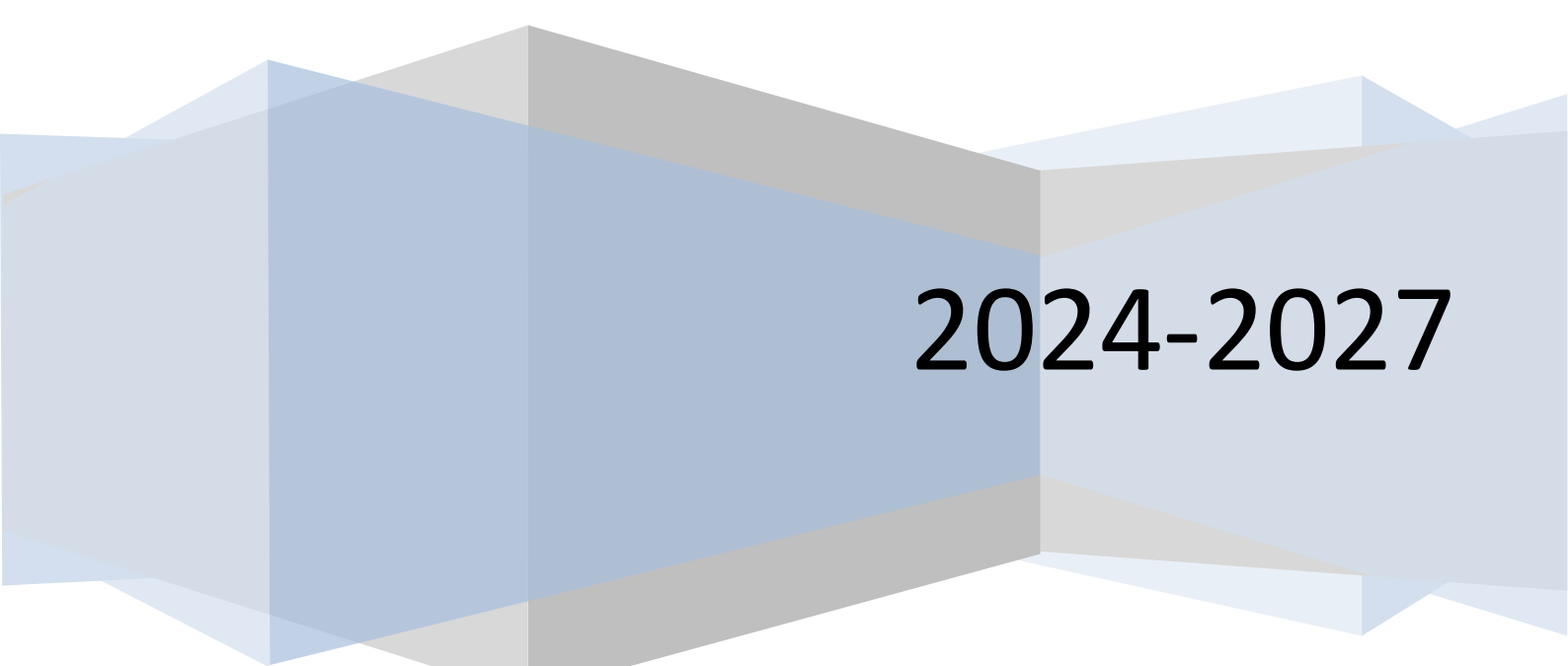


Draft Nuisance Policy

October 2024



2024-2027

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Foreword

The Public Protection Partnership handles in excess of 10,000 service requests every year. A significant proportion of these complaints relate to domestic and commercial nuisance.

The Service is committed to protecting the environment, and the health of our residents, from the effects of statutory nuisances. We recognise that nuisance can affect our residents and businesses in many ways including from noise, odour, insects, fumes, gases, accumulation of refuse and artificial lighting.

Nuisance is complex in that the Council and its officers are applying a series of objective tests to what is effectively a subjective issue. In order to determine if a matter is a statutory nuisance objective standards set out by legal precedent have to be applied. This can mean that something a resident may feel is an annoyance or a nuisance may not be defined as a statutory nuisance when the relevant legal tests are applied. This policy seeks to set out what may or may not amount to statutory nuisance.

This policy provides information on how the PPP deals both proactively and reactively to complaints of statutory nuisance and acts as a guide for those who have made or are considering making a request for this service. It also helps to signpost our residents to the appropriate organisations when the PPP is not the enforcing body for a particular type of nuisance.

