

Statutory nuisance - Taking your own private action



Taking your own action

If, for whatever reason, we cannot take action to stop a nuisance, or if you do not want to involve us, you can complain direct to the magistrates' court under section 82 of the Environmental Protection Act 1990.

You will need to prove to the magistrates' court that the problem is causing a nuisance, as defined by law.

What to do

It is important that you keep a written record of the dates, times and exact nature of the problem you are experiencing, as well as details of how the nuisance affects you.

Before you contact the court, try and solve the problem informally by writing to the person responsible for the nuisance.

If you know where the nuisance is coming from but do not know what or who is causing it, contact the owner or occupier of the premises.

If you decide to take court action, you must give the person responsible at least three days' notice in writing and give them details of your complaint.

Deliver your notice by post or hand and make sure your letter is dated and you have kept a copy. An example of a letter you could send is included in this booklet.

Working with the magistrates' court

When you contact the court, tell them you want to make a complaint under section 82 of the Environmental Protection Act 1990. You will probably need to visit the court. The procedure will be explained to you and you may be asked for evidence of the problem (a nuisance diary is included in this booklet). This will show the magistrates that you have a case.

You should also let the court know if you have told us about the problem.

The magistrates' court for the area is Southend-on-Sea Magistrates Court. The address is:

The Court House
80 Victoria Avenue
Southend-on-Sea
Essex
SS2 6EG

Phone: 01245 313300

The court will decide if they should issue a summons for the person responsible to appear in court. They may ask you to post or hand it to the person responsible for the nuisance, stating the date and time of the court hearing. If you give the notice, you should keep a record of doing so, and make sure you provide the notice well before the hearing date. On the day of the hearing, you will have to go to court and give evidence.

The person responsible for the nuisance will probably come to the court to defend themselves, and may even make a complaint against you. You do not need to have a solicitor to represent you at the hearing, but you can if you want.

You may have to pay the costs of taking the case to court. These costs will include your own costs, those of your solicitor (if you have one), and those witnesses who you ask to attend to support your case.

Getting help with costs

You cannot get legal aid for this type of case. However, you may be able to get free legal advice and help to prepare your case under the 'Legal Help Scheme'. For more information, contact the Legal Services Commission. Their contact details are on the back page of this booklet.

If you are going to represent yourself, the clerk of the court may give you advice and guidance. Or you can get advice from your local citizens advice bureau.

The outcome

If the court decides in your favour, it will make an order for the person responsible to stop the nuisance. It will set out what that person will have to do.

The order may tell them to stop causing the nuisance or prevent it from happening again. The court may also fine the person responsible at the same time as issuing the order.

If the court finds that the nuisance did exist on the date you made the complaint, they will award you your reasonable costs of taking the action. If an order is made, the person responsible for the nuisance will have to pay your costs.

If the case is dismissed, you will normally have to pay your own costs and you may also have to pay the other person's costs.

If the nuisance continues

If the nuisance continues, the person responsible for it can be found guilty of an offence and can be fined.

You should keep your record of the nuisance up to date in case the order is being ignored and you need to return to court. The procedure for taking action in the future case will be the same as for the original action.

Taking civil action

You can apply to a civil court:

- for an injunction to stop the person responsible from continuing the nuisance; and
- to claim damages or compensation, or both.

The cost

Taking civil action can be expensive, so you should get advice from a solicitor or a citizens advice bureau before going ahead.

The solicitor will be able to give you general advice on whether you might get legal aid. Or you can contact the Legal Services Commission. Their contact details are on the back page of this booklet.

Example of a letter you would give to the person responsible for the nuisance to tell them that you intend to start action under section 82.

Dear sir or madam

I intend to start proceedings under section 82 of the Environmental Protection Act 1990 due to the unreasonable nuisance coming from your property.

The nuisance is so bad that it prevents me from enjoying my property. I have gathered months of evidence to support this, and will be presenting this to the magistrate.

If you do not stop the nuisance, I will take my complaint to the magistrates court, and apply for an abatement order under section 82 of the Environmental Protection Act 1990.

I intend to start this action on

Yours faithfully

Citizens Advice
Website: www.citizensadvice.org.uk

Legal Services Commission
Helpline: 0800 085 6643
Website: www.legalservices.gov.uk

Other advice leaflets that you may find useful are listed below:

- Bonfires and smoke
- Dark smoke
- Light
- Noise
- Odours
- Premises and vehicle alarms
- Other sources of help and advice

You can view or download a copy of these leaflets from our website at www.rochford.gov.uk/nuisance

Rochford District Council
Council Offices, South Street, Rochford,
Essex SS4 1BW
Phone: **01702 318111**
Email: **customerservices@rochford.gov.uk**
Website: **www.rochford.gov.uk/nuisance**

If you would like this information in
large print, Braille or another
language phone us on
01702 318111