

Reply to
Call
E-mail

Dear

**ENVIRONMENTAL PROTECTION ACT 1990 SECTIONS 79 & 80
ALLEGED NOISE NUISANCE
RE:**

I refer to your recent complaint concerning noise disturbance.

If I have not yet discussed with you in person the specific details of your complaint, please contact me on the above telephone number or email address.

In cases such as this, it is the Environmental Health department's role to investigate cases of alleged noise nuisance, to assess if the noise complained of amounts to that considered to be a 'statutory nuisance' i.e. a *substantial* interference of well-being, comfort and enjoyment of land.

The Environmental Health Department cannot investigate trivial matters. The law governing noise nuisance does not take 'ordinary living noise' into account (for example, shutting doors, walking up and down stairs, children playing or matters concerned with poor sound insulation between properties).

For the Council to take legal action against noise nuisance, the noise must be proven by a council officer to be both unreasonable **and** excessive. The Courts will only consider something a nuisance if it would be a nuisance to a "reasonable person". The law does not exist to protect people who are abnormally sensitive to sound.

To enable us to gather sufficient evidence to prove that a statutory noise nuisance exists please find enclosed some diary sheets for you to log details of the noise disturbance you are experiencing. If you can remember recent specific instances of noise disturbance, you can also record these. Please keep the diary over the next 7-10 days and return it to this office for assessment, either in person, by post or email to the address above. If you send your diary sheets in the post, it is advisable to keep a copy. Diary sheets are an important source of evidence and must be used by you to record noise disturbance events throughout the investigation. It is unlikely that your complaint can be investigated or progressed without completed diary sheets.

I have sent a letter to the address that is alleged to be causing the problem. This is a legal requirement to allow Environmental Health to monitor or install noise recording equipment at a later date. Please be assured that it is the council's policy not to pass on your details as the complainant. The diary sheets will help to show whether the written warning has had any effect.

Once the diary sheets have been returned an assessment will be made of the information that you have recorded. If there is an indication of a statutory noise nuisance from the diary sheets, we will:

- (a) arrange a visit to your home when the noise is likely to occur; and/or;
- (b) make arrangements for a visit to be made on receipt of a call from you indicating that the noise nuisance is taking place; and/or;
- (c) arrange to install noise monitoring equipment in your home.

We will undertake three visits or install the equipment three times, or a combination of the above. If it is found following assessment that a statutory nuisance does not exist, then we will inform you.

If sufficient evidence is gathered to demonstrate that a statutory noise nuisance exists, the council may serve an Abatement Notice under the Environmental Protection Act 1990, which is a legal direction to the recipient not to cause further nuisance. Evidence of a breach of an abatement notice may lead to prosecution of the perpetrator. At this stage it may be necessary for you to attend Court hearings, however, this would be discussed with you.

You may however find an alternative approach through mediation at the Citizens Advice Bureau (01908 545180 or mediation@mkcab.org.uk) helpful in resolving your neighbour problem. This service works to resolve problems between neighbours amicably and can deal with the problem without offending the other people involved.

If I receive no further contact from you concerning this matter, within 4 weeks from the date of this letter, then we will assume our letter to the person/s allegedly causing the nuisance or mediation has rectified the situation and we will close this complaint.

If you have any queries regarding this or any other matter please do not hesitate to contact me.

Yours sincerely

Environmental Health Officer

Enc: Noise fact sheet and Diary Sheet

NOISE NUISANCE DIARY SHEET

Date	Time Noise Started	Time Noise Ended	Type of Noise & Comments

I confirm that I believe the noise from :
 is causing a serious nuisance, and I am prepared to give evidence in Court to support my complaint.

Print Name:

Signed:

Address:.....

Phone number:

Email address:

NOISE NUISANCE DIARY SHEET

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I confirm that I believe the noise from :
is causing a serious nuisance, and I am prepared to give evidence in Court to support my complaint.

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NEIGHBOURHOOD NOISE NUISANCES ACTION YOU NEED TO TAKE

STEP 1 - Keep Calm

Yes, this may seem like a tall order. You won't feel calm if you are suffering from sleepless nights due to noise from your neighbour. But if you are going to deal with the problem calm is what you must be. Dealing with a difficult neighbour who is acting unreasonably is always difficult, if you are not calm it becomes impossible.

STEP 2 - Check that you are being reasonable

This may seem a very unreasonable requirement as obviously you believe it is your neighbour who is behaving unreasonably. However, your being reasonable is an essential requirement if you are to deal successfully with the problem you are facing. This is for two reasons:-

- (a) Should this matter get as far as Court, you will need to be seen as a very reasonable person. Your neighbour may well seek to show the opposite. He may well suggest that he is a normal reasonable person trying to enjoy the comfort of his own home without giving offence, whilst you are over-sensitive and neurotic persecuting him by making unreasonable demands. You will need to prove that this is not the case.
- (b) The Courts will only consider something a nuisance if it would be a nuisance to a "reasonable man/woman". It is a principle of English law that it does not exist to protect the abnormally sensitive. So just pause to consider whether what you expect from your neighbour really is reasonable. Complaints about the occasional party or loud music are unlikely to impress; such things are all part of living in a community. Remember all neighbours cause some inconvenience - even you!

