

NUISANCE DIARY SHEET

(CONTINUED OVERLEAF)

Complaint Ref: (Office Use)	
Subject Address:	
Name of Complainant:	
Address of Complainant:	

Please enter your preferred contact details for any future correspondence:

Telephone / Mobile: _____ **Email:** _____

	Yes	No	Maybe
Please confirm if you are willing to provide a witness statement? (please tick)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Are you prepared to give live evidence in Court? (please tick)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Signature: _____ **Date:** _____

Please continue on extra sheets. Additional sheets are available from the Environmental Health Team on 01354 654321 or email - envhealth@fenland.gov.uk

DATE OF INCIDENT	TIME		WHAT HAPPENED? <small>Include a description of the event, what you saw/heard, and how it affected you, where in your property it affects and who was involved. Also include details of any relevant letters/conversations.</small>
	START	FINISH	

GUIDE TO USING NUISANCE RECORD SHEETS

1. WRITE DIRECTLY on to the Nuisance Record Sheet at the time the nuisance occurs, or when this is not practicable, as soon as possible afterwards.
NB MUST BE THE SAME DAY AS THE NUISANCE OCCURS.
DO NOT note your record elsewhere and then transfer to the Nuisance Record Sheet, as this is then not admissible as evidence.
2. NOTE the DAY, MONTH, YEAR in the Date Column e.g. 2 August 2018.
2. NOTE the time the nuisance commences. Use 24-hour clock if possible (e.g. 8pm = 20.00).
3. NOTE the type of nuisance and exact source of nuisance.
It is very important to fully describe the nuisance in detail (for example, with noise nuisance: e.g. mechanical hum: crane noise: fan noise: music (type and if tune, words etc. are distinguishable) .
DO NOT just describe the noise as LOUD! UNBEARABLE! etc.
4. NOTE the effect the nuisance has on you: i.e., in the case of noise, disturbed sleep; could be heard over TV; woke children; interfered with speech. This is very important as what makes a nuisance is how an issue interferes with the use and enjoyment of your property
5. NOTE the time that the nuisance ceased (use 24-hour clock if possible).

Do not put that the nuisance is occurring all the time unless it actually is.
6. Initial each entry and sign each page.
7. Finally, send it for the attention of the officer dealing with you case (if you have one) at, Environmental Health, Fenland District Council, Fenland Hall, County Road, March, Cambs. PE15 8NQ.
8. NB it is very important to use these forms correctly as they may be used in Court as evidence.

IO = Investigating Officer

What is a Statutory Nuisance?

Statutory nuisances are listed in the Environmental Protection Act 1990, Section 79. The Environmental Health Team can investigate these and, if appropriate, take action to resolve them. These include Noise, Waste, Artificial Light and kept animals from any property, Smoke from domestic properties, and Insects, Dust, Steam, Smell or Effluvia from business premises.

For these issues to be a statutory nuisance they must cause a substantial interference with the use or enjoyment of your property. The action must be unlawful or unreasonable and likely to affect the average person. The nuisance can affect more than one person.

How do we investigate a Statutory Nuisance?-

To determine if the issue is substantial enough to be a statutory nuisance the IO will need to consider the times, duration, regularity, impact, locality and possible means of resolution of the issue. The IO will need to gather evidence from those affected and make their assessments

The investigation of your complaint will usually be carried out in stages as detailed below.

STAGE 1

When a nuisance complaint is received by the Council a letter acknowledging your complaint and log sheets will usually be sent to you. You will be asked to complete the logs over a 14 day period and to return them to the IO. If you have any issue completing the diary sheet, or if you would like to send it back sooner/after than the 14 days then please contact your IO to discuss alternative options. The diary sheets will be used to consider if a nuisance is likely to be occurring and can be further investigated. If there is sufficient information for the officer to investigate then they will contact you to discuss progression of the investigation. If there is insufficient information on the diary sheet then the situation and alternative options will be discussed with you.

Should there be no receipt of completed logs sheet/s **after 21 days** and you have not contacted the IO then the complaint will be closed. A log received after 21 days may however be accepted by the IO as part of their initial complaint investigation.

In Stage 1 the alleged perpetrator of the nuisance will usually **NOT** be contacted by letter and advised of the complaint. However, in some cases, the IO may feel it is appropriate to contact the subject and discuss the complaint. In these instances your details will always be kept confidential.

It may be the case that on receipt of the diary sheets that the IO considers that your complaint is unlikely to amount to a statutory nuisance. If this is the case then you will be contacted to discuss the reasons why and whether alternative options are available

Cont...../

STAGE 2

The second stage of the investigation is to undertake monitoring to gather evidence of the nuisance happening. Contact will be made with the person(s) alleged to be causing the nuisance informing them that a complaint has been made and monitoring may be undertaken. Your details remain confidential at this stage. Your IO will contact you to discuss monitoring options. This may include the officer visiting to witness the nuisance in person and/or installing monitoring equipment at your property. You will be written to again with another set of diary sheets and you will be requested to continue making records of the issues you are facing whilst the IO is investigating. The diary sheet will ask you to confirm your willingness to provide a witness statement and give evidence in Court should the need arise. If you are unsure about this situation please write "unsure at moment" in this area of the log sheet.

