

DOMESTIC NOISE CONTROL

A GUIDE TO LEGAL ACTION

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INTRODUCTION

Cardiff County Council devotes considerable resources to providing a noise control service, but in a number of cases, the noise occurs randomly and the investigating officer cannot substantiate nuisance sufficiently to allow legal proceedings to be taken. This does not necessarily mean that the individual should not take their own action, nor does it imply that the complainant does not have a valid grievance. The law provides a remedy for the individual and this booklet has been prepared to assist you in taking your own action to remedy your problems. It is **not** an authoritative statement of the legal or technical aspects of noise control.

NOISE NUISANCE IN PRACTICE

Noise complaints and their causes differ widely and each case must be judged on its merits. The situation is made more difficult by the fact that one person's nuisance is another's pleasure. Another variable factor is the time at which the noise is created. What may be acceptable at 10.00pm on a Saturday evening will usually by 2.00am on a Sunday morning become decidedly unacceptable. Other factors to be considered include the volume of the noise, its nature and duration.

The crucial point is that the County Council has to be satisfied that an actionable noise nuisance exists before it can take formal action and to do so an investigating officer must normally be able to corroborate the complainant's allegations from personal observations, ideally on more than one occasion. As the establishment of a case may involve a number of visits in the evening or early morning, it may, in practice, prove to be difficult, if not impossible, to do so.

If a case is established, the County Council, through Environmental Protection Department, will be able to take action under the **Environmental Protection Act 1990, Section 80**, by serving a notice on a person causing a noise nuisance requiring them to abate it. The same Act provides the opportunity for an individual to take action against another under the **Environmental Protection Act 1990, Section 82**.

TAKING ACTION YOURSELF - THE LAW

In general terms, Section 82 says :

A Magistrates' Court may act on a complaint from an occupier of premises bothered by noise **amounting to a statutory nuisance**.

If a Magistrates' Court is satisfied that an alleged noise nuisance exists, or may start again at the same place, the Court shall make an Order for one or both of the following :

- requiring the person causing the noise nuisance to abate it within a specified time; or
- preventing the nuisance being started again.

The reason for the second type of case is to allow for the possibility that by the time the case reaches Court, the nuisance may have ceased but there are good grounds for believing that it may start again. The Court may also impose a fine.

The person against whom you take proceedings is, naturally enough, the person causing the nuisance. It may be, however, that you cannot establish who this person is. In this case, you can still take proceedings, but against the owner or occupier of the premises from which the noise is emitted. This could well be the case where you are disturbed by frequent noisy late parties. You are unlikely to know who actually turns the music on, but it is normally a relatively simple procedure to find the name of the occupier of the premises. One way is to consult a list of electors. These are available for public viewing in the Central Library, some local Libraries and at the City or County Hall.

Any person who creates a noise nuisance without reasonable excuse **after** an order has been made against them by the Court will have committed an offence and can be fined.

If the proceedings concern a noise arising from industrial, trade or business premises, then the defendants can defend themselves by proving that the “best practicable means” are used for preventing the noise.

If you are considering taking action under Section 82, you are strongly advised to read the Environmental Protection Act itself. It will tell you that only **one** person need make a complaint to the Court. In practice though, it is highly desirable to have support from other witnesses as it is likely to make your complaint appear more reasonable if you show you are not the only person disturbed by the noise.

PRIOR TO COURT - STEP BY STEP

This part gives a guide to the way that you might consider taking action over your noise nuisance.

If you can, discuss the problems with the person creating the noise. Remember, they may not be aware that they are disturbing you. This is often easier said than done, as you may find it difficult to speak with the person, but if successful, it can save a lot of trouble.

Keep a detailed written record of the **dates and times** of the noise disturbance and how it affected you. Try to assess the loudness. This can best be achieved by reference to another sound, eg. interference with normal speech or inability to hear the television at normal volume. Actual noise measurements can be misleading in some circumstances as, for instance, a noise causing disturbance in the middle of the night might not register strongly on the scale of a noise meter. All records should be simple and clear and should be made as soon as possible after the incident, whilst your memory is still fresh. Further records by other complainants will be very useful to your case.

