

LONDON BOROUGH OF
LAMBETH

NOISE NUISANCE

***A STEP-BY-STEP GUIDE
ON HOW TO TAKE YOUR OWN
LEGAL ACTION***

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INTRODUCTION

Noise is an inevitable consequence of our daily activities whether in the workplace, travelling to and from work, in the home or at recreation.

Some noise is tolerable but it becomes a **nuisance** when its level and occurrence make it an unreasonable intrusion upon our right to peace and quiet and/or puts our health at risk.

The Council investigates complaints of noise nuisance in compliance with its statutory duty. If an alleged noise nuisance occurs regularly and frequently, an Environmental Health Officer will visit whenever practicable and actually witness the noise complained of. He or she can then decide whether, in his or her opinion, the noise constitutes an actionable nuisance, or not, and proceed accordingly.

All complaints of noise will be investigated, but it is not always practicable for an Environmental Health Officer to witness the noise complained of. In these cases, the Council cannot take statutory enforcement action. This guide has been designed to steer you through the procedures that have to be followed should you wish to take your own action and /or where you do not wish to involve the Council on your behalf.

The Environmental Protection Act 1990 (Section 82) entitles you to bring a prosecution, for the abatement of noise nuisance, in your local Magistrates Court. You may wish to employ the services of a solicitor to assist you but this is not essential and will be at your own expense, although if your case is successfully prosecuted, you should get your costs awarded against the defendant.

The following guidance is intended to be helpful but it contains no guarantee of a successful outcome. It must be pointed out that, in the event of a Court case not being proved, the person being taken to Court may be entitled to apply for costs against you. The Court has a discretion in such circumstances and, if satisfied that you had reasonable grounds for bringing the proceedings, even though the case was not proved, would be less likely to award costs. However, if the Court was of the opinion that the complaint was misconceived, malicious or frivolous, it would usually be minded to award costs.

You will find included in this guide the following documents:-

- 1) Extracts from the Environmental Protection Act 1990 relating to noise nuisance;
- 2) specimen forms (A to C);
- 3) a procedural checklist and;
- 4) a leaflet entitled "Witness in Court"

If you do decide to take your own action please remember to **keep copies of all documents** as these will be required at the Court hearing. It is hoped that the time and effort you spend will be rewarded with peace and quiet.

STEP 1 - KEEPING A RECORD OF THE NOISE

The first step is to keep a written record of noise occurrences. This means recording the dates, times and durations (how long the noise continues) of each occurrence. It will be useful to give not only a description of the noise complained of but also some guide as to its intrusive effect eg. "the noise was so loud I could not hear the television" or "the noise was so loud it woke me up" etc. (See Specimen Form A).

NB. It is very important to make your notes/records at the time or very soon after the noise occurs.

The period for which you are advised to keep a record, before complaining to the Court, varies according to how often you hear the noise. For example, if you are disturbed by a party held each week in a neighbouring flat keep a record for at least four weeks whereas, for a noise which occurs daily, a record kept for one week is probably sufficient upon which to base your complaint.

You are advised to **continue to keep a record of the noise**, even after the Court case has been heard, because you may need to complain again to the Court if the problem persists.

Although an individual has the right to make a complaint about a noise nuisance it is far better and more convincing in a Court case, if one or more neighbours, who are also affected, can be persuaded to keep a similar record of the noise and be prepared to appear in Court as a witness.

Remember that, in a Court case, you must be able to prove, **beyond reasonable doubt**, that a noise nuisance has occurred. It will be invaluable, therefore, if you obtain supporting evidence from witnesses who have kept independent written records.

STEP 2 - IDENTIFY THE "PERSON RESPONSIBLE" FOR THE NOISE.

The person you should "summons" to appear in Court, "the defendant", is the person you allege to be causing the noise nuisance. If you cannot find out who that is, you can proceed instead against the owner or occupier of the premises. An example of this is with noisy parties where you may not know the name and address of the person who actually turns the record player on.

You may be able to obtain the name of the owner or occupier by inspecting either the electoral register at public libraries or by informally asking other residents or by checking the telephone directory. The local Lambeth Neighbourhood Housing Office may be able to assist if the accused person(s) occupies Council accommodation.

STEP 3 - COMPLETE A "STATEMENT OF WITNESS FORM"

The following information should be included in your "witness statement" :-

- 1) Your name and address;
- 2) Name and address of the defendant;
- 3) Dates on which the noise nuisance occur;
- 4) The times and duration of the nuisance;
- 5) The place where the nuisance is coming from;
- 6) Description of the noise;
- 7) The effect of the noise on you and your reason for believing it to be a nuisance within the meaning of the Environmental Protection Act 1990.

Much of this information is already on your written record and can be incorporated into your statement in its original form.

NB. Do not attempt to re-write or otherwise alter the record as you may need to produce it in evidence and satisfy the Court that your notes were made at the time or very soon after the noise occurs (see Specimen Form B).

