Worcestershire
Regulatory Services
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Worcestershire Regulatory Services Board

16th November 2017

Statutory Nuisances: A briefing for Members

Recommendation	That the Board notes the report.
Contribution to Priorities	It is the statutory duty of every local authority to cause its area to be inspected from time to time to detect any statutory nuisance which ought to be dealt with under Section 80 of the Environmental Protection Act 1990. It is also a requirement to take such steps as are reasonably practicable to investigate a complaint of statutory nuisance made to it by a person living within its area. This is achieved through the use of intelligence, responding to service requests and officers identifying nuisances during the course of their normal duties.
Introduction	As Members will recall, at the October 2017 Board meeting officers highlighted the increasing expectations of members of the general public in relation to what local authorities and services like WRS can achieve in relation to complaints of nuisance by members of the public. This level of expectation is increasingly challenging for the service given its capacity and the other demands placed on it. This paper aims to help members understand the legal basis for their respective local authority's activities in relation to statutory nuisance and where service like Environmental Health must draw the line in relation to investigative activities.
Report	**What is a Statutory nuisance?** As Members will be well aware, local authorities are creatures of statute and must be able to point to a statutory power in order to act. Without this they are legally powerless. Should they do anything without the statutory power to do so, that act is ultra vires, null and void. The authority may even receive claims for compensation or complaints to the Ombudsman. Whilst recent changes in local government law such as the general power of competence in the Localism Act make it easier for local authorities to do some things, the general principles of referring back to statute still apply in areas of regulation and discharging regulatory duties.

Statutory nuisances are defined in section 70(1)(a-h) of the Environmental Protection Act 1990 and are as follows:

- 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;
- 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;
- 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;

Hence whilst these are wide ranging in many ways, there are a limited number of issues that WRS can investigate in respect of being a potential statutory nuisance.

What is not a statutory nuisance?

It is an essential pre-requisite of opening an investigation and certainly in serving any notice that the act or activity subject to complaint is a nuisance as defined in law. Hence, there are some complaints that we cannot deal with legally no matter how many complaints are made or whoever makes them.

Firstly, an anonymous complaint cannot be investigated for nuisance as we must know that it is impacting at a particular location.

There are also issues that cannot be dealt with or will never reach the threshold for a statutory nuisance including where the source of, for example, a noise is unknown or it is a consequence of normal behavior.

This latter category would include:

- talking, shouting or domestic arguments
- people shouting, laughing or screaming on a public road or footpath
- walking
- vacuuming
- use of domestic washing machines or tumble dryers
- use of showers or toilets
- babies crying or children playing
- banging doors and gates
- use of domestic lawnmowers
- sky glow from artificial lighting
- cooking and other odours from domestic premises
- animals posing a danger in the road
- overgrown or untidy gardens
- unsightly or dilapidated buildings
- insects from domestic premises
- problems caused by wild animals and birds

There are other issues that fall outside our powers:

- aircraft or railway noise
- road traffic on the public highway
- approved road works
- approved commercial construction work

In order to constitute a statutory nuisance an act or activity must be either prejudicial to health or a nuisance.

Prejudicial to health

This means injurious to health or likely to cause injury to health. This will require medical opinion and is rarely available to us as an Environmental Health service. There must be an evidential link between the conditions and some form of illness.

Nuisance

The courts must be convinced that the alleged nuisance substantially interferes with a personal comfort rather than someone's land, physical possessions or the effect on such things as property values. Case law directs that the concept of nuisance is to protect public health, not to deal with irritations.

For this reason WRS officers have to consider many elements of the complaint and how it impacts the individual's life. It is important to realise that the fact that something causes annoyance does not in itself mean that it amounts to a statutory nuisance.

For something to amount to an actionable statutory nuisance, two conditions must be met:

- It must cause significant interference to the normal occupation of premises by a person of average

sensitivity;
- It must be caused by some unreasonable or unusual act or omission or behaviour.

When investigating complaints of nuisance officers must consider a number of factors including:

- Strength/severity
- Character and offensiveness of the nuisance
- Duration
- Time of day
- Nature and character of the area
- How regularly it happens
- How controllable it is and the ease of that control
- Is it unavoidable?
- What has been done to reduce the problem?
- Has the best practicable means been taken to control it? (if so this is a Legal defence)
- Public interest test, including the ongoing commercial viability of the premises/process when determining the nature of the solution to be proposed.

