

TAKING YOUR OWN ACTION UNDER SECTION 82 ENVIRONMENTAL PROTECTION ACT 1990

If the Council has decided not to institute legal proceedings in respect of a nuisance complaint, or you do not wish to involve the local authority, you can, if you are an occupier of premises affected by a 'Statutory 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 problem about which you are complaining amounts to a statutory nuisance, and so it is important that you keep a written record of the dates, times and duration of the problem, a description of its nature and the extent of the nuisance it causes you in the reasonable occupation of your premises.

Before complaining to the Magistrates, though, it is best to see if you can resolve the problem informally by writing to the person responsible for it or, if you are unable to identify who is actually causing it, to the owner or occupier of the premises concerned (you may or may not have already spoken to the person). Say that you consider they are creating a nuisance, and that unless they stop or satisfactorily reduce the activity 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. 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 and have given the person responsible for the problem 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. Tell the Clerk you wish to make a complaint under section 82 of the Environmental Protection Act 1990; the Clerk will probably make an appointment for you, and will be able to explain the procedure. You will be asked to produce evidence as described above to show the Magistrates that you have an arguable case. If the decision is made that you have an arguable case (you do not have to prove your case at this stage), a summons will be issued and served on the person allegedly responsible for the problem, stating the date and time arranged for the court hearing. The person accused will have the opportunity to come to court to defend themselves, and to make their case.

You do not need to have a solicitor to represent you at the hearing, although you may do so if you wish. 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 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 any offence under the Act and can be fined. You should therefore continue to keep your record of occurrences up to date in case the order is being ignored and it proves necessary to return to court.

Useful contacts:

Citizens Advice Bureau
www.citizensadvice.org.uk

Colchester Magistrates Court
St Botolphs Circus

Magdalen Street
Colchester
Essex CO2 7EF
Telephone Enquiries: [01245 313 300](tel:01245313300)

Tendring District Council
Environmental Protection Team
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