



Advice on Taking Private Action for Nuisance

We all seem to be affected by a nuisance at one time or another and Lancaster City Council alone receives many hundreds of requests for investigations every year. In some circumstances the City Council may be unable to act on behalf of a person who has a nuisance problem. This may be due to the type of problem, the circumstances of the case or lack of evidence. If the City Council cannot take action, or if you prefer to do so yourself, a variety of alternatives may be available.

The purpose of this leaflet is to provide general advice on the options you have. Pursuing a solution yourself – whether by informal or legal action – is relatively straightforward and you should not be daunted. You should, however, satisfy yourself on these three points before proceeding:

- you know for certain who is responsible for the nuisance bothering you
- you have discussed your problem with them and been unable to reach an agreement
- your problem is serious enough to warrant the course of action you plan to take

You should find this leaflet helpful for deciding what action you can take. We would advise you to read this general advice thoroughly and take more professional advice before proceeding.

What is a Nuisance?

Nuisances may be continuous or intermittent, occur during the day or at night. They may relate to noise, vibration, smell, smoke, unhygienic practices, etc. In any case, whether you are suffering a nuisance depends on two considerations:

- the effect of the nuisance on you - is it materially affecting the comfort or quality of your life? Is it having a substantial effect on you?
- the reasonableness of your expectations – people live in different ways and society has to recognise our individuality, but that does not mean we should put up with unreasonable interference.

Some people need to carry out their activities at times we consider to be 'sensitive', for example carrying out D.I.Y. activities in the evenings or at the weekend. Whether an activity is reasonable will depend on what it is, where, when and how often it happens, whether the least disturbing methods are followed, and sometimes whether you were given sufficient notice to prepare for its effects on you.

IMPORTANT NOTE

This leaflet is intended to provide practical information to help you find a solution to your nuisance problem. It is **not** intended to serve as independent legal advice or an alternative to taking advice. Legislation, guidance and practical methods are inevitably subject to change. Readers should read this leaflet in conjunction with prevailing legislation and guidance as amended. Where legislation is summarised this is for guidance and convenience and must not be relied upon as an accurate or comprehensive interpretation. The Council accepts no liability whatsoever for any loss or damages howsoever they may arise from use of this leaflet.

FIRST STEPS

Make sure of where the noise is coming from. It is not always obvious, especially if you live in flats or in converted dwellings and another occupier is causing the nuisance. You also need to find out who is responsible – is it an owner-occupier or a tenant? For rented property the landlord may (depending on their tenancy contract) be responsible for any poor sound-proofing, lack of repair or structural problems, etc. For leasehold property there may be a management committee or trust which holds some similar responsibilities.

If you are concerned about the noise coming from a neighbour's home, a local business or manufacturer, or noise from stationary vehicles and equipment in the street, often the best way to deal with the problem is to go to talk to the person or company responsible for the noise and point out the problem. You may find they are unaware that they are disturbing you, sometimes we are all guilty of making noise that annoys. The problem is not always one of inconsiderate behaviour, even homes that have reasonably good sound insulation may not cope with noise from powerful modern equipment.

Make the effort to discuss your nuisance problem with the person responsible at an early stage and before it escalates. You need to be polite and diplomatic but firm. If the conversation does not prove successful, do not allow an angry exchange to develop – remember it takes two people to have an argument.

Record when the nuisance happens and how long it lasts. You should keep a notebook or diary and record details of each occasion the noise occurs. A specimen 'diary sheet' for this purpose is enclosed in this pack. A description of the noise for each occasion is useful, especially if the noise is different each time. Make a note of the effect the noise has on you in material terms, e.g. unable to sleep or children woken. This record will form the basis for your case if you decide to pursue it by taking legal action.

Also keep a record of each occasion when you have approached the person responsible for the noise and asked them to reduce or stop it. The Court is unlikely to be sympathetic to your case unless you have attempted to deal with the matter neighbour-to-neighbour in a friendly manner before presenting it to the Court.

Is there a Code of Practice you can refer to? Codes of Practice give advice for minimising potential causes of disturbance, nuisance, etc. Courts must have regard to relevant codes approved by the Secretary of State when considering the defence of best practicable means. There are codes approved by the Secretary of State dealing with:

- noise from audible alarms
- ice cream van chimes
- model aircraft
- construction sites.

There are also a number of other codes from other sources offering advice on subjects including:

- use of audible bird scarers
- noise from pop concerts
- off-road motorcycling
- agricultural activities

Examining your options

It is advisable to contact the Citizens Advice Bureau (tel. no. 08701 264035, website: www.adviceguide.org.uk) initially as there are a number of different ways that you may be able to take private action dependent on the nature of your case.

