

Neighbourhood Noise Policies and Practice for Local Authorities – a Management Guide

September 2006

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The Guide was prepared under a number of contracts let and sponsored by Defra in association with the CIEH but it is largely based on the work of Temple Environmental Consultants, published as a draft for consultation in June 2003. The results of that consultation and the further contributions of the CIEH and Defra have been incorporated into this final document.

The appendices provide examples of some practices and procedures sourced from a variety of local authorities. They should be read in conjunction with the main Guide. Though most have been amended to some degree for the purposes of this document, they nevertheless necessarily reflect the interpretation of legislation and guidance, the legal advice, the structure, organisation and operational practices, and the needs and circumstances of the particular local authority which devised them. They cannot be exhaustive and the intention is not to recommend them as 'best practice' for unquestioned adoption by every local authority; rather they are provided as a starting point for developing practices and procedures for tackling noise issues in response to individual local authorities' own needs and circumstances, while nevertheless promoting some consistency among them all.

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Foreword

As our last annual survey shows, and its revised format will soon show better, public dissatisfaction with noise from a wide variety of neighbourhood sources continues to run at high levels. Environmental Health Practitioners, most of them professional Members of the Chartered Institute, are the people to whom they turn locally to do something about it. They are committed to the task and the government has provided them with an increasing range of tools.

It is not an easy task however; it takes a lot of time, effort and money. Legally, technically and administratively, neighbourhood noise control can be complex. It can involve working at unsocial hours and occasionally, a degree of personal risk nevertheless it is an important function and local taxpayers rightly expect it to be carried out competently. That is why, with the generous assistance of Defra, we have produced this second, much expanded edition of our Noise Management Guide. Drawing on a wide range of experience and expertise, we hope it will encourage and enable even better and more consistent standards of practice among enforcement authorities. That will benefit both them and, most importantly, the public at large.

A handwritten signature in black ink that reads "Alan Higgins". The signature is written in a cursive style with a large, stylized initial 'A'.

Alan Higgins
CIEH President

1.0 Background

1.1 INTRODUCTION

1.1.1 The capacity of neighbourhood noise not only to disturb but in some cases to dominate the lives of a significant minority of the population is well known. Research into attitudes to all sources of environmental noise was undertaken in 2000 by BRE¹ on behalf of Defra. The research found that though nearly 70% of respondents reported general satisfaction with their noise environment, 84% of them reported hearing noise from road traffic and 81% reported hearing noise from neighbours and/or other people nearby, half of those reporting being bothered, annoyed or disturbed to some extent by that. A significant minority (21%) said that noise spoilt their home life to some extent, 8% feeling that their home life was spoilt either “quite a lot” or “totally” by noise. In another survey², 18% of respondents reported noise as one of the top five environmental problems that affected them personally.

1.1.2 Research specifically investigating neighbour noise was undertaken in 2003 by MORI³ on behalf of Defra. The conclusions of the study included the following:

- “Nearly two thirds (63%) of people surveyed claimed that they heard noise from their neighbours. The study also found that just under half (46%) of those who heard noise were annoyed by it. This equates to nearly one third (29%) of the population as a whole.
- Neighbour noise is, therefore, a problem that can arise under certain circumstances and in specific ‘risk areas’. Risk factors include high density housing, rented accommodation (in both the social and private sectors), areas of deprivation, and urbanisation. In contrast, the profile of those less concerned by neighbour noise is consistent with circumstances

which would be expected to limit exposure, for example detached housing, high home ownership, and residence in rural/suburban locations in some of the least deprived areas nationally.”

1.1.3 The importance of effective procedures and action to address problems when they arise is clear and local authorities generally have the primary responsibility for controlling neighbourhood noise, whether it is as the environmental health service, the Local Planning Authority or housing service. The MORI research also found that:

- “The top priority from the public’s perspective in a noise incident is time; both that taken to investigate the initial complaint and the time it takes to resolve the dispute. There is a strong sense, among noise sufferers and stakeholders alike, that the process is laborious and difficult, with repeated warnings but no satisfactory outcome.
- Face-to-face contact with the council or police when the complaint is made, alongside feedback on what has been done about it, is desirable and can significantly improve client satisfaction with the service received.”

1.1.4 Ensuring that the necessary administrative and operational procedures are in place and used correctly and that residents are aware of what is available is fundamental to the provision of a service that fulfils that responsibility.

1.2 OBJECTIVES AND AIMS

1.2.1 This document replaces, updates and extends the advice in the *Noise Management Guide* published by the Chartered Institute of Environmental Health (CIEH) in 1997. The emphasis of that Guide was on the development of services which responded

¹ The 1999/2000 National Survey of Attitudes to Environmental Noise, BRE Report 205217f, Feb 2002; see: www.defra.gov.uk/environment/noise/research/nas9900/index.htm

² Environment Agency survey of 1,337 homeowners/potential homeowners across the UK undertaken for Property Search by Tickbox.net, March 2005 (EA document ref 48/05)

³ *Neighbour Noise – Public Opinion Research to Assess its Nature, Extent and Significance*, MORI Social Research Institute for Defra, October 2003; see: www.defra.gov.uk/environment/noise/research/mori/index.htm

effectively to domestic noise complaints. During the intervening nine years, there have been the inevitable changes in legislation and guidance from other sources, such as the British Standards Institute and the World Health Organisation. Additionally there have been significant legislative and procedural changes in the approach to anti-social behaviour, involving increased inter-department and inter-agency working.

1.2.2 In reviewing the 1997 Guide, the opportunity has been taken to extend its scope to the wider field of neighbourhood noise, including within that description neighbour noise. The advice in this document therefore encompasses:

- noise produced by a person’s neighbours;
- noise in the street, including that from vehicles, machinery and equipment (but excluding noise from traffic and persons);
- noise from pubs, clubs and other recreational or leisure sources; and
- commercial, local industrial and construction sites.

This Guide does not, however, address transportation noise in any detail, partly because it will be controlled more appropriately in the near future by Action Plans prepared under the Environmental Noise Directive⁴ but mainly since, at the time of writing, local authorities generally lack powers (other than under the planning system) to deal with transportation noise.

1.2.3 The aims of this document are:

- to encourage local authorities to review their noise policies and procedures to meet the requirements of existing and new legislation as well as the needs and circumstances of the communities and businesses within their districts;
- to provide guidance on appropriate, effective and clearly understood noise control policies and procedures; and
- where enforcement measures are necessary, to encourage their application

in accordance with a consistent and transparent policy while still enabling individual authorities to respond appropriately to the particular needs and circumstances of their areas.

1.3 APPLICATION AND SCOPE

1.3.1 Though aimed particularly at service managers, this new edition of the Guide may be useful to all Environmental Health Practitioners working in this field as well as to other local authority departments and professionals whose responsibilities may include aspects of neighbourhood noise.

1.3.2 The Guide is relevant to the management of neighbourhood noise in England, Wales and Northern Ireland with additional notes having been provided in instances where legislation in Northern Ireland is significantly different. A separate Guide, nevertheless based on this one, has been produced by the Scottish Executive with input by REHIS for use in Scotland.

1.3.3 Throughout the Guide, examples are provided of current good practice employed by local authorities. Generally, information from other publications or sources has been referenced rather than reproduced in the Guide for the sake of brevity.

1.4 DEVELOPMENT OF THE NEW NOISE MANAGEMENT GUIDE

1.4.1 In developing this Guide, consideration has been given to changes in legislation and new guidance that has arisen since 1997, as well as recent published research findings regarding neighbour and neighbourhood noise and other related Defra research studies. The document itself has evolved from a consultation draft over an extended period of continuing change and was informed by the following:

- meetings and discussions with policy officers and technical advisers from Defra, and the CIEH;

⁴ 2002/49/EC

- the findings of a pre-pilot questionnaire issued to selected local authorities;
- face to face interviews with officers at a number of selected local authorities drawn from the pilot group;
- several brainstorming meetings of a focus group;
- a pilot and subsequent final questionnaire circulated to all local authorities throughout England, Wales and Northern Ireland;
- a formal consultation exercise with Defra's National Noise Forum and the Devolved Administrations for Wales and Northern Ireland;
- circulation of a consultation draft for comment to all local authorities in England, Wales and Northern Ireland, coupled with regional meetings in London, Bristol, Manchester and Belfast to launch the consultation draft and invite responses;
- publication of the consultation draft on the Defra and CIEH websites, with an invitation for any interested parties to respond.

1.4.2 Responses to the consultation draft were considered jointly by Defra and CIEH, and where appropriate, amendments made.

1.4.3 The focus group comprised officers from:

- London Borough of Barnet;
- Belfast City Council;
- Brighton & Hove City Council;
- Cardiff City Council;
- Doncaster Metropolitan Borough Council;
- Gravesham Borough Council;
- Royal Borough of Kensington & Chelsea;
- Rugby Borough Council;
- South Northants District Council;
- Westminster City Council;
- Wychavon District Council;
- a technical representative from Defra; and
- consultants from Temple Environmental Consultants Ltd.

The role of the group was to assist in the development of the Guide by acting as a 'sounding board' and to contribute to the document's scope, format and content.

1.1.4 The pre-pilot questionnaire was circulated to all local authority Environmental Health Service managers in England, Wales and Northern Ireland with responsibility for

noise services. Its purpose was to collect as much relevant information as possible on the following:

- noise enforcement policies;
- management strategies and procedures;
- practical considerations;
- review process;
- challenges and key issues;
- experience relating to the existing *Noise Management Guide*; and
- features and structure of a new *Noise Management Guide*.

1.5 COMMENTS

1.5.1 Both Defra and the CIEH would welcome feedback on the contents of the Guide. Any comments should be sent by email either to noise@defra.gov.uk or to info@cieh.org, in each case incorporating the words *Noise Management Guide 2006* in the subject line.

2.0 Local authority noise management framework

2.1 LOCAL AUTHORITY ROLES AND RESPONSIBILITIES

2.1.1 Local authorities have a range of roles involving responsibility for noise control. These include:

- the investigation and abatement of statutory nuisances;
- land use planning;
- entertainment licensing;
- building control; and
- residential landlord.

2.1.2 The primary aim of the local authority noise service is to safeguard public health and quality of life, in particular through the prevention and abatement of statutory nuisances. This requires the integrated management of noise issues within its control, whether in a preventative capacity or by reactively addressing any nuisances that arise.

2.1.3 To help achieve this aim, a number of key statutory duties are placed upon every local authority in England and Wales by the Environmental Protection Act 1990, as amended, and in Northern Ireland by the Pollution Control and Local Government (NI) Order 1978:

- the duty to inspect its area from time to time to detect any statutory nuisances which ought to be dealt with;
- the duty to take such steps as are reasonably practicable to investigate a complaint of a statutory nuisance made by a person living in its area; and
- the duty to serve an abatement notice where the local authority is satisfied that a statutory nuisance exists or is likely to occur or recur within the area of the authority.

2.1.4 The duties are placed upon local authorities⁵ but they are empowered elsewhere⁶ to delegate arrangements for their discharge to their committees⁷, sub-committees or officers. This includes the power to delegate sequentially from authority to committee to sub-committee to officer⁸. Delegation to a designation of officer (e.g. 'the Principal Environmental Health Officer') rather than to any named individual is permissible and usual⁹. Neither the Local Government Act 1972¹⁰ nor the Environmental Protection Act 1990 require a resolution of the authority before noise enforcement action is taken or any *ex post facto* ratification of action taken by individuals.

