



***SOCIAL SERVICES, HOUSING AND COMMUNITY
SAFETY SCRUTINY COMMITTEE***

2.00 PM THURSDAY, 15 DECEMBER 2022

MICROSOFT TEAMS / HYBRID COUNCIL CHAMBER

All mobile telephones to be switched to silent for the duration of the meeting

This meeting will be recorded for broadcast via the Council's Internet Site. By participating you are consenting to being filmed and the possible use of those images and sound recordings for training purposes.

1. Chair's Announcements
2. Declarations of Interest
3. Minutes of Previous Meeting (*Pages 5 - 10*)
4. Environmental Health - What is a Statutory Nuisance (*Pages 11 - 18*)
5. Pre-Decision Scrutiny
To select appropriate items from the Cabinet Board agenda for Pre-Decision Scrutiny (Cabinet Board reports included for Scrutiny Members)
6. Forward Work Programme 2022/23 (*Pages 19 - 20*)
7. Urgent Items
Any urgent items (whether public or exempt) at the discretion of the Chairperson pursuant to Section 100B (4) (b) of the Local Government Act 1972.

K.Jones
Chief Executive

Civic Centre
Port Talbot

Friday, 9 December 2022

Committee Membership:

Chairperson: **Councillor C.Galsworthy**

Vice **Councillor H.C.Clarke**
Chairperson:

Councillors: O.S.Davies, J.Jones, A.R.Lockyer, A.Lodwig,
K.Morris, P.D.Richards, M.Spooner, D.Thomas,
S.Thomas and S.Rahaman

Notes:

- (1) If Committee Members or non-Committee Members wish to have relevant items put on the agenda for future meetings, then please notify the Chief Executive/Chair eight days before the meeting.*
- (2) If non-Committee Members wish to attend for an item of interest, then prior notification needs to be given (by 12.00 noon on the day before the meeting). Non-Committee Members may speak but not vote, or move or second any motion.*
- (3) For pre scrutiny arrangements, the Chair will normally recommend forthcoming executive items for discussion/challenge. It is also open to Committee Members to request items to be raised - though Members are asked to be selective here in regard to important issues.*
- (4) The relevant Cabinet Board Members will also be invited to be present at the meeting for Scrutiny/ Consultation purposes.*

(5) *Would the Scrutiny Committee Members please bring the Cabinet Board papers with them to the meeting.*

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Social Services, Housing and Community Safety Scrutiny Committee
(Multi-Location Meeting - Council Chamber, Port Talbot & Microsoft Teams)

Members Present:

10 November 2022

Chairperson: Councillor C.Galsworthy

Councillors: O.S.Davies, J.Jones, A.R.Lockyer, A.Lodwig, P.D.Richards, M.Spooner and D.Thomas

Officers In Attendance C.Howard, J.Hodges, S.Waite, A.Jarrett, A.Thomas, V.Smith, K.Warren, S.Bradshaw, S.McCluskie and C.Plowman

Cabinet Invitees: Councillors S.Harris and A.Llewelyn

Observers: Councillor A. Aubrey

1. **Chair's Announcements**

The Chairperson welcomed everyone to the meeting.

2. **Declarations of Interest**

The following Member made a declaration of interest at the start of the meeting:

Councillor Charlotte Galsworthy	Re: Items 7 - Establishing a Managed Account and Payroll Support Framework as she is a Personal Assistant (PA) for her mother.
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3. **Minutes of Previous Meeting**

The minutes of the meeting held on 11 October 2022 were approved as a true and accurate record.

4. **Pre-Decision Scrutiny**

The Committee chose to scrutinise the following Cabinet Board items:

Establishing a Managed Account and Payroll Support Framework

The Committee were provided with a report which was seeking approval to undertake a process to establish a Framework of approved providers, who would be able to appropriately support Direct Payment recipients with Managed Account and Payroll activity.

