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**A GUIDE TO RESOLVING NUISANCE
PROBLEMS INCLUDING ADVICE ON TAKING
YOUR OWN LEGAL ACTION**

ENVIRONMENTAL PROTECTION ACT 1990

PART III

SECTION 82

INTRODUCTION

The Environmental Protection Act 1990, is the legislation used to help stop problems of nuisance. It defines the types of disturbance, which can be classed as a statutory nuisance, which are as follows;

- ◆ Any premises in such a state as to be prejudicial to health or nuisance;
- ◆ Smoke emitted from premises so as to be prejudicial to health or nuisance;
- ◆ Fumes or gases emitted from premises so as to be prejudicial to health or nuisance; (private dwellings only)
- ◆ Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or nuisance;
- ◆ Any accumulation or deposits which is prejudicial to health or nuisance;
- ◆ Any animal kept in such a manner as to be prejudicial to health or nuisance;
- ◆ Noise (or vibration) emitted from a premise or a vehicle, machinery or equipment in a street that is prejudicial to health or a nuisance;

The above becomes a nuisance when it affects your ability to enjoy your own property, which includes the house and garden.

The most commonly occurring nuisance is noise nuisance from neighbouring properties, particularly when properties are adjoined. Noise is generally regarded as unwanted sound which would depend on your own circumstances and situation. What is considered to be enjoyable music to one person can be irritating noise to another.

It should be remembered that semi-detached houses, terrace properties and flats which can be adjoining commercial premises are seldom designed to be totally sound proof. The City has a large number and variety of commercial properties which support a thriving economy and it is served by widely used transport networks by a large number of people on a daily basis. This vibrant cosmopolitan environment has a rising number of residential areas but absolute silence is not always possible in such a city environment. You may, as a result be able to hear activities such as vehicle movements, shouting, commercial noise, construction noise, noise from air conditioning units, noise from radio's, TV's etc. If however, such noise is so frequent and prolonged as to interfere with your enjoyment of the property then something can be done to alleviate the problem.

In all instances the direct polite approach should be tried to resolve the situation, if this fails the following pages give a step-by-step approach in dealing with the problem cumulating in legal proceedings.

Further information about specific issues may be obtained from the Pollution Team.

DEALING WITH THE NUISANCE PROBLEM

STEP ONE

Trace the source of the disturbance and raise the problem in a direct, informal manner with the person(s) responsible for the noise. Locate the Manager, take a note of his/her name and explain how it affects your occupancy and ask if he/she could try to reduce the disturbance.

STEP TWO

If step one fails to have an adequate effect, put **your complaint politely in writing** describing what the problem is, and requesting a reduction in the disturbance. It may also be helpful to send a copy of your letter to the Company's Head Office, so as to encourage a response. You should also mention that you could take legal action under Section 82 of the Environmental Protection Act 1990 to abate a nuisance. Date the letters and keep a copy for future reference together with any letters of correspondence you receive.

STEP THREE

The letter might have an immediate effect of reducing the disturbance to an acceptable level. If it doesn't, start to **keep a daily diary record** of the nuisance in the form-illustrated on page 7. You should keep this record until you have enough evidence to prove that the noise nuisance is happening regularly. Talk to other neighbours who may also be disturbed and encourage them to keep accurate records too. Allow at least two weeks for the nuisance to improve before proceeding to step four.

STEP FOUR

If the disturbance still interferes with your occupancy, you **must decide if you are prepared to relate your complaint to the Magistrate's Court**, to enable the court to consider the issue of an Abatement Order. This process is outlined in 'Taking your own court case' on the following pages.

TAKING YOUR OWN COURT CASE

The Environmental Protection Act 1990, Section 82 states that the Magistrates' Court may act on a complaint made by any person on the grounds that he is aggrieved by the existence of a statutory nuisance (as described on page 2). In order to take this form of legal action you do not need to be represented in court by a solicitor, however, you may consider it appropriate to take independent legal advice from a solicitor, before seeking to commence proceedings. The following stages must be followed to enable court action to proceed.

WRITE ANOTHER LETTER TO YOUR NEIGHBOUR

If you wish to take the matter further on your own account, the Act first of all requires you to write another letter to your neighbour, giving them written notice of your intention to bring proceedings and setting out the matter complained of, including the dates and times of the alleged nuisance. As with Step two, describe the nuisance and the effect it has upon you. Keep a dated copy. You must allow at least **3 clear days** between the date you delivered the letter and the date you attend the magistrates' Court to make your complaint. This letter must include all of the following information:

- Name and address of the person to whom the letter is delivered;
- Your address (from which you are being disturbed);
- Address and company name of the premises (your neighbour) that is causing the disturbance;
- A description of the nuisance;
- A statement that the nuisance should be ceased and prevented from reoccurring;
- A statement that you are intending to initiate proceedings as per section 82(6) of the Environmental Protection Act 1990.

