



COTSWOLD DISTRICT COUNCIL

ENVIRONMENTAL PROTECTION

ACT 1990

SECTION 82 - A GUIDE TO TAKING YOUR OWN ACTION

Section 82 of the Environmental protection Act 1990 allows a Magistrate's Court to act on a complaint made by any person on the grounds that he/she is aggrieved by a statutory nuisance.

Nuisances may include noise (including barking dogs), fumes, dust, smells and smoke.

Contents

Contents.....	2
First Step.....	3
Taking your own legal action.....	3
How to proceed.....	3
Working with the Magistrates Court.....	3
Do You Need a Solicitor?.....	4
Getting help with costs.....	4
Cotswold District Citizens Advice Bureau.....	4
The Outcome.....	5
If the nuisance persists.....	5
Taking civil action.....	5
The cost.....	5
A Nuisance diary.....	5
Example Letter.....	6
Figure 1.....	6
Figure 2.....	7
Figure 3.....	8

First Step

You are strongly advised to tell whoever is responsible that they are causing or allowing a nuisance and that you are prepared to take legal proceedings; this can be done with the example letter shown by Figure 1 on page 9. Create two copies and send one to your neighbour and keep one copy for yourself. This letter on its own may solve the problem, but if the nuisance persists, maintain a log of the disturbances each time the nuisance occurs (you are advised to base these on Environmental Health Services' record sheets amending them as is appropriate for your case (Figure 3). Keep your records safely, as they will be critical evidence later on.

Taking your own legal action

If, for whatever reason, the local authority cannot take action, or if you do not wish to involve them, you can complain about a nuisance problem direct to the magistrate's court under section 82 of the Environmental Protection Act 1990. The magistrate's court will need to be persuaded that the problem amounts to a statutory nuisance.

How to proceed

It is important that you keep a written record of the dates, times and duration of the offending nuisance, as well as a description of its nature and the distress it causes you in the reasonable occupation of your home.

Try and resolve the problem informally before contacting the court, and by writing to the person responsible. If you know where the nuisance is coming from but do not know what or who is causing it, then making contact with the owner or occupier of the premises may work wonders.

If you decide to take action under section 82 of the 1990 Act you must give at least three days notice in writing to the person responsible of your intentions, and provide them with details of your complaint (see Figure 2 on page 10). Deliver your notice by post or hand and make sure your letter is dated and you have kept a copy.

Working with the Magistrates Court

You will probably need to visit the court where the procedure will be explained to you and you may be asked for evidence of the problem (such as a nuisance diary). This will show the magistrates that you have an arguable case. In order to pursue your complaint, you need to contact the magistrate's court; by writing **to the Court to make an appointment**.

Swindon Magistrates Court
Princes Street
Swindon Wiltshire
SN1 2JB

DX: 118725 Swindon
Tel: 01793 699800
Fax: 01793 433740

In your letter state your address and that you wish to start action under **Section 82 of the Environmental Protection Act 1990**. The Court will advise you of where and when to attend. You should also let the court know if you have notified Neighbourhood Services (01285) 623900 of the problem.

The court will decide if a summons can be issued, and may ask you to serve it (by hand or by post) on the person responsible for the nuisance, stating the date and time of the court hearing. If you serve the notice, you should keep a careful record and ensure that the notice is served well before the hearing date. When the time comes for the hearing, you will have to attend court to give evidence. Ensure that your records, and those of any other witnesses, are kept up to date and that these witnesses will support you in Court. In Court you will be required to explain your case, produce your diary and any witnesses. The person responsible for the nuisance will very likely come to the court to defend themselves, and may even make counter-accusations. You do not need to have a solicitor to represent you at the hearing, although you may do so if you wish.

You will need to be prepared for the possibility of having to pay the costs of taking the case to court. These costs will include your costs, those of your solicitor if you have one, and any witnesses you may call in support of your case.

Do You Need a Solicitor?

It is not necessary to employ a solicitor, provided you feel confident to explain the situation to the Magistrates' bench yourself. It would be very useful if you could take to court, at the time of the hearing, a neighbour or a friend who has experienced the problem to act as a witness and may strengthen your case. If you feel unsure of your ability to act yourself you can approach the Citizens Advice Bureau and discuss it with them.