Members queried what the current waiting time was to change accounts from managed to direct payments, or vice versa. It was confirmed that this takes very little time and was not an issue for Officers within the Directorate. The Head of Adult Services mentioned that the issue with direct payments was relating to obtaining a Personal Assistant (PA).

Officers were asked to provide information relating to the current waiting times for assessments for direct payments, and how long it takes for a PA to be found and matched with a service user. It was noted that the service was up to speed with the assessments, however it was difficult to provide a definitive timescale of the waiting times. The Committee were informed that there was an issue in trying to obtain PA's in the first instance; this was the same across all forms of care, including residential and domiciliary care. It was added that part of the delay, if there was a delay, was pertaining to Disclosure and Barring Service (DBS) checks, putting training in place and where insurance was required.

Following scrutiny, the Committee was supportive of the proposal to be considered by the Cabinet Board

Procurement of a Specialist Domiciliary Care Framework

Officers delivered a report for Members to consider approval to undertake the process to establish a Framework of domiciliary care providers, who would be able to appropriately deliver specialist domiciliary care and use this Framework to purchase individual packages of specialist domiciliary care.

The circulated report highlighted that this framework will include providing mental health care; Members asked if this included those with dementia. Officers explained that the Directorate had a routine framework that was already in place for the older age group (over

65's); this framework was applied to the individuals in this age group who had age related frailty, dementia and/or disabilities.

Members were informed that the report before them was in relation to an additional, specialist framework which would apply to working age groups, and children and young people; this framework will assist those with learning disabilities and mental health, as well as providing a range of children and young people services.

It was detailed in the circulated report that presently the number of adults with complex needs receiving specialist domiciliary care in their own home was relatively low; Members queried why the numbers were so low, and asked if the data collection on domiciliary care would improve in the future. Officers explained that there was currently a small number of people with learning disabilities and mental health that receive domiciliary care in their own homes; a lot of people with learning disabilities and mental health currently live in supported living accommodations or specialist care homes, therefore the demand for specialist domiciliary care wasn't as high.

Further to the above, it was mentioned that there would be wider options available for individuals by developing the framework. Officers highlighted that they were currently trying to support and enable people to live by themselves in their own homes with a package of domiciliary care; this work falls into the other work Officers were going to give and promote independence.

Officers stated that if the specialist framework was in place, they would be able to obtain better data, as the packages would go through the framework which would enable more data to be collected.

Following scrutiny, the Committee was supportive of the proposal to be considered by the Cabinet Board.

Uplift To Older People Care Home Fees

A report was provided in relation to an uplift to fees in order to support the sustainability of older people care home services in Neath Port Talbot.

Members made reference to the uplift fee of £30 per person, per week, and asked if Officers were expecting this to change due to the current cost of living crisis.

The Director of Social Services, Health and Housing confirmed that they were anticipating that the fees will need to be risen in the future; this will depend on the outcome of the next few months in regards to

the cost of living crisis, however Officers were continuing to review this. It was added that this report was the first step of an uplift programme that will need to put in place over the coming years.

Further clarity was provided in that the uplift fee detailed in the circulated report was for the current financial year. It was noted that Officers undertook an exercise to look at the fee levels for this financial year; however from the beginning of April 2022 to now, there had been a lot of factors that could not have been predicted, that have directly impacted on the financial viability of care homes. Following this, it was explained that Officers carried out a detailed piece of work with the care home sector to review the financial pressures that they were facing; it was identified that they needed an extra £30 this financial year to be viable. Officers added that they were currently trying to identify what the fees should look like for the next financial year of 2023/24; given the current inflation, they expect there to be a significant uplift next financial year.

Reference was made to the current fees paid to older people care homes; Members queried the little difference between what was currently paid to residential care homes, and what was currently paid to nursing care homes, given the difference in the type of work they undertake. Officer clarified that the amount contained within the circulated report was the fee that the Council would pay to nursing homes; there was also a Funding Nursing Care (FNC) fee in which the Health Board pays for, on top of the amount provided by the Council. It was concluded that the overall fee for a nursing home payment was higher than that amount detailed in the report circulated report; as it only detailed the uplift and the amount that Social Services contribute.