Write to the person responsible for the noise **even if you have already spoken to them**. Inform them that you feel that they are creating noise amounting to a nuisance, suggest a remedy if one is obvious to you and give them a date by which they can reasonably achieve that remedy.

If, by the date given in the first letter, there has been no progress towards a resolution of the problem, write again telling them that unless the nuisance is abated, you will have no alternative but to make a complaint to the Magistrates' Court.

Ensure that all letters are dated and are delivered personally or sent by Recorded Delivery. **Keep a copy of everything**, it may help your case later, as a Court will normally expect you to have informed the person responsible for the noise and have given them a reasonable opportunity to abate it.

If these measures do not produce any results, you may wish to consult a solicitor for advice. A letter from a solicitor can often work wonders. The Citizen's Advice Bureau will have a list of solicitors who will be able to help you, but legal aid is not available for this piece of legislation. However, you do not have to have a solicitor to take this action.

If you have definitely decided to take proceedings, the next step is to write a letter to the person responsible for the noise saying what you are complaining about and that you intend to complain to the Magistrates and that you will wait at least three full days before you complain. When the three days are up, the next step is to contact the Justice's Clerk's Office at the Magistrates Court. Explain that you wish to lay a complaint under Section 82 of the Environmental Protection act 1990 and let them know that the Environmental Protection Department has been consulted. The complaint has to be made in writing and in a particular form. Take with you a copy of the letter giving three days notice to the person responsible for the noise. The Justice's Clerk will inform you of the date and time of the Court hearing. The person about whom you are complaining will also be informed and summoned to attend the Court. You may have to serve the summons yourself or arrange for someone reliable to do it for you. You may have to prove to the Court that the summons has been properly served.

Quite apart from your remedy under the Environmental Protection Act 1990, you may take civil action in common law if you are able to show that the nuisance substantially affects your health, comfort or convenience. It is possible that Covenants or Planning Permission relating to the premises may also apply. If you feel that this is the case the Citizens Advice Bureau, Law Centre or a solicitor could give you further advice on how to proceed.

COURT PROCEDURES

If you have never attended a Magistrates' Court before, you may be surprised to find how straightforward procedures are. People who anticipate stunning the opposition with the power of their oratory are usually as surprised as those who are fearful of not receiving a fair hearing. Do not let the occasion prevent you from describing simply and clearly the main points of your case in your own words. In Court you will be referred to as the "complainant" and the person you accuse as being responsible for the noise will be the "defendant".

First of all you [or your Solicitor if you have one] will be asked to stand and explain the problem as you see it and the reasons for the complaint. You may give evidence on oath on what you have heard and may give to the magistrates written evidence as described above, such as your records of disturbance. As the defendant will also need to see this you should be prepared with at least six copies of each original document for distribution. Tape recordings may be admissible as evidence, but be very careful. They can be a double edged weapon as they are capable of mis-representing the severity of the nuisance. The Magistrates and the defendant or the defendant's representative may ask questions about your evidence.

You will now have the opportunity to call witnesses to support your case. They may be neighbours or visitors who have heard the noise themselves. You may ask them to give evidence on oath and to say how the noise affected them. It is important that they speak clearly, are, and appear to be, honest and reasonable, and do not stray from the specific issue before the Court. Side issues, such as the state of the neighbour's garden will not interest the Magistrates. Time wasted on these will not assist your case and may even weaken it.

The defendant will have the chance to cross-examine your witnesses as well as yourself. Any exaggeration or confusion may introduce doubt into the Magistrates' minds and this will reduce your chances of success.

After your witnesses have given evidence, the person accused of causing the nuisance can present their version of the events and can call witnesses to back this up. They will probably contradict some or all of the points made by your witnesses and yourself. You will also have the opportunity to cross-examine each witness in turn. It is essential that you remain polite and reasonable throughout and that you resist any attempt at provocation.

You are then entitled, if you wish, to call evidence to rebut the evidence given by the defendant.

If there are any points you wish to clarify or comment on, you may be able to speak to the magistrates again if they agree to hear you. This will be your last chance to speak on the subject in Court and you will not be able to introduce any additional evidence in your speech.

The defendant may also have a final chance to address the Court if the Magistrates agree. If so, the defendant will make his or her speech before yours, and in that case, you will speak after the defendant and have the final word.

