



Information about taking your own Private Action under Section 82 of the Environmental Protection Act 1990

This approach can be used if you have been unsuccessful in resolving the noise or nuisance problems by other means. It is an alternative course of legal action from that which Council Officials may take. It may be used in any case of statutory nuisance, as defined in section 79 of the Environmental Protection Act 1990.

Getting Started

- You must advise the noise or nuisance maker in writing of your intention to go to Court, giving at least 3 days' notice – the court will ask if you have done this.
- Magistrates Courts deal with these actions and can be contacted directly
- Go in person to the Court before 10:00 Monday to Friday. Ask the uniformed attendant for the Clerk's Office where you should ask for the Court Officer dealing with that day's applications.
- You should take legal advice as to the strength of your case as, should you lose the case, you may have to meet the Defence legal costs.

Making an Application

A small fee is payable in order to pursue the matter. You will need to prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Bring any witnesses with you and have your diaries copied to give to the court, preferably four copies for the three magistrates and one for the accused.

The magistrate will ask you questions, so may the accused, and you will have the opportunity of asking him/her questions on their evidence. Even after starting these proceedings, you should continue to keep a diary of the disturbances and keep copies of all correspondence you write or receive in date order and make notes of any conversations.

What Next

The court serves the summons by recorded delivery or by personal service and will advise you of a date to return to court, usually about 6 weeks. You must return to Court on this day. Check the lists inside or ask for help to find out which court room you should attend.

- If the accused admits causing the nuisance, the Court will hear the case on that day. You will normally be asked to make a statement in support of your claim.
- If the accused fails to attend and makes no plea by post, the case will usually be adjourned.
- If the Court is satisfied that the accused was served with the summons, it may in some cases (although generally rare), decide to hear the case in his absence.

When you return to Court

You do not need to be represented in court by a lawyer. However, if you are you will have to pay as Legal Aid is not available for these actions. Local Neighbourhood Law Centre(s) may offer free assistance in preparing your case. Prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Bring any witnesses with you and have your diaries copied to give to the Court. The Magistrate will ask you questions and so may the accused, and you will have the opportunity of asking him/her questions on their evidence. You should continue keeping a diary of the disturbances and keep copies of all correspondence you write or receive in date order, and make notes of any conversations.

Likely Outcomes

- If the court is satisfied that you have proved beyond all reasonable doubt that a nuisance exists or is likely to recur, they will make an Abatement Order requiring the accused to and/or prohibit its recurrence. The court may also impose a fine of up to £5,000, although smaller sums are more usual.
- You may in addition, ask for reasonable costs e.g. for lost earnings, to be paid for bringing your case to Court. Any claim must be made before the hearing and any award is at the discretion of the Magistrate. A copy of the Abatement Order served on the accused will be given to you for your information.

Paying Costs

If you are unsuccessful, you may be ordered to pay the defendant's costs. The costs awarded may include any reasonable costs in defending the case, including legal costs.

If the Problem Continues

Return to the same court (before 10am) as soon as possible and apply for a "summons for failure to comply with the court order". There is no need to notify your intention to the person causing the noise. You will be able to start a prosecution for breach of the abatement order from which further financial penalties are likely to be imposed if the accused is found guilty,

Further Assistance

If you require assistance on court proceedings, the Clerk of the Court may advise you in person on a weekday afternoon; usually after the courts have finished proceedings.