

Taking Private Action in the Magistrates Court

This is a brief summary of the steps likely to be involved in taking your own action under S.82 Environmental Protection Act 1990. It is not a comprehensive guide and will not guarantee that you are successful in your action. You must ensure that you are prepared to cover the costs involved in any action before proceeding.

If noise disturbance from a neighbour is materially interfering with your use of your property, you have been unsuccessful in resolving the problem informally and the Council has been unable to help or you do not want to involve them, you may be able to take action in the Magistrates Court yourself under section 82 of the Environmental Protection Act 1990.	
Seeking advice	It is strongly advised that you seek independent legal advice before proceeding with your own action. It is important to check the strength of your case first as, should you lose the case, you may have to meet the Defence legal costs. You can speak to a Solicitor but there will be a fee.
Getting Started	You must advise the person you believe to be causing a nuisance in writing of your intention to go to Court, giving at least three days' notice – the Court will ask if you have done this. Magistrates' Courts deal with these actions and can be contacted directly. Contact the local Magistrates Court for advice as to how this can be done.
Making an application	A fee is payable in order to pursue the matter. You will need to prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Have your diaries/evidence/photographs copied to give to the Clerk. When, later, it comes to applying for a summons, the Magistrate will ask you questions. Even after starting these proceedings, you should continue to keep a diary of the disturbances and keep copies of all correspondence you write or receive in date order and make notes of any conversations.
What next	The court serves the summons by recorded delivery or by personal service and will advise you of a date to return to court, usually about six weeks later. You must return to Court on this day. Check the lists of cases posted up inside or ask for help to find out which court room you should attend. If the accused admits causing the nuisance, the Court will typically hear the case on that day. You will normally be asked to make a statement in support of your claim. If the accused fails to attend and makes no plea by post, the case will usually be adjourned. If the Court is satisfied that the accused was served with the summons, it may, in some cases (although these are generally rare), decide to hear the case in his absence. If the accused attends but denies causing the nuisance, the Court may hear the case or adjourn to another date, depending on the time available.
When you return to court	You do not need to be represented in Court by a lawyer. If you are however, you will have to pay as Legal Aid is not available for these actions. A Local Law Centre may be able to offer free assistance in preparing your case but not in presenting it. Prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Bring any witnesses with you and have your diaries/evidence/photographs copied to give to the Court. The Magistrate will ask you questions, so may the accused, and you will have the opportunity of asking questions on their evidence.
Likely outcomes	If the Court is satisfied that you have proved beyond all reasonable doubt that a nuisance exists or is likely to recur, they will make an Abatement Order requiring the accused to cease the statutory nuisance and/or prohibit its recurrence. The Court may also impose an unlimited fine. You may, in addition, ask for reasonable costs e.g. legal costs. Any claim must be made at the hearing and any award is at the discretion of the Magistrate. A copy of the Abatement Order served on the accused will be given to you for your information. If you are unsuccessful, you may be ordered to pay the defendant's costs. The costs awarded may include any reasonable costs in defending the case, including legal costs.
If the problem continues	Return to the same Court (before 10:00hrs) as soon as possible and apply for a "summons for failure to comply with the court order". There is no need to notify your intention to the person causing the noise. You will be able to start a prosecution for breach of the Abatement Order from which further financial penalties are likely to be imposed if the accused is found guilty.