



## Taking Your Own Action for Nuisance

### Section 82 of the Environmental Protection Act 1990

The purpose of this informal advice sheet is to give you guidance concerning the making of a formal complaint to the local Magistrates Court where you believe you are suffering nuisance from a neighbouring property. You may wish to take legal advice from a Solicitor or from the Citizens Advice Bureau.

Sometimes, even though the Council has made several visits, its Officers may not have been able to witness the nuisance that is being complained about. This means that the Council cannot take action on the complainant's behalf. Under these circumstances, the law allows you, as a person affected by a nuisance, to go to a Magistrates Court, log a complaint and have a **private nuisance hearing**.

Taking **private nuisance action** in Court necessitates the making of an application for the issue of a Summons followed by a hearing. There is a cost involved and you should speak to the Magistrates Court for more information.

### What is a 'nuisance'?

In considering what is and what is not a nuisance, you should bear in mind what the relevant Act refers to and what the law means by 'nuisance'. The Act covers the following situations:

1. Premises in such a state as to be prejudicial to health or a nuisance;
2. Smoke emitted from premises so as to be prejudicial to health or a nuisance;
3. Fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;
4. Dust, steam, smell or other effluvia arising on industrial, trade or business premises which are prejudicial to health or a nuisance;
5. Accumulations or deposits which are prejudicial to health or a nuisance;
6. Animals kept in such a place or manner as to be prejudicial to health or a nuisance;
7. Noise emitted from premises so as to be prejudicial to health or a nuisance;
8. Noise emitted from or caused by a vehicle, machinery or equipment in a street which is prejudicial to health or a nuisance;
9. Insects emanating from relevant industrial, trade or business premises so as to be prejudicial to health or a nuisance;
10. Artificial light emitted from relevant premises so as to be prejudicial to health or a nuisance;

If your complaint results from any of the above sources you must consider if the problem is sufficient to be a nuisance in the eyes of the law.



A nuisance is caused where there is **unreasonable interference with your personal comfort or the enjoyment of your property**. What is meant by 'unreasonable' is always a question of degree and can include factors such as the time the incidents took place, where they take place, how long they last, their intensity, their characteristics, the cause etc.

## Initial Procedure

You are required to provide the person you are complaining about not less than three days notice in writing of the bringing of the proceedings to the Court and outline the nuisance being complained of.

## The Court's Powers

The Court's responsibility is to strike a balance between the right of the defendant to use his property for his own enjoyment and the right of the plaintiff to the undisturbed enjoyment of his premises. It is normally the Magistrate's attitude that everyone must put up with a certain amount of discomfort and annoyance from the legitimate activities of their neighbours, i.e. the Magistrate considers how reasonable the actions of the defendant are.

If the Court is satisfied that the defendant has caused a nuisance, they will make a Court Order requiring the nuisance to stop, or prohibit its reoccurrence. In addition the Court may require works to be undertaken to facilitate the abatement of the nuisance. If the Court Order is not complied with, the Court can impose a fine on the defendant of up to £5,000 and a further penalty of up to one tenth of the fine imposed on each subsequent day the defendant was proved to be in breach of the order.

## Costs of taking the case

The Court has discretion whether to make any award of costs. Generally you will not be awarded costs in the event of a successful action unless you instructed a Solicitor. If your case is dismissed and a defendant is represented by a solicitor, you may be required to pay all or part of a defendant's legal costs, especially if the Court on the day considers your case to have no merit.

## Preparation

Preparation of your case is very important. You may wish to seek help from a solicitor or the Citizens Advice Bureau. When making your case in Court you should have good evidence upon which the Court can rely; typically this will be facts or events experienced by yourself.

The most effective way to prepare your case is to keep a record of relevant incidents, including the time, place, how close you were to the source and the effect. If the Court is satisfied that you made a record at the time of each incident, you may be allowed to refer to it in Court. This could be particularly helpful if you suddenly become flustered by a specific question.