If you are unwilling to act as a witness and attend court then this may have an impact on any future formal action. However, the decision as to whether to act as a witness is entirely yours and you are under no obligation to do this. Legal proceedings in nuisance cases are rare and it is the desire of the Council to resolve nuisance cases without the need to go to court.

The IO will usually arrange to monitor the issue you are experiencing on three occasions. (Note: The IO may decide that there should be more or less monitoring sessions at your home. They will keep you informed as the case progresses).

If following monitoring there is insufficient evidence of nuisance then the IO will contact you to discuss the matter and offer advice. If an officer is satisfied there is a nuisance they will consider actions needed to resolve the nuisance and your complaint moves to Stage 3.

STAGE 3

Resolution can be achieved formally or informally, this will depend on the nuisance and the willingness of the person causing the nuisance to make changes. The outcome of the monitoring will be discussed with you and the person causing the nuisance. Time may be provided for an informal resolution or for alternative measures to be put in place. If informal measures are not successful then the officer will consider serving a legal notice requiring the abatement of the nuisance. A notice specifies the time by which the nuisance must be abated. The person receiving the notice has a right of appeal to the Magistrates Court within 21 days. In certain cases the notice will be suspended until the appeal is heard in the courts. At this point it may not be possible to keep your anonymity.

In the majority of cases a notice is complied with, however, if the nuisance continues then further enforcement action may be considered and your complaint will move to Stage 4

STAGE 4

If after the time of compliance and the appeal period has passed and the nuisance is still occurring then you must report this to your IO. To gather evidence of a breach of notice the IO may need you to continue filling diary sheets while the IO carries out monitoring to ascertain if there is a breach. They will contact the person causing the nuisance to discuss the breaches and seek a resolution. This may include arranging interviews or visiting their property. The IO will work within the Council's enforcement policy and consult with the legal team to consider enforcement options: these include works in default, seizing certain equipment or prosecution. You may be asked if you are willing to provide information such as witness statements and evidence to support a prosecution. You may also be asked if you are willing to appear as a witness in court.

**INFORMATION ON TAKING YOUR OWN LEGAL ACTION
REGARDING POSSIBLE NUISANCE
SECTION 82- ENVIRONMENTAL PROTECTION ACT 1990**

You may want to consider taking your own legal action regarding a possible nuisance. The Council may recommend you take your own action where the nuisance is a one-off event, occurred in the past, is sporadic or not considered substantial, as it may not be possible for an officer to witness a nuisance or gather sufficient evidence.

You can take your own action by complaining direct to the Magistrates' Court under Section 82 of the Environmental Protection Act 1990.

Prior to approaching the Court it is a good idea to speak with and write to the person or business causing the nuisance, saying that unless the nuisance is abated and by a certain date (say two weeks) you will complain to the Magistrates' Court. You will need to keep a copy of all letters for the Court. If your requests are ignored and the nuisance is not resolved, then you should contact the Justices' Clerk's Office at your Local Magistrates Court explaining that you wish to make a complaint under Section 82 of the Environmental Protection Act 1990.

The Clerk of the Court will be able to advise you further. The Clerk will advise you of how to properly notify the person or business responsible for the nuisance of your intention to seek legal action. You may also want to seek legal advice either from a solicitor or through the Citizens Advice Bureau, although this is not a requirement.

When taking a case to the Magistrates Court you would need to prove to the Magistrates beyond reasonable doubt that the nuisance you are complaining about amounts to a substantial interference in the material comfort of your home. Evidence you may wish to take may include a diary of when the nuisance occurred, how it impacts on you and how long for. If other people are affected, or if others have witnessed the nuisance, their statements may strengthen your claim. If the Court is of the opinion that you have a strong case to be answered, a date will be set for the hearing and the person about whom you are complaining will be summoned to attend Court.

If you attend Court you will be required to explain your view and to provide evidence about the nuisance. You will have to present any supporting witnesses and demonstrate their evidence. The person responsible for the nuisance will be able to question you and your witnesses and may produce their own evidence to contradict yours. Again, a solicitor can help you do this or do this for you, but you are not required to employ a solicitor.

Please note that the law relating to business premises is slightly different to residents, as they can defend themselves by proving that they are using the "best practicable means" to prevent the nuisance.

If you prove your nuisance case the Court will make an order requiring the nuisance to be abated, and/or prohibit a recurrence of the nuisance. The Court also has the power at the time the nuisance order is made to impose a fine on the defendant (currently not exceeding £2,000). If this order is ignored further Court action will need to be taken; you must therefore continue to keep records of the nuisance in case it proves necessary to return to Court. If you fail to prove your case you may have to pay some of the defendant's expenses in coming to Court.