

**Folkestone & Hythe District Council
Pollution and Residential Services**

Noise Problems

**Information Pack:
A guide to taking your own legal action**

Revised March 2016

ABOUT THIS INFORMATION PACK

This pack has been put together by the Council's Noise Team to help people take their own legal action to stop noise nuisance which affects them.

We know it looks complicated, but we have tried to break it down into a step by step system which you can follow through from beginning to end. Quite a few people have used this system over the years and have shown that it works.

Going into a Court will be worrying to most people, but the law is set up for you to use it, and they are your Courts. Going to Court may be the only way you can sort out your noise problem.

This pack contains all the paperwork you will need for an action in the Magistrates' Court:-

- (a) a 'questions and answers' sheet to start you off.
- (b) a detailed step by step guide to the legal process.
- (c) letters you will need to send to the person causing the noise.
- (d) some forms to use when you collect evidence — you need to write down details about the noise.
- (e) paperwork you will need for the Court, including a suggested remedy which the Court could impose.

We hope that you will be successful, and that this pack will be of use.

For further advice contact your local Citizens Advice or Law Centre.

Shepway(Folkestone) Citizens Advice Bureau
4-6 Princes Gate
George Lane (off Rendezvous Street)
Folkestone CT20 1RH

Tel: 01303 241435

<http://www.citizensadvice.org.uk>

Law Centre Network
www.lawcentres.org.uk

Tel: 020 3637 1330

Folkestone Rainbow Centre
69 Sandgate Road
Folkestone, CT20 2AF

Tel: 01303 850733

QUESTIONS and ANSWERS

Where you are affected by a noise nuisance, you do not have to rely on the Council to take legal action for you — you can take action yourself. Sometimes, this is the best (or the only) way forward. Section 82 of the Environmental Protection Act, 1990 enables you to complain directly to a Magistrates' Court. Detailed guidance on this procedure is given in this pack. However, the following points are worth considering first.

1. **Who can take action?**

Section 82 can only be used where you can show that a noise is causing a nuisance to you as an **occupier of property**. It can not be used, for example, by a representative of a resident's association on behalf of its members. In such a case, those members personally affected would each need to take their own action - it is an **individual thing** (you could back each other up with evidence).

2. **When can I take action?**

The Section can only be used in respect of an actual nuisance (one that is happening now) and not in anticipation of one that is likely to or will occur in the future.

3. **What is a "nuisance"?**

Nuisance is an activity which unduly interferes with the use or enjoyment of your home, garden or other property. Noise that is disturbing your sleep, stops you watching television or listening to the radio, causing you stress, etc is likely to be a "nuisance".

The test is what the "average person" would put up with. We all have to put up with some noise, but sometimes other people's noise is just too much for anybody to stand.

In each case, it is a question of degree, whether the interference is sufficiently serious to make it a nuisance. With noise, several factors will be relevant, such as the time of day, the place (quiet residential street, or noisy main road?), the extent of the problem and how long it goes on for. A single isolated event is unlikely to qualify, neither is a normal sort of noise such as lawnmower used regularly at **reasonable** times.

Noise nuisance under the Environmental Protection Act 1990 include those from vehicles, machinery or equipment in the street. Noise nuisances under the Act include those caused by vibrations. Unfortunately, traffic noise is specifically excluded.

4. **Who do I take action Against?**

You must be able to identify the person causing the nuisance (including their proper name) and be in a position to prove beyond a reasonable doubt that they are the person responsible for the nuisance. If, and only if, that cannot be established, then action can be taken against the owner or occupier of the premises or land from which the noise is emitted.

5. **What proof do I need?**

You will have to be able to prove that the noise amounts to a “nuisance”. It is important to realise that each case is looked at, on its merits. You need good evidence because you must convince the Magistrate “beyond a reasonable doubt” that the nuisance exists and that the defendant is the person causing it. The sort of evidence you need is:-

- (a) **Noise Diaries.** The importance of keeping an accurate diary cannot be overstressed. It is vital that you write the diary when the noise is happening never wait until later as you will then be relying on memory. This is **evidence**. Keep a written record of the dates, times and duration of the noise, the type of noise and how it affected you (what does it stop you doing or enjoying?). A suitable noise diary is included in this pack. Each witness must keep their own diary. Do NOT mix up evidence from more than one person on each diary.
- (b) Neighbours or visitors to your home may be able to give evidence of what they have heard. Other members of your family can also give evidence. Witnesses must only give evidence of what they have personally heard or experienced. They cannot simply tell the Court that you told them it was very loud noise they must have heard it themselves.
- (c) Copies of all the letters you have sent to the person causing the problem.
- (d) any record of involvement of the Council or Police (letters which have been sent, etc).

