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| Institution: University of Surrey |
| Unit of Assessment: UOA 20 Law |
| Title of case study: Improving public health and wellbeing through better regulation of statutory nuisances |
| <p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Research conducted at the University of Surrey focused on the problems caused by noise from wind farms, smell from sewage farms, industrial emissions, and other forms of environmental pollution and how the quality of public health could be improved through better regulation. The research impacted in the following ways:</p> <ol style="list-style-type: none"> 1) Changes to Government policies such as codes of practice and guidance notes; and 2) Changes to enforcement procedures of environmental health officers. |
| <p>2. Underpinning research (indicative maximum 500 words)</p> <p>This research into statutory nuisance was the first to analyse the regulatory framework in the UK in order to assess the strengths, weaknesses and gaps of the existing structure and to investigate the robustness of enforcement procedures used by official bodies (in England: district councils, London borough councils and non-metropolitan councils; in Wales and Scotland: unitary councils, and in Northern Ireland: district councils) within that framework. It also considered the ways in which the law could be used for individuals seeking redress for these public health impacts</p> <p>The main research found that the statutory nuisance legislation spanned three centuries originally aimed at public health problems such as cholera and was continuously amended to accommodate new forms of environmental pollution affecting public health so that as recently as 2005 it was amended to include pollution from artificial light and insects. It was found that the sanitary legislation in the 1840s dealt with the problems of lack of sanitation relating in the cholera outbreaks as well as crowded living conditions within the slum urban developments which arose during this period of rapid industrial growth, the keeping of animals in close proximity with humans in towns and the problems of factory emissions causing respiratory diseases. This same piece of legislation was then expanded to include modern forms of pollution such as noise, light and insects. The research found that this resulted in legislation, which was difficult to interpret and apply on the ground by government enforcement officers and that the regulatory framework in place was unfit for purpose and needed root and branch overhaul by Parliament. In the absence of that overhaul the codes of practice are a necessary bridging mechanism and the findings of this research were fed into such policy initiatives. The research also found that the enforcement procedures were not uniformly applied and abatement practices were not robustly carried out resulting in inadequate resolution of public health problems. It was strongly felt that this coherent advice in the form of guidance and codes of practice were required to provide some solution to this chaotic yet vital piece of law for public health and well-being. It was concluded that the codes of practice were the best way to address the shortcomings of the existing legislation. The codes deal with the later forms of statutory nuisance and play an important role as reference points for both enforcement officers and the judiciary.</p> <p>The findings and conclusions of the work were published as a book and articles (see 3 below) that were circulated to the relevant professional bodies including the Chartered Institute of</p> |

Environmental Health (CIEH) who are always consulted by Parliament about legislative changes and amendments prior to any actions being taken (see '4' below)

3. References to the research (indicative maximum of six references)

1. Rosalind Malcolm *Statutory Nuisance: Law and Practice* (with John Pointing) (2nd ed., 2011, Oxford University Press, 429 and xxxvii pp., ISBN 978-0-19-956402-6); (1st ed., 2002, 386 and xlvii pp., ISBN 0 19 924246 1).
2. Rosalind Malcolm 'Statutory Nuisance: the Sanitary Paradigm and Judicial Conservatism' *Journal of Environmental Law* (2006) Vol 18 No 1, 37-54 (with John Pointing).
3. Rosalind Malcolm 'Statutory Nuisance: The Validity of Abatement Notices' [2000] *Journal of Planning and Environmental Law* 894 - 903.
4. Rosalind Malcolm 'Organisations and environmental health – how environmental health is delivered' Chapter 6, *Clay's Handbook of Environmental Health* (ed, Battersby, S.) (20th ed., Spon Press, Taylor & Francis Group, 2011), pp. 131 – 167.
5. Rosalind Malcolm 'Statutory Nuisance Law in England and Wales' (with L.W.Blake) *Interdisciplinary Environmental Review*, [ed. Kevin L.Hickey and Demetri Kantarelis], Volume 1, Number 2, 1999, pp. 162 - 176. (ISSN: 0023-6234)
6. Rosalind Malcolm 'Statutory Nuisance: Enforcement Issues and the Meaning of "Prejudice to Health"' *Environmental Law Review* 1 (1999) 210 – 221.

The articles are in peer reviewed journals.

4. Details of the impact (indicative maximum 750 words)

The work undertaken on the law and practice of statutory nuisance has been part of a process of engagement over the last 20 years with the environmental health profession involving most local authorities engaged in environmental health in England, Wales, Northern Ireland and Scotland. The research has made an impact on judicial decision-making, government policy, better enforcement procedures through the training of enforcement officers thus contributing to the health and wellbeing of citizens.

Impact on judicial reasoning in noise cases (wind farms and theme parks)

The research has impacted on the way in which judges have decided their cases and these decisions remain good law. These cases show the impact of the statutory nuisance law where controversial planning decisions are made in areas such as noisy wind farms, theme parks and recreational activities. The effect of such decisions is to make the planning process cautious about granting decisions for such controversial developments as wind farms.

