



HILLINGDON

LONDON

**A GUIDE TO RESOLVING
NUISANCE PROBLEMS
INCLUDING ADVICE ON TAKING
YOUR OWN LEGAL ACTION**

**ENVIRONMENTAL PROTECTION ACT 1990
PART III SECTION 82**

INTRODUCTION

The Environmental Protection Act 1990, is the legislation used to help stop problems of nuisance. It defines the types of disturbance, which can be classed as a statutory nuisance, which are as follows;

- Any premises in such a state as to be prejudicial to health or nuisance;
- Smoke emitted from premises so as to be prejudicial to health or nuisance;
- Fumes or gases emitted from premises so as to be prejudicial to health or nuisance; (this does not include cooking smells from domestic premises)
- Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or nuisance;
- Any accumulation or deposits which is prejudicial to health or nuisance;
- Any animal kept in such a manner as to be prejudicial to health or nuisance;
- Noise (or vibration) emitted from premises or a vehicle, machinery or equipment in a street that is prejudicial to health or a nuisance;

The above becomes a nuisance when it affects your ability to enjoy your own property.

The most commonly occurring nuisance is noise nuisance from neighbouring properties, particularly when properties are adjoined.

It should be remembered that semi-detached houses, terrace properties and flats are seldom designed to be **totally** sound proof. You may, as a result be able to hear music and activities such as, shouting, children playing, small scale DIY noise, noise from normal domestic appliances being used, etc. from neighbouring premises. Such noise may fall below the threshold at which the Council can take direct enforcement action.

The following pages give a step-by-step guide to assist residents who wish to take action on their own part to deal with a disturbance including how to take legal proceedings if necessary.

DEALING WITH THE NUISANCE PROBLEM

STEP ONE

Trace the source of the disturbance and raise the problem in a direct, informal manner with the person(s) responsible for the noise. Approach that person introducing yourself, take a note of his/her name confirm their address if necessary and explain how the nuisance problem affects you, ask if he/she could try to reduce the disturbance.

STEP TWO

If step one fails to have an adequate effect, put **your complaint politely in writing** describing what the problem is, and requesting a reduction in the disturbance. If the disturbance is from a trading premise, it may also be helpful to send a copy of your letter to the Company's Head Office, so as to encourage a response. You should also mention that you could take legal action under Section 82 of the Environmental Protection Act 1990 to abate a nuisance. Date the letters and keep a copy for future reference together with any letters of correspondence you receive.

STEP THREE

The letter might have an immediate effect of reducing the disturbance to an acceptable level. If it doesn't, start to **keep a daily diary record** of the nuisance in the form illustrated in **appendix 1**. You should keep this record until you have enough evidence to prove that the nuisance is happening regularly. Talk to other neighbours who may also be disturbed and encourage them to keep accurate records too. Allow at least two weeks for the nuisance to improve before proceeding to step four.

STEP FOUR

If the disturbance still interferes with your occupancy, you **must decide if you are prepared to relate your complaint to the Magistrate's Court**, to enable the Court to consider the issue of an Abatement Order. This process is outlined in '**Taking your own court case**' on the following pages.

TAKING YOUR OWN COURT CASE

The Environmental Protection Act 1990, Section 82 states that the Magistrates' Court may act on a complaint made by any person on the grounds that he is aggrieved by the existence of a nuisance. In order to take this form of legal action you do not need to be represented in court by a solicitor, however, you may consider it appropriate to take independent legal advice from a solicitor, before seeking to commence proceedings. The following stages must be followed to enable court action to proceed.

WRITE ANOTHER LETTER TO YOUR NEIGHBOUR

If you wish to take the matter further on your own account, the Act first of all requires you to write another letter to your neighbour, giving them written notice of your intention to bring proceedings and setting out the matter complained of, including the dates and times of the alleged nuisance. As with Step two, describe the nuisance and the effect it has upon you. Keep a dated copy. You must allow at least **3 clear days** between the date you delivered the letter and the date you attend the Magistrates' Court to make your complaint. This letter must include all of the following information:

- Name and address of the person to whom the letter is delivered;
- Your address (from which you are being disturbed);
- Name and address of the person or company that is causing the disturbance;
- A description of the nuisance;
- A statement that the nuisance should be ceased and prevented from reoccurring;
- A statement that you are intending to start proceedings as per section 82(6) of the Environmental Protection Act 1990.

To assist you a notice of intention to bring proceedings can be found in ***appendix 2***.

ARRANGE TO ATTEND THE JUSTICES' CLERKS OFFICE

- It is advisable to make a prior appointment to attend at the Justice' Clerk's office at the Magistrates Court
- The complaint form shown in ***appendix 3*** should be completed. Make sure you keep a copy for your own reference and take the original to the Magistrates Court.
- Arrangements will be made for you to appear before a Justice of the Peace (JP) to whom you will be able to list the substance of your complaint. This means you will need to recall the complaint details to the JP.

- If the JP is satisfied that you have a case, he or she will authorise the issue of a summons. The summons is a notice sent to the persons responsible for the nuisance requiring them to attend court. If the JP authorises the issue of a summons, then the court will arrange a hearing at which the defendant will be summoned to appear.
- It is your responsibility (not the courts) to provide the written summons and to serve it. A sample form is provided in **appendix 4** for your use and convenience. Once filled in, a further two copies are required.
- Good service of the summons, i.e. delivery of the summons, is accepted as either delivery by hand or by posting the summons by 1st class post (registered delivery is preferable to normal post though not essential). Keep a written note of how the summons was served
- After the summons has been served, continue to keep records on the diary sheets.
- If the defendant does not appear at the hearing you will be required to satisfy the court that the summons has been properly served. It is essential, therefore, to keep a written record of how you served the summons including date and time.

