Basingstoke and Deane

Advice on taking private action for neighbour nuisance

It is advisable to contact the Citizens Advice Bureau first, as there may be several options for taking private action depending on your circumstances. If you are advised to pursue action under Section 82 of the Environmental Protection Act 1990, the information below may be helpful.

Your other 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 Services

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What is a statutory nuisance

Statutory nuisances are defined in the Environmental Protection Act 1990. They include issues such as noise, smoke, commercial odours and lighting. In general, a statutory nuisance is unreasonable behaviour that significantly affects someone's enjoyment of their home. The courts decide whether a problem is a statutory nuisance and can fine anyone found responsible.

Who decides if something is a statutory nuisance

Our Environmental Health officers are experts in assessing statutory nuisance, and their professional judgement is usually accepted by the courts. However, a nuisance may be difficult to witness or may not meet the legal definition.

In these cases, you can take your own action by applying directly to the Magistrates' Court under Section 82 of the Environmental Protection Act 1990. This is a straightforward and low-cost process, and you do not need a solicitor, the court clerk will guide you.

What you should do

Try to discuss the problem with your neighbour first, as many issues can be resolved informally. They may not realise they are causing a problem, so approach the conversation reasonably to avoid further disputes.

If this does not help, you may wish to consider mediation. Mediators are independent, non-legal professionals who listen to both sides and help those involved reach an agreement.

A guide to civil mediation - GOV.UK (https://www.gov.uk/guidance/a-guide-to-civil-mediation)

UK Mediation Services webpage (https://ukmediation.net/)

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:

- 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
- do not exaggerate any effect or times, stick to the facts
- remember there must be an unreasonable interference with the enjoyment of your property
- provide as much evidence as possible to support your allegation of a nuisance
- 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 be delivered by hand or post. Make sure the letter is dated and keep a copy.

Acting reasonably and giving the other person a chance to resolve the issue before taking legal action can help strengthen your case.

What happens if I take action under Section 82

You must contact the clerk of the magistrates' court and say you want to make a complaint under Section 82 of the Environmental Protection Act 1990. They will explain the process, arrange an appointment, and ask for evidence. You should also say whether Environmental Health has been involved.

If the case proceeds, a summons will be issued and a hearing date set. You can represent yourself, as a solicitor is not essential, and the court clerk can provide guidance. Legal Aid is not usually available, but advice may be available through Citizens Advice.

At the hearing, both sides present their case. If the magistrates are satisfied a nuisance exists or may recur, they can order it to stop or prevent it happening again, and may issue a fine of up to £5,000. If they are not satisfied, no formal action will be taken.

How to complete the diary record forms

It is important to keep an on-going record of the disturbance you are experiencing.

Diary sheet (/content/doclib/4485.pdf)

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 or prevented sleep
- caused annoyance or stress
- could not listen to TV or radio
- caused health effect such as headache or migraine
- could not enjoy garden

Please do not add other non-relevant information.

Contact details

Environmental Health team

If you have an enquiry, send a message to the Environmental Health team

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