

Taking your own action

Some types of nuisance occur only occasionally and if it's not possible for an Environmental Health Officer to witness it he or she may not feel able to take any action on behalf of an individual who have lodged a complaint about it. Should this be the situation in your case then you can take independent action by complaining direct to the Magistrates' Court under section 82 of the Environmental Protection Act 1990. To do this is quite simple and it need not cost much; it is not necessary to employ a solicitor.

Prior to approaching the court it is a good idea to write to the nuisance maker saying that unless the nuisance is abated and by a certain date (say two weeks) you will complain to the Magistrates' Court. Keep a copy of all correspondence between you and the nuisance maker. If the nuisance maker ignores either a verbal or written request by you to abate the noise, then contact the Justices' Clerk's Office at your Local Magistrates Court explaining that you wish to make a complaint under section 82 of the Environmental Protection Act 1990. The Clerk of the Court will be able to advise you further. He or she will tell you for example, that if you intend to complain direct to the Magistrates' Court then you must give at least three days notice to the person considered responsible for the noise that that is what you intend to do. You will need to follow this procedure even if you have written to the nuisance-maker already along the lines outlined above. The notice should provide details of the intended complaint and may be delivered to the person by hand or by normal post. A solicitor could do all this for you (his or her letter to the noise-maker would show you mean business) but solicitors do make a charge for their services.

You would need to prove to the magistrate beyond reasonable doubt that the nuisance you are complaining about amounts to a nuisance. The diary you keep therefore will be important evidence. Also, although the law says that only one person needs to be affected for there to be a nuisance, in practice the evidence of other witnesses will strengthen your claim.

A date will be set for the hearing and the person about whom you are complaining will be summoned to attend Court. You will be required to explain your view of the problem and should provide evidence – your diaries and any independent witnesses – about the disturbance. You will have to give evidence, and cross-examine your own supporting witnesses to draw out their evidence. The neighbour will be able to cross-examine you and your witnesses and may produce their own evidence to contradict yours. Again, a solicitor can help, but there is no reason why you cannot take action on your own. The law relating to business premises is slightly different: they can defend themselves by proving that they are using the “best practicable means” to prevent the noise.

If you prove the case the Court will make an order requiring the nuisance to be abated, and/or prohibit recurrence of the nuisance. The Court also has the power at the time the nuisance order is made to impose a fine on the defendant (currently not exceeding £2,000). If this order is ignored further Court action will need to be taken; you must therefore continue to keep records of noise nuisance in case it proves necessary to return to Court. If you fail to prove your case you may have to pay some of the defendant's expenses in coming to Court.