

Taking Your Own Nuisance Action

There are often very good reasons why a complainant might choose to take his own action against a neighbour who is alleged to be causing a noise disturbance.

Usually the help of the Council has already been sought and an investigation carried out. It is possible that, from the complainant's viewpoint, this has been unsuccessful. Perhaps the noise has been witnessed, but the investigating officer has decided that on the basis of what was heard, and other circumstances, it was not appropriate for the Council to take formal action for a statutory nuisance.

Noise is a subjective thing, and different people react to noise in different ways. An investigating officer judges each case on its merits. A noise may be irritating to the complainant, but may not necessarily be a nuisance in the legal sense.

The Officer has to consider what would be the reaction of an average, reasonable person to the noise, taking into account how loud it is, and other annoying qualities, and how often and when the noise occurs, and other relevant factors.

You must also apply this criterion to the noise, and ask yourself if your neighbour is really behaving unreasonably in the circumstances. If you still consider the complaint is worth pursuing, this leaflet may help you.

However, it is also possible that whilst a local authority officer has carried out a full and reasonable investigation, it has not been possible to witness the noise. You know about the problem because you have experienced it, usually on more than a few occasions, but because its occurrence is unpredictable, or of short duration, or occurs very late at night or during the early morning, the Council has not been able to witness it occurring. Alternatively, you might not want the Council to become involved with your neighbour problem, and you would prefer to deal with the situation yourself.

In cases like this, it is possible for you to take your own action, although we will continue to assist you wherever possible. This leaflet has been designed to help you pursue your complaint yourself.

STEP 1

Usually it is much better to attempt to resolve the problem without resorting to the Law.

Hopefully, you will have taken, or will take, the first step which is to **directly discuss your problem with the person causing you the nuisance**. Your neighbours may not know they are causing a problem, and in the interests of courtesy, and maintaining good relations and communications, attempt an informal and polite approach in the first instance. Pick a good time when you and your neighbour are unlikely to be too stressed, and calmly explain your problem and how it is affecting you, and ask if they could stop or reduce the noise to a tolerable level. Be prepared to compromise if, in the circumstances, this would be a fair approach.

If you cannot talk to the neighbour because you feel threatened, or the neighbour is not approachable, or relations are already poor or confrontational, try dropping a polite note to the neighbour, again explaining the problem and the affect it is having on you. Keep to the point without making unnecessary personal comments. Keep a copy of your letter.

By taking a friendly approach to begin with, you will also be seen to be the reasonable party. **Make a record of the reaction of the neighbour, and what was said, or agreed to.** It is possible that there will only be a short term improvement, and that the problem might return to an unsatisfactory level again after a few weeks or months. A written record will remind you and your neighbour of anything previously agreed, and this also might be useful evidence if further action is needed later.

STEP 2

If you have not already done so, **it is essential that you keep a diary of noise events.** This can, at times, be an onerous task, but the evidence gained is very important, and will serve to refresh your memory later. **Your diary should include a record of dates and times the nuisance occurs, a good description of the noise**

and how loud it seems, and the effect it had on you and your family at the time and how it affected your reasonable enjoyment of your premises.

Also keep a record of any witnesses. Make your notes as the noise happens or very soon afterwards, initially for at least two weeks to give a good indication of the nature and degree of the nuisance you are suffering. You may need to continue your diary until you are confident the problem is finally resolved.

STEP 3

If the informal, friendly approach has failed, and you have good evidence of the problem, then consider a formal approach.

You can, if you are aggrieved by the existence of a nuisance, complain direct to the Magistrates Court under Section 82 of the Environmental Protection Act 1990, and the following sections describe the procedure to follow.

First you are advised to **write a more formal letter to your neighbour**. Say that you consider that they are making a noise amounting to a nuisance and that unless they stop or satisfactorily reduce the noise within a reasonable period, that you feel you have little choice but to take your complaint further to the Magistrates' Court. Keep a copy of the letter in a safe place.

STEP 4

If there is still no satisfactory improvement, and you decide to proceed further, **you must now write again giving at least three days notice of your intention to take action under Section 82 of the Environmental Protection Act 1990. The notice should include details of your complaint and it can be delivered by hand or by normal post. Ensure the letter is properly dated, and that you have kept a copy. Make a careful record of when the notice was posted.**

These formal letters are likely to strengthen your case if you can show that **you have acted in a reasonable manner and that you have given the person responsible for the noise a reasonable chance to rectify the situation before resorting to legal measures.**

STEP 5

If there is still no improvement, the next step is to contact the Court. In Derby, this is: The Clerk to the Justices, Southern Derbyshire Magistrates Court, Shirehall, St Mary's Gate, Derby. DE1 3JR

Tell them you wish to make a complaint under Section 82 of the Environmental Protection Act 1990 against a neighbour who is creating a noise which amounts to a nuisance.

STEP 6

You will probably be given an appointment to attend Court, when they will explain the procedure and may ask you to provide evidence to show that you have an arguable case. Take along your diaries which should be up to date.

You will be asked if your Council's Environmental Health Department have been consulted in the matter of the complaint and why you are pursuing your own action. If you have relevant letters from the Council, take them along with you. You will be advised on the procedures that follow including service of a summons and the calling of witnesses, attendance at Court and the giving of evidence, and any costs you may be liable to pay. Remember that the person responsible for the noise will probably come to Court to defend themselves, and may make counter-accusations, so be careful not to give cause for complaint. You do not need to have a Solicitor to represent you although you may do so if you wish. **The Clerk of the Court will give you suitable advice and guidance, as will the Court's duty solicitor.**

STEP 7

Following the Court Hearing, **if the Magistrates decide in your favour the Court will make an Order requiring the defendant to abate the nuisance,** and specifying whatever measures it considers necessary to achieve this. The Court can also impose a fine on the noise maker at the time of making the Order. The Order may also prohibit or restrict a recurrence of the nuisance, and again may specify how this is done. If the Magistrates find that the nuisance existed at the time of making the complaint, then you will be awarded reasonable costs incurred by you in bringing

the proceedings. If an Order is made, the noise maker may be required to pay your costs.

However, if the Magistrates dismiss the case, then usually you will incur no more than your own costs in bringing the proceedings. These costs will, of course, be higher if you or your neighbour chooses to employ a solicitor.

STEP 8

Continue to keep your noise diary up to date in case the Magistrates Order is being ignored, and it proves to be necessary to return to Court. If the neighbour contravenes any requirements of his abatement order without reasonable excuse, he is guilty of an offence and can be fined. Seek the advice of the Clerk to the Justices on how next to proceed.

If the noise nuisance relates to a trade or business premises, then they may have a defence if they can show that they have used 'best practicable means' to abate the nuisance, and in the first instance you are strongly advised to consult with Environmental Health for specialist advice before proceeding further. This is not a defence in the case of residential premises.