

Environmental Health

Odours



Most people from time to time will be troubled by odour. Some of the most common sources of complaints are listed below:

- Agricultural spreading
- Solvents/paint spraying
- Cooking odour from food takeaways & restaurants
- Food manufacturing premises

If you live in a town centre you might expect an odour from a restaurant or takeaway.

Odours related to agricultural practices are part and parcel of living in rural areas and are unlikely to cause a nuisance, unless codes of practices are not being followed. Unfortunately weather conditions and positions of fields and crops can dictate when farmers spread. This often coincides with residents spending time in their gardens or having windows and doors open during the summer months.

Where odour is excessive and significantly affects others, and arises from any industrial, trade or business premises, this Authority is able to take enforcement action if the odour is considered to be a nuisance. This can result in a notice being served on the person responsible for the odour or the owner/occupier of the premises or land where the nuisance occurs.

Failure to comply with a notice is an offence and any evidence gathered may be used to prosecute. This could result in an uncapped fine under the Environmental Protection Act 1990 (previously £20,000 per offence). Under the Anti Social Behaviour, Crime and Policing Act 2014 an uncapped fine (previously £20,000 per offence) can be imposed or a fixed penalty notice of £100 can be issued.

In addition under the Environmental Permitting (England & Wales) Regulations 2007 we regulate businesses that emit emissions to air. These businesses are permitted and have set conditions that must be adhered to; including ways to prevent odour as far as reasonably possible. If a breach of these conditions occurs then enforcement action can be taken. Larger industrial activities are enforced by the Environment Agency.

We are unable to take action on any odour arising from a domestic property (including cooking odour), but you may wish to approach your neighbour and try to reach an amicable agreement. However, the Council may be able to investigate complaints where an accumulation or deposit caused by humans, animal, nature or machine gives rise to odour, but they must pose a risk to health by way of disease.

What is nuisance?

There has to be an unreasonable element to the activity causing the problem, not just an annoyance.

A nuisance can be defined as an unreasonable interference with the use and enjoyment of someone else's property. This takes account of frequency, duration and intensity of the nuisance amongst other factors.

What if I am affected by odour?

The friendly approach

In most cases we advise that the informal approach is the best course of action in the first instance. This gives the person responsible time to take steps to address the issue. They may not be aware that a problem exists or to what extent it affects those nearby. By staying calm and taking on board both points of view, the problem can hopefully be resolved straight away.

How do I complain?

To investigate a complaint, we need the following information:

- the address to where the odour is coming from*

- the complainant's name and address (details are not disclosed in the initial stages of the complaint)*

- when and how the odour affects the complainant*

- any other relevant information would be useful*

What to do if still suffering a nuisance?

If the problem cannot be resolved informally an official complaint can be made. The Council has a duty to investigate complaints of this nature and we have a standard procedure for investigation to ensure that each complaint is treated fairly and with no bias. An investigation may last over 6 months while sufficient evidence is gathered, however, if a complaint is open for longer than this, we will keep all relevant parties informed.

Once an official complaint has been made, the following procedure is followed:

1. *Making contact*

Contact is made with the person(s) allegedly responsible for the odour, making them aware that we have received a complaint and advising them accordingly. A letter is sent to the complainant asking them to complete and return a diary sheet detailing when and how the odour affects them.

The problem is often resolved once the issue has been raised with the person responsible for the odour, however if the problem persists, we would then ask the complainant to return a completed diary sheet.

We do **not** disclose details of the complainant during the initial stages of the complaint. However, during the investigation we may have to identify who is affected in order to resolve the situation. In some cases the complainant's address may be included on an enforcement notice or the complainant may need to appear in court to give evidence, though this is very rarely necessary.

2. *Assessment of completed diary sheet*

The returned diary sheet is evidence and essential for the investigation to demonstrate the frequency and duration the complainant is being affected and also to justify any out of hour's resources that may be required.

2a. *Witnessing the odour*

Whilst keeping the diary sheet, if the complainant is affected by odour during office hours, they are advised to call the office immediately and if available, officers will attend and try to witness the problem in the complainant's own home. If the problem cannot be witnessed during office hours then arrangements can be made to visit out of hours.

It should be stressed that the person being affected by the odour must understand that they continue to play an active role throughout the investigation.

3. Establishing a nuisance and taking formal action

If we witness an odour that is having a detrimental impact on neighbouring properties we will use the most appropriate legislation to take enforcement action. In the first instance, this would be an Abatement Notice under the Environmental Protection Act 1990 or where appropriate, a Community Protection Notice under The Anti Social Behaviour, Crime and Policing Act 2014.

Before a notice is served we may take a witness statement from the complainant(s). The statement is used to show how the odour affects them, how long they have been happening and details other important facts. A statement is a legal document and could be used as evidence in court, if needed.

4. Breach of notice

If the person responsible does not comply with the notice, then further evidence will be gathered. Once sufficient evidence has been collected, the case would then be referred to our legal team with a view to prosecution. The complainant may be required to appear in court to give evidence.

Do we always take formal action?