2.1.5 Generally, the duties under sections 79(1), 80 and 80A of the Environmental Protection Act 1990 are administered by the environmental health service. Local authority responsibility for the wider range of noise services usually involves a number of other departments and noise service managers should aim to establish formal frameworks with these departments which define the roles and responsibilities of each and promote co-operative working.

2.1.6 Other local authority departments with responsibility for noise services include:

- i) **Local authority building control and approved building inspection services** – ensure compliance with the Building Regulations¹¹ relating to sound insulation between, and reverberation in the common parts of new and converted residential buildings and acoustic conditions of schools.
- ii) **Local authority housing services** – ensure compliance with local authority tenancy conditions relating to noise nuisance. Many

⁵ See ss 79(1) and 80(1) Environmental Protection Act 1990

⁶ See s 101 Local Government Act 1972

⁷ The words 'committee' and 'sub-committee' are to be given their ordinary, natural meaning which requires that they comprise more than one member (see *R v Secretary of State for the Environment ex p Hillingdon LBC* [1986] 2 All ER 273)

⁸ See s 101(2) Local Government Act 1972

⁹ *R v Law Society of Great Britain & Wales ex p. Curtin* (1993) Times Law Reports 3 December 1993

¹⁰ See by contrast the statutory reservations to the authority in s 101(6) and (7) and the Diseases of Animals Act 1950

¹¹ *Building Regulations 2000: Approved Document E – Resistance to the Passage of Sound (2003 Edition)*, ODPM

environmental health services have collaborated successfully with colleagues in their housing department, by providing expert evidence and technical inputs into applications for Anti-social Behaviour Orders, possession orders and injunctions where noise nuisance is cited in the justification for seeking the order or injunction. Environmental health services can also highlight inadequate sound insulation.

- iii) **Local authority social services** – often there may be a role for social services in the resolution of neighbour noise complaints, particularly in cases involving persons with disabilities, e.g. partial deafness or with mental health problems, or where anti-social behaviour is involved.
- iv) **Local planning authority** – develop and enforce land use planning policies at both strategic and development site levels. The proactive implementation of national and local noise policy to a considerable extent is achieved through the planning processes.
- v) **Licensing authority** – determine applications for new licences and variations of existing licences in respect of the sale and supply of alcohol, public entertainment and late night refreshment. Local authorities with pollution prevention functions have an additional, but separate, role as ‘responsible authorities’.
- ii) **Mineral planning authorities** – have a duty to consider the impact of noise in connection with proposed mineral extraction activities, which are controlled through the planning process. Any consent issued may incorporate conditions relating to noise control. In assessing the overall noise impact of any application, the authority should have regard to the relevant Policy Statement¹².
- iii) **Environment Agency (EA)** – is responsible for administering the noise aspects of the Integrated Pollution Prevention and Control (IPPC) regime. This is a regulatory system employing an integrated approach to control the environmental impacts of certain industrial and waste activities. The EA has published guidance on the regulation, measurement and assessment of noise from permitted processes in its Horizontal Guidance Notes IPPC H3 Parts 1 and 2¹³. As one element of their permit application, operators have to demonstrate that they apply the ‘Best Available Technique’ (BAT) to a range of pollutants including noise.

To facilitate the IPPC process and to ensure coordination of the EA and local authority roles, the EA and the Local Government Associations have developed a memorandum of understanding¹⁴. The memorandum highlights eight protocols each aimed at establishing clear and agreed divisions of responsibility between local authorities and the EA and are models that may be adapted to suit local circumstances before the parties sign up. For noise issues, Protocol number 7¹⁵ is an appropriate starting point.

2.2 THE ROLES OF EXTERNAL AGENCIES

2.2.1 The roles played by various external agencies in the control of noise is summarised below:

- i) **Registered social landlords (housing associations)** – have similar duties to local authority landlords. Some councils offer direct support to registered social landlords in their area when taking action against tenants who cause nuisance, e.g. council staff giving evidence in court.
- iv) **Department for Transport/Highway Agency/Highway Authority** – for their own projects, each has a duty to consider the noise impact of road construction and similar works and must exercise its powers in connection with the control of traffic as set out in the Road Traffic Regulation Act 1984. The relevant Highway Authority is responsible for

¹² *Controlling and Mitigating the Environmental Effects of Mineral Extraction in England*, ODPM, 2004 and *Minerals Technical Advice Note (Wales) 1: Aggregates*, WAG, 2004

¹³ *Regulation and Permitting and Noise Assessment and Control*, Environment Agency, June 2004

¹⁴ *Working Better Together*, LGA/WLGA/EA, February 2003

¹⁵ *Working better together in town & country planning*, LGA/WLGA/EA, June 2003

carrying out noise impact assessments and providing sound insulation works or grants for new and improved roads as provided for in the Noise Insulation Regulations 1975 (SI 1975/1763 as amended). The Department for Transport's duties include:

- the consideration of the noise impact of road construction and similar works;
- the administration of the Noise Insulation Regulations scheme;
- the determination of applications in respect of licences for goods vehicle operators; and
- enforcement of Construction and Use Regulations by the Vehicle and Operators Service Agency (VOSA).

- v) **Police** – Generally the police have few powers or duties with respect to noise. However, there are some specific areas where the police have an interest in dealing with noise, for example:

The Licensing Act 2003 contains a power under section 161 for senior police officers to make 'Closure Orders', summarily closing licensed premises which are causing a public nuisance by reason of noise coming from them where closure is necessary to prevent the nuisance.

Sections 59 and 60 of the Police Reform Act 2002 provide powers to the police to deal with vehicles "used in a manner causing

alarm, distress or annoyance". In particular, this can be used for dealing with vehicles causing noise problems, for example excessive noise from car audio systems and from off-road motorbikes.

As required by the Crime and Disorder Act 1998, local authorities and police services are now working collaboratively in developing Crime and Disorder Strategies to address anti-social behaviour and reduce crime and disorder.

The *Noise Liaison Guide* published jointly by the CIEH and the Association of Chief Police Officers in 1997 sets out the respective roles of local authorities and the police and prescribes minimum levels of service in dealing with problems of noise. Appendix 7 contains an example of a partnership agreement drawn up between the London Borough of Barnet and the Metropolitan Police.

- vi) **Magistrates' Court** – The enforcement of abatement notices is by prosecution in the Magistrates' Court.

It can be useful to agree with the Chief Clerk to the court a standard form for documents requiring the authorisation of a Justice of the Peace (JP), e.g. for the laying of information and for warrants to enter

EXAMPLE OF GOOD PRACTICE: LONDON BOROUGH OF CROYDON

Liaison with police

The leader of the noise investigation team meets with the Borough Commander, the operational commander of the Metropolitan Police division covering the Croydon area, in spring each year. At this meeting they review the liaison between the organisations during the previous twelve-month period and use the experience gained to plan the liaison arrangements for the next year. The meeting focuses particularly on the liaison arrangements and specific issues, e.g. the Summer Saturday Night Party Patrol and the need for police assistance with equipment seizures throughout the year.

Briefing notes are provided to the police outlining legal powers and responsibilities (including any recent legislative changes) and these are distributed to duty officers at each police station to update on how to assist the environmental health department.

In addition, quarterly meetings take place with the police Community Liaison Officer to discuss ongoing cases and share information on operational issues relating to noise enforcement. This programme of meetings has assisted in the development of a greater understanding of the roles of each organisation, and regular joint working has enabled the build up of a mutual respect between field officers from the police and the council.

premises. The Chief Clerk should also be willing to provide a duty list of JPs for 'out-of-hours' response to warrant applications.

Magistrates' Courts often have professional development sessions, where it may be possible for a member of the noise management team to attend and contribute to the training programmes.

- vii) **Civil Aviation Authority** – has a duty to investigate and act appropriately in any alleged incidents of low flying by non-military aircraft. The Directorate of Airspace Policy provides a “focal point for receiving and responding to aircraft related environmental complaints from the general public.” which should be sent to:

Directorate of Airspace Policy
CAA House
45-59 Kingsway
London WC2B 6TE
Tel: 020 7453 6599

- viii) **Ministry of Defence (Air Staff)** – has a duty to investigate and act appropriately in relation to incidents of unauthorised low flying by military aircraft. The MoD also administers a non-statutory discretionary scheme to provide noise insulation grants for those living within a 70 dB LAeq,16h noise contour and may offer to purchase houses within a 83 dB LAeq,16h noise contour around military air fields. Complaints about noise from military aircraft may be directed to:

Ministry of Defence
Complaints and Enquiries Unit
Directorate of Air Staff
5th Floor, Zone H
Main Building, Whitehall
London SW1A 2HB
Tel: 020 7218 6020

2.3 NORTHERN IRELAND

- 2.3.1 The Department of the Environment (DoE) is responsible for planning control. The Planning Service, an agency within DoE, administers the development control and development plan functions. The Planning Service considers noise issues to be material to the determination of planning applications and they are taken into account in preparing development plans.
- 2.3.2 District council Building Control Officers ensure compliance with the requirements of the Building Regulations relating to sound insulation in new and converted buildings.
- 2.3.3 The Northern Ireland Housing Executive (NIHE) controls public sector housing and, as landlord, ensures compliance with tenancy conditions. However, Environmental Health Officers investigate noise complaints and enforce statutory noise nuisance provisions relating to NIHE dwellings.
- 2.3.4 The Department for Regional Development's Roads Service must publish details of proposed trunk roads – and the public has the right to object on any grounds, including

EXAMPLE OF GOOD PRACTICE: LONDON BOROUGH OF CROYDON

Liaison with magistrates

The leader of the local authority noise investigation team periodically meets local magistrates as a group to discuss noise issues. At these interactive sessions, which are attended by all JPs, the council's noise services are explained thoroughly, with particular reference to the need for warrants to enter premises and the seizing of noise-making equipment. Noise legislation is also discussed, including relevant legal precedents and, in particular, recent developments

such as the introduction of new powers and duties.

These sessions have proved to be very effective in increasing magistrates' understanding of the issues involved in enforcing noise legislation and have greatly assisted the development of an excellent working relationship between members of the bench and council officers. This is particularly useful when officers are seeking warrants from magistrates outside normal working hours.

