

Taking your own action

If, for whatever reason, the local authority cannot take action, or if you do not wish to involve them, you can complain about a nuisance problem direct to the magistrates' court under section 82 of the Environmental Protection Act 1990.

The magistrates' court will need to be persuaded that the problem amounts to a statutory nuisance.

How to proceed

It is important that you keep a written record of the dates, times and duration of the offending activity or situation, as well as a description of its nature and the distress it causes you in the reasonable occupation of your home.

Try to resolve the problem informally before contacting the court, and by writing to the person responsible for the nuisance. If you know where the nuisance is coming from but do not know what or who is causing it, then making contact with the owner or occupier of the premises may work wonders.

If you decide to take action under section 82 of the 1990 Act you must give at least twenty-one days' notice in writing to the person responsible for the nuisance, if noise, then three days, of your intentions, and provide them with details of your complaint. Deliver your notice by post or hand and make sure your letter is dated and you have kept a copy. An example of such a letter is included in this pack.

Working with the Magistrates Court

When you contact the court, tell them you wish to make a complaint under section 82 of the Environmental Protection Act 1990. You will probably need to visit the court where the procedure will be explained to you and you may be asked for evidence of the problem (a nuisance diary is included in this pack). This will show the magistrates that you have an arguable case. You should also let the court know if you have notified the Environmental Health department of the problem.

The Magistrates Courts telephone number is:

- 01905 743200

The court will decide if a summons can be issued, and may ask you to serve it (by hand or by post) on the person responsible for the nuisance stating the date and time of the court hearing. If you serve the summons, you should keep a careful record of doing so, and ensure that the summons is served well before the hearing date. When the time comes for the hearing, you will have to attend court to give evidence.

The person responsible for the nuisance will very likely come to the court to defend themselves, and may even make counter-accusations. You do not need to have a solicitor to represent you at the hearing, although you may do so if you wish.

You will need to be prepared for the possibility of having to pay the costs of taking the case to court. These costs will include your costs, those of your solicitor if you have one, and any witnesses you may call in support of your case.

Getting help with costs

Legal representation is not available for this type of case through the legal aid scheme. However, you may be financially eligible under the 'Legal Help' Scheme and this may provide free or subsidised legal advice and assistance in preparation of your case.

If you are going to represent your own case, the Clerk of the Court may give you advice and guidance. Alternatively, you can contact your local Citizen's Advice Bureau which may be able to offer assistance.

The Outcome

If the court decides in your favour it will make an order requiring the offender to abate the nuisance and specify the measures they will have to take to achieve this. The order may also prohibit or restrict a recurrence of the nuisance. The court may also impose a fine at the same time as making the order.

If the court finds that the nuisance existed at the date of making the complaint, they will award you the reasonable costs incurred by you in bringing the action against your neighbour. These costs will be awarded whether or not the nuisance still exists or an abatement order is made. If an order is made the court will generally require your neighbour to pay your costs.

If the case is dismissed, you will normally incur your own costs in bringing the case to court and you may incur the costs of the other party.

If the nuisance persists

Should the nuisance continue, any person contravening the requirements of an abatement order without reasonable excuse can be found guilty of an offence under the Act and can be fined.

You should keep your record of the disturbances up to date in case the order is being ignored and it proves necessary to return to court. The procedure for initiating a future case will be the same as for the original proceedings.

Taking civil action

You can take civil action for a nuisance at common law by seeking either an injunction to restrain the defendant from continuing the nuisance and/or by issuing a claim for damages or loss.

The cost

Taking out a civil action can be expensive, so it is highly advisable to seek the advice of a solicitor or the Citizen's Advice Bureau before going ahead.

Advice from a solicitor may be free to those who are financially eligible under the 'Legal Help Scheme'. Under this scheme, a solicitor will be able to give you general advice on whether you will be likely to meet the means and merit tests which apply to applications for full public funding (formerly legal aid) in Civil cases.

Extract of Section 82 Environmental Protection Act 1990:-

Summary proceedings by persons aggrieved by statutory nuisances.

82.

- (1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.
- (2) If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order for either or both of the following purposes-
 - (a) requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
 - (b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence; and may also impose on the defendant a fine not exceeding level 5 on the standard scale.
- (3) If the magistrates' court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, to render premises unfit for human habitation, an order under subsection (2) above may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court, rendered fit for that purposes.
- (4) Proceedings for an order under subsection (2) above shall be brought-
 - (a) except in a case falling within paragraph (b) or (c) below, against the person responsible for the nuisance;
 - (b) where the nuisance arises from any defect of a structural character, against the owner of the premises;
 - (c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises.
- (5) Where more than one person is responsible for a statutory nuisance, section (1d) to (4) above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.
- (6) Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.
- (7) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is-
 - (a) in the case of a nuisance falling within paragraph (g) of section 79(1) above, not less than three days' notice; and

(b) in the case of a nuisance of any other description, not less than twenty-one days' notice;

but the Secretary of State may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.

- (8) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.
- (9) Subject to subsection (10) below, in any proceedings for an offence under subsection (8) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.
- (10) The defence under subsection (9) above is not available-
 - (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
 - (b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney;
 - (c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above; and
 - (d) in the case of a nuisance which is such as to render the premises unfit for human habitation.
- (11) If a person is convicted of an offence under subsection (8) above, a magistrates' court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates.
- (12) Where on the hearing or proceedings for an order under subsection (2) above it is proved that the alleged nuisance existed at the date of the making of the complaint, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.
- (13) If it appears to the magistrates' court that neither the person responsible for the nuisance nor the owner or occupier of the premises can be found the court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court would have ordered that person to do.