
STATES OF JERSEY



STATES OF JERSEY COMPLAINTS BOARD FINDINGS (R.131/2025): MINISTERIAL RESPONSE

**Presented to the States on 20th November 2025
by the Minister for the Environment**

STATES GREFFE

REPORT

This response relates to the States of Jersey Complaints Board report, hearing held on 31st July 2025 for complaint by Ms. M. Le Cornu against the Minister for the Environment and the Infrastructure and Environment Department regarding a decision of the Environment Department not to issue an abatement notice in accordance with the Statutory Nuisances (Jersey) Law 1999, reviewed under the Administrative Decisions (Review) (Jersey) Law 1982.

1.0 Findings of the Board and Ministerial Response

Summary of the Board's Finding 5.3(a)

In finding the Department had acted contrary to Law, the Board considers that the Department was misdirected in relation to its obligations under the Law 1999 because in the report which accompanies the Law, it is stated that the Law *"would provide alternative means by which the [Committee] could act and perhaps spare those affected by some nuisance a potentially prolonged and costly process of civil litigation"*. The report further states that the Law places (under Article 4) *"a duty on the [Committee] to deal with statutory nuisances and to investigate any complaint of statutory nuisances made to it"*. The report concludes by stating that the Law would provide *"the public with an alternative to litigation in the Royal court"*.

Response to finding 5.3(a)

Whilst the Minister does not dispute that a purposive approach is taken to the construction of legislation, the starting point is always the legislation itself. *"...the true position is that it is the obligation of the Court to ascertain the intention of the legislature from the ordinary and natural meaning of the words used and it is only when the meaning and intention cannot be so established or that there would be a patently absurd result that extraneous material such as the projet de loi becomes relevant"* [B Limited v The Comptroller of Taxes [2024] JRC 194 at [35]]. It was therefore wrong, as a matter of first principles for the Board to look to the report, rather than legislation itself. Whether something is contrary to law depends on the natural and ordinary wording of the statutory provision in question, which in this instance is Article 5 of the 1999 Law, the wording of which is plain and unambiguous.

The Board states that the Law was enacted to provide an alternative to costly civil litigation and places a duty on the Minister to investigate complaints of statutory nuisance. The report explains how at the time, the introduction of the Statutory Nuisance Law was an alternative means to the civil law of Voisinage, the only route to nuisance complaints at that time. It was not a law in its purpose to avoid Courts in its entirety, but to potentially provide another route for common law civil litigation.

However, the Law's primary purpose is not to simply provide an alternative remedy to costly litigious action, but to protect public health by addressing matters that may also be 'prejudicial to health'. The 1999 Law was adopted by substantially copying the Environmental Protection Act 1990, the origin of which is rooted in nineteenth century public health legislation to minimise the risks of ill health.

The Department fully accepts the principal duty of the Statutory Nuisance law to investigate complaints and undertakes investigations promptly and thoroughly.

However, the law does not serve to provide immediate relief in the absence of evidence. The Minister must act proportionately and lawfully, ensuring that any enforcement action is supported by credible evidence.

Summary of the Board's Finding 5.3(b)

The Board had heard in order to serve an abatement notice the criminal threshold of "*beyond reasonable doubt*" had to be met. However, the Board found that nuisance, be it statutory or private, does not involve a crime and so the normal test of the balance of probability is appropriate.

Response to finding 5.3(b)

The Minister agrees that an abatement notice may be served on the balance of probabilities although this application is perhaps nuanced, because in so doing the Minister also needs to be satisfied that he has available the information necessary to reach a conclusion on the issues before him. The Minister in that regard must take reasonable steps, depending on the circumstances of the case, to ensure that he is properly informed so as to make a decision. Consideration is therefore given as to whether the service of an abatement notice is appropriate given the body of evidence. Whilst that can mean that reasonable persons might equally reasonably arrive at different views, it is nevertheless the Minister who must be satisfied, based on investigation and evidence collected, that a statutory nuisance is occurring and a probable source.

Where an abatement notice is appealed, as in any civil case, an appellant must satisfy the court on the balance of probabilities that the issue of an abatement notice was not justified.

When the Minister has issued an abatement notice, no criminal process flows from that issue. If a notice takes effect and there is non-compliance, then there may be criminal process which follows and in any such process the burden of proof lies on the Crown, which must prove its case to the criminal standard, the proceedings being brought pursuant to art. 5(4) of the 1999 Law.

Summary of the Board's Finding 5.3(c)

The Board acknowledges that the Minister needs to be satisfied that a statutory nuisance exists. However, the Board considered that the Department did not require certainty that a nuisance had occurred but that in the balance of probabilities it had.

Response to Finding 5.3 (c)

The Minister refutes the Board's understanding of the application of the Law. The Law's purpose to provide relief to those suffering from statutory nuisance is agreed, however, to suggest that it is then to be utilised in the absence of evidence collected by officers is incorrect. The Board correctly acknowledges that the Law states officers "take such steps as are reasonably practical to investigate a complaint". Extensive efforts were made to investigate the complaint by numerous officers as detailed in the attached 'Regulation Directorate Statutory Nuisance Report – Vibration and Resonance'. The Board also correctly acknowledges the Law states "where the Minister is satisfied that a statutory nuisance exists". If the evidence does not suggest the nuisance is occurring, then the Minister would be unsatisfied that statutory nuisance existed.