A brief discussion took place in regards to the fees that families pay towards care homes, and what would happen if a family was not in a position to pay for the additional charges going forward. The Head of Adult Services confirmed that this was referred to as a third party top up; most care homes were now charging a top up fee, with the average being around £65. It was explained that this was due to care homes claiming that they weren't being paid enough to cover the costs; where families could not afford to pay this, and where the service were placing people care in homes, The Council were paying the top up fee. Members were informed that increasing uplift fees, could assist with moving away from the top up fee; families would therefore not have to contribute financially towards the care home.

Following scrutiny, the Committee was supportive of the proposal to be considered by the Cabinet Board.

5. **Forward Work Programme 2022/23**

Members were reminded of the Adult Services Member Induction session scheduled for 17 November 2022, and the importance of attending this session was highlighted.

The Forward Work Programme was noted.

6. **Urgent Items**

No urgent items were received.

7. **Access to meetings**

RESOLVED: that pursuant to Section 100A(4) and (5) of the Local Government Act 1972, the public be excluded for the following items of business which involved the likely disclosure of exempt information as defined in Paragraph 14 of Part 4 of Schedule 12A to the above Act.

8. **Pre-Decision Scrutiny of Private Item/s**

The Committee chose to scrutinise the following private Cabinet Board items:

Development of Step Up and Step Down Services

Members received a report in relation to the proposed development of Step Up and Step Down Services.

Following scrutiny, the Committee was supportive of the proposal to be considered by the Cabinet Board.

CHAIRPERSON

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Cyngor Castell-nedd Port Talbot
Neath Port Talbot Council

NEATH PORT TALBOT COUNTY BOROUGH COUNCIL

Social Services, Housing and Community Safety Scrutiny Committee 15th December 2022

Report of the Head of Planning and Public Protection – Mr Ceri Morris

Matter for Information

Wards Affected: All Wards

Report Title: Environmental Health Briefing Note: What is a statutory nuisance?

Purpose of the Report

At a recent Forward Work Programme session of the Social Services, Housing and Community Safety Scrutiny Committee, Members wished to receive a report on 'What is a statutory nuisance in Environmental Health?'.

This report presents a briefing note with information produced by Environmental Health to answer this question.

Executive Summary

This report will highlight the main legislative definition of a statutory nuisance according to section 79 of the Environmental Protection Act 1990 and provide some commentary around the subject matter to include considerations used to determine if a statutory nuisance exists or not.

Categories of Statutory Nuisance

1. The prescribed matters that constitute a statutory nuisance are set out in section 79 of the Environmental Protection Act 1990:
 - a. any premises in such a state as to be prejudicial to health or a nuisance – This category was developed to largely deal with conditions at dwellings but it also includes land and vessels.
 - b. smoke emitted from premises so as to be prejudicial to health or a nuisance – Smoke is defined in section 79(7) as including soot, ash, grit and gritty particles emitted in smoke and has been held to include the smell of smoke. This section mainly covers smoke from domestic premises (other than from chimneys in a smoke control area) and smoke other than dark smoke from industrial and trade premises.
 - c. fumes or gases emitted from premises so as to be prejudicial to health or a nuisance – This section only applies to private dwellings. Fumes and gases are defined in section 79(7) as: “fumes” means any airborne solid matter smaller than dust; and “gas” includes vapour and moisture precipitated from vapour.
 - d. any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance – This section only applies to industrial and trade premises. The term “effluvia” includes smell.
 - e. any accumulation or deposit which is prejudicial to health or a nuisance – The terms used in this section are not defined but deposit suggests an individual instance whereas accumulation suggests the result of a number of deposits.
 - f. any animal kept in such a place or manner as to be prejudicial to health or a nuisance – In this section the term animal has a wide meaning – it has been held to include poultry. The term

'kept' is also important, as this section does not apply to animals gaining access to a place (such as feral pigeons entering buildings).

