

Statutory nuisance: How to take your own action

Environment

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STATUTORY NUISANCE

How to take your own action

What is this Information for?

The purpose of this information is to explain, in a straightforward and helpful way, how you can take your own action against a neighbour who is causing a statutory nuisance, such as a noisy neighbour who is causing you distress.

What is a statutory nuisance?

A statutory nuisance is something that, under the Environmental Protection Act 1990, affects a person's health or causes disturbance to them in their property. Nuisance can broadly be defined as something that unreasonably affects somebody's use and enjoyment of their home and property.

Noise is the most frequently complained of nuisance issue although there are other things that can be considered as nuisances. These include smoke (e.g. from garden bonfires), dust, odour, and accumulations. The Environmental Protection Act 1990 lists other specific types of nuisance.

Noise as a statutory nuisance

To be a statutory nuisance a noise must occur frequently and continue for a period of time that makes it unreasonable.

The following are unlikely to be a statutory nuisance:

- A one-off party
- Neighbours arguing
- A lawnmower used during the day
- A baby crying or dogs barking occasionally.

The council has no control over the following:

- Road traffic/revving engines on the public highway
- People shouting/laughing or screaming on a public road or footpath
- Air traffic noise

Sound levels (i.e. decibel levels (dB)) generally do not apply to statutory nuisance. Each case must be judged on its own merits and the following factors are considered to help decide if the noise is a nuisance:

- the time of the noise (noise can be a nuisance at any time of day or night but is more likely to be a nuisance at night)
- the duration of the noise (how long does it go on for when it happens?)
- the frequency of the noise (how often does it happen?)
- the type of noise (is it high pitched or does it have a particular characteristic)
- the volume of the noise (quiet noise might be a nuisance if it continues for long periods of time)

- is it 'reasonable' for the noise to be occurring when or where it is? (e.g. someone living near to an industrial estate cannot expect the same level of noise as someone living in the countryside).
- is there societal acceptance of the noise? (eg fireworks are generally accepted around bonfire night or church bells accepted on a Sunday)

In all assessments of nuisance the Environmental Health Officer investigating the case, not the complainant, makes the decision on whether the noise is a nuisance. Case law requires the Officer to act as the 'standard person' when reaching the decision. Therefore, those who have a different or higher expectation of peace, such as shift workers or people who are studying/ill, may not always get the result they want.

Why should I consider taking private nuisance action?

To take action on your behalf the Council must witness and experience the nuisance you are complaining about for themselves. They must also be satisfied that they have evidence to show to a court that the disturbance is serious enough to be considered a 'statutory nuisance' in a legal sense.

The Council must take steps as are 'reasonably practicable' to investigate a complaint and has no duty to take legal action unless it is satisfied that a nuisance exists. Whilst every effort is made to investigate a nuisance, there are occasions when Officers do not witness the problem or fail to gather enough evidence to demonstrate that it exists - for example, if the noise is irregular.

In such cases it is possible for those affected by the nuisance to take their own private action directly to a Magistrates Court. This is done using exactly the same law used by Environmental Health Officers – the Environmental Protection Act 1990, but uses a different section – Section 82.

Do I need to have a solicitor to take a private action?

No. Taking your own private action is straightforward. The law is written so that members of the public can use the court system to resolve to their problem. It need not be expensive and you do not need a solicitor. You may, however, wish to consult with a solicitor before taking legal action.

How much will taking private action cost me?

Taking private action under section 82 of the Environmental Protection Act 1990 can actually cost very little and the only necessary charge is the fee imposed by the Court for the handling of your case.

You can represent yourself and in the event that you win your case you may be able to recover any costs you may have incurred during the process. If you do decide to use a solicitor, make sure that you understand the basis on which you are being charged (normally an hourly rate) if you do not qualify for legal aid.

You should also bear in mind that you may be liable for your opponent's costs if your action does not succeed. This may be costly.

A point to consider is that if you genuinely believe you are being caused a statutory nuisance then you should be confident in winning the case. If you have any doubts then you should reconsider that what you are experiencing is probably not a nuisance in the legal sense.