The question was then posed by the Board that “if an abatement notice is served what on the balance of probabilities is the likelihood of an appeal against the notice being successful?”. However, that is not the test, and respectfully is an invitation for the Minister to act unlawfully. This is because there is no discretion for the Minister as to whether or not an abatement notice should be served. The unambiguous language of the 1999 Law is that once satisfied, an abatement notice must be served by the Minister.

Summary of the Board’s Finding 5.4

The Board considered that the Department had not adequately investigated the source of the issue or sought expert advice in relation to measuring the resonance and that the JEC might have played a more active role in assisting with the investigation of the source and identifying a solution.

Response to Finding 5.4

The Minister refutes the Board’s observations regarding the investigation process was not adequate and the suggestion that expert advice should have been sought. The Department conducted a comprehensive investigation into the complaint, which included attendance by six officers at varying times, deployment of two calibrated noise monitors in different locations within the property, external area inspection to identify the alleged nuisance, liaison with the JEC to undertake blind testing and written communication to neighbouring properties to determine if they were affected. This investigation was greater than usually deployed, which has is detailed within the attached report ‘Regulation Directorate Statutory Nuisance Report – Vibration and Resonance’. Despite this extensive investigation, insufficient evidence was obtained to indicate that the threshold for statutory nuisance had been met.

The Department acted reasonably and proportionately, applying professional expertise and utilising available resources to investigate the complaint. In the absence of evidence, further escalation to external expert advice would not have been justified.

Summary of the Board’s Finding 5.5

In considering that the Department had acted contrary to the principles of natural justice, the Board reasoned that the Department had been dismissive of the complainant’s concerns and discounted the evidence presented, and the position in relation to the complaint had altered during the life of the complaint.

Response to Finding 5.5

The Minister refutes the suggestion that the Department was dismissive of the complainant’s concerns. In contrast to the usual handling procedure of complaints outlined in the attached report – ‘Regulation Directorate Statutory Nuisance Report – Vibration and Resonance’, officers undertook multiple site visits in excess of the norm, objective monitoring with calibrated noise monitoring equipment, and liaison with relevant third parties. These actions demonstrate the seriousness with which the complaint was treated.

The Department did not discount the evidence presented by the complainant. All submissions were reviewed and assessed against statutory criteria. Detailed explanations were provided in the written submission to the Board, outlining why the

evidence presented did not meet the threshold for statutory nuisance. The outcome of the assessment, being different to the complainant's preferred outcome, does not mean that the evidence was dismissed or disregarded. All evidence presented was taken into account and considered by officers during the assessment.

The Minister does not accept the Board's finding that the Department's position has changed, despite the allegations of the complainant. Officers did not at any stage confirm a statutory nuisance existed, although one officer did note they heard a noise on one occasion. At all stages, the Department's position was guided by the full body of evidence available. As investigations progressed and monitoring results were reviewed, the Department maintained a consistent approach throughout, however, there was insufficient evidence to suggest a statutory nuisance exists.

The Minister has consistently conveyed his sympathy with Ms Le Cornu. The Department has maintained that there has been a significant impact on Ms Le Cornu arising from this situation. While no formal action has been taken this should not be interpreted as a lack of concern.

Summary of the Board's Finding 5.6

The Board was of the view that communication with the complainant appeared to have been inconsistent and a failure to adequately explain processes had led to expectations not having been met. The Board made a recommendation for the formulation of a statutory nuisance questionnaire for completion in any investigation, and the publication of the assessment and investigation process would help to manage expectations of what could be achieved within the confines of the existing legislation.

Response to Finding 5.6

The Minister acknowledges the Board's observation regarding communication and agrees that expectations in this case could and should have been managed more effectively. The Department recognises the importance of clear, consistent communication and is implementing improvements, including retraining officers on processes and procedures to ensure transparency and consistency in future cases. The Minister confirmed in his submission to the Board's hearing that he is sorry the Department's communications may have fallen short of expectations.

The Minister welcomes the recommendation to adopt a statutory nuisance questionnaire and notes that a similar tool, 'the nuisance diary', has been in use for over 20 years in Jersey and was utilised in this case. This diary enables complainants to record dates, times, and descriptions of the alleged nuisance, providing valuable evidence for assessment. A nuisance diary and guidance is published on [gov.je Nuisance complaints](http://gov.je/Nuisance%20complaints)

However this case highlights how the Department could make improvements to provide better clarity and manage expectations, such as review the current nuisance diary format to include a questionnaire to ensure it aligns with best practice and is user-friendly, and to publish guidance on the statutory nuisance investigation process, including when and how the diary should be completed. The Department can also improve its internal procedure guidance for officers on handling cases, to ensure greater consistency in approach, and ensure that the diary and any formal documentation is made available at the outset and conclusion of investigations, as

recommended by the Board. The Department will also consider improvements to customer service training and handling of complaints when they arise.

Summary of the Board's Finding 5.7

The Board was concerned that the implementation of the 1999 Law was currently falling short of providing adequate protection to the public. The Board made a recommendation for a review of the Statutory Nuisances (Jersey) Law 1999 including clear published procedures and guidance.

Response to Finding 5.7

The Minister acknowledges the Boards concern that the current Statutory Nuisances (Jersey) Law 1999 may not fully meet public expectations.