ARRANGE TO ATTEND THE JUSTICES' CLERKS OFFICE

- ◆ It is advisable to make a prior appointment to attend at the Justice' Clerk's office at the Magistrates Court
- ◆ The attached complaint form(s) should be completed as illustrated on the example form as attached. Make sure you keep a copy for your own reference and take the original to the Magistrates Court.
- ◆ Arrangements will be made for you to appear before a Justice of the Peace (JP) to whom you will be able to recite the substance of your complaint. This means you will need to recall the complaint details to the JP.
- ◆ If the JP is satisfied that you have a case, he or she will authorise the issue of a summons. The summons is a notice sent to the persons responsible for the nuisance requiring them to attend court. If the JP authorises the issue of a summons, then the court will arrange a hearing at which the defendant will be summoned to appear.
- ◆ It is your responsibility (not the courts) to provide the written summons and to serve it. A form on page 13 is provided for your use and convenience. It needs to be filled in as shown on page 12. Once filled in, a further two copies are required.

- ◆ Good service of the summons, i.e. delivery of the summons, is accepted as either delivery by hand or by posting the summons by 1st class post (registered delivery is preferable to normal post though not essential).
- ◆ After the summons has been issued, continue to keep records on the diary sheets.
- ◆ If the defendant does not appear at the hearing you will be required to satisfy the court that the summons has been properly served. It is essential, therefore, to keep a written record of how you served the summons including date and time.

THE COURT HEARING AND THE VERDICT

At the hearing, the JP will hear both sides of the case and will decide whether or not a nuisance exists or is likely to recur. The Court will either dismiss the case or make an Order requiring the defendant to:

- ◆ Abate the nuisance within a specified time and to carry out any necessary works for that purpose.

And / or

- ◆ Prevent the recurrence of the nuisance and carry out any necessary works, again within a specified time.

The court may also impose on the defendant, a fine not exceeding level 5 on the standard scale (currently £5000) for domestic nuisance or a maximum £20 000 for nuisance from a commercial / industrial premise.

If the Magistrates Court are unable to prevent the noise, it may be possible for you to obtain an injunction in the County Court or the High Court. The evidence will be similar to that required by the Magistrates Court, but the action may be costly. In this instance, you would be advised to consult independent legal advice.

COSTS ASSOCIATED WITH TAKING COURT ACTION

It is not the intention of this department to put you off taking your own action but to make it clear to you the potential financial implications. If you have a good case there is no reason why the court will not grant an abatement order.

Although the Magistrates Court will not levy a charge for you to take action, you may have to pay for the following;

- ◆ Court costs for wasting the courts time for example not turning up for a hearing etc.
- ◆ If you fail to prove your case,
 - ◆ the reasonable costs incurred by any witnesses attending the hearing.

- ◆ the court may award against you any reasonable costs incurred by the person defending the case.

As you can see, if you do not have a good case, the costs could be considerable. For this reason alone you need to be sure of your case and it is advisable to take advice from a solicitor or Citizens advice bureau before you commence court action.

If you prove your case and an order is made, the Court shall require the defendant to pay such amount, as the Court considers reasonably sufficient to compensate you for the costs and inconvenience of bringing the case, from the time you made your complaint to the conclusion of the proceedings. This recognises that the defendant ignored the letter you sent to them warning them of your intention to prosecute.

The above procedure only relates to action for disturbance that you feel amounts to a statutory nuisance. It in no way affects your right to pursue an action under common law, for example, you may wish to sue for damages if the disturbance has lost you or your business money. If you wish to pursue common law action, you are advised to consult independent legal advice.

IF THE ORDER MADE AGAINST THE DEFENDANT IS CONTRAVENED

If the nuisance continues in contravention of the requirements of the order, you should make careful notes of the time, date etc. of each contravention and you may wish to lay an information alleging that the defendant has committed an offence by not complying with the Court order. You may seek to have the defendant brought back to a further hearing for which further legal proceedings may be taken for the alleged offence.

An additional fine and/or a maximum daily penalty of £500 for each and every day the offence continues may be imposed.

COMPLAINT RECORD FORM

Your details

Name.....

Address.....

.....

Tel No.....

Source of noise details

Name.....

Address.....

.....

