



**An introduction to statutory  
nuisance prosecutions in  
respect of residential  
accommodation.**

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**PART 1**  
**What is a “Statutory  
Nuisance?”**

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## What is a “Statutory nuisance”?

Environmental Protection Act 1990 (“EPA 1990”)

**s.79(1)** contains a long list of potential nuisances such as noise, steam, smoke, animals, artificial light...

By far the most important for landlords and tenants is **s.79 (1) (a) EPA 1990**, which says a statutory nuisance will exist in:

***“...any premises in such a state as to be prejudicial to health or a nuisance”***

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## “...In such a state...”?

- This is best understood by considering the EPA 1990’s *purpose*.
- It replaced Part III of the Public Health Act 1936...
- “...the object of section 79 is to provide for the summary removal of noxious matters” (**Birmingham City Council v. Oakley** [2001] 1 AC 617 at page 628)

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## *"...in such a state...?"*

**"Premises"** must be **"in"** such a state to be prejudicial to health.

- **Birmingham City Council v. Oakley** [2001] 1 AC 617: no wash basin in W/C and so tenant had to go through the kitchen to get to the bathroom to wash their hands. Poor layout does not mean *premises* are *in* such a state as to be prejudicial to health.
- **R v. Bristol Crown Court ex. p .Everett** [1999] 1 WLR 1170: steep staircase did not mean premises were "in" such a state.

## PART 2

# What does "prejudicial to health" mean?



## "...to be prejudicial to health...?"

**S.79(7) EPA 1990** defines this as:

*"injurious, **or likely to cause injury**, to health"* (emphasis added)

The state of the premises is such as to make a well person to become ill or a sick person to further deteriorate: **Malton Borough Health Board v. Malton Farmers Manure Co. (1879) 4 Ex. D, 302**

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## "...to be prejudicial to health...?"

- This is an objective test: see **Cunningham**, below
- It *doesn't* take account of the *subjective* health of the occupier(s)
- E.g. **Cunningham v. Birmingham City Council (1988) 30 HLR 158 DC**: a boy's autism should not have been considered when asking whether or not a very small kitchen was "*prejudicial*" to health

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## *"...to be prejudicial to health...?"*

- EPA 1990 doesn't define "health". Will include both physical and mental health: e.g depression, anxiety.
- **Not** sufficient:
  - Interference with comfort: **Salford CC v. McNally** [1975] 3 WLR 87, HL
  - Decorative problems like wallpaper: **Springett v. Harold** [1954] 1 All ER 568, QB
  - Eye sores: **Coventry CC v. Cartwright** [1975] 2 All ER 99, DC

## *"...to be prejudicial to health...?" (cont...)*

- Being housed too close to a railway line: continual noise interfering with the enjoyment of the tenant's home (**R (Wakie) v Haringey Magistrates Court [2003] EWHC 2217 (Admin)**)
- Lacking sound insulation: **R(Vella) v. Lambeth LBC & LQHT [2005] EWHC 2473 (Admin)**

*"...to be prejudicial to health...?"*

Things that *have* been found to be prejudicial to health (*very* common):

- Damp;
- Condensation or mould growth; and
- infestations

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*"...to be prejudicial to health...?"*

- Expert evidence needed to answer: *is it prejudicial to health?*

**Southwark v Simpson (1998) 31 HLR 725** – chartered surveyor

- admitted that he had no medical knowledge

- Medical evidence is needed – but not necessarily medical *qualifications*

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## “...to be prejudicial to health...”?

- If they have the experience in the course of their work, that may suffice
- EHOs are more likely to have this experience: **O’Toole v Knowsley MBC (2000) 32 HLR 420**

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## “...or a nuisance...”?

- Rare & difficult for tenants to establish
- Two types: public and private (*we are concerned with private*)
  - “interferences for a substantial length of time by owners or occupiers of property with the use or enjoyment of **neighbouring** property (emphasis added)

: **NCB v. Thorne** [1976] 1 WLR 543 DC, at page 546

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## PART 3

# Defences

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## Defences

- S.82(2) EPA 1990 reads:

*"If the magistrates' court...is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises..."*

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## Defences

- EPA s. 82(4) (a) and (b) EPA 1990
- proceedings to be brought against ***"the person responsible"***. EPA, S79(7):

*"person responsible"* — (a) in relation to a statutory nuisance, means the person to **whose act, default or sufferance** the nuisance is attributable...

## ***"...person responsible..."***

Or...

(b) where the nuisance arises from any defect of a structural character, against the owner: s.82(4)(b) EPA 1990 -- see **Camden v. Gunby [1999] 4 All ER 602** – "rack rent"

(c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises. s.82(4)(c) EPA 1990



## Defences

- The complainant has prevented works: **Quigley v. Liverpool Housing Trust** [1999] EWHC 593 and **Warner v. Lambeth LBC** (1984) 15 HLR 42, DC
- Heating was provided but not used due to its expense, resulting in condensation damp: **Dover District Council v. Farrar** (1982) 2 HLR 32, DC

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## Defences

See also **Carr v. LB Hackney (1996) 28 HLR 747:**

- Condensation, dampness and mould
- *"Likely to recur"?*
- Yes, but only because the tenant wouldn't let agents in to fit convector heaters – he wanted gas central heating, as it would be cheaper to run
- Not guilty

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## Defences

- Can't simply deny liability in condensation dampness cases. Defendants need to be aware of need for heating, ventilation, insulation: **GLC v. LB of Tower Hamlets (1983) 15 HLR 54, DC**
  - Key point is causation: who/what has caused the nuisance?