The Minister welcomes the recommendation for a review of the Statutory Nuisances (Jersey) Law 1999 and that clear published procedures and guidance should be produced. This should include updating the guidance on gov.je to set out the investigation process and provide transparency on evidential requirements and expected timeframes. The Minister has consistently advocated for a review of the Statutory Nuisances (Jersey) Law 1999 but due to prioritisation of the legislative pipeline, other strategic priorities and competing demands, this has not been progressed within this political term. The challenge for the next Government is to make this a key strategic priority moving forward against a backdrop of other competing priorities.

Summary of the Board's Finding 5.8

Although a specific complaint had been made against a Departmental officer, the individual concerned had continued to be involved in the case and the Board agreed that this had been wholly inappropriate and was contrary to the generally accepted principles of natural justice. The Board recommended that when a complaint was made about a particular officer's conduct, that officer should not play an active role in the case until the complaint was fully resolved, at which time some consideration should be given as to whether their renewed involvement was appropriate.

Response to Finding 5.8

The Minister accepts the Board's recommendation and agrees that officers who are the subject of a formal complaint should not play an active role in the case until the complaint is fully resolved.

In this instance, the officer concerned was not actively involved in any investigation following the receipt of the formal complaint. The investigation had already been concluded prior to the formal complaint being lodged. The officer's subsequent action was limited to formally notifying the Jersey Electricity Company (JEC) that its substations were no longer under investigation. This was an administrative step to close the matter. The Department considers this to be appropriate and necessary to conclude the investigation.

While the Department supports the principle outlined by the Board, it is important to note that complaints should not be used as a mechanism to circumvent statutory processes or to seek alternative opinions where there is a disagreement with

professional decisions. If complaints against officers are investigated and the outcome is not upheld, it is entirely appropriate for the case officer to continue with the case. The Department will ensure that future cases are managed in a way that upholds fairness while preventing misuse of the complaints process.

Summary of the Board's Finding 5.9

The Minister and the Department had appeared to accept the impact of the noise and vibration on the complainant, but had then failed to investigate possible sources. The Board recognised that the Department's subsequent apparent disregard of the evidence provided by the complainant had understandably been a great source of frustration for her, especially given the lack of any persuasive justification provided for discounting earlier findings.

Response to Finding 5.9

The Minister refutes the Board's suggestion that the Directorate failed to investigate possible sources. Officers investigated this particular case at length, however, were unable to evidence the alleged nuisance. The Directorate acknowledges the effect this situation has had on the complainant and the associated stress it has caused. There is a significant distinction between understanding the impact of a situation on an individual and evidencing a cause under a legal framework.

Statutory nuisance must be assessed under the legally recognised principle of a 'reasonable person'. In instances where numerous officers are unable to witness an alleged nuisance, this concept must be considered. The Department was not provided at the time of this case with any witnesses to this nuisance, although there are now members of the public who are suggesting they have witnessed the nuisance. This would be a material consideration in any re-assessment.

The Minister refutes the suggestion that evidence was disregarded. fully considered the independent report and all subsequent appendices. They provided detailed, reasoned explanations of the review and decisions to not to serve an abatement notice. This was provided in writing to the Board.

Summary of the Board's Finding 5.10

The Board considered that the Department could have taken the opportunity to thoroughly review and examine the independent report commissioned by the complainant and explore the conclusions with the author for completeness. The assessment that did take place was, in the opinion of the Board, insufficient to reach the conclusions of the Department. It was due to this failing that the Board upheld the complaint on the grounds that the decision not to seek an abatement notice could not have been made by a reasonable body of persons after proper consideration of all the facts. The Board recommended that the Minister revisit the case and seek external expert advice where appropriate.

Response to Finding 5.10

The Minister accepts the Board's recommendation, and the Department remains willing to reinvestigate the alleged nuisance if agreed to by the complainant. The reassessment methodology is outlined in the attached report 'Regulation Directorate Statutory Nuisance Report – Vibration and Resonance' which will ensure this process is transparent and collaborative. This includes working with the author of the

complainant's report and the JEC. To support constructive engagement, the Department proposes a third-party independent facilitator to support discussions and observe the process of re-assessment.

Should the complainant not be willing to engage with the re-assessment as outlined within the attached report, the case will remain closed.

2.0 Recommendations of the Board, Ministerial Response and Further Actions

Recommendation 1

The Board recommended the formulation of a statutory nuisance questionnaire for completion in any investigation of a complaint under the 1999 Law, as used by local authorities in the UK to collect information about potential nuisances, would greatly assist with assessment and investigation. Furthermore, the publication of the assessment and investigation process, including making available a copy of the questionnaire both at the outset and the conclusion of any investigation would help to manage expectations of what could be achieved within the confines of the existing legislation.

Ministerial Response to Recommendation 1 and further actions

The Minister **accepts** this recommendation. Within the next 6 months the Department will:

- a) review the current nuisance diary format to ensure it aligns with best practice and is user-friendly, and re-publish an updated format including a questionnaire;
- b) revise the guidance available on gov.je regarding statutory nuisance investigation process;
- c) update internal procedures to ensure that nuisance diaries are made available at both the outset and conclusion of investigations;
- d) update internal procedures to require a formal case closure letter is provided in all cases which outlines the investigation that has occurred, the outcome and any statutory rights of appeal;
- e) improve customer service training within the team and logging of all service complaints in Customer Feedback Management System (CFMS).

Recommendation 2

The Board recommended that the Statutory Nuisances (Jersey) Law 1999 should be reviewed and that a clear procedure for the investigation of any complaints made in accordance with the Law should be established and published.