This policy will provide an effective, trusted, fair, and consistent approach to support the residents and businesses across Bracknell Forest and West Berkshire.

Councillor Iskandar Jefferies
2024-25 Chairman of the JPPC

1. Introduction

The Public Protection Partnership (PPP) is a shared service delivering Environmental Health, Licensing and Trading Standards functions on behalf of two authorities, Bracknell Forest Council and West Berkshire Council. It also delivers a range of commissioned services to other organisations including Wokingham Borough Council.

Dealing with nuisance is a core function of the PPP. The purpose of this policy is to set a framework that will help the PPP ensure the continuation of a consistent and up to date best practice approach to both reactive and proactive work on nuisance issues. The policy is not intended to be a detailed operational guide, the partnership has a well-developed series of procedure notes relating to nuisance which officers will refer to. The Nuisance Policy reflects the aims of the partnership to protect and support residents and communities and is mindful of the changing post-pandemic 'complaint environment', for example, noise issues and the changes in home working. Nuisance is dealt with in two ways. Proactively, taking steps to prevent a nuisance occurring and reactively in response to complaints.

2. Background

Council Priorities

The effective management of nuisance contributes to all three of [the Bracknell Forest Borough Council \(BFBC\) 2023 to 2027 Council Plan](#) priorities, namely, 'engaged and healthy communities', 'thriving and connected economy' and 'green and sustainable environment'. BFBC commission the PPP to deliver the management of nuisance issues. The Bracknell Forest Delivery Directorate operational priorities include (at paragraph 7.212) "the implementation of the PPP business plan in line with decisions from the Council".

West Berkshire Council (WBC) oversee the management of the PPP and is the host authority. The [WBC 2023 to 2027 Council Strategy](#), Priority 1, "Services we are Proud Of", refers to good customer service, operational excellence and transparent and accountable decision making. Priority 4, "A prosperous and resilient West Berkshire" includes proactively engaging with business. These elements of the Council Strategy contribute to and shape the standards the PPP works to.

RELEVANT PPP POLICIES

The [PPP Strategic Assessment](#) (2021-2024 (updated March 2023 and June 2024)) identifies the impact of nuisance on residents and communities as a priority.

The [PPP 2023/24 Service Plan](#) sets out the partnership wide operational approach under the headings of prevention, intelligence, and enforcement. It sets out also, values of objectivity, acting with both the best of intentions and a professional approach. The operational

approach and values set the context in which the delivery of services in relation to nuisance takes place.

The [PPP Delivery Plan \(2021-2023\)](#) sets out the planned output of the service using a prevention/intelligence/ enforcement model for each priority. The outputs required for each of the three categories in relation to nuisance work are shown in Figure 1. To achieve these outputs, the PPP has a series of procedure notes to guide officers when dealing with nuisance.

Work in relation to nuisance is guided also by the [PPP Communications and Engagement Strategy \(2022-2024\)](#), and the PPP Enforcement Policy (see [Appendix 1](#)) which set further parameters for officers to work within.

GOVERNMENT GUIDANCE

There is a range of Government guidance that deals with nuisance including:

- noise in general.
- noise from transport.
- bonfires.
- smells.
- artificial light.
- and high hedges.

The PPP procedure notes follow this guidance.

NATIONAL INTELLIGENCE MODEL

The service is intelligence led with all matters being considered by the PPP Intelligence Team with a view to identifying trends, emerging issues and in the case of nuisance potential sources.

The model requires us to look at issues from the point of view of

- Prevention:
- Intelligence Gathering:
- Enforcement

The following table sets out in broad terms that approach with respect to Nuisance: This policy builds on this with more detail.

