

Magistrates' Court Proceedings



Magistrates' Court Proceedings and Statutory Nuisance Cases

This information is intended to help individuals who are considering taking action in the Magistrates' Court to abate a Statutory Nuisance. If the Council have previously investigated your case and for whatever reason have declined to make the matter further you may still take your own action in the Magistrates' Court. You must however remember that the onus will be on you to provide sufficient evidence in support of your case.

This information is intended as guidance only and is not a substitute for sound legal advice.

What are the rights of individuals?

Section 82 of the Environmental Protection Act 1990 allows private individuals to take their own action in the Magistrates' Court for Statutory Nuisance. Statutory Nuisances are defined in Section 79 of the Act. If the Court is satisfied after representations from all concerned that a Statutory Nuisance exists, or is likely to recur, then the Court will make an Order against the owner/occupier or the person responsible to have the nuisance stopped. The Court may also impose a fine at that stage. If the Order is not complied with, then an offence has been committed and the person responsible could be prosecuted and further fined by the Court.

How do I go about taking my own action?

It is important to note that before you approach the Court to bring proceedings you must give written notice to the person responsible of your intentions. A copy of a suggested notice of intention is outlined below. In the case of noise nuisance this must not be less than three days notice and in the case of any other nuisance not less than twenty one days notice. You may either deliver the notice personally or post it. (If you post it then you will need to show proof that it was actually delivered, for example by using registered post).

It would not be advisable to serve a notice of intention if you had little or only very weak evidence to support your case. Bear in mind that the Court will only make an Order if it is satisfied that a Statutory Nuisance exists or is likely to recur. The onus will be on you as the complainant to have sufficient evidence to satisfy the Court of your case. See the section below on Evidence. You should also consider whether or not there may be a defence to such action. If you are in any doubt about anything you should consult a solicitor beforehand.

What evidence do I need?

Evidence may be gathered and presented in a number of ways. It will vary according to the type of nuisance which you are suffering. In most cases it would be helpful to make a diary of the nuisance over a period of time containing as much relevant information as possible. For example, you should include dates, times, duration and who caused the nuisance. You should also make clear the way in which it was affecting or has affected the enjoyment of your own home. The diary entries must be made at the time the nuisance took place and must be completed accurately and honestly.

If you decide to use the diary as part of your evidence in Court you may be questioned about it on oath. In most cases you will probably need corroborative evidence from a reliable independent

witness. This may be a neighbour who is similarly suffering nuisance or some other independent person who has witnessed the nuisance. These people should be willing to come to court. You could also consider engaging a professional expert witness if that is appropriate, although you will have to pay for this. For example you could engage a noise consultant in a noise nuisance case. If you are in any doubt, you should seek legal advice at an early stage.

How do I commence proceedings?

After you have served your notice of intention you must then wait a minimum of three days in a noise case and twenty one days for other matters before going to your local Magistrates' Court and making your complaint. You will need to use a proper complaint form. A copy of a suggested complaint form is outlined below. You may wish to take legal advice to ensure this is correctly filled out. When you take the complaint to the Court it may be helpful to go through the paperwork and your evidence with a Court Clerk to ensure that all relevant details are recorded. If the Court decides, on the basis of your evidence, that there may be a case to answer a summons will be issued against the person on who you served the notice of intention. Remember to keep a copy of the paperwork at all times.

A date for the hearing will be set and both parties will have the opportunity to be heard by the Magistrates. If the Court is satisfied that a Statutory Nuisance exists or is likely to recur then an order will be made requiring the nuisance to be abated or preventing its recurrence. If the order is not complied with you can go back to Court as an offence will have been committed. If found guilty the person may be fined.

Do I need to consult a solicitor?

You do not need to consult a solicitor if you wish to make your own representations to the Court. However, it is strongly advisable to get qualified legal advice at some stage, preferably before proceedings are commenced, in order that the strength of your case may be assessed and to avoid unnecessary expense.

Your local Environmental Health Officer, who has experience in dealing with Statutory Nuisances, may be able to give you informal advice or let you know where you can find further information. The Council would not be able to represent you or give a legal opinion. The Citizen's Advice Bureau may also be a good source of help and advice.

Will action under Section 82 cost me anything?

Section 82 is probably the most cost effective method of bringing a case of nuisance to Court. However, you may be subject to paying costs in the normal way. For example, if you have to instruct a solicitor to advise or represent you this will have to be paid for. If you win your case in Court the Magistrates will normally award costs against the person causing the nuisance. If at the date of the hearing the nuisance has stopped the Court may still order costs in your favour should it be proved that at the date that your complaint was made the nuisance did exist. You must bear in mind that if you lose the case costs may be awarded against you.

What other forms of action are available to me?

It may be possible in cases of nuisance to bring civil proceedings in the County Court to seek compensation or an injunction. The costs of bringing such action may be high and if you lose you could be faced with paying substantial costs to the other side. You will need to get professional legal advice before taking this kind of action. If you are on a low income a solicitor may be able to advise you whether you will be entitled to Legal Aid.

Complaint Form to Magistrates' Court

COMPLAINT

(Magistrates Court Act 1980, ss51 , 52; Magistrates' Court Rules 1981, r4)

..... Magistrates' Court

Date: _____

Defendant: _____

Address: _____

Matter of Complaint:

(Describe briefly the nature of the nuisance) _____

Sections 79 and 82 Environmental Protection Act 1990

The complaint of

(Your Name) _____

Address:

(Your Address) _____

Telephone no:

Who (upon oath) states that the defendant was responsible for the matter of complaint of which particulars are given above.

Taken (and sworn) before me.

Justice of the Peace
Justices' Clerk

Notice of Intention

NOTICE OF INTENTION TO BRING PROCEEDINGS

Under Section 82 of the Environmental Protection Act 1990

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 20.....
Signed

*Specify details of the nuisance complained of.