- noise. The Roads Service must also consider the noise impact of road construction and similar works and administer noise insulation grant schemes.
- 2.3.5 The police have controls to prevent the illegal use of motor horns. They also enforce the provisions of the Motor Vehicles (Construction and Use) Regulations (NI) 1989 regarding excessively noisy vehicles and they deal with noisy activities which may constitute public order offences.
- 2.3.6 Complaints about noise from civil aircraft can be made to:
- Department for Regional Development
Ports and Public Transport Division
3rd Floor, Clarence Court
10-18 Adelaide Street
Belfast BT2 7HW
- Under the Airports (NI) Order 1994 the Department of the Environment in Northern Ireland also has a role to play in relation to civil aircraft noise at airports. It has the power to instruct an airport operator to limit noise and vibration and may make a scheme requiring them to pay grants towards noise insulation.
- 2.3.7 Complaints about military aircraft/helicopters should be addressed to:
- Army HQ NI
Thiepval Barracks
Lisburn BFPO 801
Tel: 028 9266 5111
- 2.3.8 In Northern Ireland IPPC is administered entirely by the Northern Ireland Industrial Pollution and Radiochemical Inspectorate through the Pollution Prevention and Control Regulations (NI) 2003.
- 2.4 THE HUMAN RIGHTS ACT 1998**
- 2.4.1 The implementation in 2000 of the Human Rights Act 1998 has influenced local authority responsibilities. Section 6 of the Human Rights Act 1998 makes it unlawful for a local authority to act in a manner which is incompatible with the rights contained in the European Convention on Human Rights (the Convention). These rights extend to both the noise victim and noise-maker. The key principle of the Human Rights Act 1998 is that wherever possible there should be compatibility with the Convention rights. This principle covers both actions and any failure to act by a local authority.
- 2.4.2 The Convention rights of most significance for local authority noise services include:
- Article 6 – Right to a fair trial.
 - Article 7 – No punishment without law.
 - Article 8 – Right to respect for private and family life.
 - Article 1, First Protocol – Right to peaceful enjoyment of possessions.
- 2.4.3 However, it is important to understand that the Human Rights Act, like the Convention, aims to ensure not just the rights of any particular individual but that everyone's rights are properly respected. This means that one individual's rights will often have to be balanced against another's or the wider interests of the community as a whole. For example, the property rights of a person causing persistent noise nuisance may need to be balanced against the rights of the victims of the nuisance to a private life. Combating crime, promoting public health and the protection of the rights and freedoms of others are several reasons why a local authority might need to limit the rights of an individual. Hence, while some of the Convention rights are absolute, e.g. Articles 6 and 7, others are limited or qualified, e.g. Article 8 and Article 1, First Protocol.
- 2.4.4 Interference with qualified rights is permissible only if what is done:
- has a basis in law; e.g. Control of Pollution Act 1974, Environmental Protection Act 1990, Noise and Statutory Nuisance Act 1993, Noise Act 1996 and the Pollution Control and Local Government (NI) Order 1978, etc.; and
 - is done to secure a permissible aim set out in the relevant Article, for example for the prevention of crime, or for the protection of public order or health, or the protection of rights to privacy, and the rights and freedoms of others; and

- is necessary in a democratic society; which means it must fulfil a pressing social need, pursue a legitimate aim and be proportionate to the aims being pursued.

Proportionality

2.4.5 The points above are important tests to see if interference by a local authority in an individual’s rights is allowed under the Convention, for example by restricting noise victims’ access to an effective noise service (Article 8) or entering a noise-maker’s premises and seizing noise-making equipment (Article 8 and Article 1, First Protocol). At first sight both these scenarios appear to contravene the Convention, however, of critical importance is the proportionality condition in the third test above.

2.4.6 Even if a particular policy or action that interferes with a Convention right pursues a legitimate aim, such as providing only a limited noise service because of restricted resources or the seizure of noise-making equipment to prevent recurrence of a noise nuisance, this will not justify the interference if the means used are excessive in the circumstances. For example:

- obtaining a warrant to gain entry for the purpose of seizing equipment, although a procedure that necessitates judicial scrutiny, nevertheless represents a potential conflict with the right to respect for private and family life provided for in Article 8 of the Convention. Therefore a warrant should be sought only where the circumstances can be fully justified as a proportionate response (see also paragraph 1.5 of Note 10 in Appendix 3);
- the forfeiture (though not necessarily seizure) of noise-making equipment in response to a single breach of an abatement notice is likely to be considered a disproportionate response and an unjustified encroachment on the noise-maker’s rights; whereas prosecution on its own would be likely to be sufficient; and
- the forfeiture of noise-making equipment in response to multiple breaches of an

abatement notice, as well as prosecution, is likely to be regarded as proportionate, in order to protect the noise victim’s rights.

2.4.7 Any interference with a Convention right should be carefully designed to meet the objective in question and must not be arbitrary or unfair. Determining the appropriate provision of noise services, informed by an objective assessment of need and guided by written policies, procedures, practice notes and especially an enforcement policy approved by elected members, can be very helpful in ensuring and demonstrating that local authority actions comply with the Human Rights Act 1998.

2.5 THE INTEGRATED MANAGEMENT OF NOISE CONTROL

2.5.1 A successful noise management strategy needs to be both proactive and reactive, see Figure 1 below.

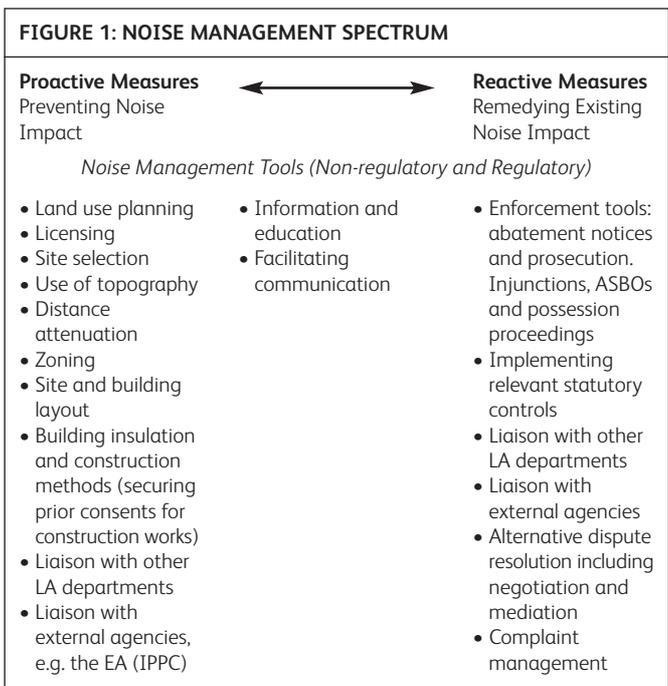


Table modified from New South Wales Environment Protection Authority’s *Noise Guide for Local Government*¹⁶. Note: Liaison with external agencies and other local authority departments can be a proactive or a reactive measure.

¹⁶ Department of Environment and Conservation (NSW), June 2004

- 2.5.2 At one end of the noise management spectrum is prevention using long-term strategic approaches that aim to avoid or restrict potential noise impacts before they occur. Land use planning, licensing and pollution prevention and control legislation have key roles to play in helping to prevent potential noise impacts, both at a strategic level and for specific projects.
- 2.5.3 At the other end of the noise management spectrum is the need to react to noise problems when they have occurred. The Control of Pollution Act 1974, the Environmental Protection Act 1990, the Noise Act 1996 and the Pollution Control and Local Government (NI) Order 1978 provide the main powers to deal with these problems at a local level.
- 2.5.4 Local authorities are well placed to promote and adopt an integrated approach to tackling neighbourhood noise problems. This involves the development of corporate and inter-agency policies and procedures designed to address the noise issues in both a pro-active and a reactive manner using both statutory powers and non-statutory measures. For example, the Anti-social Behaviour Act 2003 required all local housing authorities, registered social landlords and housing action trusts to introduce a written neighbour nuisance/anti-social behaviour policy by December 2004 and make it publicly available.
- 2.5.5 Those local authorities that have retained direct ownership and management of their own housing stock have a range of common law, contractual (through the tenancy agreement) and statutory tools to deal with noise nuisance caused by their tenants/leaseholders. Use of the first two categories of these tools is usually the responsibility of the local authority's housing service. However, good communication and liaison with the environmental health service often will assist in successfully discharging the corporate responsibility for all three.
- 2.5.6 In order to ensure efficient communication and liaison, many local authorities have found it useful to establish a formal service level agreement between their housing and environmental health services. Some service level agreements make provision for the environmental health service to re-charge their housing service for any noise services provided that are beyond those required by statutory duty.
- New roles for social landlords***
- 2.5.7 The Anti-social Behaviour Act 2003 has extended powers to tackle anti-social behaviour in local communities. Part 2 deals specifically with social housing. It includes measures developing the use of injunctions, and introduces 'demoted tenancies'. Section 12 imposed new statutory obligations on local housing authorities, Housing Action Trusts (HATs) and Registered Social Landlords now set out in section 218A of the Housing Act 1996. Information on how those obligations should be discharged is set out in a code of practice¹⁷ published by the Office of the Deputy Prime Minister. The code of practice specifically lists noise nuisance ("for example, loud parties, shouting, noise from TVs, radios, Hi-fi's and burglar alarms") as part of a non-exhaustive list of potential anti-social behaviour.
- 2.5.8 Section 218A of the 1996 Act requires local housing authorities and HATs to prepare a policy and procedure on anti-social behaviour and publish the following documents:
- a Statement of Policy and Procedures on anti-social behaviour ('the statement'); and
 - a summary of current policy and procedures on anti-social behaviour ('the summary').
- 2.5.9 Managers of local authority noise services have an important role to play in discharging these duties. Participation in drafting and implementing their council's Statement of Policy and Procedures on anti-social behaviour is vital. The aim should be to establish a similar relationship and role with

¹⁷ *Anti-social Behaviour: Policy and Procedure – Code of guidance for local housing authorities and housing action trusts*, ODPM, August 2004

social landlords to that which they enjoy with their own authority's housing service.

2.6 DEVELOPING NOISE POLICIES AND PROCEDURES

2.6.1 The development of effective noise services requires written policies and procedures which set out in clear, unambiguous terms how the service is to be scoped, organised and delivered. The potential benefits of such an approach include:

- defining the corporate, departmental and sectional remit, roles and responsibilities for the noise service;
- defining the remit, roles and responsibilities for the individual staff charged with providing the noise service;
- the establishment and monitoring of service standards;
- the management of customer expectation;
- the promotion of consistency and assessment of service performance;
- providing support and guidance for field staff;
- identifying and implementing improvements in operational and cost efficiency;
- minimising operational failures;
- the effective management of the process of providing noise services; and
- dealing with challenges to the service and its performance.

2.6.2 To facilitate this, the local authority may delegate the formulation and adoption of noise management policy to officer level without need for ratification by members. That delegation must be by formal resolution, however, otherwise it will be *ultra vires*¹⁸. In addition an authority will routinely delegate the operation of that policy at case level to those same officers. In such circumstances the officer is entrusted with both formulation and implementation of policy. Such a position is lawful but has the potential for:

- a lack of accountability for policy formulation and implementation;

- an inability to review good/bad practice;
- an inability to monitor individual case management; and a risk that case level officer decisions in relation to the individual case are based on practical/operational thresholds rather than the statutory duties placed on the authority.