When officers are considering the source of a nuisance they must consider the source in isolation. A statutory nuisance is a single issue and cannot be made up of a number of single sources that cumulatively add up to a nuisance.

Where a nuisance can be identified the local authority must serve notice. In theory the local authority has no discretion in this however the service will often take steps to try to resolve an issue where a simple change of behaviour may facilitate this. It should also be noted that The Regulators Code, made under the Regulatory Enforcement and Sanctions Act 2008, states that local authority regulators should not impose a greater regulatory burden on businesses than the law requires for compliance. This means that we can only ask a business to change its behaviour where there is a nuisance, although again the service can suggest simple amelioration measures that a business may wish to adopt in the spirit of being a good neighbour.

The legal bar for issuing an abatement notice is set high as it is the initial stage in criminalising someone's behaviour. The problem has to be assessed by an officer as the Court will deem them to be an expert witness and independent. Whilst the evidence of residents can be supportive of the local authority's case, and will be very good at painting the picture of how the problem is impacting locally, it cannot be used in the absence of an officer coming to the view that the problem under investigation constitutes a statutory nuisance.

Sustainability

Where a problem is investigated and found not to be a statutory nuisance, for fairness to both parties the investigation is terminated. Should there subsequently be a significant change to the circumstances giving rise to further problems, then consideration would be given to re-opening the case.

There are occasions, and even the Local Government Ombudsman accepts this, that a reasonable investigation may not always gather the evidence necessary to prove a statutory

nuisance. For this reason section 82 of the Act gives an individual the power to take their own action by way of complaint to the Magistrates Court. Details of how to do this are provided at our website.

Following the delivery of efficiencies through a successful pilot exercise, it was agreed with partners that customers should be encouraged, in the first instance, to use the self-help package developed for domestic nuisances, which is now provided on the WRS website before the service would consider action. This represents a departure from the traditional “one size fits all” direct intervention route which was adopted in all cases, whatever the individual need or circumstance. Where this approach proves unsuccessful the service will then undertake a reasonable investigation should the issue have the potential to be a statutory nuisance and not fall within any of the areas identified earlier which fall outside of the regime. There is always the proviso that where complainants are clearly vulnerable, the perpetrator is a known problematic individual or the issue gives rise to numerous complaints, WRS will initiate an investigation without residents going through the self-help process.

The current model for determining statutory nuisance operates on the basis of experienced officers coming to a considered decision on the impact of the alleged issue they experience on the average person. Having said this, recent experience indicates that the tolerance of the public in respect of issues with their neighbours and business appears lower than ever, with expectations of what the law generally entitles them to experience (or not) in terms of the quality of their surroundings being well beyond what the current legal situation allows.

Demands include:

- No noise after a certain time in the evening, often before 9 pm;
- No smoke being emitted at all from business premises;
- No odour, even from businesses where there is inevitably going to be some odour produced;
- That businesses that annoy people should be shut down;

These are simply not a requirement of the current environmental law framework. The service has no power to stop a business from trading under this legislative regime. Indeed there is an assumption that businesses can trade but should do so without causing a nuisance and, where some of its activities are problematic, they should find the best practicable means to minimising nuisance occurring. If they do this, even if they occasionally cause what would be in normal circumstances a nuisance, they will meet the statutory defence in the Act and cannot be prosecuted.

Hence, the service will continue to do what can be done to help resolve problems but with public expectation far higher than noted previously and regularly above what is achievable in law, this can be difficult and can result in corporate complaints that

are dealt with through the complaints process.

There is also an increasing tendency to challenge professional opinion where notices are issued. Changes to the fines structure in Magistrates Court mean that there are now unlimited fines available for some nuisance offences, so some businesses will be more willing to challenge the initial notice to try to limit their risk of future prosecution.

These demands made over and above the legal capability of the service and the number of complex cases being contested through the court system requires careful management to ensure that they do not impinge on the sustainability of the service in respect of nuisance work and our ability to deliver on our pro-active activities such as food safety inspections. We shall continue to monitor and manage this demand through the tasking process and shall only direct resources into those cases coming under the definition of statutory nuisance.

Financial Implications

Additional resources are regularly deployed to manage the annual spike in nuisance complaints which typically occurs through the summer months. Efficiencies have already been achieved in the provision of the service including more cross-discipline working by officers and the move to initial self-help for non-business related complaints, compensating for a reduction in the number of Officers within the Community Environmental Health team. Should the trend in increasing numbers and complexity of service requests be continued, with the added expectation and increased challenge from recipients of notices, then additional capacity will be required to meet this demand.