Prevention	Intelligence	Enforcement
<ul style="list-style-type: none"> • Active media campaigns • Seek to attach conditions to construction and demolition sites • Seek to impose conditions to licenced premises where appropriate • Identify events with a risk of creating noise nuisance and develop noise management plans 	<ul style="list-style-type: none"> • Work with partner agencies • Encourage reporting from those suffering from the impact of commercial and residential nuisance including noise • Make reporting noise easier by using the Noise App. 	<ul style="list-style-type: none"> • Undertake a range of statutory nuisance enforcement actions and licensing investigations • Pro-actively monitor events that meet agreed risk criteria • Pursue licence reviews for problematic premises/events • Provide dedicated case management support for nuisance and licensing investigations

Figure 1 – planned outputs for the service priority ‘impact of nuisance on communities including noise’ (PPP Delivery Plan 2021-2023)

3. Nuisance

The concept of nuisance has been part of English law since the thirteenth century. Statutory nuisance is defined in [the Environmental Protection Act, 1990 \(the Act\)](#), [the Clean Neighbourhoods and Environment Act, 2005](#) extends the statutory nuisance regime. A statutory nuisance is defined in the Act as an activity of a party that unreasonably and substantially interferes with the use or enjoyment of a home or premises or is injurious to health or be likely to injurious to health (being prejudicial to health) or a nuisance. <https://publicprotectionpartnership.org.uk/environmental-health/neighbourhood-concerns/smoke-and-bonfires/>

[The House of Commons Library Briefing Paper ‘Nuisance Complaints’ \(number 8040, March 2018\)](#) provides a guide to nuisance. It notes that Local Authorities have a duty to monitor potential nuisance and to investigate complaints of nuisance made by residents. They have a duty to act to stop or prevent the nuisance if they deem an activity to be a statutory nuisance. The Environmental Protection Act also makes provision for a resident to take private action through a magistrates’ court. In addition, residents have a recourse in common law. Section 79 of the Act outlines the different types of nuisances which can be dealt with as statutory nuisance. To be considered a nuisance, an activity must be ongoing or repeated, a one-off event would not usually be considered under the Act.

Causing a statutory nuisance is not an offence in itself, but not complying with an abatement notice or court order without reasonable excuse is.

The types of nuisances the PPP deals with most frequently are:

- Domestic Noise - such as from barking dogs, music, car and house alarms.
- Commercial Noise - such as entertainment from public houses or larger events, refrigeration and extraction units at food premises.
- Construction site noise is dealt with under [the Control of Pollution Act, 1974](#).
- Artificial Light such as security lighting on a house, floodlighting of a sports pitch. However, there are specific exemptions based on security and safety, such as bus stations, prisons and streetlighting.
- Dust, steam, grit, effluvia (odour) from industrial, trade or business premises only.
- Smoke from [bonfires](#).
- Insects from industrial, trade or business premises only.
- **Discharge of potentially harmful substances onto land e.g. sewage**

Nuisances can be from:

- Premises.
- Any accumulation or deposit.
- Any animal kept in such a place or manner, as to be prejudicial to health or a nuisance.

The assessment of nuisance is not entirely objective, the judgement of the case officer who is witnessing an alleged nuisance is subjective.

There are also types of complaint that the PPP cannot deal with because legislation relating to the issue refers to another body. These types of complaint are set out in [Appendix 2](#) along with exemptions from statutory nuisance set out in S79 of the Act.

Some household noises are not considered to be a statutory nuisance and cannot be investigated. These include:

- the sound of footsteps
- slamming doors or cupboards
- dropping objects or moving furniture
- children and babies crying
- children playing (including playgrounds)
- talking or laughing coming from inside a home or garden
- the reasonable use of noisy garden equipment such as lawnmowers or leaf blowers
- the reasonable use of washing machines, vacuum cleaners, or kitchen appliances.

Noise assessments will vary according to the source of noise (music, machinery, equipment, etc.) and the way people are exposed to it, for example, in their homes, late at night and the frequency of exposure. It is difficult to provide advice that will apply to all circumstances.

The main issues that result in complaints are loud music, barking dogs, shouting, banging doors and DIY/construction activities, and noise from commercial or industrial premises.

No house or flat is totally soundproof, and everyday living gives rise to noise from time to time. It is normal to hear some noise from neighbours, and they from you, but sometimes this can go beyond what is 'normal'. Usually, noise will need to be coming from private land or property to allow the PPP to act, but there are some exceptions to this, for example, car alarms from cars parked in the road.

Nuisance could be described as an unreasonable interference with the normal enjoyment of a property. It will usually be something that is occurring regularly and/or continuing for a period of time that makes it unreasonable.

