Library or at the Head Post Office.

- (iv) Any person who creates a nuisance without reasonable excuse **AFTER** an Order has been made against him/her by the Court, commits an offence and can be fined.
- (v) Most cases taken by a private individual relate to domestic incidences but, if you proceed against a trade or business, they can submit a defence that they are using 'best practicable means' to prevent a nuisance.

In practice, the Environmental Health Office will almost always act where a trade or business is concerned and he/she is satisfied that a nuisance exists.

The above statement is a simplified version of what the law provides to protect yourself against noise nuisance; it is written in plain English for the purpose of information. There is one point of special note: Only ONE person need make a complaint to the Court.

You can, of course, call upon supporting witnesses if you think their evidence would be useful.

5.2 How to Proceed - Step by Step

5.2.1 Before starting Court proceedings you should try every alternative means of settling the dispute. If you go to Court and lose the case you may have to pay not only your costs but those of the other side.

If you can, discuss the problem with the person creating the noise. Often this is easier said than done. Some people are rather difficult to deal with and often do not appreciate that their activities are creating nuisance to others.

5.2.2 Keep a detailed written record of dates and times of the noise disturbances at the time that they are happening. Make an assessment of the loudness. This is often difficult but can sometimes be described by reference to normal activities, e.g. the noise such as to make normal conversation impossible; meant that I had to turn the TV/radio on at a loud volume to hear it above the noise; the noise woke me up. Any records you keep should be simple and clear and should be written as soon as

possible after the incident while your memory is still fresh; you may have to present them, on oath, in Court.

Noise meters are not readily available to most people and, in any case, very often are of no assistance. A sound creating disturbance in the early hours would not necessarily register very highly on a noise meter scale.

An example of the type of diary sheet that may be used is included with this booklet.

Although the law says that only one person needs to be affected for there to be a nuisance, in practice the evidence of other witnesses will strengthen your complaint.

5.2.3 Write to the person responsible for the noise

Before starting proceedings for an Order by the Magistrates Court against any person in respect of noise from premises, the person suffering the noise nuisance must give to that person being complained about notice in writing not less than three days before he/she intends to bring proceedings. The notice must specify the subject of the complaint.

Make sure the letter is dated and **KEEP A COPY**.

A form entitled 'Notice of Intention to Bring Proceedings' is included with this booklet for your use.

5.2.4 If there is no improvement in the situation and there is still a nuisance then the next step is to contact:

Bury and Rochdale Magistrates Clerk's Office
Tenters Street
Bury
BL9 0HX
Telephone: 0161 447 8600

Tell them you wish to take action under Section 82 of the Environmental Protection Act 1990. They will probably make an appointment for you to go and explain your position. You can inform the Clerk of your consultations with the Environmental Health Officer.

You do not need to have a solicitor to represent you at the hearing, although you may do so if you wish. Legal Aid is not normally available towards the cost of proceedings in the Magistrates Court, although legal

advice prior to proceedings may be available under the '**Legal Help at Court Scheme**' depending on your financial circumstances.

Also, if you are on benefits or a low income you can get free independent legal advice from the 'Bury Law Centre' at 8 Bank Street, Bury (telephone 0161 272 0666).

If you present your own case, the Clerk of the Court will give you advice and guidance, or you can contact your local Citizens Advice Bureau which may be able to offer assistance.

- 5.2.5 If you can satisfy a Magistrate, or the Magistrates, that there is some real evidence of noise nuisance you will be allowed to "lay a complaint", which is the formal expression for the commencement of proceedings under this Act.

The laying of a complaint will involve a formal application in person to the Court. Following the laying of a complaint, a summons will be issued to the person allegedly causing the nuisance, requiring him/her to appear at Court at a stated time, date and place - you will also be required to attend. If you have any witnesses as to the nuisance you should bring them along to Court with you on the hearing date.

- 5.2.6 At the hearing you will be required to explain your problem and produce evidence of the disturbance.

- 5.2.7 If you prove your case the Court will make an order requiring the nuisance to be abated, and/or prohibit recurrence of the nuisance. It also has the power at the time the nuisance order is made to impose a fine on the defendant (currently up to £5,000). If this order is ignored further Court action will need to be taken; you must therefore continue to keep records of noise nuisance in case it is necessary to return to Court.