Tel No.....

DATE	STARTS	FINISHES	TYPE OF NOISE	HOW IT AFFECTS ME
09/07/99	22:45	23:16	Loud stereo	Can't hear TV properly
10/07/99	02:16	02:58	Loud stereo and singing	Woke me up / kept me awake
12/07/99	15:35	17:44	Loud stereo	Couldn't hold conversation in garden
<p>EXAMPLE PAGE DO NOT USE</p>				

I certify that the above record is a true statement of the noise complained of

Signed.....Dated.....

Diary Sheet Page [1]

COMPLAINT RECORD FORM

Your details

Name.....

Address.....

.....

Tel No.....

Source of noise details

Name.....

Address.....

.....

Tel No.....

DATE	STARTS	FINISHES	TYPE OF NOISE	HOW IT AFFECTS ME

I certify that the above record is a true statement of the noise complained of

Signed.....Dated.....

COMPLAINT RECORD FORM

Your details

Name.....

Address.....

.....

Tel No.....

Source of noise details

Name.....

Address.....

.....

Tel No.....

DATE	STARTS	FINISHES	TYPE OF NOISE	HOW IT AFFECTS ME

I certify that the above record is a true statement of the noise complained of

Signed.....Dated.....

COMPLAINT

Bow Street Magistrates' Court

Date:

Defendant: [NAME OF PERSON CAUSING PROBLEM]

Address: [ADDRESS OF PERSON CAUSING PROBLEM]

Matter of complaint : *Environmental Protection Act 1990:Part III;s82 - that the complainant, being the occupier of the premises known as*

[PUT YOUR ADDRESS HERE]

is aggrieved by [NOISE etc.] amounting to a nuisance by reason of

[DESCRIBE HOW THE PROBLEM AFFECTS THE ABILITY FOR YOU TO ENJOY YOUR OWN PROPERTY e.g.- 'the fact that it is played at such a volume that I cannot hear my own television'. TRY NOT TO BE VAGUE.]

and that the Defendant is (responsible for the nuisance)(and)(the(owner)(occupier) of the premises from which the noise is or would be emitted).

[DELETE THE WORDS ABOVE WHICH DO NOT APPLY]

The complaint of: [YOUR NAME]

Address: [YOUR ADDRESS]

Telephone Number: [YOUR TELEPHONE NUMBER]

who states that the Defendant was responsible for the matter of the complaint of which particulars are given above.

Taken before me [THIS WILL BE SIGNED BY THE J.P.]

(Justice of the Peace)

SUMMONS

Bow Street Magistrates' Court

Date:

To: [NAME OF PERSON CAUSING PROBLEM]

Address: [ADDRESS OF PERSON CAUSING PROBLEM]

YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THE BOW STREET MAGISTRATES' COURT

sitting at

at [TIME] on the [DAY] day of [MONTH] 20 [YEAR], to answer to the
complaint particulars which are set out below.

Matter of complaint : *Environmental Protection Act 1990:Part III;s82 - that the complainant, being
the occupier of the premises known as*

[PUT YOUR ADDRESS HERE]

is aggrieved by [NOISE/ODOUR, ETC] amounting to a nuisance by reason of

[DESCRIBE HOW THE PROBLEM AFFECTS THE ABILITY FOR YOU TO ENJOY YOUR OWN
PROPERTY. IT SHOULD BE THE SAME AS WHAT YOU PUT ON THE COMPLAINT]

and that the Defendant is (responsible for the nuisance)(and)(the(owner)(occupier) of the premises
from which the noise is or would be emitted).

The complaint of: [YOUR NAME]

Address: [YOUR ADDRESS]

who states that the Defendant was responsible for the matter of the complaint of which particulars are
given above.

Taken before me [SIGNED BY THE J.P.]

(Justice of the Peace)

SUMMONS

Bow Street Magistrates' Court

Date:

To:

Address:

**YOU ARE HEREBY SUMMONED TO APPEAR BEFORE THE UXBRIDGE
MAGISTRATES' COURT**

sitting at

at **on the** **day of** **20** , to answer to the complaint particulars
which are set out below.

Matter of complaint : *Environmental Protection Act 1990:Part III;s82 - that the complainant, being the occupier of the premises known as*

is aggrieved by *amounting to a nuisance by reason of*

and that the Defendant is (responsible for the nuisance)(and)(the(owner)(occupier) of the premises from which the noise is or would be emitted).

The complaint of:

Address:

who states that the Defendant was responsible for the matter of the complaint of which particulars are given above.

Taken before me

(Justice of the Peace)