Ministerial Response to recommendation 2 and further actions

The Minister **accepts** this recommendation. The Minister has consistently advocated for a review of the Statutory Nuisances (Jersey) Law 1999 but due to prioritisation of the legislative pipeline, other strategic priorities and competing demands, this has not been progressed within this political term. The challenge for the next Government is to make this a key strategic priority moving forward against a backdrop of other competing priorities.

As per recommendation 1, the guidance available gov.je regarding statutory nuisance investigation process will be updated within 6 months.

Recommendation 3

The Board recommended that when a complaint was made about a particular officer's conduct, that officer should not play an active role in the case until the complaint was fully resolved, at which time some consideration should be given as to whether their renewed involvement was appropriate.

Ministerial Response to recommendation 3 and further actions

The Minister **accepts** this recommendation. Senior managers within the Department will continue to ensure officers subject to complaints are removed from active involvement in related cases until the complaint is investigated and concluded.

Depending on the outcome, it will be considered whether it is appropriate for the officer to continue with the case. In most cases where complaints are not upheld, it will be considered appropriate for the officer to continue with the case.

Recommendation 4

The Board recommended that the Minister revisit the case, review all processes and procedures that informed the decision and seek external expert advice where appropriate.

Ministerial Response to recommendation 4 and further actions

The Minister **accepts** this recommendation. The Department remains willing to reinvestigate the alleged nuisance if agreed to by the complainant. The reassessment methodology is outlined in the attached report 'Regulation Directorate Statutory Nuisance Report – Vibration and Resonance' which will ensure this process is transparent and collaborative. This includes working with the author of the complainant's report, and the JEC. To support constructive engagement, the Department proposes utilising an independent facilitator between the complainant and the Department.

3.0 Minister's Summary

The Minister accepts the Board's recommendations and welcomes the opportunity to strengthen the Statutory Nuisances (Jersey) Law 1999 through a review of the law. The Minister continues to advocate for a review of the Statutory Nuisances (Jersey) Law 1999 to ensure it remains fit for purpose and to consider introducing civil provisions for cases that do not meet the statutory threshold. This review will address the legislative gap identified and provide greater clarity for Islanders. This, however, will not be possible within the remaining term of Government, and the Minister hopes that the next Government will prioritise this review as a matter of urgency.

While the Department acted within the legal framework and based its decisions on evidence, the Board's observations highlight areas where improvements are necessary, particularly in communication, transparency, and process clarity.

The Department accepts that communication with the complainant could have been clearer and that expectations should have been managed more effectively. Steps are already being taken to improve service standards. The Minister agrees that publishing a clear procedure for statutory nuisance investigations, alongside a user-friendly

version of the nuisance diary, will help complainants understand the process and evidential requirements from the outset. Internal guidance will also be updated to ensure that officers subject to complaints are removed from active involvement in related cases until those complaints are resolved, upholding the principles of natural justice.

In relation to the specific case, the Minister remains willing to reassess the alleged nuisance and will consider independent facilitation to restore confidence and ensure the complainant feels heard. The terms of the reassessment are outlined in the attached 'Regulation Directorate Statutory Nuisance Report – Vibration and Resonance'.

The Minister is committed to protecting public health, acting lawfully, and improving service delivery. These measures will enhance confidence in the statutory nuisance framework and ensure Islanders receive fair, transparent, and effective processes.



Infrastructure
and Environment

Regulation Directorate

Statutory Nuisance Report – Vibration and Resonance

1 Introduction

1.1 Purpose of the report

This report seeks to clarify the nature of Statutory Nuisances (Jersey) Law 1999 and investigations into such alleged issues. It will detail the nature of the investigation which occurred at the property of La Rosiere Cottage and the reasoned justifications of the officers who conducted the investigation for their decisions. Finally, the document seeks to clarify what any reassessment into the matter would entail to ensure the complainant, who is at the centre of this issue, can feel assured all reasonable steps have been taken to investigate the complaint.

2 Statutory Nuisance Framework

2.1 Definition and legal basis

Statutory Nuisance can be broadly defined under two distinct criteria:

- Nuisance - refers to an act or condition that substantially interferes with the use or enjoyment of land. An act which a reasonable person would find harmful or offensive and for which there is legal remedy.
- Prejudicial to Health- refers to an act or condition which may be considered injurious or likely to result in detriment to health to an individual or public health. This includes physical, social or mental wellbeing.

To assess the thresholds of what would or would not be considered a statutory nuisance as per the legal definitions above, factors considered are frequency, duration, offensiveness, intensity and location. All these factors are assessed from the position of someone who would be considered a 'reasonable person' which is explained in further detail later in this report. The factors considered are defined below:

- Frequency – How regularly does an issue occur and do other factors impact the regularity of occurrence i.e. atmospheric conditions.
- Duration – How long a particular issue continues for uninterrupted.
- Offensiveness – how objectively pleasant or unpleasant an issue is perceived by a reasonable person.
- Intensity – How objectively intense an issue is perceived by a reasonable person. i.e. decibel levels or odour assessing the strength of a smell.
- Location – Where is an issue to be perceived, specifically how is an issue impacting on enjoyment of property. An extremely important factor as nuisance is generally not considered "in passing". Consideration is also given to the location of an issue in context to the vicinity. For example, agricultural odours such as slurry spreading are expected in the countryside, however, would be considered contextually out of place in urban environments.

