

How the courts consider nuisance:

Nuisance law looks at how to keep a balance between conflicting interests. That is a balance between what one person wishes to do on their own land and how this affects their neighbour.

A degree of tolerance is expected in the interests of maintaining a peaceful neighbourhood.

The nuisance has to be causing **substantial and unreasonable interference**.

The courts will **not** take into consideration the sensitivity of the person making the complaint or what they would do on their property:

When the courts look at nuisance law it will only consider the effects of the nuisance as it would affect the 'average' person.

It is also worth noting that:

What would be considered as an acceptable level of disturbance or pollution in the middle of an industrial town would be different for a small community in the country.

The nuisance that is being caused should not be isolated or happen infrequently but be likely to recur.



Contact:

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PO Box 97
Westgate
Leeds
LS1 3JP
Tel: 0113 245 9653

Email: www.wy-leedsmags@hmcourts-service.gsi.gov.uk

Or for more information see:
www.hmcourts-service.gov.uk

Health & Environmental Action Services
Millshaw Park Way
Churwell
Leeds LS11 0LS

Phone: 0113 222 4406
Fax: 0113 247 6282
E-mail: env.health@leeds.gov.uk
Website: www.leeds.gov.uk



Leeds
CITY COUNCIL

Statutory Nuisances

Taking your own action



Health & Environmental Action Services

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Tel: 0113 222 4406

Taking your own action

The Law.

As an occupier of the premises affected by nuisance you can complain directly to the Magistrates' Court under section 82 of the Environmental Protection Act 1990. You may do this because you do not wish to involve the local authority or because you have not obtained satisfaction from them.

To do this is quite simple and it need not cost much. It is not necessary to employ a solicitor. However if you feel happier doing so, they will be able to advise you.

Try Writing.

Prior to approaching the court it is a good idea to write to the person causing the nuisance saying that unless the noise is abated and by a certain date, (e.g. two weeks) you will complain to the Magistrates' Court. Keep a copy of all correspondence.

Keep A Diary.

You would need to prove to the magistrates beyond reasonable doubt that what you are complaining about amounts to a nuisance. You should keep a written diary record of the nuisance, with dates, times, type and duration of the disturbance and how it has affected you. This will provide valuable evidence. Also, although the law says that only one person needs to be affected for there to be a nuisance, in practice the evidence of other witnesses will strengthen your claim.

The Justices' Clerks' Office

If your verbal or written request does not resolve the situation then contact the Justices' Clerks' office at your local Magistrates' Court explaining that you wish to make a complaint under section 82 of the Environmental Protection Act 1990. You will probably need to visit the court where the procedure will be explained to you and you may be asked to show what evidence you have about the problem. This will show the magistrates that you have an arguable case.

The Clerk of the Court will be able to advise you further. He or she will tell you for example, that if you intend to complain directly to the Magistrates' Court then you must give at least 3 days notice to the person considered responsible for the nuisance that that is what you intend to do. You will need to follow this procedure even if you have written to the person responsible for the nuisance already, as outlined above. The notice should provide details of the intended complaint and may be delivered to the person by hand or by normal post. A solicitor could do all this for you (and this would show you mean business) but solicitors do charge for their services.

The Hearing.

A date will be set for the hearing and the person about whom you are complaining will be summoned to attend court. You will be required to explain your view of the problem and you should produce evidence, including your diaries, and any independent witnesses to support your complaint. You will have to give your own evidence, and question your own supporting witnesses to draw out their evidence (again a solicitor may help). You and your witnesses may also be cross examined by the person (or their solicitor) about whom you have

complained and you may also be able to cross examine them and their witnesses.

The Outcome

If you prove your case the Court will make an order requiring the nuisance to be abated, and/or prohibit a recurrence of the nuisance. The Court also has the power at the time the nuisance order is made to impose a fine on the defendant. If this order is ignored further action will need to be taken; you must therefore continue to keep records of the nuisance in case it proves necessary to return to Court.

Costs

If you fail to prove your case you may have to pay some or all of the defendant's expenses in coming to court.

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