

GUIDANCE NOTES ON PRIVATE NUISANCE ACTION

APPLICATION

The assessment of noise or other nuisances may present practical difficulties for Local Authority officers where the nuisance is intermittent, irregular or unpredictable in occurrence. In these circumstances the Local Authority may not be satisfied as required by section 80 of the Environmental Protection Act 1990 that a statutory nuisance exists or is likely to occur or recur.

In other circumstances a nuisance may be more easily demonstrated, but the Local Authority may not be in a position to act with the urgency desired by the complainant.

The Environmental Protection Act 1990 therefore offers an alternative which allows individuals or groups to bring their own action. This facility is set out in section 82 of the Act.

WHICH NUISANCES ARE INCLUDED?

Section 79 of the Act defines the nuisances which can be dealt with. The Environmental Health Officer will provide more guidance, but in general the following circumstances would be included:

1. Some conditions of a neighbouring premises which adversely affects your own property;
2. Smoke emitted from premises;
3. Fumes or Gas emitted from domestic premises;
4. Dust, steam, smell or effluvia emitted from business premises;
5. Accumulations or deposits;
6. Animals kept in an unacceptable place or manner;

- a. Any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance.
- b. Artificial light emitted from premises so as to be prejudicial to health or a nuisance.

7. Noise

The test for any of these which you think may apply, is the effect that the situation has on you. It must either be prejudicial to the health of you or others living in your property, or a nuisance in that it interferes with your enjoyment of your property. It is not sufficient, for example, if you are disturbed by something which is merely an eyesore, or by merely being able to hear your neighbours.

The common sense test which the Courts apply is "Is the activity or situation unreasonable or excessive or both in the opinion of the ordinary man in the street; not somebody who may be oversensitive or in unique circumstances?" If you consider the answer to be "yes", then you could proceed with reasonable confidence.

WHAT IS THE PROCEDURE?

An occupier of any premises affected by a nuisance may complain directly to a Magistrate Court and request a hearing to consider the issue of a Nuisance Order. Before contacting the court, complainants should take the following action:

1. Discuss the problem, if possible, with the person who you consider to be responsible. Explain how you are affected and be prepared to agree a compromise.
2. Follow up any agreement in writing and keep notes of any discussion. Where direct contact is not practical, write a letter to the

person responsible expressing your concerns. Keep copies of all correspondence.

3. If the problem persists, keep a diary of occurrences and collect other evidence, such as photographs or statements from others affected.

4. It is essential that your information is accurate, dated, detailed and honest. Do not be tempted to exaggerate. Where noise is the cause of the problem, describe the type of noise and how it affects you, for example: interrupting sleep; interference with concentration. Your evidence should allow you to "Paint a Picture" for the Magistrates in order that they may appreciate your problem.

5. It is possible to make the complaint to a Magistrates Court without the benefit of legal advice but you are strongly advised to familiarise yourself with Court procedure. In practice, the Clerk of the Court will guide you through the legislation, but you will need to present your own evidence.

6. The first stage at the Court is the issue of a summons on the person responsible for the nuisance. The summons requires that person to attend a hearing. On arrival at the Court, go to the office and explain that you wish to request a hearing under S.82 of the Environmental Protection Act 1990 and that NCPAG you wish for a summons to be issued. A member of staff will guide you through the relevant procedures and you should take with you your evidence to demonstrate that you have an arguable case. You must be able to give them the full name and address of the person you consider to be responsible.

7. The Court will decide if the case is arguable, or will indicate what further information would be required. When satisfied they will issue the summons and notify you of a hearing date. A small charge will be

made for the issue of the summons. The hearing date will be at least 21 days after the date of the summons.

8. You should continue to keep records and to gather other evidence up to the date of the hearing and you should take this with you to present on the day. You will need at least 3 copies of all your evidence which must be submitted to the Court before the hearing (the Court will advise you on this). Your evidence should be well-organised and in date order. Each item must be referred to in your submission - they should be numbered to enable them to be easily identified.

9. At the hearing, the Magistrates will invite you to put your case, using witnesses where appropriate. They will then invite the defendant to respond. It is important to bear in mind that the defendant may be legally represented, and they may put questions to you.

10. After hearing the evidence, the Magistrates may be satisfied that the alleged nuisance exists, or is likely to recur. In that case, the Court must make an order which requires the defendant to abate the nuisance and/or prohibit its recurrence. They will specify a time limit and may specify works to be carried out. The Magistrate also has the facility to impose a fine, and to require the defendant to pay any expenses you have incurred. If the Magistrates decide that there is no Statutory Nuisance, they will not issue an Order, and costs may be awarded against you.

WHAT HAPPENS IF THE NUISANCE CONTINUES?

A person who contravenes the requirements of an Order may be guilty of an offence and liable on conviction to a fine. It is also possible for an injunction to be issued which must be complied with.

If the defendant continues to ignore the injunction, that person will be in contempt of Court and may be liable to imprisonment. As before you will need to provide evidence to prove that the nuisance has continued, and you may be liable to pay costs if you fail. There are certain defences in the Act NCPAG which would be considered and you are advised to seek legal representation if you wish to pursue action for contravention of a Nuisance Order.

Officers from the Environmental Health Department can be contacted for advice regarding the application of these procedures and the evidence required. You must remember that these processes can take some time and your anonymity cannot be preserved. This action should not be taken lightly and may lead to poor relations with your neighbours.