

TAKING LEGAL ACTION TO STOP NOISY NEIGHBOURS

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INDEX OF DOCUMENTS

1. EXPLANATORY MEMORANDUM
2. FIRST NOTICE TO COUNCIL
3. SECOND NOTICE TO COUNCIL
4. FIRST NOTICE TO NEIGHBOUR
5. SECOND NOTICE TO NEIGHBOUR
6. INITIAL DETAILS OF THE PROSECUTION CASE (IDPC)
7. SUMMONS
8. NOISE MONITORING DIARY
9. TEMPLATE WITNESS STATEMENT

This is a preview only. To purchase the full documents, please visit: <https://fsreg.com/taking-legal-action-to-stop-noisy-neighbours-from-causing-noise>.

1. EXPLANATORY MEMORANDUM

Question 1: What is Statutory Noise Nuisance?

Statutory noise nuisance is defined in Section 79(1)(g) of the Environmental Protection Act 1990 (“EPA”) as noise emitted from premises so as to be “prejudicial to health” or a “nuisance”.

“Nuisance” is not defined in the EPA and we understand that the courts generally interpret it as being any activity which causes a substantial and unreasonable interference with a neighbour’s use or enjoyment of their property. The harm suffered must interfere with the “personal comfort” or be “offensive to the senses” of those occupying or visiting the affected property.

Typical examples of statutory nuisance include unreasonable noise coming from a neighbour’s property (i.e. “**Statutory Noise Nuisance**”) and other types of nuisance such as smell, smoke and the keeping of animals. This pack only deals with Statutory Noise Nuisance.

In this pack you will find:

1. This Explanatory Memorandum.
2. Draft First Notice to Council.
3. Draft Second Notice to Council.
4. Draft First Notice to Neighbour.
5. Draft Second Notice to Neighbour.
6. Draft Initial Details of the Prosecution Case (IDPC).
7. Summons Template.
8. Template Noise Monitoring Diary.
9. Template Witness Statement.

Question 2: How does the Statutory Noise Nuisance action work?

The process is based on summary proceedings at your local Magistrates’ Court brought under Section 82 of the EPA. In these proceedings, you do not need to be represented by a lawyer (even though we recommend that you are) and are not generally required to pay the defendant’s cost if your claim is unsuccessful.

The proceedings are started by submitting to the court a document called a “Summons” (see Document 7). There typically follows a hearing at which your case is discussed and, if you are successful, an order is issued against your neighbour requiring them to stop causing the noise.

Your neighbour may also be ordered by the court to compensate you for the reasonable expenses incurred by you in the proceedings and pay a fine of up to £5,000.

Before the proceedings are started you need to take certain actions which are further described in this Explanatory Memorandum including:

1. Notifying your local council of the noise issue and giving them the opportunity remedy it.
2. Notifying your neighbour of the noise issue and giving them the opportunity to stop it.
3. Prepare the evidence to support your case including a noise monitoring diary and one or more witness statements.
4. Prepare a document known as “Initial Details of the Prosecution Case” (“IDPC”) to be attached to your Summons.

The documents contained in this pack will help you to take all of the above steps.

We understand that a Statutory Noise Nuisance action can be brought by both a tenant and a homeowner.

Question 3: What steps should I take before commencing my action?

Under Section 82 of the EPA, the only formal requirement before commencing a Statutory Noise Nuisance action is to send to your neighbour a notice of your intention to bring such action and give them at least three days to stop the noise.

However, in practice we understand that the Magistrates' Court expects you to make several attempts to resolve the issue before formal proceedings are commenced. Equally, before the Summons are submitted to the court, it is necessary for you to gather sufficient evidence to support your case.

There is no prescribed process to follow in order to achieve the above result. Having said that, please see below a possible course of events:

1. Ensure that you have correctly identified the source of the noise including the responsible neighbour and the nature of the noise (e.g. loud music playing). You must also find out what the full name of your neighbour is. The answer to Question 7 explains how to do this.
2. Start writing details of the noise occurrences in the noise monitoring diary (see Document 8). You should record the time, duration, decibels (see the answer to Question 8 for an explanation of how to do this) of the noise and the effect the noise has on your wellbeing. We recommend that you record as many instances of the noise as possible because the frequency with which the noise occurs is one of the factors that are relevant to determine whether a noise constitutes statutory nuisance (see Question 4 for further information).
3. You may also want to create a YouTube account and upload one or more recordings of the noise as an "unlisted video" (see Question 9 for further information).
4. You should also ask a few people to witness the noise and send you an email or a letter containing their witness statement (please see Document 9 for a template of this statement).
5. After you have collected the above evidence, you can contact your local council to make them aware of the existence of the noise and ask them to take action (see Document 2 for draft language of this notice). If the initial response you receive from the council is unsatisfactory, we suggest that you pursue any complaints' escalation processes they have in place before you move to the next stage, which is sending to the council a final notice (see Document 3 for draft language of this notice).
6. If, having completed the above steps, the issue is still unresolved, you can send to your neighbour a letter bringing the noise issue to their attention and politely asking them to resolve it (see Document 4 for draft language).
7. If, despite the above letter, the issue continues, you can send them the advance notice required under Section 82(6) of the EPA (see Document 5 for draft language) giving them at least 3 days to resolve the issue.
8. While you take all the above steps, you should continue to document the noise occurrences in your diary and gather as much additional evidence as you can. These may include commissioning a noise impact assessment report from a firm of acoustic consultants (see Question 6 for additional information).
9. If the noise continues after the expiry of the three days or more given to your neighbour in the advance notice, you may submit your Summons, IDPC and supporting evidence to your local Magistrates' Court (see Question 15 for information on how to find your local court). This will formally commence the proceedings.
10. Your Summons will then be considered by the court which will either reject your claim based on an initial assessment or set a hearing at which your case will be discussed in the presence of the defendant and witnesses (if any).
11. If your claim is successful, the court will issue an order requiring the defendant to stop noise nuisance from occurring again.

Even though there is no need to consult a lawyer in relation to the above matters, or to be represented by a lawyer in the proceedings that follow the submission of your Summons, we recommend that you always take individual legal advice before bringing any action.

Please also ensure that you keep copies of all correspondence sent or received regarding your noise issue as we understand that you will be required to produce them as evidence to the court.

2. FIRST NOTICE TO COUNCIL

Notes:

- Each council will have its own procedures for submitting noise complaints against neighbours. These complaints are sometimes referred to as anti-social behaviour (ASB) complaints and are often submitted by completing an online form on the court's website. Please contact your council for further information.
- The language contained in this Document 2 will help you to bring your noise issue to the attention of the council for the first time. You should of course tailor this notice to your individual case and we suggest that, before you send this notice to the council, you collect some initial evidence to support your case such as a noise monitoring diary and some witness statements.

[Write your full name]

[Write your address]

[Write your telephone number & email address]

[Write the name of your council]

[Write their address]

[Write the date on which you send this notice to the council]

Dear Sir/Madam,

Noise Situation

I am sending you this letter to file a complaint against the resident[s] of [write your neighbour's address] for noise being caused which is likely to be statutory noise nuisance under Section 79(1)(g) of the Environmental Protection Act 1990. The noise consists in [briefly describe the noise, for example, loud music, radio, TV, or constant shouting] and it occurs [describe frequency]. This matter has been going on for quite a while and our daily activities have been drastically affected by it.

Please can you deal with this situation as soon as possible and require the resident[s] of [state your neighbour's address] to stop causing this noise.

[For your information, I have attached to this letter the following document:

1. A noise monitoring diary recording some of the instances when the noise occurred during the period from [write the period's start date] to [write the period's end date];
2. Witness Statement[s] by [write the full name of the witness] dated [write the date when the witness's email was sent].
3. List any other evidence you have gathered.]

Please can you acknowledge receipt of this letter and confirm what steps you will take to resolve this situation. Please feel free to contact me if you have any questions.

Yours faithfully,

[Write your full name]

[Sign here]

4. FIRST NOTICE TO NEIGHBOUR

[Write your full name]

[Write your address]

[Write your telephone number & email address]

[Write your neighbour's full name]

[Write their address]

By hand [we suggest that you deliver this letter in the presence of a witness or record the delivery of this letter with a camera or smartphone]

[Write the date on which you send this notice to the neighbour]

Dear [write their first name]

Noise Situation

I hope you are well.

I am writing this letter to let you know that, for some time, I have been disturbed by noise coming from your property.

The noise consists in [provide details of the noise, e.g., loud music, radio or television being played in your property]. It typically occurs [provide details of the days and times at which it occurs e.g. most evenings during the week and weekends, from 10pm until 2am].

The noise affects [me/us/my family] in a number of ways, including because [provide details, for example, it prevents me from focusing on my work during daytime].

Accordingly, I would be grateful if you could [detail what action you would like them to take, for example, keep the volume lower when you play music and/or not play music between 10pm and 8am].

I look forward to hearing from you and please do not hesitate to contact me if you wish to discuss this matter.

