

Advice

Advice on taking private action for neighbour nuisance



Basingstoke
and Deane

Examining your options

It is advisable to contact the Citizens Advice Bureau initially as there are a number of different ways that you may be able to take private action dependent on the nature of your case.

Your options may include:

- Taking action for statutory nuisance in the Magistrates Court
- Taking civil action for an injunction or award of costs
- Using a Mediation Service

If the Citizens Advice Bureau advise you to consider taking your own action under Section 82 of the Environmental Protection Act 1990, this general guide should provide some assistance and information.

What is a statutory nuisance?

'Statutory nuisances' are defined in the Environmental Protection Act 1990. They include noise, smoke, commercial odour and lighting problems. In broad terms a statutory nuisance is unreasonable behaviour which has a significant effect on someone's enjoyment of their property. The courts decide whether something amounts to a statutory nuisance and fine anyone who is found guilty of causing such problems.

Who decides if something is a statutory nuisance?

Environmental Health staff are the recognised experts in assessing the existence of a statutory nuisance. If they consider a nuisance is being caused, a magistrate will usually accept their view.

However, it is not always possible for the Environmental Health team to establish the existence of a statutory nuisance. This may be because the nuisance occurs only occasionally, and it is not possible for council officers to witness the nuisance.

In other cases the officer may feel the matter could not be classed as a 'statutory nuisance' and, therefore, cannot take any legal action on behalf of the complainant. In this situation, you can take independent action by complaining directly to the magistrates' court under section 82 of the Environmental Protection Act 1990. This is a straightforward process and not necessarily an expensive option. It is not necessary to employ a solicitor, as the clerk of the court is responsible for guiding you through the process in court.

What you should do

Firstly discuss the problem with your neighbour. Many problems can be resolved informally, with a little co-operation on both sides. Sometimes neighbours do not realise they are causing a problem. Try to be reasonable, otherwise discussions could end in further arguments, and deterioration in neighbourly relations.

If this fails to resolve the issue, you may wish to undertake mediation. Mediators are independent, non-legal people who listen to both sides of the dispute, and support those involved in reaching an agreement.

Further details on your nearest Mediation Service can be found at www.mediationuk.org.uk

If attempts to resolve the matter informally fail, you may complain directly to the magistrates' court.

How to complain directly to the magistrates' court



The magistrate must be satisfied that the issue amounts to a statutory nuisance.

The following will help you to put your case:

1. Keep a detailed written record of the problem and its effects. The record must be accurate, stating each date and time the problem occurred, and describe how it affected you (for example, could not sleep, could not hear TV).
2. Do not exaggerate any effect or times – stick to the facts. Remember, there must be an unreasonable interference with the enjoyment of your property.
3. Provide as much evidence as possible to support your allegation of a nuisance.
4. If you decide to take action under Section 82 of the Environmental Protection Act 1990, you must give the perpetrator at least three days notice for noise issues, and at least 21 days for all other nuisance issues.

What do I need to include in the notice to the perpetrator?

The notice should include details of the complaint and can be delivered to the perpetrator by hand or post. Make sure your letter is dated, and keep a copy.

It is likely to strengthen your case if you have acted in a reasonable manner, and given the perpetrator the opportunity to rectify the situation before resorting to legal measures.

What if there is still no improvement?

The next step is to contact the clerk of the magistrates' court. Tell them you wish to make a complaint under Section 82 of the Environmental Protection Act 1990. They will probably make an appointment with you to discuss the procedure, and ask you to produce evidence that you have an arguable case. You must also let them know if the environmental health team has been involved in the investigation.

A summons will be issued and served on the perpetrator, stating the date and time arranged for the court hearing. They will probably come to court to defend themselves, and may even make counter-accusations.

You may want a solicitor to represent you at the hearing, but this is not essential. Legal Aid is not usually available towards the cost of proceedings in the magistrates' court, but legal advice prior to the proceedings may be available under the green form scheme, depending on your financial circumstances.

If you present your own case, the clerk of the court will give you advice and guidance, or you may be able to get help from your local Citizen's Advice Bureau.

At the court hearing both parties will be given the opportunity to present their case to the magistrates. They will then decide the outcome of the case based on the evidence heard. If they are satisfied that a nuisance exists or may start again, they will make one or both of the following:

1. An order requiring the person causing the nuisance to stop it within a specified time
2. An order preventing the nuisance being started again.

The magistrates may also fine the perpetrator up to **£5,000** if they feel this is necessary.

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

Guidance for the completion of diary record forms

Please read the following notes before you complete these forms.

Start and finish time

- Record both the start and finish time of each incident.
- Use either the 12-hour (8.30am/ pm) or the 24-hour (08:30) clock.
- If the problem occurs intermittently, for example dog barking, record the total duration of the incident with an indication of how often it occurs during that time, for example 7pm to 9pm dog barking every 10 minutes for 2 to 3 minutes at a time.

Description of incident

- Should be kept as short as possible for example “loud music”.

How the incident affected you

Record brief details of how the incident affected you, for example:

- Disturbed/prevented sleep.
- Caused annoyance/stress.
- Could not listen to TV/radio.
- Caused health effect such as headache/migraine.
- Couldn't enjoy garden.

Please do not add other non-relevant information.

How long should you keep a record?

- It is important to keep an on-going record of the disturbance you are experiencing.
- Additional diary sheets are available to download from www.basingstoke.gov.uk/go/noise

DATE	START TIME	FINISH TIME	DESCRIPTION OF INCIDENT	HOW THE INCIDENT AFFECTED YOU
THUR 3/3/11	1.00AM	2.00AM	LOUD MUSIC	DISTURBED/PREVENTED SLEEP
SAT 5/3/11	3.30PM	5.00PM	DOG BARKING FOR 5-10 MIN SPELLS	COULD NOT LISTEN TO TV/RADIO

Your address: Source of nuisance:

I confirm that the above information is true to the best of my knowledge and belief. Signed: Date:

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