

# Reigate & Banstead

## BOROUGH COUNCIL

Banstead | Horley | Redhill | Reigate



### ENVIRONMENTAL PROTECTION ACT 1990 SECTION 82 *A GUIDE TO TAKING YOUR OWN ACTION*

Section 82 of the Environmental protection Act 1990 allows a Magistrates' court to act on a complaint made by any person on the grounds that he is aggrieved by a statutory nuisance.

[http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1990/cukpga\\_19900043\\_en\\_1](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1990/cukpga_19900043_en_1)

Nuisances may include noise (including barking dogs), fumes, dust, smells and smoke.

Reigate and Banstead Borough Council have provided the following information in order to explain the process in a simple step by step manner.

#### **WHAT IS THE FIRST THING YOU SHOULD DO?**

You are strongly advised to tell whoever is responsible that they are causing or allowing a nuisance and that you are prepared to take legal proceedings; this can be done with the example Letter A shown below. Create two copies and send one to your neighbour and keep one copy for yourself. This letter on its own may solve the problem, but if the nuisance persists, maintain a log of the disturbances each time the nuisance occurs (you are advised to base these on Environmental Health Services' noise record sheets a copy of which is at appendix B amending them as is appropriate for your case). Keep your records safely, as they will be critical evidence later on.

#### **WHAT DO YOU DO NEXT IF THE NUISANCE IS ONGOING?**

If after a reasonable period, say two weeks, no improvement has been made, you can then consider going to court and making a complaint to the Magistrates' bench. The court makes a **charge** for this service, and you may get costs awarded against you .

#### **HOW DO YOU MAKE A COMPLAINT TO THE COURT?**

If you wish to make such a complaint, you should contact the Magistrates' Court in Hatchlands Road, Reigate ( 01737 765581). **Write to the Court to make an appointment.** In your letter state your address and that you wish to start action under **Section 82 of the Environmental Protection Act 1990**. The Court will advise you of where and when to attend.

#### **DO YOU NEED A SOLICITOR?**

It is not necessary to employ a solicitor, provided you feel confident to explain the situation to the Magistrates' bench yourself. It would be very useful if you could take to court, at the time of the hearing, a neighbour or a friend who has experienced the problem to act as a witness as this may strengthen your case. If you feel unsure

of your ability to act yourself you can approach the Citizens Advice Bureaux and discuss it with them.

## **STARTING AN ACTION AT THE MAGISTRATES' COURT**

### **WHERE DO I NEED TO GO?**

South East Surrey Magistrates' Court, Hatchlands Road, Redhill, Surrey has the power to issue summonses under section 82 of the Environmental Protection Act 1990 for all premises in the Borough of Reigate and Banstead.

### **HOW DO I NOTIFY MY NEIGHBOUR?**

You must notify your neighbour in writing that you intend to instigate legal proceedings (this is a legal requirement). If your complaint concerns noise, three clear days must elapse between that day and the day you approach the court. If your complaint concerns any other statutory nuisance, 21 clear days must elapse between that day and the day you approach the court. You must do this even if you have previously sent your neighbour an advisory letter.

### **WHERE AND WHEN SHOULD I GO WHEN ATTENDING COURT?**

You should attend the South East Surrey Magistrates' Court, Hatchlands Road, Redhill, Surrey (01737 765581). Summonses are generally issued at the beginning of the court's business day and you should go to the court at 09.45 am on any day except Saturday, Sunday or other public holidays.

### **WHAT DO I DO WHEN I ARRIVE AT THE COURT?**

When arriving at court, go to the office and ask which court is dealing with the issue of summonses. Take **all** the relevant paperwork you might have including any correspondence you have had with the court.

### **HOW DO I MAKE AN APPLICATION TO THE COURT?**

There is usually a member of staff standing at the door taking down details of the summons required. He or she will take your name, address, and details of the complaint that is being made, use your diary to describe your problem. You do not need any identification. You do not need any witnesses. Ensure that you say that you require a summons under section 82 of the Environmental Protection Act 1990. You will then have to wait until your name is called.

