

NEIGHBOUR NUISANCE TAKING YOUR OWN ACTION

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There is provision in the law for a complainant to take their own action through a magistrates' court, in much the same way as the Council would proceed. A resident may wish to do this if they have previously complained to the Council and are dissatisfied with the investigating officer's decision, or if they have particular reasons for not involving the Council in their complaint from the outset.

Before you consider legal action there are some important points you should be aware of!

- Familiarise yourself with Part 3 of the Environmental Protection Act 1990, particularly sections 79 (matters that may constitute statutory nuisances) and 82 (Summary proceedings by persons aggrieved by statutory nuisances).
- Make sure you know the correct address of the premises where the nuisance is being caused and the full name of the person(s) responsible. The latter can be obtained from the Electoral Register available in most public libraries.
- In the interest of keeping good neighbourly relations you should always consider making an informal approach to the source - either in person or by letter - to make them aware of the problem and give them an opportunity to resolve it. Advice on doing this can be found on our website, or from the Environmental Protection team. **(Our contact details are at the end of this fact sheet)** It will strengthen any legal case if you have given the person responsible a reasonable opportunity to rectify the situation before resorting to legal action.
- Evidence of other witnesses will also strengthen your case although the law says that only one person needs to be affected for there to be a nuisance. Speak to your neighbours and find out whether the nuisance is disturbing them too. They



might be prepared to attend court as witnesses on your behalf.

- You do not have to employ a solicitor to help present your case but it may be advisable to do so.
- If the Court does not agree with your case you may be liable to pay for the costs of the case including the defendant's expenses and his/her solicitor's fees.

Preparing a case to present before the magistrates

- Keep a written log of dates and times when the nuisance occurs and the effect it has on you and members of your family. This will be important evidence to present later before the magistrates.
- Keep a copy of all letters you send and make sure these are dated. Make detailed notes of any conversations you have with anybody connected with the case, and again make a note of the time and date these occurred. In particular keep records of how often and when you have approached the person responsible for the nuisance and asked them to stop.
- You **must** inform the person causing the nuisance by letter that you intend to take legal action against them under Section 82 of the Environmental Protection Act 1990. You **must** give them at least three days notice in the case of noise nuisances or 21 days notice for any other nuisance before you apply to the Magistrates' Court. Within the letter you must describe the matter which you are complaining about. You **must** keep a copy of this letter yourself, as you may need it later to show the court representative.
- If there is still no improvement contact the magistrates' court (details in your local telephone directory) and tell them you wish to make a complaint under S82 of the Environmental Protection Act 1990. You may be asked to attend a court to explain your case and show the evidence you have accumulated.

Applying for a summons at the magistrates' court

If the nuisance continues unabated and you have followed the procedures outlined above, you will need to obtain a summons from your local magistrates' court. This means that the person causing the nuisance is summoned to attend a court hearing so that your evidence surrounding the case can be heard.

Obtaining a summons involves the following steps:

- Locate the nearest magistrates' court available to deal with your case.



- Once at the court, you will have to explain to the clerk of the court or one of the deputies why you want a summons under the provisions of the Environmental Protection Act 1990 Section 82.
- Time will then be found in a courtroom for you to present your request for a summons to the magistrates, and it is here that you must present the evidence you have gathered.
- The clerk of the court or one of the deputies will prompt you on the order of your submission to the magistrates.
- The magistrates will then decide whether there is an arguable case and if they agree with you a summons will be issued with a date and time for a future court hearing.
- The court officer will then arrange for the summons to be served or, alternatively, you may be asked to serve this on the person responsible for the nuisance. If you have to do this, make sure you deliver the letter in plenty of time before the hearing date and make a note of the time and date of delivery.
- At this stage of the procedure, you should now seriously consider whether you want a solicitor to represent you at the actual hearing. Alternatively you may decide that you will still conduct the case yourself.

The Hearing

- On the day of the hearing if the defendant appears in person and pleads guilty, you will only need to present the general circumstances of the case to the magistrates. The court will then make an order requiring the abatement of the nuisance or prohibiting its recurrence.
- If the defendant pleads not guilty you will then have to prove your case by presenting your evidence under oath and calling any or all of your witnesses. The defendant will also be there to defend him/herself, possibly with the assistance of a solicitor, and he/she may also make counter-accusations against you. They may also call witnesses of their own. If the defendant gives evidence or calls any witnesses, you will also be able to question them, but you can only question them on the facts relating to the nuisance.
- If you prove your case beyond reasonable doubt, the magistrates will make an order requiring the nuisance to be abated and may also impose a fine of up to £5,000 on the person responsible, if the source is from a residential property.



This increases to £20,000 for nuisance from commercial premises. The Court also has the power to require the person you are taking action against to pay to you any reasonable costs you may have incurred in bringing the case.

- If the defendant fails to comply with this order they will be committing an offence and further court action will be necessary and you should therefore continue to keep a record of occurrences after the hearing.

REMEMBER

Legal action should be the last resort. It is unpleasant and will undoubtedly further sour the relationship between you and the person responsible for the nuisance.

If you require more information please contact:

Environmental Protection team, Charnwood Borough Council, Southfields,
Loughborough, Leics LE11 2TX

Office Opening Hours: Monday to Thursday 8.30am to 5.00pm; Friday 8.30am to 4.30pm

Tel: (01509) 634636 Fax: 01509 262076

E-mail: env.health@charnwood.gov.uk

We have more information about nuisance law on our website at:-

<http://www.charnwood.gov.uk/environment/environmentalprotection.html>

To arrange for an explanation of any part of this document in your language or to receive a copy in Braille, on audio tape or large print please call 01509 634567.

This information is available in different formats. To access these please phone (01509) 634560.

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這資料具不同的格式，請致電 (01509) 634560 索取。

आ माहिती जुदी जुदी पद्धतिओमां उपलब्ध छे। ते भेगववा माटे कृपा करी आ नंबर पर झेल करो (01509) 634560.

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