6. **Do I need a Solicitor?**

No action should be started unless you are reasonably confident that you can prove your case to the Magistrates. You may decide to appoint a Solicitor to take the action on your behalf, but this may result in considerable cost if you lose the case or if costs are not awarded to you.

7. **What about the cost?**

If you win, costs are **not** automatically given to you; you must make an application for costs at the Court. Even if you lose, it is very unlikely that you will have to pay the defendant’s costs, but you might have to pay your own. However, it is true to say that Magistrates’ Court action is not expensive, **and it might sort out your problem.**

8. **How many times do I have to go to the Magistrates’ Court?**

You will have to go to the Court at least three times - once to get the summons, once for the preliminary hearing and once for full hearing. If the person making the noise ignores the Court, you will have to go back to get the Magistrate to fine the defendant for breaching the Court Order.

9. **Is the Magistrates’ Court the end of it all?**

It usually is, but not always. After the Magistrates’ Court hearing, the defendant (the person making the noise) can appeal to the Crown Court if they don’t like the Magistrate’s decision.

10. **What if the noise is caused by a business?**

You are less likely to succeed if the noise has been or is caused in the course of a trade or business. This is because the person(s) responsible eg. the partners of a business) have a defence under the Act if they can show that the “best practicable means” has been used for preventing or minimising the noise. What are the best practicable means in any case may be difficult to decide and expert assistance might be required.

Given these major difficulties, you are strongly advised to talk to the Noise Team if you are affected by noise from a business.

STEP BY STEP INSTRUCTIONS FOR ACTION IN THE MAGISTRATES' COURT

- A Before complaining to the Magistrates' Court, it is best to see if you can solve the problem informally by writing to the person making the noise. If you are unable to identify who is actually causing the noise, then write to the owner or occupier of the premises concerned. Do this whether or not you have already spoken to them. Write 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. Make sure that the letter is dated and keep a copy. A suitable letter is enclosed in this pack.

Although the law does not require you to do this, it is likely to strengthen your case if you can show that you have acted in a reasonable manner. This means giving the person responsible for the noise the chance to sort out the situation before you take legal measures.

- B If the nuisance is not stopped, you may decide you have no option but to start legal proceedings. As a preliminary step, make sure you know which Magistrates Court to go to. Each Court deals with its own area and the boundary between areas can be rather confusing. Phone your local Magistrates' Court to check that they deal with your address.

- C Before you do anything else, you must notify the person causing the problem that you intend to take court action. The notification must be in writing and must be given at least three days before you intend going to Court. The notification should either be delivered by hand or sent by recorded delivery post. A signed copy and details of delivery should be kept as evidence. An example of this type of notification is included in this pack.

At this stage, it may be advisable to get some advice from your Solicitor or from one of the local legal Advice Centres or Citizens Advice Bureaux or Law Centre.

- D To start proceedings, you go to your local Magistrates court any weekday before 9.45am, and ask to speak to the Court Clerk. Explain that you want a summons under section 82 of the Environmental Protection Act, 1990 and give brief details of your problem.

You will then have to give a brief summary of your evidence to the Court Clerk or to the Magistrate. The sort of evidence you may need at this stage is:

- i. A copy of the notification given to the person causing the noise. Copies of any other letters sent to that person.
- ii. Any noise diaries you have kept, or any other records of the noise.
- iii. Any record of involvement of the Council or Police (letters which have been sent, etc).
- iv. Names of any people (friends, relatives, visitors to your property, neighbours) who have witnessed the noise and are willing to give evidence. You do not need any detailed evidence from these people, just the fact that they have heard the noise and will give evidence in your support.

Having heard your application, the Court will decide whether or not to issue a summons. It is advisable to have a summons prepared in advance. A possible summons is included in this pack. The Court may use your summons or may decide to draft the summons themselves. You will be told the date of the hearing and it will later be confirmed in writing.

The Court will normally be able to type the summons into the necessary forms for you, or you may have to use your Solicitor, Legal Advice Centre or one of the Advice Centres.

- E The Summons then has to be served. The Court will normally do this for you, but they may charge.
- F The summons gives a date for a **preliminary hearing**. This can also be called the “**non-effective** date”. Both you and the defendant must attend. The Court will ask the defendant how he/she pleads to the alleged offence. If the plea is “not guilty” then the Court will probably set a date for a full -trial. If the defendant pleads guilty then the Magistrates may make an immediate Order with respect to the nuisance. You will be advised if a future trial date is set.
- G It is unlikely the defendant will plead “guilty”, so these cases almost always go to a **full hearing**. At the hearing, you will have to prove, first, that there is a nuisance and, secondly, that the defendant is the person responsible. You do not need to have a Solicitor to represent you at the hearing, although you may do so if you wish.