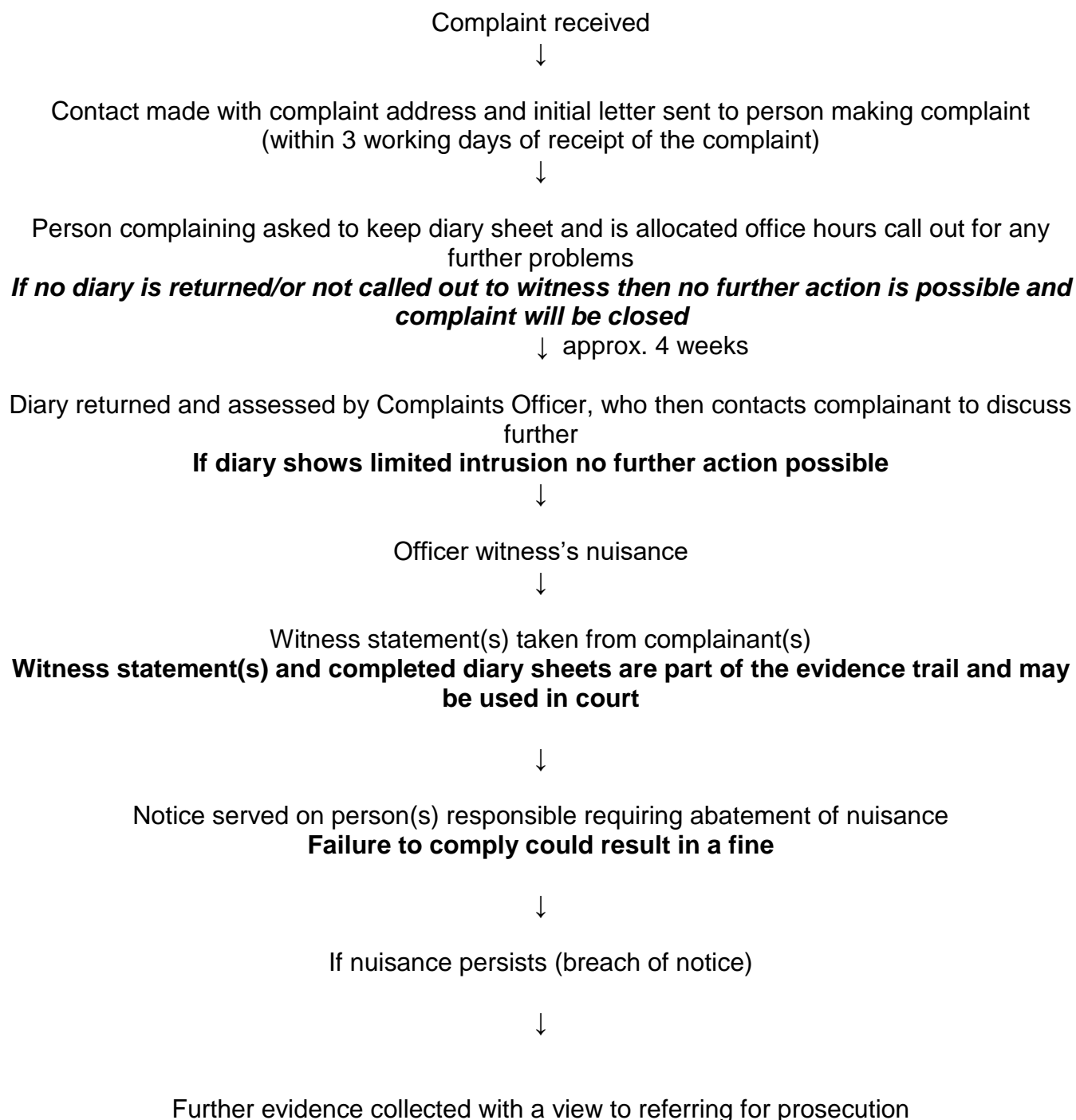
In some cases after careful consideration further action cannot be taken. The reasons for this may be due to lack of evidence, sensitivity, the fact that the problem only occurs occasionally, is hard to witness or because there is no unreasonable element to the complaint.

Advice for complainant's – taking your own action

As an alternative, the complainant may decide to take their own action under Section 82 of the Environmental Protection Act 1990, by complaining directly to the Magistrates Court. For further information on this please contact us directly or alternatively visit the Council's website (our contact details can be found at the end of this booklet).

Complaints Procedure – Odour
Environmental Protection Act 1990 (Statutory Nuisance)
The Anti Social Behaviour, Crime and Policing Act 2014

The flow diagram shows the general procedure which this Department follows when investigating a complaint.



Contact Us

You can contact us:

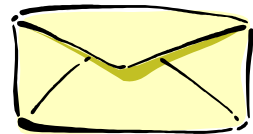
By telephone: 01283 508524 or 01283 508578



By email: ehsupport@eaststaffsbc.gov.uk



By post: Environmental Health
East Staffordshire Borough Council
Burton Town Hall
King Edward Place
Burton upon Trent
Staffordshire
DE14 2EB



By calling in at ESBC Customer Service Centre, Market Place, Burton upon Trent

Visit our website at: www.eaststaffsbc.gov.uk

Environmental Health Pages: <http://www.eaststaffsbc.gov.uk/environmental-health>