

NOISE NUISANCE

HOW TO TAKE YOUR OWN ACTION



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1. **Introduction**

Noise is a subjective thing, and different people react to it in different ways. What can cause extreme annoyance to one person may hardly be noticed by another. A noise may be irritating but it may not necessarily be a nuisance in the legal sense.

There is no fixed level of noise which constitutes a statutory nuisance; individual circumstances differ and each case needs to be judged on its merits. In deciding whether or not a noise is sufficient to amount to a statutory nuisance, the court has to consider what would be the likely reaction of an average, reasonable person to the noise, taking into account not only its loudness, but also such factors as when, how often and for how long the noise occurs.

Often a direct and informal approach to the firm, or person, responsible for the noise, is the best way of securing an improvement. This is especially true with noisy neighbours, although when making such an approach it might be worth bearing in mind that you yourself may sometimes be guilty of causing noise which disturbs other people. Where a direct approach fails, you can take one of the following 2 courses of action;

- Make a complaint directly to the Magistrates
- Take civil action

2. **Making a Complaint direct to the 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 noise 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 noise 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 noise, a description of its nature and the extent of the nuisance it causes you in the reasonable occupation of your premises. (See section 4 of this guidance about gathering information and evidence).

Before complaining to the magistrates, it is best to see if you can resolve the problem informally by talking or writing to the person responsible for the noise. If you are unable to identify who is actually causing the noise, 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 a noise amounting to a nuisance and that unless they stop, or satisfactorily reduce the noise, 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 at least three days notice in writing to the noise maker that you intend to do this. The notice should provide details of the complaint and the Act provides that it is sufficient for it to be delivered to the noise maker 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 noise 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 at the local magistrates' 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.

Any monitoring forms provided to the council as part of their investigation will be returned on request, and can be used for your own action.

You should also let them know that you have consulted the Environmental Protection Team at Torridge District Council; they may ask why you are pursuing the matter privately and not through the council. If the Clerk is satisfied you do have a case, a summons will be issued and served on the person responsible for the noise, 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.

Under the Environmental Protection Act 1990 it is a defence in any summary proceedings relating to noise caused in the course of a trade or business to prove that the best practicable means have been used to prevent or counteract the effect of the noise. This recognises that there is a limit to what it is reasonable to require a person to do or to spend to reduce noise. It also recognises that there may be technical limitations.

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 depending on your financial circumstances. Speak to the court about this or get further information from <http://www.legalservices.gov.uk>

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 noise maker at the time of making the order. 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 noisy 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 noise maker 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 noise 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.

3. Civil Action

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 damages for loss. You must show either that the noise causes you particular or special loss over and above the ordinary inconvenience suffered by the public at large, or that you have an interest in land (as an occupier, tenant or owner) affected by the noise. In deciding whether a particular noise amounts to an actionable nuisance, the court has to strike a balance between the right of the plaintiff to the undisturbed enjoyment of their property and the rights of the defendant. There cannot therefore be an absolute standard. It is always a question of degree whether the noise is sufficiently serious to constitute a nuisance, having regard to such matters as the neighbourhood and the time when the noise occurs. The court must decide each case on the particular circumstances of the allegations.

Civil action can be expensive and it is highly advisable first to seek the advice of a solicitor about the case itself and the possibility of claiming Legal Aid for any proceedings. Help towards meeting the costs of legal advice may be available under the legal advice and assistance scheme. If the action is successful it is likely that the court will award you some costs although this is discretionary - the action could still be expensive.

In civil actions for damages or for an injunction for the abatement, prohibition or restriction of a nuisance, the defence of 'best practicable means' is not available. The criterion is how the nuisance affects others.

4. Evidence

The magistrates (or in the case of a civil action, the judge), will need to be persuaded that the noise amounts to a nuisance. You will need to produce evidence and where possible, witnesses or statements from witnesses to support your case.

You should keep a written record of the history of the nuisance and all action that you have taken.

The following checklist should assist you:

1. Address where the noise is coming from
2. Name of the person/s or firm making the noise
3. What the noise is caused by
4. When you first noticed the noise

5. When the noise occurs and for how long
6. Keep a log or diary of the nuisance. Attached is a blank record sheet you can make photocopies of and use and a completed example.
7. Keep a record of when you approached the person responsible and what was said. Keep copies of any letters sent or received
8. Write down the name and address of any witness and what they have witnessed. It would be helpful to get any witness to write down a description of what was heard at the time and their opinion about the noise. A formal statement by a witness can be produced in court as evidence. A blank statement of witness form is attached which you can photocopy and use.

Example 1

RECORD SHEET

NAME: *Mr Neighbour*

ADDRESS: *15 The Street, Anytown*

SOURCE OF NOISE: *8 The Street, Anytown*

DATE	TIME NOISE STARTS	TIME NOISE FINISHES	COMMENTS
7.6.94	11.30pm	11.45pm	Mr Jones asked me to listen to the noise from No.8. I sat in his living room. It was terrible. Louder than I have my own stereo. I could hear all the words of the songs. I couldn't sleep with that racket. I could hear it outside in the street and even in my own house across the road. The music carried on till 1.30am. I could hear it lying in bed and I live across the street

Example 2
RECORD SHEET

NAME: *Mr Jones*

ADDRESS: *10 The Street, Anytown*

SOURCE OF NOISE: *8 The Street, Anytown*

DATE	TIME NOISE	TIME NOISE	COMMENTS
1.6.94	10.30 pm	2.30 am	<i>Loud music. Couldn't hear my own TV. Went to bed at 11.30 pm couldn't sleep. Noise constant, could hear every word of the songs in my bedroom.</i>
4.6.94	1.00 am	3.00 am	<i>Complained to Mr Noisy next day. He said it is his house and he will do what he wants.</i>
7.6.94	11.00 pm	1.00 am	<i>Woken up by loud music. Couldn't get back to sleep. I went round to see Mr Noisy at 1.30 am and asked him to turn it down. It went down for 10 minutes and then back up again at 1.40 am. to the same volume as before.</i>
	1.00 am	1.30 am	<i>I couldn't sleep. The music could be heard throughout my house. It went off at 3.00 am.</i>
			<i>Next day I felt ill with lack of sleep. Loud music. I couldn't hear my TV properly. Got Mr Neighbour to witness it (11.30 – 11.45pm).</i>
			<i>The music got louder and then went off at 1.30 am. I couldn't sleep all night with the worry.</i>

Signed _____

RECORD SHEET

NAME:

ADDRESS:

SOURCE OF NOISE:

DATE	TIME NOISE STARTS	TIME NOISE FINISHES	COMMENTS

Signed _____

Phone: 01237 428700 (main switchboard)

Email: environmental.protection@torridge.gov.uk

Website: www.torridge.gov.uk

Torridge District Council
Environmental Protection Team
Riverbank House
BIDEFORD
Devon
EX39 2QG

Further information and guidance

<http://www.hmcourts-service.gov.uk/HMCSCourtFinder/>

<http://www.environmental-protection.org.uk/>