

IL0 - UNCLASSIFIED

ENVIRONMENTAL PROTECTION ACT 1990 - SECTION 82

COMPLAINT DIRECT TO MAGISTRATES COURT

Where, for whatever reason, the local authority has decided not to institute proceedings, or where you do not wish to involve your local authority, you can, if you are aggrieved by the existence of a statutory nuisance, complain direct to the magistrates' court under Section 82 of the Environmental Protection Act 1990. The magistrates will need to be persuaded that the problem about which you are complaining amounts to a statutory nuisance. It is important that you keep a written record of the dates, times and duration of the problem, a description of its nature and the extent of the nuisance it causes you in the reasonable occupation of your premises.

Before complaining to the magistrates, it is best to see if you can resolve the problem informally by writing to the person responsible for the interference. If you are unable to identify who is actually causing the problem, write to the owner or occupier of the premises concerned (you may or may not have already spoken to them). Say that you consider they are making noise/smoke etc amounting to a nuisance and that unless they stop, or satisfactorily reduce the problem, you feel that you will have little choice but to take your complaint to the magistrates' court

If you subsequently decide to take action under Section 82 of the Environmental Protection Act 1990, you must give the person causing the problem notice in writing, of your intention to do this. The notice must be at least 3 days for noise and 21 for other nuisances and should provide details of the complaint. The Act provides that it is sufficient for it to be delivered to the person responsible by hand or normal post. Make sure that the letter is dated and keep a copy. It is likely to strengthen your case if you can show that you have acted in a reasonable manner and have given the person responsible for the problem the chance to rectify the situation before resorting to legal measures.

If there is still no improvement, the next step is to contact the Clerk of the Court. Tell them you wish to make a complaint under Section 82 of the Environmental Protection Act 1990. They will probably make an appointment for you to go and see them when they will explain the procedure and will ask you to produce evidence as described above to show the magistrates that you have an arguable case.

You should also let them know if the environmental health department of your local authority has been consulted. A summons will be issued and served on the person responsible for the nuisance, stating the date and time arranged for the court hearing. They will probably come to 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. Legal Aid is not normally available towards the cost of proceedings in the magistrates' court although legal advice prior to proceedings may be available under the "Green Form Scheme" depending on your financial circumstances.

If you present your own case, the Clerk of the Court will give you advice and guidance, or you can contact your local Citizens Advice Bureau, which may be able to offer assistance.

If the magistrates decide in your favour the court will make an order requiring the defendant to abate the nuisance, and specifying whatever measures it considers necessary to achieve this. The court can impose a fine on the person responsible. The order may also prohibit or restrict a recurrence of the nuisance, and again may specify how this is to be done.

A person who without reasonable excuse contravenes any requirements of such an order is guilty of an offence under the Act and can be fined. You should, therefore, continue to keep your record of nuisance occurrences up to date in case the order is being ignored and it proves necessary to return to court.

If the magistrates find that the nuisance existed at the date of making the complaint, then they will award you reasonable costs against the person responsible whether or not the nuisance still exists or whether an abatement order is made. In other circumstances, magistrates have discretion as to how to award costs under Section 64 of the Magistrates' Court Act 1980 and either you or the nuisance maker could pay all or part of both sides' costs according to circumstances. However, there is no reason why costs should be high and you should not need to employ a solicitor.