Getting help with costs

Legal representation is not available for this type of case through the '**Legal Aid**' Scheme. However, you may be financially eligible under the '**Legal Help**' Scheme and this may provide free or subsidised legal advice and assistance in preparation of your case.

If you are going to represent your own case, the Clerk of the Court may give you advice and guidance. Alternatively you can contact your local Citizen's Advice Bureau, which may be able to offer assistance.

Cotswold District Citizens Advice Bureau

2-3 The Mews
Cricklade Street
CIRENCESTER
Gloucestershire
GL7 1HY

Telephone: 01285 652908
Fax: 01285 657303

The Outcome

If the court decides in your favour it will make an order requiring the offender to abate the nuisance and specify the measures they will have to take to achieve this. The order may also prohibit or restrict a recurrence of the nuisance. The court may also impose a fine at the same time as making the order. If the court finds that the nuisance existed at the date of making the complaint, they will award you the reasonable costs incurred by you in bringing the action against the nuisance maker. These costs will be awarded whether or not the nuisance still exists or an abatement order is made. If an order is made the court will generally require the nuisance maker to pay your costs. If the case is dismissed, you will normally incur your own costs in bringing the case to court and you may incur the costs of the other party.

If the nuisance persists

Should the nuisance continue, any person contravening the requirements of an abatement order without reasonable excuse can be found guilty of an offence under the Act and can be fined. You should keep your record of nuisance occurrences up to date in case the order is being ignored and it proves necessary to return to court. The procedure for initiating a future case will be the same as for the original proceedings.

Taking civil action

You can take civil action for nuisance at common law by seeking either an injunction to restrain the defendant from continuing the nuisance and/or by issuing a claim for damages or loss.

The cost

Taking out a civil action can be expensive, so it is highly advisable to seek the advice of a solicitor or the Citizen's Advice Bureau before going ahead. Advice from a solicitor may be free to those who are financially eligible under the '**Legal Help Scheme**'. Under this scheme, a solicitor will be able to give you general advice on whether you will be likely to meet the means and merit tests which apply to applications for full public funding (formerly legal aid) in civil cases.

A Nuisance diary

Start with the following statement: - **“This log is true to the best of my knowledge and belief and I make it knowing that if it tendered in evidence I shall be liable to prosecution if I have willfully stated anything in it which I know to be false or do not believe to be true.”** Only record Nuisance – do not include any information on your neighbours or their family life (Human Rights Act 1998 Schedule 1 Article 8 and Regulation of Investigatory Powers Act 2000 Part II) State the address where the nuisance originates. You may want to draw up a table showing the date, duration times – from and to, and a description of nuisance, see example Figure 3.

Example Letter

Figure 1

Your Address

Date

Dear Neighbour, (state the name if you know it) For some time I have been disturbed

by..... The main problem appears to be I shall be grateful if you would cease this disturbance and I inform you that if you do not I am prepared to take action under section 82 of the Environmental Protection Act 1990.

I regret the necessity for this letter, but your actions are causing me considerable distress.

Yours sincerely

Your name.

Figure 2

**SECTION 82
ENVIRONMENTAL PROTECTION ACT 1990
Notice of Intention to take Action**

To (Name of person Causing Nuisance)

of: *(Their Address)*

I *(Your Name)*

of: *(Your Address)*

am affected by nuisance caused or permitted by you at:
(Location/Address of Nuisance)

The nuisance that affects me is: *(Loud Music, Noise from DIY etc.)*

To prevent nuisance to me you are requested to: *(Stop the continuation of Noise/DIY etc.)*

By the day of 20

If this requirement is not met, then I shall take the matter to the Local Magistrates Court to be dealt with under section 82 of the Environmental Protection Act 1990.

If the court finds in my favour they will make an Order to require you to abate the nuisance. In addition, they have the power to fine you up to £5,000. (£20,000 if this is in the course of trade, business or industry).

Signed

Date

Figure 3

Nuisance Diary				
<p>“This log is true to the best of my knowledge and belief and I make it knowing that if it tendered in evidence I shall be liable to prosecution if I have willfully stated anything in it which I know to be false or do not believe to be true.”</p>				
No	Date	Time		Description <i>(Loud Music, Banging etc.)</i>
		Start	End	
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				