



## **TAKING YOUR OWN ACTION**

In some instances the Local Authority, whilst sympathetic to the effect the disturbance is having on you, may be unable to take further action due to a lack of evidence (maybe because the disturbance is intermittent or unpredictable), or they conclude that there is no statutory noise nuisance in existence.

Alternatively you may decide not to involve the Local Authority in your complaint. If this happens independent action can be taken by complaining directly to the Magistrate's Court under section 82 of the Environmental Protection Act 1990. This process is quite simple and need not cost much; whilst there is no requirement to employ a solicitor, it is advisable to seek some legal advice.

This leaflet has been prepared by the Public Protection Division of the Council to assist you if you wish to take private action against a person considered to be creating or causing a noise disturbance which interferes with the reasonable enjoyment of your property and which you believe to be a nuisance. Should you decide to take the matter to court yourself, Carmarthenshire County Council is unable to offer advice on how you should proceed with any particular case.

Set out in this leaflet is an outline process that may assist you if you are suffering from a disturbance and it has not been possible to stop the nuisance by any other acceptable means. Legal proceedings between neighbours should always be viewed as the last resort.

## **WHAT CAN YOU DO IF A NEIGHBOUR IS DISTURBING YOU?**

1. Approach the neighbour and explain politely that you are being troubled by a noise disturbance emanating from their premises. Many people are often unaware that they are causing a problem. Most will be glad to do what they can to reduce the disturbance. If you feel that your neighbour might react angrily to a complaint then approach the matter carefully, or send them an informal letter. Never place yourself in a position where you may be at risk of being harmed.
2. If the problem continues, keep a diary or log of events causing you a disturbance. Record details such as dates, times, duration, cause of disturbance and how it affected you (e.g. disturbs sleep, makes relaxing difficult etc). Only record nuisance information as it affects you. Do not include any personal information on your neighbours or their family life.

3. Write to your neighbour explaining the problem. Ask them to abate (control) the noise disturbance within a specified time period (e.g. two weeks), referring to any conversations you may have had and what, if anything they agreed to do. Make sure you date the letter and keep a copy.
4. It is important that before any approach is made to the magistrate's court, you have gathered sufficient information to assist you in your case. Keep a record of any conversations you have or any letters you write. If your neighbours are tenants, discuss the problem with their landlord.
5. If you know any other person being disturbed by the problem or who has witnessed the problem, ask them if they would be willing to give evidence at court if you started proceedings against the person responsible for the disturbance. If they are willing, ask them to keep their own nuisance log of the problem and how it affects them. They will need to make a written statement if the matter goes to court.
6. You should now be in a position to proceed with legal action against the person causing the disturbance.

## **COMPLAINING TO A MAGISTRATES COURT**

Under section 82 of the Environmental Protection Act 1990 a Magistrate's Court may act on a complaint made by any person on the grounds that they are *aggrieved* by the existence of a statutory nuisance. You **MUST** have sufficient evidence to support your claim. Proceedings under section 82 are criminal matters, and your case must be proved beyond reasonable doubt.

7. If you decide to take action under Section 82 you **must** give notice in **writing** to the person responsible for the problem. The written notice must state your intentions to take such action and provide them with details of the complaint. For complaints relating to a noise problem 3 days notice is required, for any other category of nuisance 21 days notice is needed. Deliver your notice by hand or if posted, it is suggested that you use recorded delivery. Make sure your letter is dated and that you have a copy.
8. If there is no improvement after you have sent the letter, you should contact the Clerk of the Court that has jurisdiction for the area in which you live. Inform the Clerk that you wish to make a complaint under section 82 of the Environmental Protection Act 1990. The Clerk of the Court will probably make an appointment for you to go and see them.
9. At the Magistrates Court you will speak to one of the Clerks. A Clerk is a person who advises the Magistrate. They will inform you of the procedure and will take the details of your complaint, so that they can

decide whether they should issue a summons. A summons is a document that informs the person who is causing the problem that they must attend the Court at a time and day to “answer” the complaint. You may incur a small administrative fee.

10. The Court may ask you to serve the summons (by hand or post) on the person responsible. If you serve the notice yourself, keep a careful record and ensure that the summons is served well before the hearing date.
11. If the Court is unable or unwilling to issue the summons, you will be advised of the reason why.
12. You will be required to attend Court to prove your case, along with any witnesses you wish to call to assist you in proving your case.
13. If the defendant pleads guilty, all you will need to do is explain to the court the circumstances as to why you made the complaint and why you believe the problem amounts to a nuisance. The court will then decide on the appropriate penalty.
14. In situations where the person responsible for the problem, the defendant, pleads not guilty you will be required to prove your case by giving evidence on oath and calling any witnesses you may have to give their evidence, on oath. The defendant, if attending, can question you and your witnesses. The defendant may also give evidence and call any witnesses he may have. You will have an opportunity to question him and his witnesses.
15. If the Court finds in your favour, they will make an order requiring the defendant to abate (control) the nuisance. The order may also prohibit or restrict a recurrence of the nuisance. The order will specify the measures that will have to be undertaken to achieve this. You should keep a record of any costs that you or your witnesses have incurred e.g. having to take a day off work unpaid, travelling expenses, etc.
16. If you lose your case, you will normally have to pay your own costs in bringing the case and may also have to pay the costs of the other party.
17. In the case where an abatement order is served, where that order is breached without reasonable excuse, that person shall be guilty of an offence under the Act and can be fined. Where a breach of an order is occurring, ensure that you log all the relevant details, so that this evidence can be used should it be necessary to return to court. The procedure for initiating a future case will be the same as for the original proceedings.