5.3 **Court Conduct**

Although it is not essential, you can engage a solicitor to act for you and he/she will advise you on Court procedures. If you take your own case, there are things you should know about Court procedure. This information will be provided by the Magistrates Clerk's Office.

6. **ALTERNATIVE TO LEGAL ACTION – MEDIATION**

Noise disputes are often resolved through speaking with the neighbour/ the person responsible for the noise. Legal action should be a last resort. It is unpleasant and will inevitably further sour the relationship between you and your neighbour. The Council, in conjunction with its Housing Association

partners offers a free and confidential mediation service which attempts to resolve disputes between neighbours before they progress or worsen and before there is a need for any formal action which would otherwise have to be considered. Both parties in the 'dispute', being the complainant or complainants and the noise source have to be agreeable to mediation and will be fully advised on the service provided and their obligations to the process and to the other party in mediation.

Failure to comply with any agreement which may follow from mediation could result in subsequent involvement by Environmental Health.

Please contact us if you wish to discuss this further.

7. FINAL REMARKS

There are two sides to every story. Environmental Health Officers investigate many complaints of domestic noise and very often they find that the person being complained about has just as plausible a story as the complainant. Often it is found that relations between neighbours are strained and that the noise complaint is just part of a greater and sometimes more complicated dispute. In these circumstances, the Environmental Health Officer will often recommend the complainant to take his/her own case. The Magistrates Court then has to decide the rights and wrongs of the situation.

Remember that the person you complain about may be able to produce counter-arguments in his/her defence which are just as real to him/her as your grievances are to you. Many 'noise nuisance' complaints are, in fact, merely a part of a very complex situation of human relations. It is extremely difficult for any of us to be objective in considering our relationships with others, but one thing you must do is be quite certain of the grounds of your complaint and that you are not over-reacting to a situation which, under normal circumstances many people would find acceptable.

If you have not contacted the Council as yet and require further advice on any of these matters then contact:

The Department for Communities and Wellbeing
3, Knowsley Place
Duke Street
Bury
BL9 0EJ
Telephone: 0161 253 5353
E-mail: customercontactteam@bury.gov.uk

Details of your complaint will be noted.

You can telephone, write, email or call in person. Always give an indication of when you can be found at home or where you can be contacted during the day.

**SECTION 82 OF THE ENVIRONMENTAL PROTECTION ACT 1990
NOTICE OF INTENTION TO BRING PROCEEDINGS**

To Mr/Mrs/Ms _____

of _____

I, _____

of _____

being aggrieved by a statutory nuisance, namely*

in relation to the premises known as

HEREBY GIVE NOTICE under Section 82(6) of the Environmental Protection Act 1990 that I intend to bring proceedings for an Order under Section 82(2) of the said Act in the Bury Magistrates Court to abate the nuisance and prohibit the recurrence of the nuisance against you, as [the person responsible for the said nuisance] [the [owner] [occupier] ** of the said premises].

Dated _____

Signed _____

* Specify details of the nuisance complained

** Delete as appropriate

**TO THE PERSON SERVING THIS NOTICE:
PHOTOCOPY THE NOTICE AND KEEP THE COPY TO SHOW TO THE
MAGISTRATES COURT**

NOISE MONITORING SHEET

Our Reference (SR number)_____

Your Name:_____ Your Telephone Number: _____

Your Address:_____

Please indicate in the box provided if the noise recorded is typical, quieter or louder than the level of noise disturbance you complain of

Start Time and Date of the Incident	When did it finish?	Type of Noise	Use the box below if the noise recorded is Typical, Quieter or Louder than the level of noise disturbance you complain of.			COMMENTS – How Loud? (e.g. woke me up/had to turn my television higher to hear it etc.)	Did anyone else witness it? Give their name & address
			Typical	Quieter	Louder		

NOISE MONITORING SHEET

Our Reference (SR number)_____

Your Name:_____

Your Telephone Number: _____

Your Address:_____

Please indicate in the box provided if the noise recorded is typical, quieter or louder than the level of noise disturbance you complain of

Start Time and Date of the Incident	When did it finish?	Type of Noise	Use the box below if the noise recorded is Typical, Quieter or Louder than the level of noise disturbance you complain of.			COMMENTS – How Loud? (e.g. woke me up/had to turn my television higher to hear it etc.)	Did anyone else witness it? Give their name & address
			Typical	Quieter	Louder		