



Statutory Nuisance – Taking your own action

There are often very good reasons why a complainant might choose to take their own action against a neighbour who is alleged to be causing an unreasonable disturbance. Usually with the help of the Council an investigation has been carried out. Perhaps the problem has been witnessed, but the investigating officer has decided that it was not appropriate for the Council to take formal action for a statutory nuisance. What may annoy and be irritating to the complainant might not be a nuisance in the legal sense. The Officer has to consider what would be the reaction of an average, reasonable person to the problem being complained about, taking into account the duration, frequency, time of day the issue arises etc. You must also apply these criteria to the issue concerning you, and ask yourself if your neighbour is really behaving unreasonably in the circumstances.

However, it is also possible that whilst a local authority officer has carried out a full investigation, it has not been possible to witness the problem. You know about the problem because you have experienced it but because its occurrence is unpredictable, or of short duration the Council has not been able to witness it. Alternatively, you might not want the Council to become involved with your neighbour problem, and you would prefer to deal with the situation yourself.

In all these circumstances it is possible for you to take your own action. This leaflet has been designed to help you pursue your complaint yourself.

TAKING YOUR OWN NUISANCE ACTION

◆ **STEP 1** – It is advisable to **discuss the problem with the person causing you the nuisance**. Your neighbour may not know they are causing a problem, and in the interests of courtesy, and maintaining good relations try a polite approach in the first instance. Pick a time when you and your neighbour are unlikely to be too stressed, and calmly explain the problem and how it is affecting you, ask if they could moderate their behaviour so the issue becomes a tolerable one. Be prepared to compromise if this would be a fair approach. If you cannot talk to your neighbour try writing a polite note explaining the problem and the effect it is having on you. **Keep a copy of your letter**. By taking a friendly approach to begin with, you will also be seen to be the reasonable party. **Make a record of the reaction of the neighbour, and what was said, or agreed to**. It is possible that there will only be a short term improvement, and that the problem might return to an unsatisfactory level. A written record will remind you and your neighbour of anything previously agreed, and this also might be useful evidence if further action is needed later.

◆ **STEP 2** – If you have not already done so, **it is essential that you keep a diary of events**. This can be onerous but the evidence gained is very important, and will serve to refresh your memory later. **Your diary must include dates and times when the nuisance occurs, a description of the problem, how long it lasted and the effect it had on you in your home**. Keep a record of any witnesses. Make your notes as the issue arises or very soon afterwards and keep a record during this process. You may need to continue your diary until you are confident the problem is finally resolved.

◆ **STEP 3** – If the informal approach has failed you can complain directly to the Magistrates' Court under Section 82 of the Environmental Protection Act 1990 by using the following procedure: -

- Write a more formal letter to your neighbour advising that unless they stop or satisfactorily reduce the the problem you are experiencing within a reasonable period that you feel you have little choice but to take your complaint further to the Magistrates' Court. Keep a copy of the letter in a safe place.
- If there is no improvement, **you must write again giving at least three days notice of your intention to take action under Section 82. The notice should include details of your complaint and can be delivered by hand or by normal post. Ensure the letter is properly dated, and that you have kept a copy. Make a careful record of when the letter was posted.** These formal letters are likely to strengthen your case if you can show that **you have acted in a reasonable manner and that you have given the person responsible for causing the problem a reasonable chance to rectify the situation before resorting to legal measures.**
- If there is no improvement, the next step is to contact the Magistrates Court. In Chesterfield this is
 - The Clerk to the Justices
 - North East Derbyshire & Dales Magistrates Court
 - The Court House, Tapton Lane,
 - Chesterfield, Derbyshire, S41 7TW

Tell them you wish to make a complaint under Section 82 of the Environmental Protection Act 1990 against a neighbour who is creating a problem (and state what the problem is; e.g. noise, bonfire smoke, lighting etc.) which amounts to a nuisance.
- **You will be given an appointment to attend Court** and you will be asked to provide evidence to show that you have a case. Take along copies of letters and your records. You will be asked why you are pursuing your own action. If you have relevant letters from the Council, take them along with you. You will be advised on the court procedures and any costs you may be liable to pay. Remember that the person responsible for causing a problem will probably come to Court to defend themselves, and may make counter-accusations, so be careful not to give cause for complaint. You do not need to have a Solicitor to represent you. **The Clerk to the Court will give you suitable advice and guidance, as will the Court's duty solicitor.**
- Following the hearing, **the Magistrate may decide in your favour and the Court will make an Order requiring the defendant to abate the nuisance**, specifying whatever measures it considers necessary to achieve this. The Court can also impose a fine on the nuisance maker. If the Magistrate finds that the nuisance existed at the time of making the complaint, then you may be awarded reasonable costs incurred by you in bringing the proceedings. If an Order is made, the person causing the problem may be required to pay your costs. However, if the Magistrates dismiss the case, then usually you will incur no more than your own costs in bringing the proceedings. These costs will, of course, be higher if you or your neighbour chooses to employ a solicitor.
- **Continue to keep your diary of incidents up to date in case the Magistrates' Order is being ignored, and it proves to be necessary to return to Court.** If the neighbour contravenes any requirements of the Order without reasonable excuse, he is guilty of an offence and can be fined. Seek the advice of the Clerk to the Justices on how next to proceed. **If the nuisance relates to a trade or business premises**, then they may have a defence if they can show that they have used 'best practicable means' to abate the nuisance, and in the first instance you are strongly advised to consult with Environmental Services for specialist advice before proceeding further. This is not a defence in the case of residential premises. If you require further assistance, you might wish to consult a solicitor or seek advice from the Citizens' Advice Bureau on 01246 209164 or 0300 456 8437.

Should you have any queries or wish to make a complaint you can contact us

- In person at Chesterfield Borough Council, Revenues Hall, New Square, Chesterfield, Derbyshire, S40 1AH
- By letter to Chesterfield Borough Council, Environmental Protection Team, Town Hall, Rose Hill, Chesterfield, Derbyshire, S40 1LP
- By telephone to main switchboard on 01246 345345
- Via email/through website www.chesterfield.gov.uk