

TAKING YOUR OWN LEGAL ACTION ON NUISANCES

Where disturbance due to noise, smoke, light, fumes or gases, dust, smell or other effluvia, or any accumulation or deposit is of limited effect, intermittent or of short duration it is likely that it will not be possible for officers from the council to witness a statutory nuisance.

In cases such as these or where a person does not wish to involve the council, private action may be taken through the Magistrates Court under section 82 of the Environmental Protection Act 1990. Although you can take this action yourself it would be advisable to contact a solicitor or this department first for advice.

In the absence of such advice the procedure outlined below can be followed:

- Speak with your neighbours if you feel you are able to. Alternatively you could send a polite letter to the person responsible, explaining the problem together with an indication of how long it has persisted and asking them if they can reduce the disturbance they are causing. It is often the case that people do not realise they are causing others a problem. Once they are politely informed that it is they will quite happily resolve the matter. Retaliatory tactics rarely, if ever, solve the problem and often make it worse.
- Keep a contemporaneous written record of events when you are disturbed and what effect they have on you. This should be continued even after the court action has commenced.
- Send a civilly worded letter to the person responsible requesting them to restrict their activities so that they no longer cause you a disturbance. You should also indicate that if there is no improvement you intend taking private nuisance action. Keep a copy of the letter and a note of the date, time and method of its delivery.
- Should there be no improvement the next step is to contact: **The Clerk To Dartford/Medway Magistrates, North Kent Administrative Centre, The Brook, Chatham, Kent, ME4 4JZ; telephone Medway [01634] 830232** to discuss the matter and to ask for an appointment in order to put your case forward. Unless you are on an income related benefit there is an administrative fee to be paid to the courts currently £200 (April 2009).

At your interview with the court officer you should take with you all relevant papers including your records of nuisance events. You should also indicate whether there are any witnesses to the events that you have been recording. You may be required to pay a court fee before a summons is issued. This may be returned depending upon whether or not the magistrates agree with your case. You will need to demonstrate to the magistrates that the disturbance about which you are complaining amounts to a nuisance, therefore in practice the evidence of other witnesses will strengthen your claim. **If you fail to prove your case** you may have to pay some or all of the defendant's expenses in coming to court.

After the evidence has been heard, if the magistrates are satisfied a **statutory nuisance** has occurred, can make an **order** requiring the person responsible to abate the nuisance or prohibit its recurrence. The magistrates also have the power to impose a **fine** the current maximum of which is **£5,000** or **£20,000** for a business [level 5 on the standard scale] on the person responsible for the nuisance.

After the court hearing you should continue to maintain your record of events in case the person responsible disregards the magistrates order. If there is a **breach** of the order you will need to report this to the magistrates' clerk, for a further hearing to be arranged.