Home insurance policies can cover private legal action. This may be already written into your policy or it may be possible to add it. You should speak directly with your insurance provider regarding this.

How do I begin to take private nuisance action?

You would be required to show the Court that you have attempted to resolve the problem yourself. It is necessary to tell the person concerned that they are causing you distress as they may be unaware of this. You should normally approach the person who is causing you a problem. If this fails you may need to put your concerns in writing; attached is a suggested letter that you can use for this purpose.

Please ensure you are calm, fair and open when discussing problems and ask for co-operation. Explain how the noise affects you, your family, and your life and ask your neighbour to try to help by thinking of you. If there is an improvement thank them and ask them to keep to that level of noise.

Should there be no improvement with the noise situation, or if you do not feel confident about approaching your neighbour directly you will need to put your concerns in writing.

Fill in the necessary details and obtain a photocopy (or fill out a further letter) and keep this for yourself as a copy.

Hopefully once you have given this letter to your neighbour, it may on its own result in the problem being resolved. You may find that your neighbour has not known that their actions have been disturbing you and you may be able to come to some arrangement with them that suits you both.

EXAMPLE LETTER 1

Address

Date

Dear Neighbour

For some time I have been disturbed by noise created within your premises.

The main problem seems to be

I should welcome the opportunity to discuss this problem with you in order that we may resolve the matter as soon as possible.

The Local Authority have informed me that there is provision under Section 82 of the Environmental Protection Act 1990 for me to take my own action and that I can apply to the Courts for a noise abatement order to be issued.

You will appreciate that I have no wish to do this and I hope to be able to resolve the problem amicably with you.

I look forward to hearing from you in the near future.

Yours sincerely

What if the situation remains the same or deteriorates?

Take Formal action

If, after you have sent the letter, the noise, which is disturbing you, continues to persist, you will need to consider approaching the courts for an order to abate the nuisance.

The magistrates will need to be satisfied that your complaint is justified. To help prove your case you should note each time the noise problem occurs and a diary sheet has been included with this pack for this purpose. It is essential that it be completed at the time the event occurs and kept in a safe place for use later.

Completing the Diary Sheet

You will note that on the sheet there are a number of headings. It is important that you include the date and the time that the noise started and finished. The two times are perhaps sometimes difficult to judge as the noise may not be a nuisance initially or may cease to be a disturbance, although it can still be heard.

You should therefore consider carefully what you are recording and the manner in which it disturbs you.

The judgement you make must be *reasonable* in terms of both your occupancy of your part of the dwelling and that of your neighbour. You cannot expect absolute silence or no disturbance at all from your neighbours. Therefore, you should carefully assess how the noise is intruding into your use of your premises.

You will have to make a judgement as to how serious the nature of the noise is. This may be difficult to do if it is of an intermittent or varying nature or the action creating the nuisance appears to be a one off event (such as birthday party or anniversary).

If you are unsure as to whether or not to proceed you may need to seek advice from the Environmental Health Officer who is responsible for your area whose address and telephone number is given at the end of this pack.

In completing the diary, you should attempt to describe what you think is making the noise for example, loud television, machinery operating, noisy domestic activities, and try to make an assessment as to how loud the noise is:

- Does it intrude over your enjoyment of your own television set?
- Is the volume level so loud that you can hear it in different rooms?

You will see that there is also a further column for comments this should include if the noise stops you sleeping, relaxing, working and how it makes you feel for example tense, headache and so on. You should complete your name and address and you should establish, as far as possible, the address

and the location from which the noise arises. You should take care in doing this in order to avoid any confrontational situation.

After a reasonable period of time, say 3 / 4 weeks, if no improvement has been made you should consider taking your evidence to the magistrates.

Complaining to the Courts

The procedure is straightforward, and you should not feel daunted if you have no experience of Court procedures.

You are required under Sections 82 (6) and (7) of the Environmental Protection Act 1990 to give at least 3 days written notice of your intention to bring proceedings to the person against whom you are taking action. A suitable letter (Example 2 below) is enclosed for this purpose.