It is not acceptable to relay events which someone else reported to you unless that person also gives evidence in confirmation – this is called hearsay evidence and will not be accepted. It is helpful if more than one person records the nuisance and that the willingness and availability of such persons to attend Court is known (time off work, holidays etc.).



## Procedure

Go to the Magistrates Court building in Victoria Avenue and ask to speak to the Duty Court Clerk. Explain your case to the Clerk and request that you be allowed to make a complaint to the Magistrates. You will need to show the clerk of the Court that you have given three days notice to the persons responsible for the nuisance, and for this purpose it will be necessary to keep a copy of any written notice you have given to show to the clerks. It may be possible to arrange an appointment by telephoning the Court on (01702) 354235. The Clerk then arranges for you to go into Court when it is convenient. Unfortunately, you should be prepared to wait around a lot. 9.15 a.m. is probably the best time to approach the Clerk.

The Clerk may direct you to the witness box to take the oath and then ask you to explain to the Magistrates your complaint. This stage is not a trial, but the Magistrates must be satisfied there is evidence of a genuine "case to answer". Address the Magistrate as "Sir" or "Madam" or "Your Worships". It is probably best to start with a summary of facts, for example, type of complaint, frequency, number of recorded incidents, number of witnesses and the availability of a record. Ask the Magistrates whether they want you to go into any detail.

If they are satisfied they will direct the Clerk to issue a summons to the defendant and fix a date for the first hearing.

## First hearing

On this date the Court will usually only hear 'guilty' pleas - it will not be scheduled for a full hearing (but you should check this with the Court Office) and it should not be necessary for your witnesses to attend.

If the defendant pleads 'guilty' then the Magistrates will hear both sides of the case briefly before making an Order. If the defendant pleads 'not guilty', then the Magistrates will normally fix a date for a full hearing and adjourn the case. If they wish to hear the case and there are witnesses who have not attended, then you may request adjournment for this purpose or decide to go ahead without your witnesses. If the defendant does not appear at all then the Magistrates will probably adjourn to give the defendant a further opportunity to appear.

## Adjourned hearing

If the defendant has pleaded 'not guilty' or failed to attend the first hearing you should attend Court with your witnesses. If the plea is "not guilty" there will be a full hearing. If the defendant was absent at first hearing and is again absent you should ask the Court to proceed in his absence.

**Note**, if the defendant appears, having failed to appear at the first hearing, and pleads 'not guilty', then the Court may fix a further date for a full hearing when all the witnesses should attend.



### Further contacts:

- The Clerk's Office at **Essex Magistrates Court** manage the Court hearing and advise on what can and cannot be done. They can be contacted at:

*Essex Magistrates' Court, Osprey House, Hedgerows Business Park, Colchester Road, Springfield, Chelmsford, Essex, CM2 5PF*

- Southend **Citizens Advice Bureau** offers free legal advice and can be contacted at:

*Citizens Advice Bureau, Church Street, Southend*  
*Telephone 01702 610610.*

- Nuisance control is part of the role of the **Environmental Health Service** at Southend-on-Sea Borough Council and can be contacted at:

*Environmental Protection Team, Regulatory Services Group, Southend-on-Sea Borough Council, PO Box 5558, Civic Centre, Southend, SS2 6ZQ*

*Telephone 01702 215005*  
*Facsimile 01702 215517*

*This note is not a comprehensive guide to the initiation of private legal action under the provisions of Section 82 of the Environmental Protection Act 1990. Rather it is given in good faith for the purposes of general information only. There is no guarantee of successful Court action, and if you are in any doubt as to the procedure to be adopted in making a formal complaint to the Magistrates Court it is recommended that you seek professional legal advice perhaps via the Citizens Advice Bureau or your own solicitor. Southend-on-Sea Borough Council cannot accept any responsibility for events rising from the advice given in this information sheet.*

**If you have difficulty in reading this document, please contact the Environmental Health Service on 01702 215005 and request a large print version of “Taking your own action for nuisance under section 82 of the Environmental Protection Act 1990”.**