### **WHAT DO I SAY TO THE MAGISTRATES' BENCH?**

Your application will normally be heard within 1 hour and an usher will conduct you into the court. The court will normally be empty apart from court staff and the Magistrates' bench. The Magistrates will attempt to make you feel at ease. Describe briefly to the Magistrates' bench that you need a summons under section 82 of the Environmental Protection Act 1990. The Magistrates will ask you to give an account of your problem. You should show to the Magistrates a copy of the letters that you previously sent to your neighbour together with your record of observations. Tell the Magistrates about the complaints you have made to the owner or person causing the nuisance.

### **WHAT HAPPENS NEXT?**

If the Magistrates are satisfied that correct notice has been given and there are sufficient grounds for a hearing then a summons will be issued. A date and time will then be fixed for the initial hearing of the case (usually in about four weeks). The court issues and serves the summons on the defendant. The court requires the full address and the name of the person you are complaining about.

### **WHAT HAPPENS AT INITIAL HEARING?**

If a summons is issued against the person about whom you are complaining, then you will be asked to attend court, with any witnesses you may have, to give evidence about the nuisance that is causing you disturbance. If the accused does not admit the nuisance the court will be unable to hear the case that day and the hearing will be used to schedule a future hearing date. Both sides will need to agree dates to avoid and the number of witnesses that will appear. The next hearing will usually be re-scheduled within the next three months.

### **WILL THE OTHER PERSON BE IN COURT?**

If you have any witnesses, they should attend the final hearing. If the accused admits causing the nuisance, the court will hear the case on that day. If the accused fails to attend and makes no plea the case can be heard in their absence. If the accused does not admit to the nuisance, then they will also be able to put forward a case. After hearing the evidence at the full hearing, the Magistrates will decide whether or not a statutory nuisance exists. If the decision is in your favour, an order must be made which will require the nuisance to be abated and may also prohibit its recurrence. You should be able to describe succinctly and without emotion what action your neighbour needs to take in order to abate the nuisance - for example, keeping amplified music to reasonable times. The court will help with court procedures.

### **WHAT ARE THE LIKELY OUTCOMES?**

If the court is satisfied that you have proved your case they will make an abatement order requiring the accused to cease the noise or prohibit its recurrence and may also impose a fine of up to £5,000 (although smaller sums are more usual). You may, in addition, ask for reasonable costs to be paid for bringing your case to court. Any claim must be made before the hearing and any award is at the discretion of the Magistrates. A copy of the order served on the accused can be requested and it is recommended that you obtain one. If the decision is not made in your favour, then costs may be awarded against you.

### **WHAT SHOULD YOU DO IF THE PROBLEM CONTINUES?**

Once the order has been served on your neighbour, it must be obeyed. Should your neighbour fail to comply with the order you should go back to the court and report the facts. You may return to the same court as soon as possible at the same time of day and apply for a "*summons for failure to comply with the court order*". There is no need to notify your intention to the offender. Another hearing will then be set and the court will decide if a penalty is warranted. Again, you will again need to keep a diary of events and provide evidence in a similar way to the hearing when the order was made.

**HOW CAN YOU OBTAIN FURTHER ASSISTANCE?**

If you require assistance on court procedures, the Clerk of the Court may advise you in person. Please telephone 01737 765581 to arrange an appointment 9am to 4.30pm.

**WHAT MUST I DO THROUGHOUT THE PROCEEDINGS?**

For the duration of the proceedings, maintain a diary of disturbances and keep copies of all correspondence you write or receive in date order and make notes of any conversations.

**Letter A:**

Addressee

Your Address

Date

Dear Neighbour, (state the name if you know it)

For some time I have been disturbed by..... The main problem appears to be .....

I shall be grateful if you would cease this disturbance and I inform you that if you do not I am prepared to take action under section 82 of the Environmental Protection Act 1990.

I regret the necessity for this letter, but your actions are causing me considerable distress.

Yours sincerely

Your name.

### NOISE RECORD SHEET

**My Address:** \_\_\_\_\_

Date	TIME AM/PM		Address and Location of the Noise	Nature of Noise Causing the Problem	The Noise is Interfering with our/my Life by	Signature
	From	Until				
						_____

I hereby certify that the above details are correct to the best of my knowledge

(All persons making an entry on this form must sign).

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_

Signed: \_\_\_\_\_

Dated: \_\_\_\_\_