Your options may include:

- Taking action for statutory nuisance in the Magistrates Court
- Taking civil action for an injunction or award of costs
- Using a Mediation Service

If the Citizens Advice Bureau advise you to consider taking your own action under Section 82 of the Environmental Protection Act 1990, this general guide should provide some assistance and information.

INFORMAL WAYS OF RESOLVING YOUR PROBLEM

Legal action should be a last resort. It is unpleasant and will inevitably further sour the relationship between you and your neighbour. It is very important that you do your best to resolve the problem in a positive but non-aggressive way. Mediation services can be a great help in achieving this, although they do require that both you and the person responsible for your problem are willing to talk to an independent mediator. The nearest mediation service to Lancaster district is:

Preston Mediation Service
Town Hall Annexe
Birley Street
Preston PR1 2RL

Tel: 01772 558958

Email: panda@preston.gov.uk

If you are an owner-occupier or private tenant there would be a fee for this service. If you are a Council tenant you should ask Council Housing Service to refer your case to mediation.

TAKING CIVIL ACTION

Taking action for Statutory Nuisance (see previous section) is not the only course of legal action. Alternatively you can take civil action for noise nuisance at common law by seeking either an injunction to restrain the defendant from continuing the nuisance or by issuing a claim for damages or loss, or both.

A common law nuisance is typically one which, quite apart from statutory provisions, interferes with your use, enjoyment and rights concerning your property and violates the principles of Common Law laid down for your protection (i.e. a Private Nuisance).

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 "Green Form Scheme". A solicitor will also be able to provide advice on whether you will be likely to meet the means and merits tests which apply to applications for full civil legal aid.

FEEDBACK

Environmental Health Services has prepared this advice to assist you. We would be pleased to hear how you get on in resolving your problem, and what you feel we could do to improve our advice in future.

Feel free to contact us if we can help to clarify anything in this leaflet:

Lancaster City Council
Environmental Protection Team
Town Hall
Marine Road East
Morecambe
LA4 5AF

Tel: 01524 582935

Email: environmentalprotection@lancaster.gov.uk

COMPLAINING TO A MAGISTRATES' COURT ABOUT A STATUTORY NUISANCE

Put simply, a statutory nuisance is a nuisance (see 'Nuisances' earlier in this leaflet) of a class defined by Section 79 of the Environmental Protection Act 1990. Some circumstances are explicitly excluded from being statutory nuisances or benefit from legal defences. Whether a nuisance is a statutory nuisance can only be decided by the appropriate local authority (.e.g. Lancaster City Council) or a Court. If the local authority is unable to take action for you, or if you do not wish to involve it, you can complain about a noise problem direct to the Magistrates' Court under Section 82 of the Environmental Protection Act 1990. The wording of Section 82 is reproduced at the back of this leaflet.

The Magistrates' Court will need to be persuaded that your nuisance problem amounts to a statutory nuisance. The Court can grant an Abatement Order with legal effect and/or fine the person found guilty of causing a statutory nuisance.

How Do I Proceed?

Assuming that you believe that you are being unreasonably affected by disturbance amounting to a statutory nuisance, the following general advice for complaining to a Magistrates Court should be helpful. Before proceeding you should also take advice from the Citizens Advice Bureau and a solicitor if you choose to consult one. During the process you will also be seeking the advice of the Clerk to the Magistrates' Court. The Legal Adviser at the Court can only give procedural advice and not legal advice on other matters relating to your application.

Preparing your case

Make sure you have all your records in order.

Speak to your neighbours and find out whether they too are disturbed by the noise and whether they are prepared to appear in Court as witnesses on your behalf. Any independent witnesses will be of great benefit to your case.

Give fair warning of your action

Assuming that you have followed the 'First Steps' advice in this leaflet, and your informal approach to the person you believe is causing a statutory nuisance is not successful, there are certain things you must do before taking legal action.

It is essential that the full name and address of the person causing the nuisance is known. The Electoral Register held at Libraries and Lancaster and Morecambe town halls may be of use to you, or in extreme circumstances you may wish to carry out a Land Registry search.

If you decide to take action under Section 82 of the Environmental Protection Act 1990 you must legally give notice of your intentions in writing to the person causing the nuisance – at least three days for noise nuisance and at least 21 days for any other form of nuisance – and provide them with details of your complaint. Deliver your Notice by post or hand and make sure your letter is dated and you have kept a copy. A specimen letter is provided in this pack.

Working with the Court

When you contact the Court, tell them you wish to make a complaint under Section 82 of the Environmental Protection Act 1990. 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. This will show the Magistrates that you have an arguable case. There is a fee of £23.50 for making a complaint under the Environmental Protection Act 1990 to the Magistrates Court. Residents in Lancaster City Council's area will usually be contacting Lancaster Magistrates Court:

Lancaster Magistrates Court, George Street, Lancaster LA1 1XZ.
Tel: 01524 597000

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 noise, stating the date and time for the Court hearing. If you serve the Summons, 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. You should consider at this stage whether you wish to have a solicitor to represent you at the actual hearing. Alternatively you may conduct the case yourself if you wish. The person responsible for the noise will probably come to Court to defend themselves, and may even make counter-accusations.