Officers assess statutory nuisance based on a balance of the aforementioned factors. A statutory nuisance cannot be established without sufficient evidence of each criteria being experienced to a level which would be considered unreasonable to a reasonable person.

2.2 What can be defined as a statutory nuisance

Given the above, there are many issues and factors which can result in or cause statutory nuisance, as the way in which our environment impacts us can be significant. The law defines the following issues as matters which can constitute statutory nuisances providing the matters meet the criteria of prejudicial to health or nuisance:

- The state of a premises/ property.
- Smoke.
- Fumes or gas.
- Light.
- Dust, steam, smell or other discharge from an industrial, trade, agriculture or business premises.
- An accumulation or deposit.
- The keeping of animals.
- Noise from a premises.
- Noise from a vehicle, machinery/ equipment.
- A water supply i.e. polluted drinking water.
- A body of water or watercourse which is foul.
- Any tent, van, shed or similar in such a state or overcrowded so as to be prejudicial to health.
- Any other matter which may constitute a nuisance by virtue of regulations under the Statutory Nuisances Law.

There is one regulation made under the law, Statutory Nuisances (Jersey) Regulations 2017 which specifically identifies the feeding of wild animals in such a way or manner as to be prejudicial to health, or a nuisance may constitute a statutory nuisance.

There are a number of exemptions to what can be considered statutory nuisance which are:

- Nuisance arising from traffic
- Nuisance arising from any naval, military or air force of the Crown
- Political demonstrations or demonstrations supporting or opposing a cause or campaign.

Lastly there are considerations within the law for “best practical means defence”. In short, this is where a person or organisation has implemented remedy or mitigation so as to prevent the occurrence to the best of their ability. For example, acoustic housing for noise, shading for lighting, filtration for odour or dampening for vibration. It is a matter which may be considered by officers and would be considered by the courts when assessing reasonable grounds for pursuing statutory nuisance.

When an alleged nuisance is investigated, an abatement notice can only be served if the Minister, on an objective basis, is satisfied that there is a statutory nuisance (or is likely to occur or recur). That is a factual assessment having regard to many factors such as (but not necessarily limited to) frequency, offensiveness, intensity, duration, location. As the assessment is based on what an average, reasonable person would find unacceptable, not individual sensibilities. Failure to comply with an abatement notice that has taken effect is a criminal offence.

2.3 Limitations of the Law

The law does not cover:

- Personal sensitivities or preferences – the law is regulated under the principle of a ‘reasonable person’, i.e. what a reasonable person could be expected to tolerate. As such it does not account for individual sensitivities or medical conditions which may result in a particular issue impacting an individual more than it would a ‘reasonable person’. In legal terms, this has often been referred to as ‘the average man on the Clapham omnibus’. This legal concept is referring to a hypothetical, ordinary and reasonable person and is often used by the courts to determine whether somebody has acted in a reasonable manner. Whilst the reference is somewhat dated, it remains a relevant concept in modern law to define an average person on the street. It is important to note this concept is not based on a geographical context and simply is a legally recognised analogy for the assessment of an average person.
- Infrequent or minor disturbances – matters which may not meet the statutory threshold for nuisance in terms of impact, frequency, duration, offensiveness etc. for example, matters that may meet a civil threshold but not a criminal threshold.
- Issues governed by other regulatory frameworks – whereby an issue is giving rise to what could be considered statutory nuisance however the most appropriate method of remedy sits within another regulatory framework. For example, a breach in planning law giving rise to noise should be rectified through the planning system. Ideally resolving the cause rather than the symptom.

2.4 How statutory nuisance investigations are triggered and conducted

Complaints are usually received by the Regulation Directorate who will contact complainants to discuss the matter further. The Directorate will establish whether or not it is likely to be a nuisance or refer the issue to other services as deemed appropriate. Officers will risk base assess for the likelihood of nuisance and triage accordingly. If there may be a case for nuisance, they will request a complainant to complete a nuisance diary. This serves an important function as an evidential statement as to the frequency, duration, offensiveness and impact it is having upon them, an essential criterion when assessing statutory nuisance. Depending on the nature of the complaint, officers will wait for the return of the diary or visit to make an initial assessment. Should the officer have reasonable grounds to consider nuisance may be existing they will write to an alleged cause to advise them there is an investigation.

Generally, on return of a diary stating when the issue is impacting the complainant, an officer will visit up to 3 times to assess and attempt to witness the nuisance. In some instances, this may be extended beyond 3 visits if officers have reasonable grounds to suspect there may be a statutory nuisance occurring. If this is not witnessed within 6 visits, then the case is usually closed.

If it is found, through the evidence gained by the diaries, from an officer’s visits or use of monitoring equipment (in the case of noise), a nuisance does exist, the Minister for the Environment shall serve an abatement notice in accordance with article 5 of the Statutory Nuisances (Jersey) Law 1999.

Once a notice is served, monitoring will be conducted after the expiry of the notice to ensure compliance. Should compliance not be achieved, then a case file will be prepared for consideration by the Law Officers Department.

Utmost care and consideration is given to the detail and assurances by officers that a statutory nuisance exists before the service of a notice. Article 9 of the Statutory Nuisances (Jersey) Law 1999 details appeals and compensation whereby if an abatement notice is appealed and the courts find the abatement notice has indeed been served incorrectly, the Court shall have the power to award compensation to the aggrieved. Given situationally this can be significant sums, officers are conscious of any impact on the taxpayer for wrongly serving notices without sufficient evidence to suggest a statutory nuisance is occurring and hold true to their ethical and professional standards. This is why officers are expected to be adequately trained and qualified to correctly, professionally and impartially serve the public.