The following are unlikely to be a statutory nuisance:

- a one-off party
- neighbours arguing
- a lawnmower being used
- a baby crying or dogs barking occasionally

Noise that the PPP have no control over includes:

- road traffic/engine noise on the public highway
- people shouting/laughing or screaming on a public road or footpath
- air traffic noise

There is no maximum noise level (decibel level) that relates to noise nuisance. Each case is judged on what might be reasonable and normal for the situation. Factors taken into consideration include:

- when the noise is happening (noise can be a nuisance at any time of the day or night)
- the duration of the noise
- how often it is happening
- the type of noise
- whether there is social acceptance (for example, bonfire night or church bells)

Unfortunately, there is no added protection for shift workers or people who are studying or ill and may want or expect a degree of peace and quiet in the day than might be the norm.

4. Prevention of Nuisance

Prevention of nuisance, as set out in the PPP Delivery Plan (Figure 1), is carried out through work both within the PPP and with a range of other services within the two Councils.

Although the PPP is not a statutory consultee on planning applications, in both authorities the PPP is consulted on applications to ensure measures to prevent nuisance are put in place at the earliest opportunity. The aim is to ensure that the impact of development is minimised for both existing and future residents.

This proactive approach to planning applications provides the opportunity to make improvements to the acoustic environment. Good acoustic design needs to be considered early in the planning process to ensure the most appropriate and cost-effective solutions are identified at the outset. An example would be if the use of a premises involved a commercial activity on the ground floor with residential use above. If the proposed commercial activity had the potential to cause a nuisance, recommendations could be put forward to attempt to mitigate the problem at the design stage. In making recommendations, where appropriate, the relevant PPP procedure notes are referred to.

The legislation for dealing with sound in the environment is concerned with controlling noise (only). Dealing proactively with planning applications gives the PPP opportunities to make improvements to the acoustic environment. Good acoustic design needs to be considered early in the planning process to ensure the most appropriate and cost-effective solutions are identified from the outset.

The Welsh government's land use planning policy now includes consideration of creating appropriate soundscapes. This refers to the 'right acoustic environment in the right time and place'. In terms of proactive management of noise nuisance this is something that may be appropriate for inclusion in future guidance in England.

The PPP works with entertainment event organisers to ensure that both licensing obligations and environmental protection laws are complied with. The PPP oversees [the Safety Advisory Group \(SAG\)](#) which provides guidance to event organisers. The group consists of representatives from the PPP, police, fire and ambulance authorities and the civil contingencies and highways services in Bracknell and West Berkshire Councils.

The group aims to ensure that entertainment events are safe for all parties involved. Guidance is provided on emergency planning, traffic and noise management, event management, licensing and food standards requirements and health protection. This work helps prevent the occurrence of nuisance during an event. It also enables the PPP to decide whether monitoring of an event for nuisance is required.

To prevent and minimise nuisance the PPP, where appropriate working with the planning services, attaches conditions to activity on construction and demolition sites using the

Control of Pollution Act 1974. The PPP recommends the addition of Construction/Environmental Management Plans for planning applications.

The Local Authority Licensing functions for both Councils sit within the PPP albeit that each partner authority retains its individual Licensing Committee and sets licensing related policy and monitors performance through those Committees. Licensing conditions are set for premises as appropriate to prevent nuisance.

The Licensing and Environmental Health teams work together closely to ensure appropriate conditions are applied. The Prevention of Public Nuisance is the role for the Responsible Authority (and for PPP this is the Environmental Quality Team). Environmental Health is a statutory consultee on applications, consideration is given to issues of noise, litter and waste, odour and lighting.

The PPP, wherever possible, works to establish a close and positive relationship with local businesses. This is not just to prevent nuisance arising but also to help businesses succeed as part of the drive in both Councils to encourage a prosperous local economy. The success and learning from working with businesses post-Covid have advanced the skills within the PPP in this aspect of its work. An example of this would be attendance at local Pubwatch meetings.

The partnership works closely with external organisations that are involved in nuisance such as the police, housing associations and the Environment Agency.

The communication of advice to residents, businesses and partners is an important part of preventing a nuisance. Advice is provided on the PPP website and social media accounts. In addition, advice and training is provided to Councillors to assist them when undertaking ward work.

5. Complaints

To manage demand and to avoid incurring the resource required to undertake investigations and manage formal proceedings, the PPP website in relation to [‘nuisance neighbours’](#) and [‘commercial nuisance’](#) (which includes nuisance from commercial premises and construction sites) advises residents on how they might deal with and solve any problem themselves before contacting their respective Council.