If the defendant appears before the Court and pleads guilty, you will only need to present the general circumstances of the case.

If the defendant pleads "not guilty" you will have to prove the case by giving evidence on oath and calling any of your witnesses. The defendant can question you and your witnesses and call any witnesses s/he may have. Should the defendant give evidence or call any witnesses, you in turn will have the right to question them. You can only question them on the nuisance, however.

The outcome, win or lose

If the Court decides in your favour it will grant an Abatement Order requiring the offender to abate the nuisance and specify the measures they will have to take to achieve this. The Abatement Order may also prohibit or restrict a recurrence of the nuisance. The Court may also impose a fine of up to £5,000. You may be awarded reasonable costs incurred by you in bringing the action against the nuisance maker.

If you are unsuccessful the Court will dismiss your case and may ask you to pay the defendant's costs in defending the action you have brought. You would also be liable to pay your own costs, those of your solicitor if you have one, and those of any witnesses you have called in support of your case. This aspect of your action should be considered very seriously and you may wish to consult a solicitor specifically about this.

Getting help with the costs

Legal representation is not available for this type of case through the Legal Aid Scheme. However, you may be financially eligible under the "Green Form Scheme" and this will provide free legal advice and assistance in the preparation of your case.

If your household insurance includes legal assistance you can ask your insurer if they will take the case on your behalf.

If you are going to present 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.

What if the nuisance persists after the Court issues an Abatement Order?

Any person contravening without reasonable excuse the requirements of an Abatement Order served on them is guilty of an offence under the Environmental Protection Act 1990. The Court may fine them up to £5,000 and impose another penalty of up to £500 for each day the statutory nuisance contravenes the Abatement Notice. Further Court action will be necessary to deal with this.

You should continue to keep your record of nuisance up-to-date in case the Abatement Order is being ignored and it proves necessary to return to Court. The procedure for initiating a further case will be the same as for the original proceedings.

Wording of Section 82 of the Environmental Protection Act 1990

82.—(1) A magistrates' court may act under this section on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.

(2) If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated it is likely to recur on the same premises, the court shall make an order for either or both of the following purposes—

- (a) requiring the defendant to abate the nuisance, within a time specified in the order, and to execute any works necessary for that purpose;
- (b) prohibiting a recurrence of the nuisance, and requiring the defendant, within a time specified in the order, to execute any works necessary to prevent the recurrence;

and may also impose on the defendant a fine not exceeding level 5 on the standard scale.

(3) If the magistrates' court is satisfied that the alleged nuisance exists and is such as, in the opinion of the court, to render premises unfit for human habitation, an order under subsection (2) above may prohibit the use of the premises for human habitation until the premises are, to the satisfaction of the court, rendered fit for that purpose.

(4) Proceedings for an order under subsection (2) above shall be brought—

- (a) except in a case falling within paragraph (b) or (c) below, against the person responsible for the nuisance;
- (b) where the nuisance arises from any defect of a structural character, against the owner of the premises;
- (c) where the person responsible for the nuisance cannot be found, against the owner or occupier of the premises.

(5) Where more than one person is responsible for a statutory nuisance, subsections (1) to (4) above shall apply to each of those persons whether or not what any one of them is responsible for would by itself amount to a nuisance.

(6) Before instituting proceedings for an order under subsection (2) above against any person, the person aggrieved by the nuisance shall give to that person such notice in writing of his intention to bring the proceedings as is applicable to proceedings in respect of a nuisance of that description and the notice shall specify the matter complained of.

(7) The notice of the bringing of proceedings in respect of a statutory nuisance required by subsection (6) above which is applicable is—

- (a) in the case of a nuisance falling within paragraph (g) of section 79(1) above, not less than three days' notice; and
- (b) in the case of a nuisance of any other description, not less than twenty-one days' notice;

but the Secretary of State may, by order, provide that this subsection shall have effect as if such period as is specified in the order were the minimum period of notice applicable to any description of statutory nuisance specified in the order.

Continued/...