THE COURT HEARING AND THE VERDICT

At the hearing, the JP will hear both sides of the case and will decide whether or not a nuisance exists or is likely to recur. The Court will either dismiss the case or make an Order requiring the defendant to:

- Abate the nuisance within a specified time and to carry out any necessary works for that purpose.

And / or

- Prevent the recurrence of the nuisance and carry out any necessary works, again within a specified time.

The court may also impose on the defendant, a fine not exceeding level 5 on the standard scale (currently £5000) for domestic nuisance or a maximum £20 000 for nuisance from a commercial / industrial premise.

COSTS ASSOCIATED WITH TAKING COURT ACTION

Although the Magistrates Court will not levy a charge for you to take action, you may have to pay for the following;

- Court costs for wasting the courts time for example not turning up for a hearing etc.

If you fail to prove your case:

- The reasonable costs incurred by any witnesses attending the hearing.
- The court may award against you any reasonable costs incurred by the person defending the case.

If you prove your case and an order is made, the Court shall require the defendant to pay such amount, as the Court considers reasonably sufficient to compensate you for the costs and inconvenience of bringing the case, from the time you made your complaint to the conclusion of the proceedings. This recognises that the defendant ignored the letter you sent to them warning them of your intention to prosecute.

The above procedure only relates to action for disturbance that you feel amounts to a statutory nuisance. It in no way affects your right to pursue an action under civil law, for example, you may wish to sue for damages if the disturbance has lost you or your business money.

It may be possible for you to obtain an injunction in the County Court or the High Court. The evidence will be similar to that required by the Magistrates Court, but the action may be costly. In this instance, you would be advised to consult independent legal advice. If you wish to pursue civil law action, you are advised to consult independent legal advice.

IF THE ORDER MADE AGAINST THE DEFENDANT IS CONTRAVENED

If the nuisance continues in contravention of the requirements of the order, you should make careful notes of the time, date etc. of each contravention and you may wish to lay an information alleging that the defendant has committed an offence by not complying with the Court order. You may seek to have the defendant brought back to a further hearing for which further legal proceedings may be taken for the alleged offence. The procedure for doing this is similar to above.

An additional fine and/or a maximum daily penalty of £500 for each and every day the offence continues may be imposed.

Appendix 1

NOISE OR OTHER NUISANCE RECORD FORM

Your Details

Alleged Source of the problem

Name..... Name.....
Address..... Address.....
.....

Date	Time ¹ Start/ Finish	Description of Nuisance	How it Affects You ²

I certify that the above is a true record of events.

Signed.....Date.....

¹ How often does it disturb you and for how long each time? (It is not sufficient to merely state everyday or, every week)
² To what extent does the nuisance disturb you?

Date	Time ³ Start/ Finish	Description of Nuisance	How it Affects You ⁴

I certify that the above is a true record of events.

Signed.....Date.....

³ How often does it disturb you and for how long each time? (It is not sufficient to merely state everyday or, every week)

⁴ To what extent does the nuisance disturb you?

Appendix 2

ENVIRONMENTAL PROTECTION ACT 1990
section 82

Notice of intention to bring proceedings

To
of

I,
of

being aggrieved by a statutory nuisance, namely*

in relation to the premises known as

HEREBY GIVE YOU NOTICE under section 82(6) of the Environmental Protection Act 1990, that I intend to bring proceedings for an [abatement] [and] [prohibition] order under section 82(2) of the said Act in the magistrates' court sitting at

against you, as [the person responsible for the said nuisance] [the [owner] [occupier] of the said premises].

Dated

Signed

Delete any words in square brackets which do not apply

* Specify details of the nuisance complained of

Appendix 3



COMPLAINT FOR ORDER in respect of statutory nuisance

Magistrates' Court

(Code)

Date :

Defendant :

Address :

Alleged Offence : that I am aggrieved by the existence of a statutory nuisance under section 79(1) of the Environmental Protection Act 1990, namely*

at or in respect of [the premises] [[a vehicle] [machinery] [equipment] in the street] known as

and that the defendant is [[one of] the person(s) responsible for the said nuisance] [the [owner] [occupier] of the premises] [the person in whose name the vehicle is for the time being registered] [the driver of the said vehicle] [the operator of the machinery or equipment]

The Complaint of :

Address :

who states that the particulars given above are true.

Taken before me

[District Judge] [Justice of the Peace] [Justices' Clerk]

Delete any words in square brackets which do not apply

* Insert particulars of the alleged nuisance

Appendix 4



SUMMONS in respect of statutory nuisance

Magistrates' Court

(Code)

Date :

To the Defendant :

of :

You are hereby summoned to appear before the Magistrates' Court at

on _____ at _____ [a.m.][p.m.]
to answer the following complaint:

Matter of complaint : That the complainant is aggrieved by the existence of a statutory nuisance under section 79(1) of the Environmental Protection Act 1990, namely*

at or in respect of [the premises] [[a vehicle] [machinery] [equipment] in the street] known as

and that you are [[one of] the person(s) responsible for the said nuisance] [the [owner] [occupier] of the premises] [the person in whose name the vehicle is for the time being registered] [the driver of the said vehicle] [the operator of the machinery or equipment]

The complainant is :

Address :

Date of complaint :

[District Judge] [Justice of the Peace] [Justices' Clerk]

Delete any words in square brackets which do not apply

* Insert particulars of the alleged nuisance