- g. noise emitted from premises so as to be prejudicial to health or a nuisance - The definition of noise includes vibration but does not apply to noise caused by aircraft other than model aircraft.
 - h. noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street – The provisions relating to noise in a street does not apply to road traffic noise.
 - i. any insect emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance – This provision was introduced to deal with flies near waste water treatment works.
 - j. artificial light from premises so as to be prejudicial to health or a nuisance – This provision relates to security lights (domestic and commercial), sports facilities (like floodlit football pitches), decorative lighting of buildings or landscapes, laser shows and light art.
2. For any of the above matters to count as a **statutory nuisance**, evidence must be established to prove one of the following:
- a. it unreasonably and substantially interferes with the use or enjoyment of a home or other premises, or
 - b. it causes harm to health or is likely to cause harm to health.

Duty to Investigate

3. A Local Authority must take such steps, as are reasonably practicable, to investigate any complaint of statutory nuisance from

a person living in its area. This function is delegated to Environmental Health.

4. Sometimes it is not possible for an officer from Environmental Health to witness or be satisfied of a statutory nuisance, and as such we are unable to assist in all cases reported to us.

Matters for Consideration

5. Environmental Health staff will consider matters previously established by the courts (called “case law”), in order to evaluate whether a nuisance exists and determine if the Local Authority can act or not. Factors include:
 - a. **Impact of the activity** – this is a measure of the impact of the alleged nuisance on the receptor. In some cases assessment of the impact can be supported by objective measurements (such as noise monitoring) but in many cases it will be a subjective assessment as to the degree of health risk or interference.
 - b. **Locality of neighbourhood** – This considers the location of both the receptor and assesses if the activity is normal for the character of the area.
 - c. **Time of activity** – This considers the time of the activity. Many nuisances have a significant impact because of the time of day at which the nuisance occurs e.g. noise from an entertainment venue would be less acceptable after 23:00hrs.
 - d. **Frequency** – This considers how often the activity occurs. Activities that occur frequently or continuously are more likely to be determined to be a nuisance.
 - e. **Duration** - This considers how long the activity lasts. For example, an activity lasting one hour would be assessed

differently to a four hour activity. The duration is considered alongside time and frequency.

- f. **Reasonable person test** – This considers what a ‘reasonable person’ would find objectionable or not. In addition, it also considers what is widespread practice or common usage in an area.
- g. **Importance of the activity** - This element considers how important the activity is to the local community. However, there is a point when a socially beneficial activity creates such an effect that it becomes unacceptable.
- h. **Mitigation factors** – This considers what reasonable steps have been taken to minimise the impact of the activity and what further steps are required. In some cases, there is a legal defence available that ‘best practicable means’ were used to prevent or counteract the effects of a statutory nuisance.

Service of Notice

- 6. Where Environmental Health is satisfied that a statutory nuisance exists, or is likely to occur or recur, it must serve an abatement notice on the person responsible, premises owner or occupier. The notice will require steps and/or works to be taken to the abatement of the nuisance or prohibition or restriction of its occurrence or reoccurrence.

Appeal of Notice

- 7. The person on whom the notice is served may appeal to the Magistrates Court within 21 days of date on which he is served with the notice.

Enforcement

- 8. Failure to comply with the terms of an abatement notice without reasonable excuse may result in prosecution action being taken in

the Magistrates Court. The defence of best practicable means will be considered for certain types of nuisance.

9. If an abatement notice is not complied with, Environmental Health may take the necessary steps to abate the nuisance itself. Although this power exists, due to financial considerations, it is not always possible for these measures to be used. These powers are more regularly used in cases of noise nuisance, where officers seizure noise making equipment.