The website provides detail relating to nuisance issues, not just for complainants but also for those involved in activities that could give rise to nuisance. The objective is to help all parties avoid either causing or being subject to nuisance.

In the 2023-2024 year the PPP Service Plan records that the partnership received 1,146 service requests in relation to noise (both commercial, 329 requests and non-commercial,

644 requests) and bonfires (173 requests). A low number of 'other nuisances' service requests were also received but these were not recorded separately.

Service request trends and resource allocation are reviewed bi-weekly at the PPP 'tasking meeting'. Through this mechanism the partnership is not only aware of demand but can take steps to ensure adequate resourcing. 95% of service requests receive a response within two days. The PPP Joint Management Board and the Joint Public Protection Committee oversee performance via the quarterly performance monitoring reports.

Two teams within the PPP deal with nuisance service requests, the Community Team for domestic cases, and the Environmental Quality Team for commercial cases. The process followed in their investigations is set out in [Appendix 3](#).

There is a duty officer system in place to manage incoming service requests. Each investigation is different and there is a commitment to responding with the flexibility necessary to resolve each issue. Officers use log sheets as a basic record of each case, an example of a log sheet is attached at [Appendix 4](#). The use of Geographic Information Systems (GIS), noise apps, noise monitoring, and the provision of advice or enforcement action vary according to the requirements of each case. Actions are guided by procedure notes to ensure a consistency of approach and reduce the risk of any potential maladministration.

Anonymous complaints are logged onto the PPP IT system. Such complaints are often difficult to investigate if the address of the complainant is not known and an officer is unable make an assessment from the premises experiencing an alleged nuisance. However, all such complaints will be considered as potential intelligence for problem profiling.

6. Resolution of issues

The preferred outcome to a service request regarding nuisance is an informal solution. In some cases, this may involve a [mediation](#) process which the PPP will arrange. Where all parties agree to try an informal approach to remedy a concern, the PPP will make a referral to our third-party agents, Resolve Mediation Service.

Important to the success of the partnership in managing nuisance is allowing staff to develop a local, on the ground knowledge of the people and businesses in the area.

There will be some issues that require formal action. The partnership has an Enforcement Policy, and its work includes the provision of other regulatory functions, for example, Trading Standards. It has a depth of expertise and a successful track record in progressing formal action. In the 2023/24-year nine Control of Pollution Act notices and ten Environmental Protection Act notices (nine in relation to domestic cases and one in relation to a commercial case) were served.

7. Competency

To ensure that the partnership maintains high standards, not only to deliver a quality, responsive service but also to avoid successful challenge, there are in place a set of procedure notes and a quality management system. Both are the subject of regular updates.

Staff development is key. The partnership has an extensive performance management system in place. In addition to monitoring performance the system enables appropriate staff development. Officers dealing with nuisance undertake not only mandatory corporate training but also individual development programs. These programs range from short courses, such as those run by professional institutions, through to post graduate degrees. There is also interaction with other local authorities, for example, regional professional groups.

Equipment, used, for example, to monitor or measure noise, is regularly maintained, calibrated and staff are updated on how to use it. This is important to avoid a successful challenge to evidence.

8. Risk Management

The key risk in providing an effective service to deal with nuisance is the financial pressure that local government is experiencing. In response, the partnership needs to be as cost effective as possible in managing nuisance issues.

Staff retention is a risk to service provision. Nationally there are shortages of appropriately qualified staff. The partnership provides development opportunities to staff, as set out in the [Workforce Planning Strategy](#) and [Training and Development Plan](#), as well flexible working arrangements in order to continue to be an employer of choice.

There is always a risk of a successful challenge, particularly in relation to enforcement action. In order to minimise the risk procedures are updated on a regular basis and the competency of officers maintained through ongoing training and learning.