So, for example, in a case concerning the noise from 7 wind turbines near Barrow-in-Furness, the judge cited the research:

'The learned authors of Malcolm & Pointing, *Statutory Nuisance – Law and Practice* state that the correct procedure is to lay an information and that if, in error, a complaint is made, this may render any subsequent proceedings a nullity (see para 16.31 and fn 58, p. 276).' See (a) in 5

below.

In another case concerning noise made by the Alton Towers theme park, the judge relied on the research as follows:

“ I should perhaps add to that, helpfully set out in the written part of the closing submissions of Mr Caplan, a passage from "Statutory Nuisance Law and Practice, Oxford University Press" written, I assume, by Messrs Malcolm and Pointing: 'Whereas to the lay person anything that annoys him is a nuisance, the legal test for noise/nuisance is objective. The noise must be both excessive and unreasonable.'" See (b) in 5 below.

Again, in a case concerning noise from racing motorcycles and cars the research was cited in the closing submission of Counsel. See (c) in 5 below.

Impact on Enforcement Practices

The research has impacted on the professionalism of the environmental health services through the training of the enforcement professions in conjunction with the CIEH, the core professional body described in section 2 above. As stated by the (now) former President of the Chartered Institute of Environmental Health, the research at Surrey has changed “the way many local authority officers work as Statutory Nuisance has been a neglected area of practise in recent years. In those circumstances and with all the cuts and changes in local government many officers have forgotten having (or in some cases never known) how the legislation should work. I come across many misunderstandings and misconceptions up and down the country. I always refer them to your work when advising how the provisions should be used and applied in their environmental health work. It is apparent in my dealing with EHPs throughout the country that your excellent work has changed the perception of how statutory nuisance should operate and sometimes it has to be said, such that their own in-house legal advisers have to be corrected.” See (d) in 5 below.

Impact on government policy on health and wellbeing

The research has had an impact on the way in which businesses operate. This is through the impact the research has made on government policy on health and well-being where it has been cited in government codes of practice and consultation documents. These all impact on the practice of enforcement processes within local government.

These policy documents include nuisances from noise (for example, from wind turbines), smells (such as from sewage farms), and artificial light (from business and other premises).

The research is cited, for example in the *Wind Farm Noise Statutory Nuisance Complaint Methodology* in relation to the economic impact of the defence available only to business and industry in relation to wind farm noise: ‘The origins of the defence were to prevent such interference in the activities of the manufacturing and business classes as would have harmful economic consequences’. See (e) in 5 below.

In the government guidance on smell nuisance, the research is cited in relation to the appeals procedure which industry can bring against an order by the local authority to abate the nuisance. See (f) in 5 below.

The research is also cited in the *Noise Management Guide* (Defra / Chartered Institute of Environmental Health). This draft is held online at the request of the environmental health service and is a continuing reference point till a final version is produced – see (g) below.

Further, local authorities have indicated the importance of the research on health impacts: ‘... one LA specifically commented on a legal reference. The text on “prejudice to health” and

“nuisance” in Malcolm & Pointing on “Statutory Nuisance Law and Practice” was said to be useful. See (h) in 5 below.

5. Sources to corroborate the impact (indicative maximum of 10 references)

- a) Cited in Nichols, Albion and Lainson v. Powergen Renewables Limited and Wind Prospect Limited (South Lakeland Magistrates’ Court)
(http://www.cartmelalleyturbines.com/stop/index.php?option=com_content&view=article&id=106:statutory-nuisance-noise-and-windfarms&catid=37:national&Itemid=18)
- b) (Everard HHJ in *Roper v. Tussauds Theme Parks Ltd*, Crown Court, Ref. A20040143.
(<http://www.richardbuxton.co.uk/v3.0/node/222>)
- c) (*Mansell Raceway Limited and (2) Dunkeswell Kart Racing Club Limited v East Devon District Council* [Central Devon Magistrates’ Court]).
- d) Email of 12 July, 2013 from Dr Stephen Battersby, Environmental Health Consultant and former President of the Chartered Institute of Environmental Health)
- e) (Report Prepared for Defra: Contract No. NANR 277 (Defra 2011; page 68, footnote 105; page 85, footnote122); (<http://www.defra.gov.uk/publications/files/pb-13584-windfarm-noise-statutory-nuisance.pdf>)
- f) (*Odour Guidance for Local Authorities*,(Defra, 2010; page 25 footnote 32, page 92) <http://www.defra.gov.uk/publications/files/pb13554-local-auth-guidance-100326.pdf>).
- g) (http://www.cieh.org/library/Knowledge/Environmental_protection/Noise/NoiseManagementGuideSeptember2006.pdf); the *Draft Scottish Noise Management Guide*, (Scottish Executive Environment Group – final version awaited)
(<http://www.scotland.gov.uk/Publications/2005/10/2192231/22363>)
- h) *An Investigation into Artificial Light Nuisance Complaints and Associated Guidance, Final Report*, (Defra, 2010 at page 44).