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## Defences

- The 21-day notice is not sufficiently detailed as in **East Staffs. Borough Council v. Fairless [1999] Env. LR 525**
- The 21-day notice was served on the wrong person: see, in particular, s.160 (2) (3) EPA 1990: clerk, CEO, lawyers, but note **Allen v LB Ealing [2021] EWHC 948 (Admin)**
- Complainant not the "person aggrieved". See: **Watkins v Aged Merchant Seamen's Homes [2019] H.L.R. 25**
- Nuisance doesn't exist at the date of trial – but...costs

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## Checklist

- Service of abatement notice (“notice of intended prosecution”). **EPA 1990, s82(6)**
- Laying of the information at Magistrates’ Court, no less than 21 days after service of the notice
- Premises in such a condition as to be injurious to health, or likely to cause injury

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## Checklist

- Alternatively, the condition of the premises must constitute a public or private nuisance
- Defendant must be the person responsible for the nuisance
- Claimant/complainant must be the person aggrieved by the nuisance – doesn’t just mean *‘the tenant’*
- Nuisance must be in existence as at the date of the hearing. Exists or likely to recur?

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## PART 4

# What can the Magistrates' Court award?

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## A guilty plea or finding

- Abatement order (requiring works to be done)
- Fine
- Compensation
- costs

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## Abatement Order

If the defendant is guilty (following a guilty plea or a conviction after trial), the Court shall order it to abate the nuisance, and the **abatement order** will include a detailed schedule of works and a time limit for those works to be completed (usually prepared by the parties). S.82(2)

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## Abatement Order

- The abatement order may include works of improvement to the premises of a kind that could not be ordered in s11 LTA 1985 County Court proceedings
- E.g. **Kelly v Birmingham District Council (1985) 17 HLR 572:** the local authority was ordered to install central heating in order to abate serious mould growth
- If unfit for human habitation, order may prevent occupation: s.82(3)

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## Fine (s.82(2))

- Fine “may” be imposed: s.82(2)
  
- But no nuisance = no fine.
  
- If the Court is satisfied that there was a nuisance on the day the complaint was made then a costs order shall follow (see “*shall order*” in EPA 1990, s.82(12)), but there is no power to award a fine or compensation if the nuisance has abated.

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## Fine

- Since 12<sup>th</sup> March 2015 (commencement of **s85(1)** of the **Legal Aid, Sentencing and Punishment of Offenders Act 2012**), the fine on conviction is no longer limited to £5,000. This maximum has now been removed.

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## Fine

■ **R v Yorkshire Water Services Limited [2001]** set out the criteria for determining the sum of compensation:

- the degree of culpability involved in the commission of the offence
- the damage which was done
- whether the defendant has any previous record
- the need to strike a balance between a fitting expression of censure and the counterproductive effect of imposing too great a financial penalty (cont...)

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## Fine

Cont...

- the defendant'(s)' attitude and performance after the events, including their plea of guilty
- in an appropriate case, the duty of the Court to determine what the penalty for any one incident should be, rather than to tot up the various manifestations of that incident

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## Compensation Orders

- Compensation is relevant for:
  - any personal injury (but see **R v Horseferry** below);
  - any loss
  - any damage resulting from the offence
  
- A convicted person **may** be ordered to pay compensation (**s130 of the Powers of Criminal Courts (Sentencing) Act 2000**)

## Compensation Orders

- *Stones Justices Manual* states in relation to compensation under s130 (emphasis added):

*“The machinery of a compensation order under this Act is intended for **clear and simple cases**. It must always be remembered that the civil rights of the victim remain, although the power to make a compensation order made by the court of trial can be extremely beneficial **as long as it is confined to simple straightforward cases and generally where no great amount is at stake.**”*



## Compensation Orders

In **Davenport v Walsall MBC [1997] Env. LR 24**, the Court declined to make a compensation order because the correct venue for deciding the amount of compensation was the County Court. The damages in the case were not easily quantifiable and were accordingly not within their discretion.

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## Compensation Orders

- In **R. v Horseferry Road Magistrates ex parte Prophet [1995] Env. LR 104**, the Court determined that compensation should only be awarded in cases which are simple and straightforward, and where no great amount is at stake.
- It was unsuitable for personal injury.

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## Compensation Orders – period?

- Compensation should be confined to the period from the date of the summons to the date of the Court’s decision (**R v Liverpool Crown Court ex p Cooke [1996] 4 All ER 589**).
- Given that no complaint can be made until the appropriate notice has expired under **EPA 1990 s82 (6) & (7)**, there is no jurisdiction to make a compensation order in respect of any period before that date.

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## Costs – ‘compensation’

- Costs incurred pursuant to Contingency Fee Agreements are recoverable pursuant to **s27(1) of the Access to Justice Act 1999**.
- If the Court is satisfied that there was a nuisance on the date that the complaint was made then a ‘costs order’ **“shall”** follow.
- This is pursuant to s.82 (12), namely...

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## Costs -- 'compensation'

- The Court's discretion as to the amount of costs that are awarded is limited by **EPA 1990 S.82(12)** to:

*"...such amount as the court considers reasonably sufficient to compensate [the aggrieved person] for any expenses properly incurred by him in the proceedings".*

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## Costs -- 'compensation'

- Costs cannot be resisted by suggesting that it was impossible to carry out the works by the date required by the notice (**R v Dudley BC ex p Hollis (1997) 30 HLR 902; Sandwell MBC v Bujok (1990) 23 HLR 48**)
- **Taylor v Burton [2021] EWHC 1454 (Admin)**. Broad-brush approach

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## Costs – ‘compensation’

The costs which can be recovered include expenses incurred in proving the existence of a statutory nuisance (e.g. obtaining the expert’s report), and expenses incurred in carrying out the steps required by statute prior to the making of the complaint (e.g. service of the notice).

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## The end – any questions?

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