



## INTRODUCTION

This booklet has been prepared by Torbay Council to assist you in taking private action against any person considered to be creating or causing a noise which interferes with your lifestyle and is believed to be a nuisance. It contains background information which may be found useful in bringing a case to court if it has not been possible to stop the nuisance by any other acceptable means.

If the Local Authority has decided that formal action by them is not appropriate then action can be taken by the person experiencing the alleged noise nuisance or their legal representative. For this reason it may be considered advisable to discuss the matter with a solicitor, although this is not essential

## ENVIRONMENTAL PROTECTION ACT 1990 – SECTION 82

Under *Section 80 of the Environmental Protection Act 1990* action can only be taken by a local authority where it is satisfied a statutory nuisance exists, or is likely to occur or recur in the area of the authority.

Unfortunately, the investigation of noise complaints can be both time consuming and costly. Most frequently, noise sufficient to generate complaints occurs during the evening, at nighttime or in the early morning when people wish to relax or sleep.

It is not always possible for an investigating officer (IO) to determine whether an alleged statutory nuisance exists. If the IO is not able to be satisfied that such nuisance is being produced then, in general, no further action can be taken by the local authority.

However, under *Section 82 of the Environmental Protection Act* a magistrates court may act on a complaint made by any person on the ground that he is aggrieved by the existence of a statutory nuisance.

If the magistrates' court is satisfied that the alleged nuisance exists, or that although abated is likely to recur on the same premises, the court shall make an order against the defendant.

It is important, in any case you may decide to take, that detailed evidence is available to show the steps you have already used to attempt to stop the nuisance.

It is therefore important that a diary or notebook is kept in which sufficient information likely to assist your case is recorded (a suitable form is available from the council). The details should include:

1. Description of the noise and its exact source.
2. When and how often you have told the person responsible for the noise that you consider it to be a nuisance. (If you have written to the person regarding the noise, copies of any letters etc should be kept).
3. When the noise occurs and how long it lasts.
4. How much the noise interferes with your enjoyment of life (e.g. if it disturbs your sleep, makes reading or relaxing difficult, etc).
5. Whether there are others (neighbours etc) who also suffer from the noise and who are prepared to appear in court as witnesses on your behalf.

## **ENVIRONMENTAL PROTECTION ACT 1990 – SECTION 82 (Cont/d)**

### **Procedure in the Magistrates Court**

At this stage it is advisable, though not essential, to discuss the matter with a solicitor. If you intend to continue the case yourself, issuing a summons is quite simple using the following steps:

1. Identify the magistrates' court at Torquay (Union Street, Torquay – telephone 202202).  
Torquay.
2. You **MUST** give notice to the neighbour that you intend to take action against, that this is what you intend to do. This can take the form of a letter.
3. You need to address a letter to the Listing Officer at the Magistrates Court, Union Street, Torquay. The information you need to include is:
  - i) Details of the section and act under which you are taking this action – this is Section 82 of the Environmental Protection Act 1990.
  - ii) Details about the nature of the complaint. A description of the nuisance and why you wish to pursue the matter through the courts.
  - iii) The full name and address of the person who you intend to take the action against.
4. The court will issue a summons against the person described in 3(iii). This will require them to attend court on a set date. You will be notified of this date.
5. If the court is unwilling or unable to issue the summons, you will be advised of the reasons why.
6. The first hearing, the date being set under 4, will be either a pre-trial review or sometimes an adjournment for a pre-trial review. At the pre-trial review you will be expected to submit your evidence to the court. A trial date will be set, and your evidence will be exchanged with the defendant.
7. You must attend to prove your case on the date fixed for the hearing of the hearing together with any witnesses you wish to call to assist you in proving your case.
8. If the defendant appears at court and pleads guilty, all you need do is explain to the court the circumstances leading to the making of the complaint and why you think the noise amounts to a nuisance. The court will then decide on the appropriate penalty.
9. If the defendant does not appear at court, or appears and pleads not guilty, you will have 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 and give evidence himself and call any witnesses he may have. You can then question him and his witnesses. The court, if it finds the case has been proved it decides on the appropriate penalty.
10. It is important to bear in mind that if your case is unsuccessful, the court has the power to order you to pay the costs incurred by the defendant in defending his case.