Individuals can take private action for an alleged statutory nuisance

10. If, for whatever reason, the local authority cannot establish a Statutory Nuisance, it is possible under section 82 of the Environmental Protection Act 1990 for a complainant to apply directly to Swansea Magistrates Court with their evidence and ask that the Court issues an Abatement Order on the responsible person.

How to report an alleged statutory nuisance to Environmental Health

11. The easiest way to report a statutory nuisance to Environmental Health is via the Council's online reporting at www.npt.gov.uk and complete a complaint form to report a 'Pollution Incident or Nuisance'.

[I want to report...](#)

Coronavirus Complaint	Fly Tipping	Missed collections
Street lighting fault	Noise Nuisance	Dog fouling
Abandoned Vehicle(s)	Benefit Fraud	Blue Badge Misuse
Change of Address	Empty Property	Food Hygiene Complaint
Found Dog	Graffiti	Highways Issue
Litter, Dog Foul and Grit Bin Issue	Lost Dog	Pest Problem
Pollution Incident or Nuisance	Pothole	Problem with a Rented Property
Street Cleaning Issue	General Incident Report	

12. Please note that should Environmental Health be able to take the complaint further to investigation phase, officers will write to the address being complained about in order to bring the matter to their attention.
13. In addition, Environmental Health may require the complainant to attend Court and act as a witness for the Local Authority.
14. Monitoring log sheets will be required to demonstrate the effects of the activity in terms of nuisance and health impact. These forms may be presented at Court should the Local Authority consider there is enough evidence to act on behalf of the complainant.

Financial Impacts

No implications

Integrated Impact Assessment

There is no requirement to undertake an Integrated Impact Assessment as this report is for information purposes.

Valleys Communities Impacts

No implications.

Workforce Impacts

No implications.

Legal Impacts

No implications.

Risk Management Impacts

No implications.

Consultation

There is no requirement for external consultation on this item.

List of Background Papers

Part 3 of the Environmental Protection Act 1990

([www.legislation.gov.uk/ukpga/1990/43/part/III/crossheading/statutory-
nuisances-england-and-wales](http://www.legislation.gov.uk/ukpga/1990/43/part/III/crossheading/statutory-nuisances-england-and-wales))

England and Wales guidance on Statutory Nuisance
([www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-
complaints](http://www.gov.uk/guidance/statutory-nuisances-how-councils-deal-with-complaints))

Guidance to accompany the Statutory Nuisance Provisions in Scotland
([https://www.gov.scot/binaries/content/documents/govscot/publication
s/advice-and-guidance/2009/01/guidance-accompany-statutory-
nuisance-provisions-public-health-etc-scotland-
act/documents/0076564-pdf/0076564-
pdf/govscot%3Adocument/0076564.pdf](https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2009/01/guidance-accompany-statutory-
nuisance-provisions-public-health-etc-scotland-
act/documents/0076564-pdf/0076564-
pdf/govscot%3Adocument/0076564.pdf))

Officer Contact:

Mr Mark Thomas, Environmental Health & Trading Standards
Manager, m.thomas2@npt.gov.uk

Mr Calvin Davies, Environmental Health Team Leader (General
Environmental Health), c.davies13@npt.gov.uk

Mr Gareth Liley, Interim Environmental Health Team Leader (Public
Health & Pollution Control), g.liley@npt.gov.uk

Social Services, Housing and Community Safety Scrutiny Committee

(All starting 2pm unless otherwise stated)

Meeting Date	Agenda Item	Contact Officer
2022		
27 th June		
28 th July	Training Meeting	
11 th Oct (re-scheduled from 22 nd Sept)		
10 th Nov		
15 th Dec	'What is a statutory nuisance' in Environmental Health	Celvin Davies
2023		
26 th Jan	Asylum Seekers and Refugees Policy	Sarah Waite
	Anti-Social Behaviour	Elinor Wellington / Claire Jones
9 th March	Single Point of Contact (SPOC)	Angela Thomas
	Team Around the Family / Early Intervention	Ruth Griffiths / Keri Warren
20 th April		

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