

Advice on Taking Private Nuisance Action Section 82 - Environmental Protection Act 1990

We are all affected by nuisance at some point in our lives, the Council can investigate a nuisance on your behalf, however under some circumstances we may not be able to take action, i.e. lack of evidence, type of nuisance etc. If the Council cannot take action, or alternatively you would prefer to take action yourself, there are alternative options.

Any person affected by any form of nuisance has the right to complain directly to the Magistrates' Court under section 82 of the Environmental Protection Act 1990. The Magistrate will need to be convinced that the problem amounts to a statutory nuisance.

What is a nuisance?

There are various types of nuisance, which range from smell, noise, dust, unhygienic practice etc, they may occur day or night and be continuous or intermittent. A nuisance is something, which materially affects the comfort of your life or has a substantial effect on the quality of your life. You should also bear in mind that you must be reasonable in your expectations, people have different ways of living, it is only when it becomes an unreasonable interference that it is a nuisance.

How to proceed?

Firstly be absolutely sure of where the nuisance is coming from, it is not always entirely obvious.

If you are concerned about noise from a neighbouring property, make sure you try to talk to the problem maker first, a Magistrate will expect this to be done before you go to Court and it is always best to try to resolve the problem informally. Make a note of the dates every time you approach the problem maker and asked them to stop. The Court will be more sympathetic to your case if you have demonstrated that you have already taken the necessary steps in a friendly manner.

The Outcome

Make an effort to record the dates and times of the nuisance and how long it lasts. Write down what type of nuisance occurred and how it has affected you (for example disturbed sleep). You may use the monitoring sheets we have sent you (if you have any) in addition to your own. These records will form the basis of your case when you present them to the Court if you decide to pursue the claim.

Before you approach the Clerk to the Magistrates' Court, obtain advice from the Citizens Advice Bureau as they sometimes may be able to offer free legal advice, or a solicitor if you choose to consult one. Also speak to neighbours and find out if they too are affected and if they could attend as witnesses on your behalf, these will add weight to your case.

If you do decide to take action you must legally give notice of your intentions in writing to the person causing the nuisance – at least three days for noise nuisance and 21 days for other types of nuisance, in addition to details of your complaint. You should deliver this notice by post or hand making sure the letter is dated and you have kept a copy.

Approaching the Magistrates'

When you contact the Clerk to the Magistrates' Court tell them you wish to make a complaint under section 82 Environmental Protection Act 1990. You may need to visit the Court where the procedure will be explained further and you may need to present your evidence (monitoring records), this will demonstrate that you have a reasonable case. Please let the Court know at this time if you have notified the Council's Environmental Health Department of the problem.

The Court will then decide if a Summons can be issued on the person responsible for the nuisance (which they may ask you to deliver or post) stating the date and time for the Court hearing.

When the time comes for the hearing, you and any witnesses will have to attend Court to give evidence, the person responsible may come to defend themselves, which could involve counter accusations being made. You may be questioned under oath, it is up to you if you decide to present your case yourself or obtain the services of a solicitor.

If the Court decides in your favour it will grant an Abatement Order requiring the offender to abide by and may specify measures to be taken to achieve this. The Court may impose a fine at this stage and you may be awarded the costs of bringing the action to Court.

If the person responsible fails to comply with the Abatement Order without reasonable excuse they will be guilty of an offence and the Court may fine them up to £20,000, further Court action will be necessary to deal with this. It is therefore important to continue to record any up-to-date nuisances in case the Abatement Order is ignored and a return to Court is necessary.

If you are unsuccessful your case will be dismissed and you may be asked to pay the defendant's own costs, you may wish to seek specialist advice from a solicitor on this matter. Legal representation is not available for this type of case through the Legal Aid Scheme.

Example of letter of intention to start action under section 82

Dear Sir/Madam

I write to give notice of my intention to start proceedings under section 82 of the Environmental Protection Act 1990 due to the unreasonable amount of noise (e.g. loud music) coming from your property.

The noise is so bad that it can be clearly heard in my property and is stopping (me)(my family) from getting to sleep at night (or otherwise). I have gathered evidence over the last six weeks to support this and will be presenting this to the Magistrates' Court.

Unless the noise stops or significantly reduces, I shall have no other option than to take my complaint to the Magistrates' Court and apply for an Abatement Order under the above mentioned legislation.

I intend to start this action on ***date*** should the noise continue.

<<date the letter and keep a copy>>



**North Warwickshire
Borough Council**

Private Nuisance Action

**ADVICE ON TAKING YOUR OWN
LEGAL ACTION THROUGH
A MAGISTRATES COURT**

Environmental Health Dept
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