



Environmental Protection Act 1990

Private Legal Action for Nuisances – Section 82

Advice to Residents

Introduction

The purpose of this document, is to give you, a resident of Sefton suffering from an alleged nuisance some general advice concerning the making of a formal complaint to the local Magistrates Court. That is to bring about private legal action against a neighbour under the provisions of Section 82 of the **Environmental Protection Act 1990**. More detailed advice and guidance can be given by a solicitor or the Citizens Advice Bureau.

If you have contacted the Environmental Health team about this and been told that they cannot proceed with your case, this does not preclude you from taking a private action. However you should follow the guidance within our leaflet 'How the Council can help you deal with Nuisances'.

Definitions

A nuisance is something that causes an undue interference with your personal comfort or the enjoyment of your property. What constitutes 'undue' is always open to dispute because it becomes subjective. Relevant factors which should be taken into account include the time, place, extent and manner etc. of the nuisance which is the subject of your complaint. The following are the categories under which nuisance may arise.

- Any premises in such a state.....
- Smoke emitted from premises.....
- Fumes or gases emitted from premises.....
- Any dust, steam, smell or other effluvia arising on an industrial, trade or business premises.....
- Any accumulation or deposit.....
- Any animal kept in such a manner....
- Any insects emanating from relevant industrial, trade or business premises.....
- Artificial light emitted from premises.....
- Noise emitted from a premises

.....**So as to be prejudicial to health or a nuisance.**

Procedure

In order to improve your chances of a successful the following steps should be observed:-

1. In the first instance it is best to discuss the problems with the person responsible for the nuisance. They may not realise they are disturbing others and may be willing to prevent it. Make a note of the date of your discussion with the person responsible for the nuisance and what is said. It is preferable to show the Magistrates that you have tried amicable methods to get the nuisance stopped.
2. If, after your conversation the disturbance continues, you should write to the person responsible for the nuisance saying that you consider that they are '**making noise amounting to a nuisance**' (for example), and that unless they stop the noise or reduce it to a reasonable level, you will have no alternative but to make a complaint to the Magistrates' Court – Keep a copy of the letter.
3. Make a note of the dates and times of the disturbances. You should also record the degree of disturbance it causes, (eg the high-pitched whine of a saw, unable to hold a conversation). The duration that it existed for where it was most noticeable. Any notes you make should be written down as soon as possible after the incident. You may have to present them on oath in Court, so they should be straight forward and legible.

An example of a suitable diary of events is given below. You may wish to describe the occurrences in the following terms. You must be precise and should not exaggerate.

Intermittent – Noise present for less than half of the time during the observation period.

Persistent – Noise present for more than half of the time during the observation period.

Continuous – Noise present all of the time during the observation period.

Date	Start time	Finish time	Location observer	Type of Nuisance	Type of disturbance being caused and comments
12/06/05	6 am	8 am	Front bedroom	Continuous drilling	Woken up - unable to get back to sleep
13/06/05	7 pm	8 pm	Rear garden	Offensive smell for dog faeces	Unable to relax and enjoy
14/06/05	8 pm	9:30 pm	Study	Dog barking intermittently	Unable to concentrate
15/06/05	10pm	4:30am	Bedroom	Light shining directly into bedroom window	Causing difficulty with sleep.

4. If the problem still continues, you may complain directly to the local Magistrates' Court. It is a requirement of Section 82, **Environmental Protection Act 1990** that the person causing the nuisance is given at least 3 days notification in writing of your intention to take them to court. The notification must specify the nuisance complained of, accurately name the person responsible, be properly addressed, dated and served. You may wish to use a similar form to the one included at the end of this leaflet. The Court may require proof that you have complied with this requirement, so a copy of the notice and all relevant details should be kept.

Service of the notice should be by one of the following means:

- i. Handing it directly to the person
 - ii. Leaving it at the person's home (by posting it through the letter box)
 - iii. Sending it by Recorded Delivery – proof of delivery slip should be obtained from the post office
 - iv. In the case of a limited company the notification should be addressed to the Company Secretary sent to the Registered Office.
5. Contact the Clerk of the Court and explain that you wish to make a complaint under Section 82, **Environmental Protection Act 1990**. The Clerk may make an appointment to see you in order to explain the procedure and see your evidence. When satisfied the Clerk will then arrange for a summons to be issued on the person responsible for the nuisance, stating the date and time arranged for a Court hearing. The person responsible will probably come to Court to defend the case and may make counter-accusations.

If the Magistrates decide in your favour, the Court will make an order requiring the defendant to abate the nuisance specifying any measures it considers necessary to achieve this. The order may prohibit or restrict a recurrence of the nuisance and again may specify how this is to be done. A time period for the defendant to comply with these requirements may be given.

A fine may be imposed on the defendant and you will be entitled to compensation for any expenses incurred in bringing the proceedings. If the Magistrates dismiss the case, the defendant may be able to claim any costs incurred in defending the case. These costs may include, for example, the cost of having a solicitor represent them at the hearing.

In any legal proceedings taken against a trade or business, it is a defence to prove that the '**best practicable means**' have been taken to minimise the nuisance. Local conditions and circumstances, the current state of technical knowledge and the financial implications are all taken into account when assessing 'best practicable means'.

6. A person, who without reasonable excuse contravenes any requirement or prohibition imposed by the Court Order, is guilty of a further offence. You should therefore, continue to keep your record of occurrences of the nuisance, up to date, in case the order is being ignored and it proves necessary to return to court.

Legal Assistance

There is no legal requirement to appoint a solicitor for this. However, a solicitor is able to offer legal advice, send correspondence on your behalf and represent you in Court. The solicitor can also advise about the possibility of claiming Legal Aid for the proceedings and obtaining legal advice free or at a reduced cost under the Legal Aid scheme.

Civil Action

Civil action can be used to restrain the defendant from continuing the nuisance (usually by obtaining an injunction against the person). Civil action can bring about a rapid end to nuisance complaints, but taking civil action can be very expensive and it is advisable to seek the advice of a solicitor.

Concluding Advice

Nuisance such as noise may interfere with the comfort and enjoyment of life but, whereas some people may consider the slightest noise a nuisance, the legal definition is more restrictive. There is no fixed level of noise which constitutes a statutory nuisance; individual circumstances differ and each case needs to be judged on its merits. Factors such as the level of noise, its duration and nature, frequency of events, the area, the background noise levels, the time of day etc, would be taken into account. What seems to you to be a case that cannot possibly fail, when subjected to the scrutiny of the Court, may be seen quite differently.

The decision to take legal action should not be made lightly, but as the very last resort after every other means of resolving the problem have been attempted and failed.

PLEASE NOTE – This note is not a complete guide to the initiation of private legal action under Section 82 of the **Environmental Protection Act 1990**. It is no guarantee of successful court action, and if you are in any doubt as to the procedure to be adopted in taking private action it is recommended that you seek professional legal advice.

Section 82

Notice of Intention to Take Action for Noise Nuisance

To:

.....

.....

Take notice that I am a person aggrieved by noise with amounts to a nuisance for which you are the [person responsible for the nuisance] [(owner) (occupier) of the premises from which the noise is emitted]* and it is my intention to apply, in not less than three days from the service of this notice, to the Magistrates Court for an order under Section 82 of the above Act against you.

Description of Nuisance source:-

.....

Signed:-.....Date:-

* Delete section in brackets that do not apply.