2.6.3 As a guide, it is suggested that the following elements should be addressed in strategy, policy and technical procedure documents for noise services:

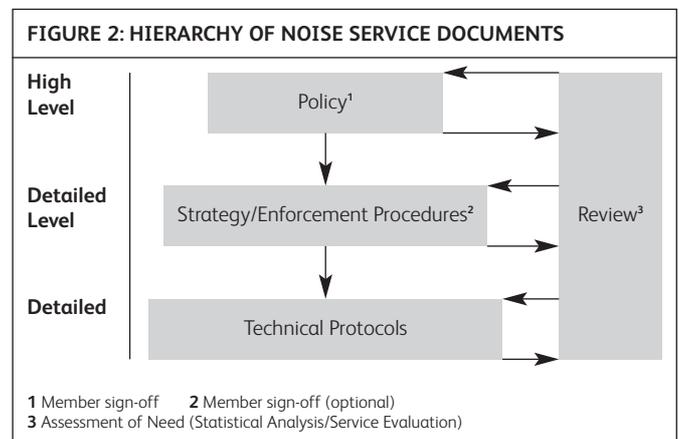
- the title and commencement date of the document together with reference to any amendments;
- the title of the officer responsible for maintaining quality;
- details of the legal context in which the service operates;
- a description of the organisational structure, including specific posts or named officers as appropriate;
- details of how the service assures the competence of its authorised officers, including professional and technical qualifications, experience and developmental training, etc.;
- a detailed description of the scope of the service, including provision for responding to service requests out of hours;
- a digest of service standards, including relevant performance indicators and targets, where these have been developed;
- a practical definition of what constitutes 'resolution' of a complaint;
- an enforcement policy reflecting the national enforcement concordat;
- a review of stakeholder issues, including equal opportunities, ethnic monitoring and customer feedback;
- service level agreements and procedures for liaison with different local authority departments, police, the Environment Agency and other external agencies as relevant;
- a set of detailed, procedural guidance notes (detailed examples of practice derived from particular local authorities are included in Appendix 3) as an aid to achieving consistency in dealing with

¹⁸ See *R v St Edmundsbury BC ex p Walton* (1999), Times Law Reports, 5 May 1999

- particular matters, such as:
- investigating a complaint (Note 1)
 - prioritisation of complaints (Note 2)
 - the use of record sheets (Note 3)
 - the use of notebooks and statements (Note 4)
 - the taking of witness statements (Note 5)
 - the use of alternative dispute resolution (section 4.5 of the main Guide)
 - ensuring the correct service of a notice (Note 6)
 - abatement notices – service, appeals, defences etc (Note 7)
 - PACE interviews (Note 8)
 - issuing formal cautions (Note 9)
 - entry by warrant and powers of seizure (Note 10)
 - information about taking private action (Note 11)
 - Acceptable Behaviour Contracts (ABCs) (Note 12)
 - dealing with persons with mental disorder (Note 13)
 - dealing with planning applications (Note 14)
 - liaison on licensed premises (Note 15)
 - construction site noise (Note 16)
 - dealing with nuisance from vehicle alarms (Note 17)
 - dealing with buildings’ intruder alarms (Note 18)
 - poor sound insulation between dwellings (Note 19)
- provision for periodic review.

2.6.4 The procedures described above may form part of the noise service’s quality management system. It is recommended that key elements of the strategy, i.e. policy

and strategy/enforcement procedures, are subject to scrutiny and approval by elected members and that the strategy is formally adopted by the local authority, thereby ensuring corporate status and commitment. A suggested hierarchy of documents is presented in Figure 2 below.



Preventative strategies

2.6.5 The anticipation and prevention of noise nuisance is a statutory duty under the Environmental Protection Act 1990 and the Pollution Control and Local Government (NI) Order 1978. Resolving noise problems after they occur may not be possible and is often more time-consuming, difficult and costly than preventing them happening in the first place. It is better to anticipate and avoid or mitigate potential noise impacts as early as possible in the planning and design process of any new scheme, development or activity.

EXAMPLE OF GOOD PRACTICE: CITY OF WESTMINSTER

Pro-active service initiatives

A good example of a pro-active initiative involves the council’s noise service working actively to seek out nuisances and working in a co-ordinated way with planning and licensing officers on joint enforcement initiatives by:

- carrying out post-planning permission monitoring of

- compliance with conditions and joint enforcement action with the planning department;
- pro-actively patrolling high-risk locations in the West End for nuisances;
- inspecting all licensed premises, e.g. entertainment establishments, massage parlours, night cafés, etc, prior to grant or renewal of licenses; and
- carrying out joint enforcement action with licensing.

Land use planning

- 2.6.6 In most planning cases where noise is a material consideration, a noise impact assessment should be an integral part of the process for making land use planning decisions. Such advice should be sought at the earliest possible stage of the planning process. Effective land use planning can help prevent or mitigate potential noise impacts. By avoiding the location of noise-sensitive uses near to noise-producing premises, noise problems can often be prevented. Where this is not possible, noise controls need to be incorporated into new noise-producing developments and mitigation measures may be prudent for new noise sensitive developments such as residential development, schools, hospitals, nursing homes and places of worship.
- 2.6.7 Government guidance is provided for England by *Planning Policy Guidance Note (PPG) 24 Planning and Noise*¹⁹ (currently under review) and for Wales by *Technical Advisory Note (TAN) 11 – Noise*²⁰, which describe how the land use planning regime should be applied to noise issues.
- 2.6.8 It is an important function of the environmental health service to contribute to a local authority's land use planning functions by providing professional and technical support and expert advice on noise, which may include:
- drafting policies relating to noise for the Unitary Development or Local Plan;
 - assessing the localised noise impacts of new development proposals by vetting planning applications and drafting, where appropriate, relevant planning conditions and informatives;
 - contributing to the decision making process by preparing or contributing to committee reports and attending committee meetings where necessary; and
 - providing technical input into the

assessment of compliance with planning conditions, as these relate to noise, and contributing to the planning enforcement process.

Note 14 in Appendix 3 sets out a model procedure for environmental health services to deal with planning applications.

Premises licensing

- 2.6.9 In a similar way to town and country planning, noise problems associated with premises licensed for the supply of alcohol, regulated entertainment or late night refreshment can be prevented or greatly reduced by assessing the potential noise impacts from venues at the application or renewal stages.
- 2.6.10 Public entertainment and liquor licensing has undergone radical change recently. Guidance issued by the Secretary of State for Culture, Media and Sport under section 182 of the Licensing Act 2003²¹ provides advice on using the new licensing regime to address noise issues associated with licensed premises.
- 2.6.11 The Licensing Act 2003 consolidates the previous plethora of licensing legislation and devolves responsibility for liquor etc licensing to local government. The new regime permits flexible opening hours for licensed premises with the potential for up to 24 hour opening, seven days a week. This is subject to consideration of the impact on local residents and businesses and the opinion of a range of 'interested parties' (including persons living in the vicinity of the licensed premises) and 'responsible authorities' (including the local authority for environmental health) in pursuance of the four key licensing objectives, which are:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.

¹⁹ Department of the Environment, September 1994, at: www.communities.gov.uk/index.asp?id=1144098

²⁰ Welsh Assembly Government, October 1997 at: <http://new.wales.gov.uk/about/departments/depc/epcpublications/PlanPubs/TANs/TAN11?lang=en>

²¹ *Guidance issued under section 182 of the Licensing Act 2003 and Guidance to Police Officers on the Operation of Closure Powers in Part 8 of the Licensing Act 2003*, Department for Culture Media and Sport, July 2004, (revised June 2006) at: www.culture.gov.uk/NR/rdonlyres/7B118F40-5BCC-4195-8DA0-9E1A3A1FDAD1/0/Guidanceissuedundersection182.pdf

2.6.12 The new licensing regime provides opportunities to achieve better standards of noise management for licensed premises. In extreme circumstances, such as where public disorder results or is anticipated from licensed premises, or where noise emitted from licensed premises causes public nuisance, the police have the power to close such premises within a specified geographical area for 24 hours. Additionally, section 40 of the Anti-social Behaviour Act 2003 empowers local authorities to shut down licensed premises for 24 hours where noise from the premises is causing public nuisance.

Note 15 in Appendix 3 provides a practice note covering public entertainment licensing and noise issues.

2.6.13 The environmental health service should contribute to the licensing process by providing professional support, technical and expert advice on noise, which may include:

- drafting policies relating to noise for the Licensing Committee;
- assessing the noise impacts of existing licences where complaints are raised or when new licence proposals or applications for variations to licences are made; and drafting relevant licence conditions or objecting to the granting of new, varied or renewed licences, where appropriate;
- contributing to the decision making process by preparing or contributing to committee reports and attending the Licensing Committee where necessary; and
- providing technical input to the assessment of compliance with licence conditions, as

these relate to noise, and contributing to the licensing enforcement process.

2.6.14 The Clean Neighbourhoods and Environment Act 2005 will, when fully implemented in October 2006, extend the application of the Noise Act 1996 to include licensed premises, permitting local authorities to issue fixed penalty notices to the person responsible at pubs and clubs where noise at night exceeds the permitted level as measured from within the complainant's dwelling after service of a warning notice. The permitted level for licensed premises will be specified in directions from the Secretary of State for Environment, Food and Rural Affairs.

Proactive initiatives

2.6.15 Examples of imaginative and innovative pro-active local authority initiatives include:

- dedicated web sites detailing a range of information including descriptions of the scope of the service; how to make a complaint; specific topics such as construction site noise and publicising successful prosecutions, etc.;
- contributing to the raising of the awareness of noise issues by participating in Noise Action Week;
- improved advertisement and promotion of noise services leading to a significant increase in uptake; and
- drafting of guidance and advice on noise for developers and licensees to increase the effectiveness of the town planning and licensing regimes for prevention of noise problems.

EXAMPLE OF GOOD PRACTICE: BRISTOL CITY COUNCIL

Guidance on noise control for licensed premises

This comprehensive guide offers practical advice to licensees, breweries, club owners and club managers on how to control noise from licensed premises. Areas covered include:

- the circumstances in which a public entertainment

licence is required;

- noise from plant and equipment;
- noise from servicing, deliveries and waste collection;
- gardens and play areas;
- customers;
- controlling noise through building design;
- controlling noise from outdoor events.

3.0 Structuring the service

3.1 SERVICE STANDARDS

3.1.1 For a local authority to discharge its statutory duties, a minimum standard of service needs to be resourced, monitored, achieved and documented. Service standards relevant to those duties and local policy should be established at least for the following:

- response policy including target response times;
- provision of technically competent enforcement officers;
- administrative support at all stages of the complaint;
- complaint recording and priority criteria (screening);
- communications within the service and with noise sufferers and makers;
- links with other local authority service departments;
- liaison with police and other external agencies;
- health and safety of officers;
- maintenance and calibration of measurement and recording instruments;
- individual case and overall service evaluation; and
- agency arrangements with other authorities.

The standards must provide for specific and measurable outputs wherever appropriate.

Service levels

3.1.2 The appropriate level of service will vary between local authorities, and a Needs Assessment provides the basis for the selection and appropriate resourcing of a suitable model such as one of the following:

Needs Assessment Rating: Very High – typically a large dedicated noise team (e.g. 10 to 14 staff) providing an around-the-clock service with messages relayed through a point of public contact, accessible all day, every day.

Needs Assessment Rating: High – provided by a modestly sized dedicated noise team (e.g. 6 to 8 staff) giving a regular, extended hours service with messages relayed through a point of public contact, accessible all day, every day.

Needs Assessment Rating: Moderate – likely to include a contact point receiving complaints and a ‘call out’ service on Friday/Saturday evenings and at other targeted times and seasons. Officers may undertake non-noise duties in addition.

Needs Assessment Rating: Low – this may comprise a rota of non-specialist officers providing a standby response service to calls received by a duty officer. Attendance in non-urgent cases would be deferred until the matter could be investigated during the routine working week.