Kind regards,

[Write your full name]

[Sign here]

6. INITIAL DETAILS OF THE PROSECUTION CASE (“IDPC”) RELATING TO A CLAIM FOR STATUTORY NOISE NUISANCE UNDER SECTION 82 OF THE ENVIRONMENTAL PROTECTION ACT 1990

Brought by:

[Write your full name] of [write your address] (“**Applicant**”)

Against:

[Write neighbour’s name] of [write neighbour’s address] (“**Defendant**”)

The Applicant contends that the noise emitted from the Defendant’s premises constitutes statutory noise nuisance under Section 79(1)(g) of the Environmental Protection Act 1990 (“**EPA**”).

The Applicant applies to the Magistrates’ Court under Section 82 of the EPA for the issuance of an order requiring the Defendant to stop causing the statutory noise nuisance.

The Applicant claims as follows:

1. The Applicant lives in [write your address] (“**Applicant’s Property**”). The Applicant’s Property is [describe your property in one sentence, for example, a flat on a third floor of a block of flats].
2. The Defendant lives in [write your neighbour’s address] (“**Defendant’s Property**”). The Defendant’s Property is a [describe defendant’s property in one sentence, for example, a flat above the Applicant’s Property].
3. The noise (“**Noise**”) consists in [describe the nature of the noise, for example, unreasonably loud music, radio or television].
4. It first occurred [state when it first occurred] and has since been occurring regularly. Instances from [state the start date of the period covered by your noise monitoring diary] to [state the end date of the period covered by your noise monitoring diary] are recorded in the attached noise monitoring diary (please see attachment [...] - Noise Monitoring Diary). This issue is ongoing and originates from the Defendant’s Property.
5. [When the Noise occurs, the decibel levels in the Applicant’s Property typically increase from [number] decibels to [number] decibels – please see the attached noise monitoring diary for details.]
6. [The Noise has been witnessed by several visitors to the Applicant’s Property (please see attachment[s] [...] - Witness Statement[s]).]
7. [The Applicant has commissioned a Noise Impact Assessment Report from [state the name of the acoustic consultants], a member of the Institute of Acoustics, which concluded that the Noise [is excessive and constitutes a nuisance – please amend as appropriate to reflect the findings of the report].]
8. When it happens, the Noise has the following effects on the Applicant:
 - 8.1. [Write the first effect the noise has on you, for example, lack of sleep, loss of concentration, physical weakening, underperformance at work, poor memory, impact on mental health, poor mood, angry state of mind and other potential consequences];
 - 8.2. [Write the second effect the noise has on you]; and
 - 8.3. [Write the third effect the noise has on you and keep listing for as many reasonable consequences the noise may have on you].
9. The existence of the Noise and the problems caused by it were first reported by the Applicant to the [state the name of your council] (the “**Council**”) on [state the date when you sent the first notice to the council] (please see attachment [...] - First Notice to Council). The Council [did not

7. SUMMONS

APPLICATION FOR SUMMONS OR WARRANT FOR ARREST FOR ALLEGED OFFENCE

(Criminal Procedure Rules, rule 7.2(6); section 1, Magistrates' Courts Act 1980)

This is an application by [write your name] (name of applicant)
for the court to issue a summons against the proposed defendant.

Applicant's address: [write your address]

Email address: [write your email address]

Phone: [write your phone number]

Mobile: [write your mobile phone number]

Alleged offence(s):

Statutory Noise Nuisance under Section 79(1)(g) of the Environmental Protection Act 1990

Date(s) of alleged offence(s):

Please see the attached monitoring diary (among others). [This noise nuisance is continuing as at the date of this application.]

Proposed defendant

Name: [write the name of the neighbour who is causing the noise nuisance]

Address: [write neighbour's address]

Email address (if known): [write neighbour's email address if you know it]

Phone (if known): [write neighbour's phone number if you know it]

Mobile: [write neighbour's mobile number if you know it]

1. Complete the box above and give the details required in the boxes below.¹

2. Sign and date the completed form.

3. Send or deliver a copy of the completed form to the magistrates' court office.

Do not send this form to the proposed defendant unless the court tells you to do so.

The court may determine your application with or without a hearing and without receiving representations from the proposed defendant. The court will not usually arrange a hearing so it is important that the information you put in this form is complete and accurate.

(1) Consent to prosecute

Do you need consent to prosecute?

☐ Yes ☒ No

If yes, you must include with your application written evidence of that consent.

Some offences may not be prosecuted without the consent of the Attorney General, the Director of Public Prosecutions, or another authority. The legislation that creates the offence will say whether such consent is required.

¹ Forms for use with the Rules are at: www.justice.gov.uk/courts/procedure-rules/criminal/formspage.