- (8) A person who, without reasonable excuse, contravenes any requirement or prohibition imposed by an order under subsection (2) above shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction.
- (9) Subject to subsection (10) below, in any proceedings for an offence under subsection (8) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means were used to prevent, or to counteract the effects of, the nuisance.
- (10) The defence under subsection (9) above is not available—
- (a) in the case of a nuisance falling within paragraph (a), (d), (e), (f) or (g) of section 79(1) above except where the nuisance arises on industrial, trade or business premises;
 - (b) in the case of a nuisance falling within paragraph (b) of section 79(1) above except where the smoke is emitted from a chimney;
 - (c) in the case of a nuisance falling within paragraph (c) or (h) of section 79(1) above; and
 - (d) in the case of a nuisance which is such as to render the premises unfit for human habitation.
- (11) If a person is convicted of an offence under subsection (8) above, a magistrates' court may, after giving the local authority in whose area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the person convicted was required to do by the order to which the conviction relates.
- (12) Where on the hearing of proceedings for an order under subsection (2) above it is proved that the alleged nuisance existed at the date of the making of the complaint, then, whether or not at the date of the hearing it still exists or is likely to recur, the court shall order the defendant (or defendants in such proportions as appears fair and reasonable) to pay to the person bringing the proceedings such amount as the court considers reasonably sufficient to compensate him for any expenses properly incurred by him in the proceedings.
- (13) If it appears to the magistrates' court that neither the person responsible for the nuisance nor the owner or occupier of the premises can be found the court may, after giving the local authority in those area the nuisance has occurred an opportunity of being heard, direct the authority to do anything which the court would have ordered that person to do.

**NOTICE OF INTENTION TO BRING PROCEEDINGS
ENVIRONMENTAL PROTECTION ACT 1990: SECTION 82(6)**

TO: *1 _____ DATE: _____

OF *2 _____

**Regarding Section 82 of the Environmental Protection Act 1990
Notice of Intention to take Proceedings**

I am writing to you as the [person responsible][owner of] the premises known as:

*3 address _____

The noise from the above premises is such that a Statutory Nuisance as defined by Section 79(1)(g) of the Environmental Protection Act 1990 is being caused. Brief details of some, but not necessarily all, of the matters which are contributing to the noise are as follows:

*4 _____

Urgent action is necessary to abate the Statutory Nuisance and prevent it recurring.

I would ask that, within the next seven days (i.e. by the *5 _____ day of _____ 20 ____), you either:-

- (a) ensure the necessary action is taken to abate the Statutory Nuisance and prevent it from recurring, or
- (b) provide me with a detailed timetable setting out the remedial action you intend to take to abate the Statutory Nuisance and prevent it from recurring.

This letter should be taken as Notice of my intention to initiate proceedings in the Magistrates' Court under Section 82 of the Environmental Protection Act 1990 if the Statutory Nuisance still exists and you have failed to provide a satisfactory timetable of remedial action by the said *5 _____ day of _____ 20 ____

Yours faithfully

[Add your name and address in block capitals here]

(signed) _____ *6 _____

** see notes overleaf for completion*

**Notes for completion of Notice of Intention to bring Proceedings
(under Section 82(6) of the Environmental Protection Act 1990)**

1. Insert name of person causing the noise nuisance. It is suggested that you send copies of the Notice of Intention to the owner(s) and occupier(s) of the premises from which the noise is coming. It is essential that the notice is sent to named persons.
2. Insert the full address of the person named in 1.
3. Insert the full address of the premises from which the noise nuisance comes.
4. Insert the details of why the noise is considered to be a nuisance. For example:
 - Excessive noise of amplified music at unreasonable hours.
 - Incessant and persistent barking of a dog at all hours.

Please note that allegations of noise amounting to a nuisance must be supported by detailed records of the time the nuisance starts and stops, the dates on which it occurs, and a detailed description of the way the alleged nuisance is affecting you, e.g. preventing or interrupting sleep; or interfering with the reasonable enjoyment of your home. A record in the layout of the specimen record form we have provided is suitable.

5. Insert a date at least seven days after the date at the top of the form.
6. Insert your full name and address.

NUISANCE RECORD FORM

Keep a note below and on continuation sheets if necessary of the dates when the nuisance occurs, the times it starts and finishes, and the way in which it affects you.

Remember that any action necessary to resolve this problem may involve legal proceedings. It is important that accurate records are kept and specific times when the nuisance affects you are noted. Phrases such as "all the time" and "every day", should be avoided, as should any angry remarks. If Court action is taken you will have to be prepared to produce and give evidence of the alleged nuisance.

Your Details:

Name

Address

..... Tel No

Source of Nuisance Details:

Name.....

Address

..... Tel No

DATE	STARTS	FINISHES	DESCRIPTION OF THE NUISANCE	HOW IT AFFECTS ME

I certify that the above record is a true statement of the nuisance I am experiencing.

Signed Name (printed) Dated

CONTINUATION SHEET

Sheet number

DATE	STARTS	FINISHES	DESCRIPTION OF THE NUISANCE	HOW IT AFFECTS ME

I certify that the above record is a true statement of the nuisance I am experiencing.

Signed Name (printed)

..... Dated