After this, the Magistrates will leave the Court to consider the matter further. They may call the Clerk of the Court, who normally sits in front of the bench, to advise on legal points. On returning they will announce their decision and you will know whether your action has been successful or not.

If you have been successful, the defendant may be told to carry out certain works within a certain, e.g. additional sound insulation and the Environmental Health Officer may be asked to monitor these works and report back to the Court. The defendant will certainly be ordered to abate the nuisance and

may be fined. You can ask the Court to consider an award of costs in your favour if you and/or your witnesses have incurred expenses in the course of the case.

If, on the other hand, the Magistrates decide that you have not proved your case, you may be asked to pay defendant's expenses to the court Office. You do have the opportunity of appealing, within 21 days, to a higher Court when the details of the case would be reconsidered.

FINAL REMARKS

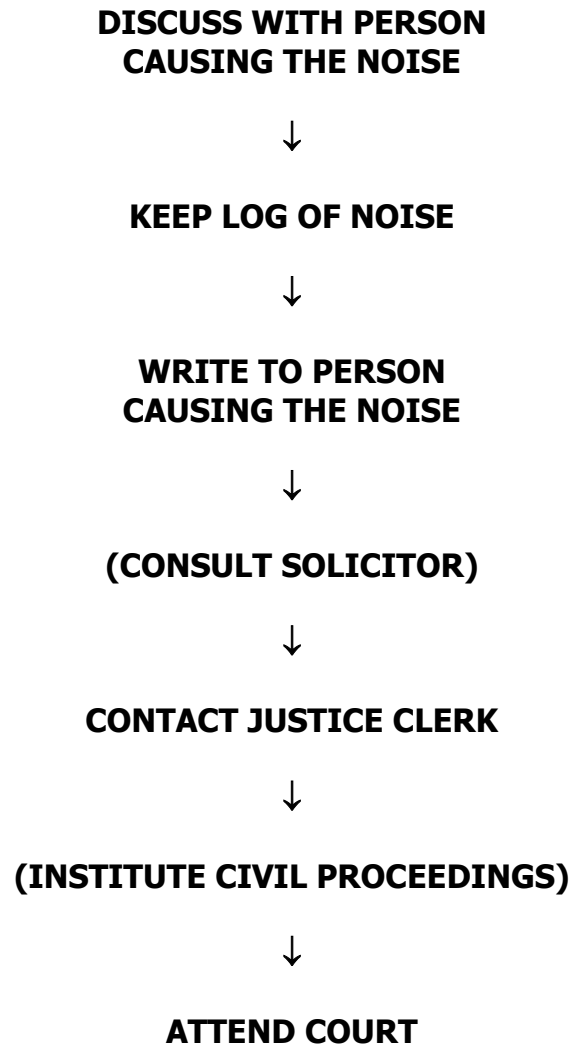
There are always two sides to a story. Environmental Health Officers throughout the country investigate many thousands of complaints of domestic noise every year and in many cases they find that the person being complained about has a story every bit as plausible as that of the complainant. It is common to find that relations between neighbours have become strained over a period of time and that the noise complaint is simply a part of a much bigger and often more complicated dispute. The Environmental Health Officer may consider that he is unable to confirm the existence of a noise nuisance. This is often a reason why the officer may inform the complainant that the council are unable to take action and that the procedure outlined above might be considered by the complainant. The Magistrates' Court can then decide on the matter.

Remember that the Court will only be interested in hearing details of your specific noise complaint and not those of other disputes or differences between you and your neighbours.

Also remember that the person you complained about may be able to produce counter-arguments in defence which may appear to be just as real as your grievances. It is extremely difficult too for any of us to be wholly objective in considering our relationships with others, but one thing which you **must** do is to be quite certain of the grounds of your complaint and that you are not over-reacting to a situation which most people would find acceptable.

The vast majority of noise complaints can be and are resolved without resorting to formal action by the Local Authority or a private individual. Often much goodwill can be preserved by a friendly word with the person causing the nuisance and it is hoped that the procedures described in this document will only be used when all other methods have failed.

The procedures are summarised in the chart below with optional steps in brackets.



Cardiff Magistrates Court

Fitzalan Place

Cardiff South Wales

Wales

CF24 0RZ

029 2046 3040