Remember, even if the nuisance has stopped, the case can continue if the Court is satisfied that it may start again.

You will need to bring all your evidence to Court. This includes noise diaries, letters, etc, as outlined above. Your witnesses must also attend to give evidence. You can only give evidence to the Court about what has happened in the **last six months**.

- H If you are not using a Solicitor, you should tell the court that you intend to represent yourself. You will be required to take an oath that you will tell the truth and you will be asked to give your full name, address and occupation. You will then be given an opportunity to present your case. Explain your problem to the Magistrates in your own language giving specific examples of when the noise occurred, its loudness, and how it affected you. Tell the Court if you have any witnesses to call. You and your witnesses may be asked questions by the Clerk, the Magistrates, the Defendant or his or her representative. The Defendant is then given a chance to put their side of the case. You may question what he/she has said if they choose to say anything.
- I At the end of the case, the Magistrate will leave the Court and come to a decision. If the Magistrate finds in your favour, the most usual action is to make an order:-
 - (a) requiring the defendant to stop the nuisance, and/or
 - (b) prohibiting or restricting recurrence of the nuisance.
 - (c) the Magistrate can also specify whatever measures he/she thinks are needed to achieve (a) and/or (b).

The Court does have the right to impose a fine on the defendant. However, this is most unusual, and they rarely do so at this stage of a case.

- J The Court also has the power to tell the Council to do works to stop the nuisance (after allowing the Council to be heard). This is only if the person responsible refuses to do the work!!

Points to remember in Court

All statements or answers to questions should be addressed to the Magistrate regardless of who asks the question.

The Magistrate should be referred to as “Sir” or “Madam”. Keep your answers or statements short and to the point.

Do not confuse the issues by bringing in any other problems you are having with the person making the noise - keep **strictly** to the noise problem. Ignore anything else.

Speak clearly and in your own language.

Witnesses are not allowed into the Court until they are called.

There are no facilities for children in the Court, alternative arrangements should be made for their care prior to going to Court.

Do **not** drink alcohol before you go into the Court. You want to be clear and concentrated!

Dress appropriately. This has no legal significance, but it may affect the way the Magistrates view your case.

- K If the Magistrates find in your favour you may apply to the court for any legitimate costs incurred by you or your witnesses in taking the action. This is not compensation for the disturbance caused to you but reimbursement for expenditure. There is no guarantee that costs will be awarded.

If you lose the case, and the defendant asks for costs, then these will almost always be paid out of public funds. This is because your case is not considered to be a private action, provided the Magistrate believes it was not unreasonably brought before the Court.

- L Any contravention of the Court Order is a serious offence and should be notified to the Court immediately. The Magistrates will set a new date for a further trial at which you will again be required to attend the court and give evidence. If the Magistrates find that the order has been breached they may impose a fine on the defendant for each occasion on which the order was ignored. This means you must continue to keep the ‘Noise Diary’. In very bad cases, they can also impose extra penalties such as prison, community service, etc.

FIRST WRITTEN CONTACT LETTER

It is advisable to send a written statement of your complaint to the person causing the problem in order to ensure that they understand what the problem is.

Complete both copies of this letter as shown below. Keep the copy on the back of this sheet and deliver or post the other copy to the person causing the nuisance. Keep a copy of the letter and details of when it was sent.

Today's date

Your name and address

Your neighbour's name

Dear Mr Jones

For some time I have been disturbed by noise coming from your property. The main noises which affect me are :-

Source of the noise

1 : Very loud television and loud stereo.
2 : Washing machine used after midnight

This noise is causing me considerable disturbance and is a real problem in the use of my home. I would be very grateful if you could stop this noise so that we can live peacefully together.

We have spoken about this in the past and I am now putting my concern in writing. I regret the need for this letter but your actions are causing me significant distress.

Yours sincerely

Signature

B. Smith

Print your name

Mrs B. Smith

Your neighbour's name and address

Mr Jones
29 Any Street
Any Town
RM5 7PQ

Mrs Smith
27 Any Street
Any Town
RM5 7PQ

Date : 1st January 2016

Date :

Dear M

For some time I have been disturbed by noise coming from your property. The main noises which affect me are :-

INSERT TYPE OF NOISE HERE

This noise is causing me considerable disturbance and is a real problem in the use of my home. I would be very grateful if you could stop this noise so that we can live peacefully together.

We have spoken about this in the past and I am now putting my concern in writing. I regret the need for this letter but your actions are causing me significant distress.