2.5 Relevant case law

Reg's Skips Limited v Yates 2008 – Jersey case law of voisinage detailing the definition of nuisance and acknowledged the similarities yet distinction between voisinage and statutory nuisance specifically, the definition of 'nuisance' for the purposes of the Law must go beyond being merely analogous to an act or omission which would justify an action in voisinage. This specific distinction between statutory nuisance and act of voisinage, which generally considered common nuisance, is significant when considering how officers assess for the higher threshold of statutory nuisance.

Fernando v Minister for Health and Social Services 2012 (2) JLR 21– local case law including what is considered a definition for statutory nuisance specifically referring to a reasonable person "for the purposes of art. 2 of the 1999 Law, the word "nuisance" means an act which a reasonable person would find harmful or offensive and for which there is a legal remedy".

This is local case law referring the principles of a reasonable person. Furthermore, it states being able to provide 'legally remedy' indicating the need to not only establish nuisance occurring, but a definitive source to legally compel a resolution.

There is extensive persuasive case law precedent from the UK, spanning over 100 years of documented cases which supports the above principles. Whilst this is not binding in Jersey, it provides the logic used to assess statutory nuisance and the sound application of relevant principles.

3 Noise and vibration –assessment methodologies and summary explanations

In cases where complaints are received and the source of the disturbance is not very apparent, then an investigation into the alleged source and other potential sources is commenced collecting evidence to form the basis of the nuisance assessment.

3.1 Initial Investigations

Initial investigations will generally consist of providing a complainant with a nuisance diary. The document is used to record the following information:

- Time an issue starts
- Time an issue ended
- What the perceived issue was

- How it has impacted the individual

In providing such evidence a complainant is given the opportunity to detail in their own words the frequency, duration, character of the issue and the impact it is having upon them. This is their own, subjective assessment and experience of the problem, not definitive proof of the existence of a statutory nuisance. It is however, considered an important item of evidence in conjunction with officers' subjective assessments and objective evidence such noise recordings.

Further to the use of diaries, particularly where a complainant indicates an issue is occurring 24 hours a day, officers may opt to attend to witness the alleged issue. If a matter is alleged to be 24 hours a day, 7 days a week it is reasonable to assume that at any given time the matter will be witnessed by an officer. If an officer is unable to witness a matter on 3 separate visits, in light of a claim that it is constant, the investigation in the majority of cases will be closed. An officer may however choose to continue with the request to complete the diary to establish if there are any other particular trends in timings which may warrant further investigation.

3.2 Subjective assessments

Subjective assessments are utilised by an investigating officer to assess, in their professional opinion, whether or not a noise would constitute a statutory nuisance considering the frequency, duration, character, volume, tonality and impact of the noise on a reasonable person. In instances when a noise is occurring at all hours, officers will attend at a range of times to fully understand the implication of any noise and its likelihood to be causing a statutory nuisance.

Subjective assessments of noise measure the character of the noise and combine that with data or assessments of frequency and duration of the noise. These are commonly completed informally at an early stage of an investigation with the complainant to verify the understanding of the noise source. This works particularly well with noises which can be heard by everyone such as dogs barking or air handling units.

Subjective assessments can be supplemented with data from handheld noise recorders to provide a record of what the officer heard.

3.3 Noise Monitoring

Noise monitoring involves the use of calibrated recording equipment either set up and used remotely or with an officer in situ with the device. The equipment used provides an objective assessment of noise in the area, including a trace of the noise detailing how loud or the decibel levels recorded, a frequency breakdown, and record of the noise for review.

In terms of statutory nuisance, the noise recording equipment used are often left in the property for a period with the occupier able to control when the unit begins recording the audio. This serves a double function as it prevents the disruption to the member of the public of having multiple officers present at inconvenient hours. It also acts as a sign that when the complainant hits 'record' (via a button on the equipment provided) as and when the issue is impacting them, giving officers an accurate point reference as to when the issue is at its worst. In essence, a recorded diary.

Any recordings may be listened to with calibrated speakers to be representative of the volume recorded by the unit, so officers are able to understand and consult with colleagues for opinions as appropriate. This also allows for officers to increase the volume to assess relatively minor noise disparities, in an attempt to identify potential sources by listening to it through amplification.

All noise monitoring equipment used by the Directorate is UKAS calibrated as per industry standard meaning sound level meters are calibrated biennially and calibrators, annually. Sound level meters are calibrated before setting up and on collection of the unit to ensure there has been not material measuring drift during the time the unit has been in situ and recordings may be considered accurate.

The alternative measurement technique is for monitoring with a sound level meter which is supervised by a trained officer. This method is better suited to noise issues which can be predicted or are in operation constantly. The limitations of supervised monitoring are that an officer needs to be present to operate the sound level meter and ensure the unit is not tampered with.

The Class 1 sound level meters owned by the department are calibrated to measure noises within the range of 20-140dB. Decibels follow a logarithmic scale which has its own complexities in understanding however some examples are below

- A whisper is ~30dB
- Moderate rainfall ~40-50dB
- An average conversation is ~60dB
- Traffic noise ~70-80dB

3.4 Vibration Monitoring

Sound pressure waves (noise) when it travels through something solid can convert into kinetic energy resulting in vibration. Vibration can move through some solid structures easier and more quickly than sounds can move through air due to the density of the molecules of the substrate allowing the energy to be passed easier. This is often apparent between flats where noise appears to come through to neighbouring units easily via structural transference.