Take a copy as you will need this later.

You should then contact:

Clerk of the Court
Lavender Hill Magistrates' Court
176a Lavender Hill
Battersea
SW11 1JU

Telephone No: 0330 808 4407

Inform the Court official of your address and that you wish to start an action under Section 82 of the Environmental Protection Act 1990.

Explain that you have kept a diary of events and that you have previously written to the person causing the nuisance informally and that as there has been no change. You have now informed them (at least three days previously) of your intention to bring proceedings.

Confirm that you have copies of these letters available to show the court. You will then be advised where you are to attend and at what time. You should ensure that you can be available but be aware that there will be other cases being heard and that your own case may be delayed or setback.

Giving evidence in court

On the day of the initial hearing you will be interviewed, having taken the oath (or having affirmed).

Do not get worried or concerned. The Court Clerk will help you through the formalities - he/she will advise you and tell you when you should speak.

The Clerk will advise the Justices on points of law during your submission and will also help clarify points in your evidence.

The Court will listen to your explanation of the events and will, assuming they felt that there is a case to answer, issue a "Summons" against the person who you are complaining about. This will outline the details of your complaint and specify a date and time when the case will be heard. Again, you should ensure that you are available and be aware that there will be other cases being heard and that your own case may be delayed or set back.

At the main hearing you will give your evidence first and the Magistrate will be particularly interested in seeing the diary of events that you have kept and would also hear evidence, on your behalf, from your friends or relatives who can support your claim. Do not get emotional or over anxious. Stay calm so that you can think clearly and explain your case to the magistrates to the best of your ability.

The person whom you have summonsed will be able to cross-question both you and any witnesses that you bring. They will also be able to submit evidence to try to disprove your case or prove that there is mitigating circumstances, which should be taken into account.

Likewise you will be able to cross-question them and any witnesses that they bring.

The Magistrates will, on the evidence and the arguments presented, decide whether or not a nuisance exists. If they decide in your favour, an order prohibiting the nuisance and its recurrence at any other time will be made.

If the nuisance order is contravened, then you will have to consider informing the court. A further summons will be issued which will require the person on whom the order was made to appear before the Court and your evidence of the contravention of the conditions of the order will be heard in a similar manner to your original application.

If it is proved that the notice has been contravened, then the magistrates can impose a fine.

Using a Solicitor

It is not necessary to employ a solicitor to represent you at either the initial application or any subsequent hearing providing that you feel confident that you will be able to explain the situation to the Magistrate yourself.

The Court will ensure that your best interests are represented when you present your evidence and you should not feel daunted if the other side employs a solicitor.

You are able to have a friend or colleague act as your advisor on the day of the hearing and they can take notes on your behalf but they cannot address the court.

If the person that you have summonsed convinces the Magistrates that there is no case to answer you may be liable, at the discretion of the Court, to pay their costs and you should bear this in mind when deciding what action you are going to take.

Further Advice

You may also seek informal advice from the Environmental Health Officer, please contact:

Regulatory Services Partnership
Serving the London Boroughs of Merton, Richmond upon Thames and Wandsworth.
Civic Centre
London Road
Morden
SM4 5DX

Tel No: 020 8545 3025

The advice given above is intended to outline the provisions of Section 82 of the Environmental Protection Act 1990 and is intended to inform, in general detail, residents and others. Judgement of a noise nuisance is primarily subjective and the opinion of one individual may differ from that of another, particularly as to the severity of the event etc. The final interpretation of events and necessary remedy lies with the Courts.

Neither the Council or its officers or servants can be held responsible for the failure of any action (and the consequences thereby) taken under Section 82 of the Environmental Protection Act 1990.

Noise Nuisance Diary Sheets

Subject Address:

Complaint Reference Number:

Date:	Start Time:	End Time:	Description of Noise or other nuisance:	How does the nuisance affect you? Other comments.

Signed_____

Date:	Start Time:	End Time:	Description of Noise or other nuisance:	How does the nuisance affect you? Other comments.

Signed_____