Yours sincerely

LETTER ADVISING OF COURT ACTION

You are required to advise the person against whom you are taking the action of your intentions in writing at least three (3) days before going to court. This letter complies with that requirement.

Complete both copies of this letter as shown below. Keep the copy on the back of this sheet and put the other copy of the letter through your neighbours letter box or send it by recorded delivery. Write on the space provided on your copy details of how and when the delivery was made.

Today's date	Your name and address
	Mrs Smith 27 Any Street Any Town RM5 7PQ
Your neighbour's name	Date : 1 st February 2016
Your neighbour's address	Dear Mr Jones,
	Re : Noise Nuisance from 29 Any Street, Any Town, RM5 7PQ
Source of noise	I am writing to advise you that I intend to start legal action under Section 82 of the Environmental protection Act 1990 because of the noise nuisance coming from your property. The nuisance is caused by 1 : Very loud television and loud stereo 2 : Washing machine used after midnight
	I would be willing to accept a written assurance from you that you will stop the nuisance and will not let it happen again. As neighbours, I would like there to be good will between us. Stopping the noise nuisance would prove your good will and would remove the need for me to take court action.
	Unless I receive such a written assurance from you within the next three (3) days, I will go to Bromley Magistrates Court to start legal proceedings without any further warning to yourself.
	The Environmental protection Act states that I must notify you in writing three clear days before taking this action. This letter is such a formal notification.
Your signature	Yours sincerely <i>B. Smith</i>
Print your name	Mrs B. Smith
Name and address of your neighbour	Mr Jones 29 Any Street Any Town RM5 7PQ



This is a true copy of the letter I posted / delivered	
to	(neighbours name)
At	(neighbours address)
On	(date and time)
Signed :	Date :

Date :

Dear M

Re : Noise Nuisance from

I am writing to advise you that I intend to start legal action under Section 82 of the Environmental protection Act 1990 because of the noise nuisance coming from your property. The nuisance is caused by

- 1 :
- 2 :

I would be willing to accept a written assurance from you that you will stop the nuisance and will not let it happen again. As neighbours, I would like there to be good will between us. Stopping the noise nuisance would prove your good will and would remove the need for me to take court action.

Unless I receive such a written assurance from you within the next three (3) days, I will go to (INSERT COURT) Magistrates Court to start legal proceedings without any further warning to yourself.

The Environmental protection Act states that I must notify you in writing three clear days before taking this action. This letter is such a formal notification.

Yours sincerely

COURT SUMMONS

The court will normally draft and serve the *summons* on your behalf. It is, however, advisable to have a summons prepared in advance. Complete the form as shown below and bring it with you to the court on the first time you attend.

If the Magistrates grant the summons and sign these copies they will normally serve the summons on your behalf. There may be a charge for the service of the summons.

BEFORE THE BROMLEY MAGISTRATES COURT

INFORMATION has this day been laid before me the undersigned

by: Mrs B. Smith
27 Any Street
Any Town
RM5 7PQ

being a person aggrieved by a statutory nuisance, under Section 82 of the Environmental Protection Act 1990 that you are the occupier of premises, namely,

29 Any Street, Any Town, RM5 7PQ

from which noise amounting to a statutory nuisance as defined by Section 79 of the Environmental Protection Act 1990 is being emitted. The said nuisance arising from

- 1 : Very loud television and loud stereo
- 2 : Washing machine used after midnight

YOU ARE THEREFORE HEREBY SUMMONED to appear before the Bromley Magistrates' Court sitting at The Court House, 1 London Road Bromley Kent BR1 1RA

On _____ (date) at _____ (time)
to answer to the said information and to show cause why the Court should not make a nuisance order requiring you to abate the said nuisance and C to execute any works necessary for this purpose) and prohibiting a recurrence of the said nuisance (and requiring you to execute any works to prevent a recurrence).

Dated this 7th day of February 2016

Signed :

Justice of the Peace
Chief Clerk

Record of Observations

Your Name :

Your Address :

Address from which nuisance arises :

Fill in this form when the noise is happening. Do not wait until later.

Each person must keep their own records. Use separate sheets for each individual.

Date	What is the nuisance caused by	How intrusive is the nuisance	Time Started	Time Finished	Comments

Signed _____ Date : _____

Record of Observations

Your Name :

Your Address :

Address from which nuisance arises :

Fill in this form when the noise is happening. Do not wait until later.

Each person must keep their own records. Use separate sheets for each individual.

Date	What is the nuisance caused by	How intrusive is the nuisance	Time Started	Time Finished	Comments

Signed _____ Date : _____

Continuation Sheet

Date	What is the nuisance caused by	How intrusive is the nuisance	Time Started	Time Finished	Comments

Signed _____ Date : _____