Right! So now you are CALM, REASONABLE AND SURE THAT YOU ARE DEALING WITH A NUISANCE THAT SIGNIFICANTLY AFFECTS YOU.

STEP 3 - The Friendly Approach

You may not feel very friendly but life will be a lot easier if you are able to persuade your neighbour to change his ways. You are much more likely to achieve a good response if you speak quietly to him rather than shout and scream. At this stage it is best to assume that he, like you, is a reasonable person. Invite his co-operation.

So if you haven't already spoken to your neighbour about your concerns, you should do. This isn't always easy but it is important and does show that you want to sort the matter out in a neighbourly way.

STEP 4 - If things Don't Improve

If, when you speak to him your neighbour refuses to change his ways, is rude or threatening, then further action is necessary.

It would be useful to put your complaint in writing to your neighbour. A brief, firm but polite letter advising him of why you consider he is being unreasonable should be sent. You may wish to state that if matters do not improve you will have to complain to the Environment Health Department. The letter must be dated and you should keep a copy.

You will need to keep a 'diary' of any further incidents when you consider that your neighbour has caused a nuisance, and a form for this purpose is attached. It is important that you complete the form and questionnaire in full. Such a record should be kept for a sufficient period to show that the nuisance significantly affects you and is not a "one off" event. It is difficult to say how long the 'diary' should be kept for, because circumstances vary so much.

STEP 5 - Notify the Environmental Health Department

When you believe that you have sufficient evidence in the 'diary' you must sign it, indicating that you are prepared to give evidence in court, if necessary. The Environmental Health Department should then be contacted and your 'diary' supplied to the officer.

STEP 6 - Action by the Council

The Environmental Health Department will raise the matter with your neighbour and in some cases may need to take sound level measurements.

If the Council is satisfied that a nuisance exists, a Legal notice will be served on the person causing the nuisance requiring him to stop it.

If the neighbour does not stop causing a nuisance, then the Council can take action against him in the Magistrates' Court. If he is found guilty then the person responsible for the nuisance can be fined and if he allows it to continue after conviction, a further fine may be given for each day on which the nuisance continues.

STEP 7 - What to do if The Council will not take Legal Action

It may seem that after investigation the Council is not satisfied that a legal nuisance exists. In such circumstances you can take action yourself through the Magistrates' Court, but if you can't convince the investigating officer, you may not be able to convince the Court that legal action is appropriate.

STEP 8 - Making a Complaint Direct to the Magistrates' Court

If the Council is not able to take legal action, perhaps because it cannot verify your complaint then you can.

Before you approach the Court make sure that you have good written records of the dates and times the nuisance has occurred, how long it continues and what effect it has on you. You also need a note of the occasions you have spoken to your neighbour and copies of any letters sent or received.

If you have not already done so it would be wise to write to your neighbour advising him that you consider he is causing a nuisance and unless he stops, you will take your complaint direct to the Magistrates' Court. Make sure the letter is dated and keep a copy. If there is no improvement you should contact the Clerk to the local Magistrates' Court. Information on where the Court is can be found at your library. Address a letter to the Clerk to the Court and advise him that you wish to make a complaint under Section 82 of the Environmental Protection Act 1990.

The Clerk to the Court will probably make an appointment for you to go and see him. At this meeting he will explain the court procedure and ask you to demonstrate that you have a genuine case. You therefore have to be prepared to show him the records you have been keeping of the nuisance and your requests to your neighbour. You should also let him know whether you have complained to the Council.

If the Clerk decides that you have an arguable case (you don't have to prove your case at this point) a Summons will be served on your neighbour and he will be required to attend Court at a later date.

STEP 9 - Attend Court

Before attending Court you have to decide whether you wish to be represented by a solicitor. You do not have to - it's up to you. You may know a solicitor whom you can use or you could contact your local Citizens Advice Bureau for names of solicitors who might undertake this work. If you do employ a solicitor be sure to get an estimate of the likely cost before you ask him to act for you.

If you decide to present your own case, you must be well organised as well as reasonable. The Clerk to the Court will give you guidance at the hearing, but have all your facts, dates, copies of letters, etc ready to refer to as necessary.

Your neighbour will probably attend Court and may well make claims about your own behaviour or unreasonableness; so be reasonable and do not get involved in swapping personal abuse. Just stick to the facts and demonstrate how patient you have been.

If the Magistrates agree that your neighbour is causing a nuisance they will make an order, called a Nuisance Order, requiring him to stop and stating what he must do to achieve this.

If the neighbour breaks the requirements of the Nuisance Order, without a reasonable excuse, he can be fined and a penalty imposed for each day he continues to cause a nuisance. You must therefore keep a record of any further problems and if necessary return to Court. You should know that your neighbour does have the Right to Appeal to the Crown Court against the decision of the Magistrates.