STEP 4 - GIVE "NOTICE OF INTENTION" TO BRING PROCEEDINGS (SPECIMEN FORM C) TO THE "PERSON RESPONSIBLE" FOR THE NOISE.

Complete every section of the "Notice of Intention" in **BLOCK CAPITALS** and ensure that the name of the person you believe to be responsible is on it. Place the notice in an envelope, properly addressed, and serve it upon the person you believe to be responsible.

The Court normally serves the Summons, but if you are required to serve the Summons, you will need to certify on the back of the Summons form the method of service you have chosen. There are two ways in which you can serve a Summons:-

- 1) by handing it to the person being "summonsed" to appear;
- 2) sending it, by recorded delivery post, to the person being summonsed to appear.

NB. If you are not clear about the method of service, ask the Clerk of the Court.

STEP 7 - THE COURT HEARING

You do not have to be represented by a solicitor but, if you decide to conduct the case yourself the Court will expect you to follow proper Court procedure. If you are unfamiliar with Court procedure, go along when the Court is sitting, sit in the public gallery at the back of the Court and note how the cases are conducted. You will see that the Clerk to the Court sits in front of the Magistrates. The Clerk's job is to advise Magistrates on points of law and to ensure that proper Court procedures are followed. It will be this person who will help you with procedures when you present your case. Sometimes the case will be heard by a single Stipendiary (Professional) Magistrate, who also sits with a clerk.

Further information on Court Procedure is contained in the enclosed leaflet entitled "Witness in Court".

Be sure to have your statement, notes and record of noise occurrences with you when your complaint is heard in Court. You will be required to go into the witness box and give evidence.

When you give your evidence, ask the Magistrates if you can read from the notes you have made (i.e. Specimen Form B) and explain that you made the notes at the time the noise occurred.

It is suggested that your evidence is presented in the following way:-

- 1) Give a description of the premises where the noise comes from, eg. detached, semi-detached or terraced house, flat, shop, factory etc., and the position and proximity of your dwelling in relation to the noise source.

NOTE: You are advised to consult your local Environmental Health Officer for advice if the premises where the noise is coming from is industrial, trade or other business premises as there may be a "best practical means defence" which could affect your case.

- 2) Give a description of the noise and why you believe it to be a nuisance. Read out your statement and quote from the actual records of noise kept by you.
- 3) State that, at the date the "Notice of Intention" was given, a "Statutory Nuisance" had occurred, or had existed or was likely to recur.

- 4) Confirm that the person who was in receipt of the "Notice of Intention" is the person responsible for the "Statutory Nuisance".
- 5) Produce a copy of the "Notice of Intention" to confirm that sufficient information was given to the addressee and show that it was properly served.
- 6) Confirm that there was no reasonable or satisfactory response to the "Notice of Intention" within the appropriate time period and that the "Statutory Nuisance" existed at the date of applying for the Summons or that it had recently occurred.

After you have given your evidence the defendant (the person you have named in the complaint) has the opportunity to ask you questions and the Magistrates will probably question you also.

You will then be given the opportunity to call any witnesses. If you do, the Court will expect you to question them so as to present their evidence. The defendant and the Magistrates may also question your witnesses.

When the defendant gives his/her evidence you will be able to question him/her but be sure to avoid any arguments or make statements where you should ask questions. You will not help your case if you become antagonistic in Court.

NB. When you give **your evidence**, make **statements only**. When you **question a witness**, ask **questions only**.

STEP 8 - COURT JUDGEMENT

If the Court is satisfied that an alleged nuisance exists, or may recur at the same place, the Court **must** make an Order for one or both of the following:-

- 1) to requiring the person causing the nuisance to stop it within a specified time;
- 2) to preventing the nuisance occurring again.

In addition, the Court may impose a fine, at present not exceeding £5000 (Criminal Justice Act 1982 - level 5).

The reason for the two forms of verdict is to allow for the situation where, having made your complaint, by the time you go to Court the nuisance has stopped but you feel you have grounds to suppose it may well start again.

Section 82(12) of the 1990 Act makes it clear that the Court must order the defendant to pay, to the prosecution, such amount as the Court considers reasonably sufficient to compensate him/her for any expenses necessarily incurred by him/her in bringing the proceedings. If you wish to claim these costs you should have an idea how much and how you arrived at that figure. You may also ask the Court to grant compensation under Section 35 of the Powers of

the Criminal Courts Act as the offence is classified as criminal.

STEP 9 - FURTHER ACTION TO TAKE IF COURT ORDER IS DISOBEYED

If the Court Order is not obeyed, you can make a further complaint to the same Court. To do this you should visit the office of the Court and seek the advice of the Clerk.

You should take your record of noise occurrences up to and after the original Court case. The Court can again fine a person who disregards the Court Order up to £5000 and a further £500 for each day thereafter that the offence continues.