The assessment of local need

3.1.3 Local authorities must provide many services yet their resources are always finite. What proportion of those they can spend on noise services can best be guided by a robust and objective assessment of the current and anticipated demand which might include consideration of the following:

- data collected, including how they are recorded, their fairness, accuracy, security and legality;
- trends in data, such as the number of complaints recorded for each noise category, e.g. domestic, commercial, construction, industrial, leisure, etc.;
- the number of repeat complaints about the same problem as a proportion of overall complaint numbers for each noise type;
- distribution of complaints, in terms of temporal, seasonal or geographic trends;
- current performance of the service;
- current levels and outcomes of statutory enforcement activity, e.g. as set out in the CIEH’s annual survey of noise enforcement activity;
- an objective evaluation of the performance of the service against other comparable service providers, e.g. using benchmarking exercises as part of a ‘best value’ or similar review;
- an assessment of the balance of resources deployed pro-actively and reactively; and
- consultation with stakeholders to determine what their needs and expectations are, e.g. members of the council, social landlords including the local

authority, residents and tenants groups, local community groups, local chamber of commerce and business groups, police, previous noise complainants and noise-makers.

3.1.4 A government report, *Guidance on Enhancing Public Participation in Local Government*²², is aimed at involving the public in the decision making and judgements of local authorities though care needs to be taken in the design of such schemes and the interpretation of their outputs.

3.1.5 For many years, the CIEH has gathered and published statistics relating to noise complaints and enforcement activity nationwide. These data are based on voluntary returns requested from all local authorities and are used by both CIEH and Defra for, among other things, evaluating trends in noise complaints and to help identify areas where local authorities may be experiencing problems. Some years ago, both organisations identified a need for a more detailed evidential database to inform the development of national policy and aid the review of powers available to local

EXAMPLE OF GOOD PRACTICE: ROYAL BOROUGH OF KENSINGTON & CHELSEA

Results of noise and nuisance questionnaire	Score	
<p>Residents Panel consultation surveys are carried out by Kensington & Chelsea four times a year. The October 2002 questionnaire contained specific questions covering noise and nuisance. From a total of 708 completed questionnaires (a response of 58%) 146 residents identified noise as the environmental problem with which they were most personally concerned. This was then subdivided into the noise source that bothered, annoyed or disturbed them, covering the various transportation noise sources; building, construction and demolition and road works; neighbour noise, both within the home and outside; entertainment noise; and industrial noise. Residents were asked to rank the top five most annoying noise sources. The table opposite details the score for each source of noise.</p> <p>Although traffic noise is not strictly relevant in the context of this Guide, evaluating transport noise alongside other noise complaints can prove persuasive when pursuing funding for a 'noise service'.</p> <p>In this case, noise from road traffic was the most annoying type of noise, followed by construction, demolition, renovation or road works, then noise from neighbours inside their homes.</p> <p>As part of the survey the residents' sensitivity to noise was also questioned. Further detailed questioning related to response to noise within the home, at different times of the day and night, and any consequent actions taken to deal with noise.</p>	Road traffic	1,912
	Building, construction, demolition, renovation or road works	1,747
	Neighbours inside their homes, e.g. parties, music	1,385
	Aircraft	1,127
	Other people nearby	707
	Other entertainment or leisure, e.g. pubs, restaurants	522
	Any other noise	381
	Other commercial premises (including refuse collection from them)	343
	Trains or railway stations	336
	Community buildings, e.g. churches, community centres	172
	Sports events	116
	Factories or works	100
River or canal work	46	

22 ODPM, Aug 2004, see: www.communities.gov.uk/index.asp?id=1135571

- authorities. That need was endorsed by the Commons Environmental Audit Committee²³ and following consultation with local authorities, the CIEH and Defra subsequently developed a more comprehensive noise statistics framework for implementation via existing local authority complaint management software²⁴.
- 3.1.6 This framework was put into use in England, Wales and Northern Ireland from 1 April 2005. The data since requested will be even more helpful to a local authority when assessing/reviewing local needs, formulating noise service policies and practices and for monitoring the success of local initiatives.
- 3.1.7 For all these service models, the service might also undertake programmed visits, e.g. to monitor regular disturbance from licensed premises or domestic noise that occurs at routine times. In these circumstances, a collaborative approach between local authorities may be a cost effective and efficient option. In some cases, an ‘out-of-hours’ service may be partly or wholly contracted out; in others a formal agency agreement entered into with another local authority and the service offered on a rotational basis though officers from outside the ‘home’ local authority might only be delegated the necessary powers for specific problems such as audible intruder alarms.
- ‘Out-of-hours’ provision**
- 3.1.8 The majority of local authorities now resource some scale of ‘out-of-hours’ service to provide prompt investigation of noise complaints at times outside of the traditional Monday to Friday ‘9 to 5’ work day. Authorities that do so generally report that such a service is popular, frequently used and provides value for the resources expended.
- 3.1.9 ‘Out-of-hours’ services broadly fall into one of six types:
- a seven day per week, 24 hours per day service;
 - a seven day per week, but less than 24 hours every day service;
 - a 24-hour service provided on certain days only, e.g. weekends;
 - certain hours of certain days only, e.g. 20:00 to 04:00, Thursday to Friday;
 - a stand-by service under which an officer may be called out on an ad-hoc basis;
 - programmed visits made to on-going noise problems.
- 3.1.10 Models may be adjusted for seasonal variation in the demand for the service with complaint numbers often being higher in summer than in winter but whatever form the ‘out-of-hours’ service takes, it will require detailed arrangements and operational protocols to be established. Modification of an existing 24-hour support service or other emergency call out system elsewhere in the local authority may provide a suitable starting point.
- 3.1.11 Amendments to the Noise Act 1996 contained in section 42 of the Anti-social Behaviour Act 2003 now allow local authorities to use the night noise offence powers under the Noise Act 1996 without formally adopting the legislation and without the need for a reactive noise service every night of the week, throughout the year²⁵.
- When is an ‘out-of-hours’ service required?**
- 3.1.12 Research by ENCAMS on behalf of Defra²⁶ indicates that:
- a percentage of noise victims are unlikely to complain to their council because they feel isolated in their suffering and do not believe that anyone can resolve the situation. These noise sufferers can be very distressed and can become ‘resigned victims’ because they have no faith in the

²³ See recommendation 26 at: www.publications.parliament.uk/pa/cm200304/cmselect/cmenvaud/1232/123204.htm

²⁴ See Appendix 7

²⁵ Defra Circular NN/31/03/2004, National Assembly for Wales Circular NAFWC 22/2004, *Noise Act 1996 (as amended by the Anti-social Behaviour Act 2003)*, Defra, June 2004, see: www.defra.gov.uk/environment/noise/pdf/noise-act-circular.pdf

²⁶ *Neighbour Noise – a guide for the public*, Encams, November 2003, at: www.encams.org/uploads/publications/noise_sq.pdf

system helping them. Providing an ‘out-of-hours’ noise service helps reduce the degree of isolation felt by noise victims;

- publicising a noise service effectively leads to increased public awareness and service uptake;
- the uptake of the ‘out-of-hours’ noise service is likely to be higher than any previous ‘9 to 5, weekday only’ service;
- an ‘out-of-hours’ noise service reduces the response time to complaints and the time taken to resolve cases; this is popular with noise victims;
- an ‘out-of-hours’ noise service also reduces wasted staff time and resources in dealing with repeated or unjustified noise complaints as cases tend to be investigated, resolved and closed more quickly;
- a 24/7 service, reacting to and taking action on noise complaints as they happen, is not always needed. ‘Out-of-hours’ noise services targeted to peak demand periods, with visits made to gather evidence and any action deferred until authorised staff are available, can be acceptable, however, a 24-hour hotline staffed with personnel trained in taking, screening and prioritising complaints, and sensitively dealing with complainants, contributes significantly to achieving high levels of customer satisfaction.

3.1.13 A benchmarking survey²⁷ in 2000/2001 of most London Boroughs providing a service

found that the peak of complaints received generally occurs on Friday and Saturday nights from 22:00 to 02:00, although significant numbers of complaints were also received at a similar time throughout the week. Figure 3 opposite shows an analysis of when noise complaints were received by the Royal Borough of Kensington & Chelsea, at a time when the borough operated a 24-hour/ seven day a week service.

The pattern of demand for the Kensington & Chelsea noise service fits within the general profile of the timing of the most common source of complaint – domestic noise disturbances – found by the BRE study of domestic noise complaints undertaken for the DETR in 1999²⁸.

3.1.14 This study found that in a sample of local authorities, the majority of domestic noise disturbances occurred outside traditional ‘9 to 5’ weekday working hours. Though the number of complainants reporting disturbance increased throughout the day from 06:00, a broad peak in complaints was seen between 21:00 and 03:00, the majority of those between 23:00 and 02:00, with the lowest levels of disturbance occurring between 05:00 and 12:00. Music was principally responsible for complaints in the period 18:00 to 03:00.

3.1.15 Both the BRE study and the London benchmarking study support the case for an

EXAMPLE OF GOOD PRACTICE: LEEDS CITY COUNCIL

Public promotion of the noise service

An out-of-hours noise complaint scheme was introduced which led to a dramatic improvement in the council’s noise service. Prior to the introduction of the weekend and night-time scheme in 2001, no specific publicity had been given to the council’s noise service and noise complaints were dealt with by standard letters, resulting in few visits and poor levels of customer satisfaction.

The new scheme was promoted with an innovative marketing campaign involving a credit card size flyer displaying the hours of operation and a contact telephone number for the service being sent out to households throughout the area. Analysis of the service’s impact during its first year indicated that there had been a doubling of the number of domestic noise complaints received, which had, in turn, led to a 412% increase in enforcement action by the environmental health service.

²⁷ Greater London Noise Benchmarking Study Report, CIEH (2002)

²⁸ Domestic Noise Complaints – furthering our understanding of the issues involved in neighbourhood noise disputes, Grimwood C, Ling M, BRE, December 1999, see: www.defra.gov.uk/environment/noise/research/domestic/pdf/domestic.pdf

FIGURE 3: PATTERN OF DEMAND – ROYAL BOROUGH OF KENSINGTON & CHELSEA

This diagram represents the number of service requests that occurred in any given hour and day of the week, as a percentage of the weekly total (hue of shading indicates number of complaints)

Hour starting	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday
06:00	0.08	0.26	0.31	0.15	0.10	0.21	0
07:00	0.26	0.41	0.36	0.44	0.51	0.48	0
08:00	0.30	0.30	0.25	0.16	0.40	0.51	0
09:00	0.20	0.07	0.07	0.03	0.12	0.54	1
10:00	0.08	0.03	0.00	0.13	0.12	0.61	1
11:00	0.18	0.07	0.03	0.02	0.15	0.64	1
12:00	0.07	0.15	0.03	0.03	0.12	0.86	1
13:00	0.13	0.02	0.05	0.02	0.07	1.27	1
14:00	0.07	0.00	0.07	0.00	0.08	1.15	0
15:00	0.03	0.03	0.03	0.03	0.03	0.95	0
16:00	0.02	0.08	0.02	0.03	0.05	0.94	0
17:00	0.44	0.66	0.40	0.49	0.74	0.99	0
18:00	0.79	0.81	0.72	0.76	0.91	0.97	0
19:00	1.10	0.92	0.92	0.82	1.19	0.84	0
20:00	0.99	0.99	1.07	0.72	1.22	0.86	0
21:00	0.99	0.95	0.87	1.20	1.33	1.12	0
22:00	0.79	1.05	1.05	0.79	1.28	1.45	0
23:00	0.86	1.15	1.12	1.38	1.40	1.75	0
24:00	0.95	1.14	1.14	1.23	1.81	2.50	0
01:00	0.87	1.04	0.49	0.79	1.50	2.22	0
02:00	0.43	0.61	0.44	0.59	1.09	1.47	0
03:00	0.41	0.28	0.23	0.41	0.71	1.09	0
04:00	0.30	0.12	0.23	0.15	0.43	0.63	0
05:00	0.07	0.10	0.16	0.10	0.35	0.49	0

EXAMPLE OF GOOD PRACTICE: BELFAST CITY COUNCIL

Noise Act 1996

Following an assessment of customer needs and the analysis of noise complaints made to local police stations and other agencies; there was strong political and public support for the introduction of a night-time noise service and adoption of the Noise Act. This led to a 400% increase in service requests and two thirds of all noise complaints are now made directly to the night-time noise service.