Different frequencies have varying capabilities in terms of transferring via structures or solids in the form of vibration. High frequencies have a shorter wavelength which results in a greater energy dissipation/absorption through scattering and friction. Low frequencies tend to move through structures far more easily due to the longer wavelengths resulting in less scattering, a greater ability to diffract around obstacles and cause vibration. Examples of where this is easily apparent is when loud music is played it tends to be the base notes which are heard or felt easily through structures and at long distances. In essence, it is easier for low frequency noises to cause vibration and resonance due to it being physically easier for the mass of an object to move at a lower frequency than a higher frequency.

Vibration can be assessed through subjective assessment (physically feeling the vibration) and objective methods (using vibration meters). Humans are reasonably sensitive to vibration with the limits of detection usually somewhere between 0.14 to 0.3 mm/s. There is also a concept of the perception of vibration when it is experienced with noise.

Vibration complaints to the Directorate are rare and can generally be concluded by subjective assessments. Typical complaints regarding vibration can be easily observed such as those caused by civil engineering works. As a result, the Directorate do not have any vibration specific monitoring equipment. However, it is not necessary for the establishing of statutory nuisance as subjective measures are considering suitable. If vibration is not to a degree where it can be physically detected by the majority of people it would not constitute a statutory nuisance. The Directorate has no previous record of resonance, nor any other complaints associated with this case.

3.5 Low frequency resonance with amplification

The alleged nuisance centres around low frequency noise emanating from JEC substations which have the potential to travel through structures and over long distances. Noise from substations itself is not a novel concept and is well documented across multiple jurisdictions and does have the potential to cause nuisance. The frequencies in question do have the potential to result in vibration, however no causal link between the cause and effect has been evidenced.

The alleged resonance phenomenon is grounded in well-established physics. However, the specific claim of amplification via electrical appliances is speculative and is not widely supported by the scientific literature and there are no peer reviewed studies which definitively concur this is based on fact.

Simply, resonance occurs when a system is driven by an external force at a frequency that matches its natural frequency. This causes it to oscillate with a greater amplitude. This is a well known and documented phenomenon in mechanical systems such as bridges, acoustics, electrical circuits and quantum systems. Low frequency which can result in resonance are also well documented to travel great distances with ease and can prove challenging to attenuate.

In relation to electrical substation, on rare occasions there are documented instances of low frequency noise which has given rise to statutory nuisance. For this to be the case it would need to be audible, observable, excessive and witnessed by a competent officer.

Resonance with amplification, however, as stated is not supported by strong science. The concept is that electrical appliances are feeding back to a central point at a harmonic frequency to the natural frequency of the structure which is considered to being resonated. The complainant has stated that 3 separate acoustic consultants have confirmed this however the Directorate has not received evidence of this.

3.6 Other factors for consideration during noise investigations

When assessing noise, or the use of any of our senses, consideration has to be made around personal sensitivities and perceptions. Everybody has their own sensory experience including varying acuities and tolerances. In terms of noise, this may include particular acuities in certain frequencies considered beyond the typical human range, hearing loss, and various forms of tinnitus. Tinnitus is the sensation of hearing noise where there is no external noise present. It affects as many as 1 in 7 adults, can come and go and vary in volume or intensity. The noise is a real experience for the individual and can be extremely distressing. Officers will investigate any alleged sources of noise until such a time as no noise can be established and then will recommend seeking medical advice from a GP or audiological professionals. Officers are not medical professionals, however are often the only professionals who will attend a property and experience the sound scape within an individual's home.

4 Summary of the Drury Lane complaint

4.1 Case history

An initial complaint was received by the Department on the 21 September 2021 citing a constant low frequency noise. The disruption was described in the following terms:

- Music type-noise

- Revving or thudding
- Whine
- Five different tunes making a cacophony
- High pitched twittering
- Vibration, making the complainant seasick while lying in bed, and making taps rattle

Numerous visits were conducted by a total of 6 officers and the use of calibrated remote monitoring noise equipment, however, no issue was identified or a likely source to explain the complainant's experience. Extensive officer hours, use of diary sheets, noise recordings, stakeholder engagement and blind test shut offs of the alleged sources (substations) occurred as part of the investigation which did not establish any issue to be witnessable.

In December 2022 the complainant engaged the services of a private company (Hartigans), to produce a report into the alleged phenomenon after been shown the evidence from the noise recordings taken by the Directorate. The complainant contacted the Directorate again in December 2023 with this report, which was shared with officers. This report was scrutinised at length by multiple officers which independently concluded the evidence collected in the report did not align with the presented conclusions. The report indicated that there was significant evidence to suggest the substations were causing the phenomenon. There was no clear correlating link to this conclusion noting in the report itself that monitoring of the substations was inconclusive. The level of vibration monitored in the report was minimal and often below the threshold of human detection which again, did not support the conclusions. On this basis, it was considered inappropriate to serve an abatement notice from the data in the report.