EXTRACTS FROM PART 3 OF THE ENVIRONMENTAL PROTECTION ACT
1990 NOISE NUISANCE

SECTION 79-Statutory nuisances:

(1) Subject to subsections (2) to (6) below, the following matters constitute "statutory nuisances" for the purpose of this Part, that is to say-

- (a)
- (b)
- (c)
- (d)
- (e)
- (f)
- (g) noise emitted from premises so as to be prejudicial to health or a nuisance;
- (h)

(2) Subsections (1)(b) and (g) above do not apply in relation to premises-

(a) occupied on behalf of the Crown for naval, military or air force purposes or for the purposes of the department of the Secretary of State having responsibility for defence, or

(b) occupied by or for the purposes of a visiting force;.....

(6) Subsection (1)(g) above does not apply to noise caused by aircraft other than model aircraft.

(7) In this Part-

"prejudicial to health" means injurious, or likely to cause injury, to health;

FORM "A"

"NOISE DIARY SHEET"

ADDRESS OF NOISE SOURCE: _____

DAY TIME	DATE	START TIME a.m/p.m.	DESCRIPTION OF NOISE (what type and how loud - how it affected complainant)	STOP a.m/p m
<i>Monday am</i>	<i>2/3/87</i>	<i>2.00 am</i>	<i>Loud music woke me up.</i>	<i>3.30</i>
<i>Friday pm</i>	<i>6/3/87</i>	<i>7.00 pm</i>	<i>Loud music, had to turn television up - then went out to get away from noise.</i>	<i>11.30</i>
<i>Sunday pm</i>	<i>8/3/87</i>	<i>3.00 pm</i>	<i>Loud music, not as loud as last time but had to close the window so I did not need to turn radio up.</i>	<i>5.00</i>

FORM B

STATEMENT OF WITNESS (example only)

(C.J. Act 1967,s.9;M.C. Act 1980,s102;M.C. Rules 1981,r.70)

Statement of: *A.N.Other*
Age of Witness (if over 21 enter "Over 21): *Over 21*
Occupation of Witness: *Hairdresser*
Address and telephone No.: *23,Acacia Ho., Rutland Rd,
London SW12
0171 926 7188*

This statement consisting of one page signed by me, is true to the best of my knowledge and belief and I make it knowing that, if it is tendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the _____ day of _____

Signed _____

Signature witnessed by _____

I have lived at 23 Acacia House since August 1987 and I have suffered loud amplified music coming from my neighbour, Mr Smith at 21 Acacia House. The music can be at any time of the day and including the early hours of the morning. Since January 1988,I have kept a record of the noise which I have brought with me today to read out in Court. All entries on the record were made at the time or very soon after the noise occurred. The worst problem is in the evenings and early hours of the morning when the noise often starts at 6 or 7pm and has gone on until 2am the next day. The music is loud and can be clearly heard in all rooms of my flat. It disturbs my sleep and it is not possible to watch television without turning the volume up and very often the music can be felt in my living room and bedroom which are next to No.21. The music interferes unreasonably with the enjoyment of my flat and repeated requests for the music to be turned down have been to no avail. For the reasons that I have outlined, I consider the noise to be a nuisance under Section 79 of the Environmental Protection Act 1990.

Signed: _____

Signature witnessed by: _____

NOTE: This statement must be signed on each page and at the end of the written matter by the person making this statement.

FORM C

NOTICE OF INTENTION TO BRING PROCEEDINGS
under section 82 of the Environmental Protection Act 1990

To: *Mr Smith,*

Of: *21 Acacia Ho., Rutland Road, London SW12.*

I A. N. *Other*

Of *23, Acacia Ho., Rutland Road, London SW12.*

being aggrieved by a statutory nuisance, namely

loud amplified music being emitted

in relation to the premises known as *21 Acacia Ho., Rutland Rd, London SW12.*

HEREBY GIVE YOU NOTICE under section 82(6) of the Environmental Protection Act 1990, that I intend to bring proceedings for an [abatement] [and] [prohibition] order under section 82(2) of the said Act in the magistrates court sitting at

the local Magistrates Court,Address.....

against you, as [the person responsible for the said nuisance] [the [owner] [occupier] of the said premises]

Dated _____

Signed _____

PROCEDURAL CHECK LIST

- STEP 1: "Noise diary sheets" completed. []
- STEP 2: Person causing nuisance identified []
- Address of person responsible for noise
nuisance located. []
- STEP 3: "Statement of Witness" form completed. []
- STEP 4: "Notice Of Intention To Bring Proceedings"
form completed and served on the person
responsible. []
- STEP 5: Met Clerk of the Magistrates Court and
completed "Complaint Form" and "Summons Form". []
- Justified the taking of action to Magistrate
and Summons signed. []
- STEP 6: Summons served []
- STEP 7: COURT HEARING DATE
- Remember to take all relevant papers referred
to in guidance note []

NOTE:

Blank copies of the following forms can be obtained from the Environmental Health Department.

- "Noise Diary Sheet"
- "Statement of Witness Form"
- "Notice Of Intention To Bring Proceedings Form"

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