The statutory nuisance provisions (Part III) of the Environmental Protection Act 1990 do not apply in Northern Ireland and Noise Act powers are now frequently used to resolve neighbour noise disputes. In practice, by having a reactive night-time service the majority of these complaints are resolved informally without the need for warning or fixed penalty notices. However, the threat of a £100 fine has proved an effective deterrent and there has been a 95% compliance rate for Noise Act warning notices.

Belfast City Council does not operate throughout the whole of the night noise offence hours, i.e. 23:00 to 07:00 (this is allowed under the amendments of the Noise Act 1996 contained in the Anti-social Behaviour Act 2003) but instead targets the hours between 20:00 and 04:00 when complaints are most likely to arise. The night-time service terminates at 04:00 because less than 3% of service requests are received between 04:00 and 08:30 (when day staff come on duty). Often, for complaints made during this period, the noise commenced long before 04:00 and the council is actively promoting the service and encouraging complainants to promptly contact the night time service when the problem arises. Though the council is well aware of some practical problems with the Noise Act in terms of measuring exceedances of the permitted level within the complainant's property and the underestimation of bass beat, in Belfast the service has been able to use this legislation effectively to resolve night-time neighbour noise disputes.

'out-of-hours' noise service when noise problems are more common and generally have greater impact than noise problems that occur during the normal working day.

- residents;
- local businesses;
- ethnic groups;
- the elderly; and
- people with disabilities.

Stakeholder issues

3.1.16 Authorities should regularly review the efficacy and usage of whatever service model they adopt. The aims of the review should be to:

- establish whether established performance objectives and targets are being met;
- identify where changes in the service might be justified;
- identify if any under performance is occurring and how it could be tackled; and
- identify if the policy serves all parties fairly²⁹, including:

3.1.17 The review should concentrate not only on customer satisfaction and the take-up of the service by different groups but also seek to establish whether use by one section of the community may disadvantage another. Concern has been expressed by some community groups that ethnic minorities may sometimes be over-represented in enforcement activities for alleged noise nuisance. Local authority environmental health services must guard against the misconception that noisy parties, for example, are usually held by specific racial groups.

²⁹ See 1. *Statutory Code of Practice on the Duty to Promote Race Equality*, Commission for Racial Equality (2002), at: www.cre.gov.uk/downloads/duty_code.pdf, 2. *The duty to promote race equality – A Guide for Public Authorities – (Non-statutory)*, Commission for Racial Equality (2002), at: www.cre.gov.uk/duty_guide.pdf and 3. *Good Practice Guide – Service Delivery*, Equal Opportunities Commission, at: www.eoc.org.uk/Default.aspx?page=15376

3.1.18 In addressing noise complaints which involve members of the public from ethnic communities, the local authority should adopt a sensitive strategy based upon information and advice from, for example, racial equality councils and community groups. Use of interpreters and translators for communication with complainants and noise-makers whose English language skills are poor is good practice. Local authorities must remain aware that complaints about neighbour noise in particular have the potential to be a vehicle for harassment. As a matter of course, local authorities should undertake ethnic monitoring of all noise cases to ensure they are enforcing the law in a non-discriminatory way. Care should be taken in analysing customer feedback surveys since participants by definition lack objectivity.

3.2 RESOURCES

3.2.1 Under the Environmental Protection Act 1990, local authorities have a statutory duty to take “such steps as are reasonably practicable” to investigate noise complaints and take action to remedy noise if this constitutes a statutory nuisance. This duty is reinforced by section 6 of the Human Rights Act 1998 which makes it unlawful for a local authority to fail to act to protect, *inter alia*, rights to private and family life, which includes the impact of serious pollution. To fulfil these duties, local authorities must have adequately resourced and competent officers available to take appropriate action when noise problems occur; this may be outside normal office hours, as discussed above.

3.2.2 The determination of what constitutes an appropriate level of resource to commit to the noise service will be guided by the assessment of local needs (see 3.1.3 above) and an evaluation of staffing, revenue and capital operational costs. The size and type of noise service is likely to vary:

- in a large authority there is often a specific noise team including sufficient in-house technical specialists and dedicated

support staff (e.g. 10 to 14 staff) to provide 24-hour services responding to messages from a publicised point of contact;

- where demand on the service is slightly less or, in a medium size local authority where demand on the service is high, an in-house specialist team of perhaps 6 to 8 staff giving a regular extended hours service via a 24-hour point of public contact might be appropriate;
- in a medium size local authority subject to a moderate demand for noise services there may be limited ‘out of hours’ cover provided by officers on a ‘call out’ service targeted at critical times such as Friday and Saturday evenings but possibly also undertaking other non-noise duties in addition; and
- in a small local authority without noise specialists, a rota of non-specialist officers on standby, who are contacted via a duty officer for urgent cases that cannot properly be deferred to permit investigation during the normal working week, may be all that is justified by the needs assessment. However alternatives should be considered, such as developing an association or collaboration with other nearby local authorities and/or out-sourcing elements of the noise management service to provide an economical but effective service.

3.2.3 Importantly, the design and resourcing of the service must take account of the health and safety issues for staff and ensure a safe system of work is provided. This should address the following issues:

- the Working Time Regulations 1998³⁰;
- adequate rest time between shifts;
- lone worker issues;
- personal protective equipment; and
- transportation.

3.2.4 The assessment of existing resources should identify all noise control work undertaken within the authority, not just within the environmental health service. The data and information collected will be of value in determining not only who provides the

service, but also what resources should be allocated to it in the future and where they might come from. For example, these costs might extend beyond the environmental health service and include:

- the total costs of noise control work carried out by the environmental health service, e.g. staff costs (including training), capital cost and running costs of equipment and vehicles, costs associated with storage of seized and forfeited equipment (less revenue from its subsequent sale). Attention is drawn to the framework for cost accounting recommended for LAPC by Defra in AQ2/01³¹;
- the total costs of staff resource and equipment in other departments, for example: advice and inspection by building control services on noise control in new build or conversions;
- the application and enforcement of noise conditions attached to planning permissions, e.g. what time is spent in determining the appropriate conditions and the cost of enforcing these conditions; and
- how much time, resource or equipment is

spent in public-sector housing management investigating and taking action to deal with noise problems.

- 3.2.5 The resourcing plan should set out a clear timetable for reviewing its implementation. For example, over a period of time, the extent of any out-of-hours service may need to be amended to meet changes in the needs of the local community.

3.3 COMPETENCE AND TRAINING

- 3.3.1 Critical to the effectiveness of the noise service is the training and competence of its staff. Though in a different context, a statement of the essential principles to ensure that staff either have adequate standards of competence or are subject to adequate and appropriate supervision is provided in the Health and Safety Commission's *Section 18 Guidance Note to Local Authorities*³².
- 3.3.2 In any environmental health service, officers undertaking noise investigations generally will fall into one of two groups, either Environmental Health Professionals

HELP WITH FUNDING – NEW INITIATIVES

Additional funding may be available should a local authority include a 'stretched' target for noise services as part of its Local Area Agreement (LAA) Reward Element.

The LAA Reward Element carries on from the Local Public Service Agreements (LPSAs) that have been in operation since 2000, whereby top-tier authorities negotiated a package of around a dozen or so 'stretched' targets with Government. These 'stretch' targets required authorities to consider their performance in service areas over a three year period, then commit to deliver an enhancement in performance beyond that, for which the authority would receive a Performance Reward Grant were it successful. To assist in this delivery, the authority received a Pump Priming Grant to spend as it wished in pursuance of the targets.

These same principles of 'stretch', Performance Reward Grant and Pump Priming Grant continue within the LAA Reward Element, the difference being that such targets are now negotiated as part of the LAA process by the relevant Government Office. See: www.odpm.gov.uk/index.asp?id=1161635

It should be noted, however, that framing 'stretched' targets around noise services has proven problematic under LPSAs. For example, a target around reduced reporting of noise nuisance may in theory be achieved by a worsening of the reporting mechanism or a reduction in the service's public profile. By the same token, an authority would need to be wary since it is likely that the better their reporting and response service the greater the likelihood that people will report it. Given this, noise related stretch targets have tended to use perception indicators measured by survey.

³¹ AQ 2(01) *Cost accounting for Local Air Pollution Control (LAPC)*, Defra and WAG, July 2001 at: [www.defra.gov.uk/environment/airquality/lapc/aqnotes/aq02\(01\).htm](http://www.defra.gov.uk/environment/airquality/lapc/aqnotes/aq02(01).htm)

³² Health & Safety Commission, October 2002, at: www.hse.gov.uk/lau/pdfs/sec18.pdf

- who hold a Certificate of Registration of the Environmental Health Registration Board or technical officers who have taken other appropriate qualification routes.
- 3.3.3 The training of the first group, at least in more recent years, has been designed around a number of relevant 'core' competencies. Environmental Health Professionals holding a Certificate of Registration issued by the Environmental Health Registration Board (EHRB) and having qualified via the 'logbook route' (post 1997) will, of necessity, have had to demonstrate to a CIEH appointed assessor that they have had involvement in at least three noise cases. Additionally they will have had to demonstrate their ability to obtain representative and reliable noise samples and data and be able to collate, organise, analyse and interpret the results of these noise sampling programmes and surveys using recognised national and international standards. This requirement is one of the logbook's Stage 'B' Critical Learning Outcomes. Close support will nevertheless still be essential for officers new to the function as they gather specialist experience and those who have not recently been active in noise control matters may require refresher training.
- 3.3.4 Officers coming to this function without the benefit of a comparable training are thought unlikely to be competent to undertake it adequately with much less than two years practical experience during which time they will have been closely supervised and gained a thorough knowledge of both technical and administrative aspects of noise control in conjunction with qualified colleagues.
- 3.3.5 For both Environmental Health Professionals and technical officers there are a number of Institute of Acoustics (IOA) training courses offered by universities and colleges leading to the following qualifications:
- Postgraduate Diploma in Acoustics and Noise Control;
 - Certificate of Competence in Environmental Noise Measurement; and
 - Certificate of Competence in Workplace Noise Assessment.
- 3.3.6 Local authorities are encouraged to construct a skills profile for each post in their noise service against which the skills of post holders can then be matched and appropriate additional training provided as necessary. This may be more difficult for smaller local authorities and in such cases there may be opportunities via formal partnership agreements for officers of adjoining or nearby authorities to work together in gaining experience and developing and maintaining the necessary knowledge and skills.
- 3.3.7 In general, there should be no necessity for officers working on administrative or managerial functions relating to pollution control to achieve the same level of competence, particularly in technical issues, as those required for 'field' officers. However, no less consideration should be given to the skills required for those particular posts and, where necessary, additional appropriate training should be provided for those too.
- 3.3.8 Professional and technical training for officers falls into several categories. It may be needed to introduce 'new entrants', i.e. officers newly-qualified or previously engaged on other duties, to the noise service, to introduce new legislation or a technical development to those already working for the service, or it may be in the nature of 'refresher' training, reinforcing knowledge already acquired but, perhaps, little used. In each case, it may be obtained from external sources – for example courses leading to the Institute of Acoustics qualifications – however there will be many instances where adequate 'in-house' training can be developed either within an individual local authority or by nearby local authorities joining together to define their needs and how they can best be satisfied, probably at lower cost. This latter approach may be most appropriate for procedural matters.
- Out-sourcing**
- 3.3.9 There may be occasions when a local authority finds the need for external specialist advice on a noise issue, perhaps where they are outside the experience or competence of its own officers or for short-term cover when an experienced officer

leaves and there is a delay in appointing a suitable replacement.