On 10 January 2024 two officers attended the property to discuss this in detail and attempt to witness the alleged phenomenon again. The extended visit yielded no further evidence as the officers were unable to observe the alleged issue even though the complainant felt it occurring at the time. It was explained that if the matter is not observable then officers would be unable to progress under Statutory Nuisance (Jersey) Law 1999. The officer offered at this time to conduct a full reassessment into the matter which was declined by the complainant. The complainant instead opted to progress a complaint through the Government's formal Customer Feedback Policy which was investigated and concluded as not upheld.

4.2 Current position

As officers are unable to witness, observe or record the phenomenon there is insufficient evidence to suggest a statutory nuisance is occurring. Furthermore, there is no evidence to suggest that the substations are responsible for any interference with the property noting the blind testing did not adequately align between a complete cessation of the alleged nuisance and the shut off of the substations.

Therefore, the Directorate do not at present consider there to be a Statutory Nuisance of Resonance with amplification occurring at La Rosiere Cottage.

5. Proposed reassessment structure

5.1 Reassessment overview

Whilst the Directorate maintains there is currently insufficient evidence to suggest a statutory nuisance the offer of reassessment remains open. This reassessment would be conducted by different officers to those who have been involved previously and whom also hold Certification of Competency in Environmental Noise Monitoring. In order for the Directorate to reassess the case, the complainant must be willing to accept the offer and participate openly with the process. To assist in the regard, the Directorate proposes utilising an independent company to facilitate conversations and observe interactions to ensure the complainant can be heard and officers can convey the results of any investigation in an open and transparent manner. As part of this process, the Directorate would seek to engage with the JEC and Hartigan to be involved in the conversation and bring all parties into the conversation.

During the original investigation no other individuals claimed to be able to witness the noise. We understand that there are individuals who now allege to have witnessed the nuisance. During the course of the re-assessment officers will need interview those parties and request witness statements.

5.2 Subjective assessments

The officers new to the case will conduct a thorough reassessment involving site visits. These visits will include internal to the property in an effort to witness the alleged nuisance and to the general vicinity to survey possible sources including the substations. These visits would ideally be with the attendance of any other key stakeholders and the independent facilitator. The complainant will be requested to complete new nuisance diaries and to share these with the officers for their consideration. These diaries may yield fresh information as to patterns or times to target visits.

5.3 Noise monitoring

Equipment

As part of a further investigation into the complaint, noise monitoring equipment will need to be installed at the complainant's property. The monitoring equipment used for the investigation will be a Trojan2 Noise Nuisance Recorder, a Class 1 sound level meter, compliant with IEC 61672:2013 and a Class 1 Acoustic Calibrator. All equipment will hold a valid UKAS accredited calibration certificate.

Methodology

Two qualified Environmental Health Officers with Certificate of Competence in Environmental Noise Measurement, will be in attendance to oversee the installation of the equipment. The monitoring location of the equipment will be determined following the officers' completion of a survey of the complainant's premises, to determine the most suitable location for the installation. A suitable location for the equipment is required to:

- Be representative of a noise-sensitive receptor
- Have availability of a continuous power supply

Precautions will be taken against possible interference, including ensuring that the microphone is not screened or exposed to sound reflections. Officers will ensure that a field calibration check is completed, using the Acoustic Calibrator prior to commencing recordings. The acceptable deviation is 0.5 dB. If the equipment returns a deviation beyond this threshold, the equipment will be replaced with

an alternative unit, of the same specification. Once the equipment is calibrated, the microphone will remain in position on a tripod and fitted with a windshield. The sound level meter will be secured within a lockable case, which will be secured with a padlock. The officers will ensure that date and time stamped photographs are taken during the installation, and any observations, including visual and auditory from the installation, are documented. The serial numbers for both the sound level meter and the calibrator will be documented.

The unit will remain in place and undisturbed for a period of one week (7 days). After the installation period has lapsed, the officers will attend the premises again to collect the equipment at an agreed time. Prior to removing the equipment, an additional calibration will be performed using the Acoustic Calibrator. Officers will ensure that the process is documented through photographic evidence, and any observations are recorded in writing.

Following the removal of the equipment, the data will be analyzed using the equipment manufacturer's software (NoiseTools).

Data analysis will include:

- Reviewing of relevant noise indicators (LAeq, LAFMax, LAE, LAF1, LAF5, LAF10, LAF50, LAF90, LAF95, LAF99)
- Comparison of measurements to acceptable levels and appropriate guidance (e.g. World Health Organisation, 2018)
- Aim to identify tonal, impulsive or intermittent frequency
- Identify other distinguishable features usually associated with industrial and commercial sound sources.

No less than two officers will review the available data independently and submit their comments separately. A senior officer will review the officer's findings and provide a summarized response, based on the findings. The sound monitoring unit's raw data output will be shared for transparency. Following a review of the data, the next steps will be determined, if appropriate, based on the findings.

Final steps

In the event a statutory nuisance is evidenced and can be definitively attributed to a source, then officers shall be able to consider action under the Statutory Nuisances (Jersey) Law 1999. If officers are unable to establish a statutory nuisance, then the case shall be brought to a formal close. At the outcome of the case, records of all meetings, data from equipment recordings, and a full written case report will be provided to the complainant.

6 Conclusion

As explained in section 2, the requirements of statutory nuisance and the framework to which officers investigate, there has been no conclusive evidence observed, collected or received to suggest statutory nuisance to be occurring. Therefore, no abatement notice has been served to date. However, the Directorate remains open to reassessing the situation should the complainant be willing to participate with the proposed engagement of an independent facilitator.