Appendix 1: Enforcement Policy

The Inter-Authority Agreement of the 6th January 2017 states the enforcement policy of the services is as follows:

Enforcement Policy: The following Enforcement Policy will apply:

- (1) the Regulators Code will form the basis for the general approach to delivery of the Service; and
 - (2) the Code for Crown Prosecutors (as amended from time to time) will be the policy basis for decisions on institution or otherwise of legal proceedings
-

Appendix 2: Types of Nuisance not dealt with by the Service

Types of complaint that the PPP cannot deal with, and who may be able to assist:

Complaint	Who Could Assist	Contact
Traffic noise from motorways and major trunk roads	Highways England	National Highways - National Highways
Defects in, or construction of, local roads	Council Highways Teams	Roads Bracknell Forest Council (bracknell-forest.gov.uk) Report a Problem - West Berkshire Council
Noise from moving motorbikes and cars	Thames Valley Police	Vehicle nuisance involving cars, bikes and mopeds Thames Valley Police
Aircraft noise	Civil Aviation Authority	Civil Aviation Authority (caa.co.uk)
Anti-Social Behaviour from a neighbourhood event or activity, or a person's unreasonable behaviour	Council ASB or Community Safety teams	Crime and community safety Bracknell Forest Council (bracknell-forest.gov.uk) Anti-Social Behaviour (ASB) - West Berkshire Council
Odours from domestic properties (such as from cooking smells or smoking)	a private matter, see comment below*	
Unightly or untidy homes	may be for Planning Enforcement	Make a planning enforcement complaint Bracknell Forest Council (bracknell-forest.gov.uk) Planning enforcement - West Berkshire Council
Commercial or trade waste burning	this is only permitted if the operator has a waste exemption certificate from the Environment Agency	Environment Agency - GOV.UK (www.gov.uk)
Bonfire smoke drifting across a road	Thames Valley Police	Report antisocial behaviour Thames Valley Police
Dark smoke from a chimney serving a	Environment Agency	Environment Agency - GOV.UK (www.gov.uk)

Complaint	Who Could Assist	Contact
furnace or boiler or industrial plant		
Smoke from a steam train	Not covered by nuisance laws	
Pollution of a canal	Canal and Rivers Trust	Canal & River Trust (canalrivertrust.org.uk)
Pollution of a watercourse, a river or lake	Environment Agency	Environment Agency - GOV.UK (www.gov.uk)

*A private matter is an issue that does not fall within the remit of a formal body with enforcement powers, such as a Local Authority. These issues could be dealt with by, for example, the impacted party attempting to resolve an issue directly with a neighbour, approaching the Citizens Advice Bureau or a solicitor.

Appendix 3: The Service Approach to Investigating Nuisance

For investigations into an alleged nuisance from domestic and commercial premises, the teams assess one or more of the following:

- Whether it interferes with the use of the complainant's property.
- Whether it may affect the complainant's health.
- How it is likely to affect the average person (unusual sensitivities are not included, such as shift workers)

This will be determined by the following:

- How often it happens
- How long it lasts
- When it happens

The above determines whether or not a statutory nuisance exists, may occur, or recur.

To progress an investigation, the PPP needs residents to register a complaint directly with the appropriate team and provide evidence of the impact the nuisance is having on them. The PPP can be [contacted](#) by telephone, email and via the online portal. A Ward Member, Member of Parliament or Town/Parish Councillor cannot act on behalf of the resident as the investigation must consider the effect of the alleged nuisance on the resident and a judgement will be made of whether there is a statutory nuisance.

In order to provide evidence, a resident would be asked to complete diary sheets (filled in for 2-4 weeks depending on the frequency of the alleged nuisance) and/or submit noise recordings via the [NoiseApp](#). Sound level meters can be installed in a resident's property to allow them to make recordings over a period of time, usually a week. Officers will also endeavour to visit during events, to witness the nuisance and assess the impact on the resident.

In the early stages of an investigation, the PPP does not provide details of who has complained. If a statutory nuisance is occurring or likely to happen in the future or is likely to recur, then the PPP must serve an Abatement Notice. This would require the person(s) responsible, or the owner or occupier of the land, to cease the nuisance or abate the nuisance within a given timescale.

Should the investigation proceed to the serving of an Abatement Notice and enforcement action being taken, the PPP would need complainants to provide evidence and/or witness statements for any breaches of the Notice, which may be presented to the Magistrates Court.

If there is insufficient evidence and witnessing does not indicate a statutory nuisance, the case will be closed. However, the complainant can take their own action under section 82 of the Environmental Protection Act. In addition, Mediation is a valuable tool, particularly in dealing with domestic matters which do not meet the threshold for a statutory nuisance. The PPP can offer this service by making a referral to the Resolve Mediation Service, where all parties agree to try an informal approach to remedy the concern.

More information on website at [Environmental Health - PPP \(publicprotectionpartnership.org.uk\)](http://Environmental Health - PPP (publicprotectionpartnership.org.uk))