3.3.10 'Buying-in' services, possibly following a 'Best Value' review, may also be a means of achieving economies of scale – the Local Government Act 1972 makes provision for local authorities to assist one-another through agency agreements and to 'buy in' services from independent consultants. Section 101 details the arrangements for the discharge of functions between local authorities including the ability to share fees and charges as appropriate. Section 113 provides for staff of one local authority to be placed at the disposal of another local authority.

3.3.11 Should an authority choose to pursue this option, it has a responsibility to be satisfied that the 'bought in' services demonstrate the same level of competence as would be required from its own officers, i.e. the authority still retains overall responsibility for performance of the appropriate noise control function.

Appointment and authorisation

3.3.12 Only those officers who are regarded as competent to perform the function by their employing local authority should be authorised or given the necessary appointment. It will be a matter for each local authority to judge who is, or is not, to

be authorised but caution must be exercised in allocating powers for the sakes of all concerned. Appointments must be made only through the formal local authority process, formally recorded for verification, if needed, and officers issued with appropriate appointment documentation.

3.3.13 It is expected that from time to time (for example, when a Scheme of Delegation is considered), authorities will review the appointments of all their officers. Where an officer ceases to be employed by the local authority or where there is no longer any necessity for holding an appointment for noise control duties, etc. the authority should formally terminate that appointment, such termination being recorded. Attention to the 'correct' authorisation of officers will ensure that no legal challenge can be successful.

Updating and continuing professional development

3.3.14 Though the principal responsibility for training must rest with employers (who must maintain sufficient budgets to meet it), it is expected that officers undertaking the function will regularly update themselves by reference to various authoritative publications, the use of appropriate websites (to which all professional staff should have unrestricted access) and other similar sources of information, by continuous discussion with

EXAMPLE OF GOOD PRACTICE: VARIOUS LOCAL AUTHORITIES

Appropriate training of enforcement officers

The following good practice measures have been used in different authorities to help ensure that enforcement officers are suitably trained:

- recruitment policies, e.g. written job descriptions, person specifications and minimum requirements for qualifications and experience;
- all non-Environmental Health Professionals or technically qualified officers undertake the Institute of Acoustics (IOA) Certificate of Competence in Environmental Noise Assessment;

- a 'mentoring' system exists where each action taken is recorded and monitored by a senior officer;
- professional discussion and support;
- appraisal interviews;
- refresher training;
- team meetings and discussions on complex cases;
- career development of individual officers, including development and adherence to a formal training plan and competence tests for field officers in the assessment of nuisance and in the use of sound level meters.

officers from their own and other authorities, attendance at Pollution Study Group meetings and the like. Employing authorities should support these activities.

- 3.3.15 Continuing Professional Development (CPD) is a requirement for members of the Chartered Institute of Environmental Health and for several other professional bodies. CPD 'points' may be obtained as a result of attendance at relevant training sessions, for involvement in cascade training within a local authority or group of authorities and also from involvement in other 'professional development' activities such as attendance at conferences and symposia, etc.

3.4 SAFETY

- 3.4.1 There are significant personal safety issues for staff engaged in the investigation of complaints and enforcement of noise nuisance legislation. Appendix 4 contains advice from the now defunct Society of Environmental Health Officers regarding personal safety at meetings and on site visits.
- 3.4.2 A documented risk assessment procedure for visiting sites should always be in place and the safe working procedures developed may include one or more of the following:
- compliance with the Working Time Regulations 1998, including allowing additional time beyond the statutory minimum for the recuperation of staff after late night 'out-of-hours' duties, where a documented risk assessment shows it to be appropriate;
 - use of radios with panic buttons linked to the control room;
 - officers accompanied by buildings' concierges;
 - joint visits with colleagues or police;
 - lone working arrangements during normal office hours and joint working at night and at weekends;
 - use of anti-stab jackets, particularly during seizures;
 - putting a 'tracking log' system in operation whereby a supervising officer sets priority of complaint and knows of whereabouts of rapid response officers. Clients are updated on likely response

times for dealing with complaint and the whereabouts of field staff are known in case of emergency, etc.

- a list of known 'difficult customers', with guidance on how to deal with them, e.g. do not approach or only approach with police support. This information may not always be held electronically but data protection legislation requires that such information, however stored, should be kept confidential to the staff who may be affected, continuously updated, reviewed regularly and destroyed when no longer necessary.

3.5 INVENTORIES (EQUIPMENT ETC.)

- 3.5.1 Where noise level measuring or recording equipment is in use, it is essential to have a record of the technical capabilities and limitations (accuracy) of the equipment together with current calibration certificates. Calibration certificates will in general need to be renewed at two year intervals and may need to be available for legal proceedings.

Information

One authority hires out items of equipment to other authorities as part of an arrangement which funds the cost of their annual calibration by an accredited laboratory.

- 3.5.2 An inventory for an 'out-of-hours' service should also include:
- clear and simple instructions for installing and operating the equipment in typical situations;
 - a file of written procedures;
 - blank copies of standard letters, notices, applications for warrants, warrants and receipts for seized equipment;
 - a list of telephone contacts, e.g. JPs, glaziers, locksmiths, etc.;
 - a sound level meter system including a calibrator, windshield and spare batteries; and
 - an equipment bag containing torches, attack alarms, mobile phones, etc.

4.0 Implementing the service

4.1 CO-ORDINATION OF THE SERVICE

4.1.1 Good working relationships with colleagues in other local authority departments, in the Environment Agency and in other external bodies are of real importance. The role of other local authority services and external agencies has already been described briefly in section 2 above and it should be a major responsibility of the noise manager to ensure that these bodies work together in a co-ordinated and mutually supportive way on noise matters.

4.1.2 Whilst the local authority has a co-ordinating role, it should not overlook the fact that though another department or agency may be involved, it still has duties to investigate complaints and take action when satisfied of a statutory nuisance. Where more than one section of the council could be involved in dealing with a noise problem, the environmental health service should be guided by its own noise management procedures and collaborate with the other council departments as appropriate. Once, nevertheless, it becomes necessary for the council to consider prosecution or other court action, the case should be reviewed and a corporate decision taken on which enforcement action is most appropriate. It is not precluded by law, and it is common practice for an enforcement officer from the environmental health service to contribute evidence to assist another council department in taking action.

4.2 DELIVERY

4.2.1 Delivery of the noise service can conveniently be divided into three main stages:

- Initiation, including:
 - the receipt of a qualifying noise complaint;
 - inspecting the district for nuisances;
 - an application for planning permission;
 - an application for a premises licence;
 - an application for Building Regulations approval; and

- consultation with the Environment Agency on an IPPC permit application.
- Investigation/enforcement, including:
 - authorisation of officers under delegated powers;
 - investigation and gathering of evidence;
 - judgement on the existence of statutory nuisance or excessive noise;
 - the formulation of appropriate planning/licensing condition;
 - the grant of Building Regulation approval; or alternative dispute resolution;
 - managing the follow-up procedure;
 - carrying out works-in-default or the seizing of noise-making equipment where required; and
 - court proceedings.
- Resolution/closure of complaints, including:
 - withdrawal of complaint;
 - abatement achieved by informal means;
 - abatement achieved by formal action;
 - referral of the matter to an external agency;
 - noise determined not to be a statutory nuisance; and
 - investigation or resolution of the complaint not reasonably practicable.

4.2.2 Initiation

4.2.2.1 Local authorities' duties under section 79(1) of the Environmental Protection Act 1990 include inspecting their areas from time to time in order to detect any statutory nuisances which ought to be dealt with. Notwithstanding, noise nuisances generally come to their attention by the complaint route.

4.2.2.2 Several reports of investigations by the Local Government Ombudsman have highlighted the importance of the initiation stage and in particular that proper records of complaints should be kept and a system be in place to track progress of an investigation and action taken in a timely manner³³.

³³ Local Ombudsman's Complaint 88/A/1864 against Barnet LBC, 3 May 1990, Commission for Local Administration in England

The receipt of complaints

4.2.2.3 The written procedure for receiving, recording and categorising or screening noise complaints should include complaints received at night and weekends. It also should provide for receipt by all common forms of communication including:

- direct complaint at a council office or to an elected member;
- telephone;
- letter; and
- email.

4.2.2.4 For complaints received by telephone, a trained officer or operator to take complaints is ideal. However, recent research by ENCAMS³⁴ on behalf of Defra suggests that a well scripted noise hotline number can suffice in some circumstances.

4.2.2.5 An objective system for the prioritisation of complaints facilitates the allocation of resources for investigation to ensure effectiveness and fairness, particularly at times when demands on the service are greatest.

4.2.2.6 In deciding how best to use their resources, a council may regard noise impacts to be of greater importance at night than during the day, and it may be appropriate to develop a different set of objectives and priorities for the night time ‘out-of-hours’ noise service. An example of a local authority noise complaint prioritisation scheme where the need for service has been assessed as ‘moderate’ to ‘high’ and resourcing precedence has been for a rapid reaction service during night time rather than during the day, is given below.

EXAMPLE OF GOOD PRACTICE: LONDON BOROUGH OF ISLINGTON

Prioritisation of complaints – out-of-hours

Objectives

The purpose of the ‘out-of-hours’ noise service is to make the most effective use of available resources in order to abate noise nuisances which affect people within the borough. The ‘out-of-hours’ noise service will also, subject to the demands of the first objective, seek to prevent any worsening of, and secure an improvement in, the noise problems experienced by our customers.

Due to there being no equivalent service in the housing department out of hours, during the night the environmental health ‘out-of-hours’ noise service reacts to noise complaints from council tenants in the same manner as all other complaints, and copies the housing officers in to all complaint reports and case details.

