



How to take private action against nuisances

Calderdale Metropolitan Borough Council
Environmental Health
Housing and Environment Services
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Taking your own private action

The law recognises that in certain cases it is difficult for the local authority to obtain sufficient evidence to take formal action under Section 80 Environmental Protection Act 1990, irrespective of undertaking a proper investigation. This may be due to us not being able to witness the nuisance, or that the nuisance only occurs occasionally or we feel that your particular complaint is best dealt with by a private action.

For these reasons Section 82 of the Environmental Protection Act 1990 gives you the right to make a complaint directly to the Magistrates' Court. You can do this by either making the complaint yourself using the information contained in this document or by using a solicitor.

Before considering private action

Before considering private action we would suggest that you try to discuss the problem with your neighbour. Many problems can be resolved informally, with a little co operation on both sides. Sometimes neighbours may be unaware they are causing a problem. Try to be reasonable otherwise discussions could end in further arguments and deterioration in neighbourly relations. If this informal approach fails, you can complain directly to the Magistrates' Court.

Keep a diary

You will need to prove to the Magistrates that what you are complaining about amounts to a nuisance and therefore you need to be able to provide detailed evidence. You should keep a written diary record of the nuisance and how it affects you. Such evidence could include:

- (a) Description of the nuisance, what causes it, where it comes from
- (b) When the nuisance happens and how long it lasts (dates and times of occurrences)
- (c) how it affects you and how it interferes with the enjoyment of your property (e.g. could not sleep, could not hear TV)
- (d) whether there are other people (neighbours etc.) who are suffering the nuisance and who are prepared to appear in court as witnesses on your behalf.

Your record must be accurate and not exaggerated and must demonstrate that there is unreasonable interference with the enjoyment of your property. You should provide as much evidence as possible to support the allegation of nuisance.

Preparing to take private action

Prior to approaching the Magistrates' Court you must write to the person responsible for the nuisance giving them at least 3 days notice of your intention to complain to the Magistrates' Court.

Your letter must clearly inform that person what it is you are complaining about in order that they may try to stop the nuisance. It is a good idea to inform that unless the nuisance ceases by a certain date (e.g. 2 weeks) you will complain to the Magistrates' Court. It is likely to strengthen your case if you have acted in a reasonable manner and given the person causing the problem the opportunity to rectify the problem before taking legal proceedings. Make sure that the letter is dated and you keep a copy.

Making a complaint to the Magistrates' Court

If your verbal or written request does not resolve the problem then the next step is to contact the Clerk of the Magistrates' Court explaining that you wish to make a complaint under Section 82 of the Environmental Protection Act 1990. You may have to make an appointment to visit the court where the procedure will be explained and you will be required to produce evidence to demonstrate you have an arguable case. At this stage you do not have to prove your case. You must also inform them if Environmental Health Service has been involved with the investigation.

If the Clerk to the Court agrees that you have a justifiable complaint, a summons to attend Court will be issued to the person you are complaining about. You will also be informed of the time and date of the hearing.

The hearing

You must attend court at the arranged date and time and take with you any correspondence, documents, records etc and any witnesses to help you in proving your case.

You will be required to explain your problem and produce evidence of the nuisance, including dairies and witnesses to support your complaint. You will be required to give your own evidence and question your own witnesses to draw out their evidence. The neighbour, who you are complaining about, will have the opportunity of cross examining you and your own witnesses and they may produce their own evidence. You may want a solicitor to represent you at the hearing but this is not essential.

After both parties have had an opportunity to present their case to the Magistrates they will decide the outcome of the case based on the evidence heard.

The outcome

If the Magistrates are satisfied a nuisance exists they will either make a nuisance order requiring the nuisance to be abated, and/or prohibit recurrence of the nuisance. The Courts also has the power to impose a fine on the defendant (currently not exceeding £5000). If this order is ignored further court action will need to be taken, you must therefore continue to keep records of noise nuisance in case it proves necessary to return to court.

If the Magistrates are not satisfied that a nuisance existed, exists or is likely to occur no formal action will be taken.

Costs

If you fail to prove your case you may have to pay some or all of the defendant's expenses in coming to court.

Useful contacts

Magistrates' Court
PO Box 32
Harrison Road
Halifax
HX1 2AN

Telephone: 01422 360695

e mail: magistrates-court.co.uk/halifax-magistrates-court/