Contact Point

David Mellors
Environmental Health and Trading Standards Manager
David.Mellors@worcsregservices.gov.uk

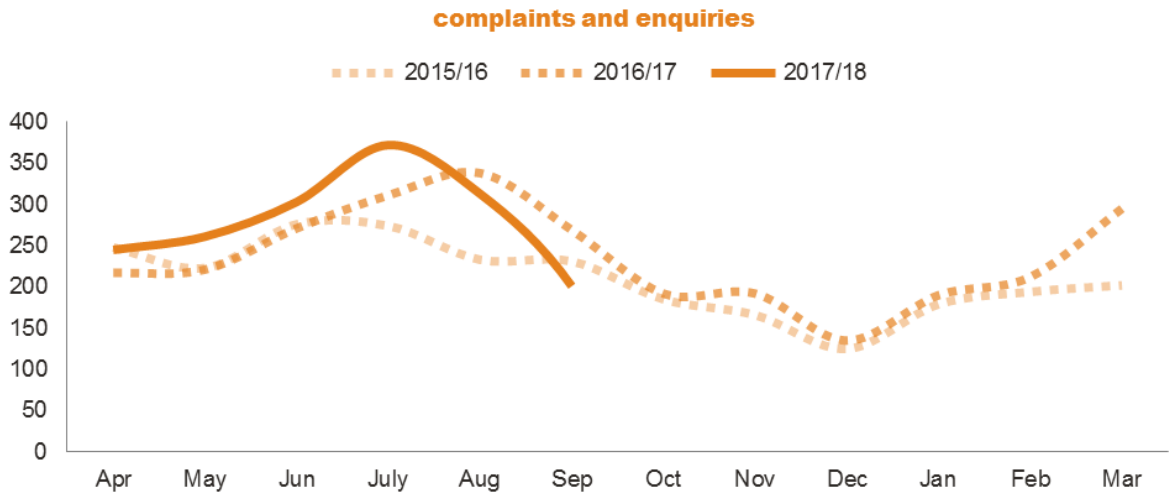
Background Papers

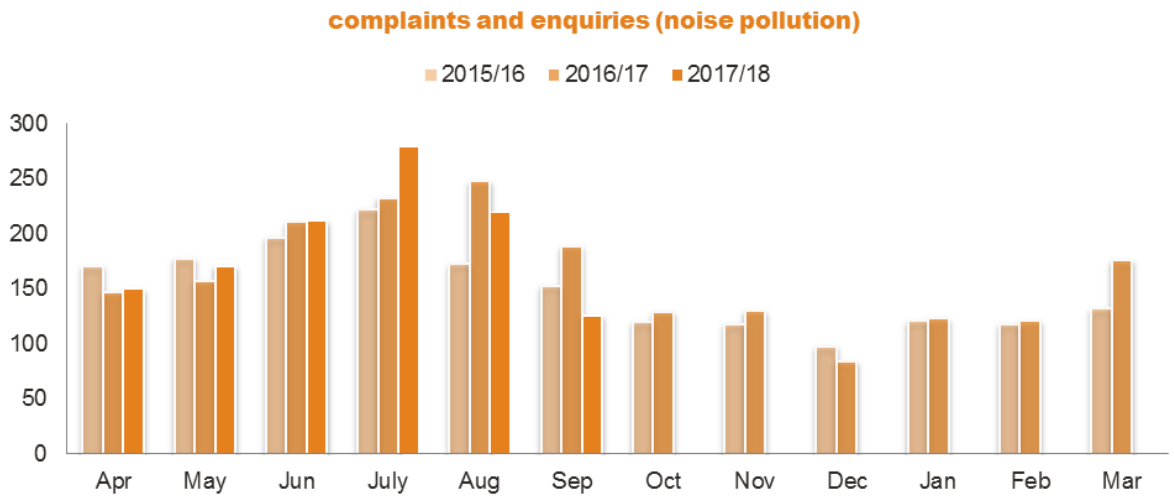
Appendix 1: Extract from Q2 Activity Report
Appendix 2: Annual Figures for Nuisance Requests for Service

Appendix 1: Extract from Q2 Activity Report

Pollution

The chart below shows the number of complaints and enquiries recorded by WRS over a three year period relating to pollution. Types of cases recorded under this category include air pollution (smoke, fumes and gases), light pollution and noise pollution. The chart (bottom right) shows the number of complaints and enquiries relating to noise pollution.





Appendix 2: Annual Figures