Guidance

In order to make the most effective use of available resources, when the amount of complaints received is high or the time between receipt of different

complaints is short, then noise service officers will often have to prioritise their activities. The following guidelines are intended to assist officers in deciding the order in which they should deal with complaints. They are not rigidly prescriptive, and officers should use their discretion to ensure that their primary consideration is the most effective use of available resources to abate the largest number of noise nuisances.

In normal circumstances, complaints should be dealt with as soon as is practicable in the chronological order in which they are received. The following considerations may however, justify officers dealing with cases out of strict time sequence or deferring investigation of certain complaints until other higher priority complaints have been dealt with:

- where the officers believe that an investigation is likely to result in witnessing a contravention of a statutory notice and that contravention is likely to lead to legal proceedings;
- where a noise incident is likely to affect a greater number of households (e.g. ‘raves’, pay parties, alarms and incidents resulting in multiple

³⁴ ‘Resigned Victims’ pilot campaign, Encams (Defra research study, 2003) at: www.encams.org/campaigns/main2.asp?pageid=35

EXAMPLE OF GOOD PRACTICE: LONDON BOROUGH OF ISLINGTON**continued**

complaints);

- where issues of public safety are involved (e.g. unlicensed public entertainment in vacant commercial premises, etc.)
- where dealing with calls in time sequence would result in excessive travel time between visits, reducing the overall efficiency of the service (e.g. criss-crossing across the district);
- where early intervention can forestall the likely occurrence of a serious nuisance and/or safety hazard (e.g. to deal with a problem 'rave' before it gets going);
- where early intervention can improve the overall effectiveness of the service (e.g. to witness an alarm nuisance and serve notice, returning to the premises later for work in default/enforcement); and
- where an officer has already made a commitment to a caller to visit, and another call is received which would normally receive higher priority, the officer may, at their discretion, deal with the arranged visit first.

It is recognised that 'out-of-hours' officers may not be in full possession of all the relevant information to enable them to follow the above prioritisation criteria. There are also circumstances when it may be appropriate to give a lower priority to certain types of complaint such as:

- anonymous complainants;
- complainants who are not willing to be contacted or visited by the out-of-hours noise service officers or who do not want any action to be taken on the night; and
- complaints where the investigating officer has limited information, hampering the investigation.

Normally, all complaints should be investigated, even those falling within the above three categories. The only exceptions to this are:

- where the information available is so scant that it is impracticable to investigate; and
- where there is insufficient time to complete an investigation before the end of the out-of-hours shift.

4.2.3 Investigation

4.2.3.1 As well as the general surveillance duty mentioned above, section 79(1) of the Environmental Protection Act 1990 provides that where a complaint alleging a statutory nuisance is made by a person living within its area, the local authority must take such steps as are reasonably practicable to investigate it. This does not preclude undertaking investigations at the instigation of others. Additionally there is a permissive power available to local authorities for the investigation of night noise from dwellings (and licensed premises as of October 2006) under the Noise Act 1996 following a complaint from any individual present in a dwelling in the area.

4.2.3.2 The nature and extent of the steps an authority might be required to take to comply with the duty to investigate will primarily be determined by the nature and seriousness

of the complaint received, however the resources of the authority set against their local conditions and other responsibilities are not immaterial. The courts will allow an authority some margin when formulating and applying a noise management policy which determines practicable steps by reference to, amongst other considerations, the officer time and other resources available to it³⁵. Ombudsman's reports have, nevertheless, highlighted that excessive delay in investigating 'out-of-hours' noise is as much a breach of the duty to take reasonably practicable steps to investigate complaints as a complete failure, neither being condoned by staff shortages or lack of overtime funding³⁶.

4.2.3.3 Authorities should guard similarly against formulaic responses; a response to a complaint of nuisance that involves no more than sending a warning letter to the alleged noise-maker or requiring complainants to fill

³⁵ See *Jordan v Norfolk CC* [1994] 4 All ER 218

³⁶ Local Ombudsman's Complaint 88/C/182 against Rotherham MBC, 26 November 1990, Commission for Local Administration in England

in diary sheets or refusing to respond unless more than one complaint is received from more than one complainant is unlikely to fulfil the duty to investigate complaints, as none of these processes on its own constitutes an investigation.

Gathering evidence

4.2.3.4 It should be emphasised that the same principles of gathering evidence apply to noise investigations in respect of commercial premises/activities as to domestic ones.

4.2.3.5 Many complainants are concerned that they may be identified to the alleged noise-maker; consequently most local authorities do not give out complainant details to alleged noise-makers. Obviously, in many circumstances it will not be difficult for the alleged noise-maker to work out who may have complained and if a prosecution takes place, it may not be possible to withhold the name and address of the complainant if that is where the noise nuisance is witnessed. Complainants should be advised of this early on in the course of the investigation.

4.2.3.6 Some local authorities have expressed concern that alleged noise-makers may try to use their right of access to personal information being held about them under the Data Protection Act 1998 to seek confirmation from the local authority of the identity of complainants. For example, they may demand access to the case file or even to officers’ notes. Whereas there are provisions in the Data Protection Acts (by which is meant here the Data Protection Act 1998, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004³⁷) for disclosure of personal information on request, there are also provisions for withholding information where third party confidentiality, e.g. complainants’ details, may be compromised, and for editing or restricting the information an alleged noise-maker has access too, thereby avoiding identifying the complainant. Each case needs to be considered individually and the advice of the local authority’s data controller

and the Data Protection Commissioner should be sought if necessary.

4.2.3.7 Diary sheets kept by the complainant can form a useful component of the evidence on which a local authority might be satisfied that a statutory nuisance exists or might occur or recur. Diary sheets on their own, however, may not provide sufficient evidence of statutory nuisance or breach of a statutory notice, because:

- diary sheets may be countered easily by claims that they are false, exaggerated, inaccurate or that the noise was from elsewhere; and
- diary sheets do not identify the person responsible for the nuisance.

4.2.3.8 The main usefulness of diary sheets therefore lies in providing information to the enforcement officer so that judgements can be made on whether:

- it is worthwhile programming visits to maximise the probability of witnessing the noise;
- it is likely that environmental health staff will ever witness the noise;
- the diary sheets could corroborate evidence from enforcement officers or other witnesses that the noise they have witnessed as a nuisance occurs frequently and/or for an extended period of time; and
- the noise is due to unreasonable behaviour or poor sound insulation.

4.2.3.9 When, appropriately, diary sheets are issued, it is important to ensure that their purpose and the best method of completion is clearly explained to the complainant. Returned diary sheets should be date stamped and clearly marked with the file reference.

The Regulation of Investigatory Powers Act

4.2.3.10 The Regulation of Investigatory Powers Act 2000 (RIPA) introduced new provisions relating to the interception of communications, the acquisition and

³⁷ SI 2004/3391

EXAMPLE OF GOOD PRACTICE

Documented procedures for investigating complaints

One London Borough has issued work instructions for its staff as part of its ISO 9000³⁸ Quality Assurance system.

Having written procedures and work instructions:

- provides clear guidance to staff on the minimum standards expected;
- provides support and advice on how the service standards can be achieved;
- helps ensure consistency across the team;
- encourages good record keeping; and

- leads to greater efficiency.

Computer files can be updated at the end of each shift so that staff working on subsequent shifts can be apprised of new cases, the progression of existing cases and any personal safety issues that may have arisen.

Some local authorities have looked at remote working with laptop or palm held computers. Although there can be significant benefits, these may be limited by communication difficulties and the extra security and personal safety risks using portable IT equipment in the car or on the street may involve.

disclosure of data relating to communications, the carrying out of surveillance, the use of covert human intelligence sources and the acquisition of means by which electronic data protected by encryption or passwords may be decrypted or accessed.

4.2.3.11 Part II applies to directed surveillance (section 26(2)), intrusive surveillance (section 26(3)), and the conduct and use of human intelligence resources. The provisions relating to human intelligence sources are not relevant here.

4.2.3.12 Routine noise monitoring is carried out by:

- (a) simple listening and diary keeping by neighbouring occupiers without the knowledge of the occupiers of the source premises; and/or
- (b) simple listening and record compiling by an officer of the authority without the knowledge of the occupiers of the source premises; and/or
- (c) noise recording by a surveillance device placed in the affected premises with the consent of the occupier; and/or
- (d) noise recording by a surveillance device placed outside of the source premises without the knowledge of the occupiers of the source premises.

All fall within the definition of surveillance (see section 48(1)-(4)).

4.2.3.13 Category (a) or (b) – simple listening – is unlikely to be directed surveillance as, whether or not it is covert, it is not likely to result in the obtaining of private information about a person (see section 26(2)(b)). It is not intrusive surveillance either as it does not involve the presence of an individual or of a surveillance device in the source premises, hence the Act will not apply.

4.2.3.14 Category (c) noise recording is not covert and so will not be directed or intrusive and, again, the Act will not apply.

4.2.3.15 Category (d) noise recording is covert. It is nevertheless unlikely to be directed as it is unlikely to result in the obtaining of private information about a person. By its very nature it is listening to noise as it occurs and can be heard outside of the source premises. It is unlikely to be intrusive as the recording device is outside of the source premises and will not consistently provide information of the same quality and detail as might be expected to be obtained from a device actually present on the premises (see section 26(5)) as, again, it is recording the noise as it is heard outside of the source premises.

³⁸ ISO 9000:2000, *Quality Management Systems – fundamentals and vocabulary, installation and servicing*

4.2.3.16 The Act’s provisions will therefore not apply to the routine noise management surveillance envisaged by the Guide. See the Home Office Covert Surveillance Code of Practice for more information³⁹.

Low frequency noise investigations

4.2.3.17 Low frequency noise investigations can present particular problems in terms of gathering evidence and assessing the significance of results. Recent research on this, available on the Defra website, provides guidance on appropriate criteria and investigative procedures^{40 41}.

Contacting the alleged noise-maker

4.2.3.18 Individual local authorities will be guided by their own legal advice but both the CIEH and Defra take the view that contacting the alleged noise-maker before complaints have been corroborated risks them threatening legal action where no statutory nuisance exists or is likely. Sometimes the local authority may be being used as a tool to harass alleged noise-makers in neighbour disputes centred on other non-noise related issues. Additionally, alerting alleged noise-makers to the investigation might defeat the object in some cases. Consequently, many local authorities have a policy of not contacting alleged noise-makers until the existence of a noise problem has been established.

Witnessing the noise

4.2.3.19 Efforts should be made to witness the noise if possible including reactive visits at the time the noise is occurring or programmed visits at times when the noise is likely to occur as suggested by diary sheets. If visits are not possible, use of a Minidisc or DAT (digital audio tape) based recorder system should be considered. The CIEH does not

believe that the routine use of such devices requires authorisation under the Regulation of Investigatory Powers Act 2000.

4.2.3.20 Some local authorities take the view that three visits of suitable duration at times and on days/nights when the probability of witnessing any noise is greatest is sufficient to constitute “reasonable steps to investigate” a complaint, however, that can only be a rule-of-thumb and there is, in fact, no legal requirement for a local authority officer to witness an alleged nuisance at all before serving an abatement notice. Notwithstanding, where attempts made to witness the noise have been unsuccessful, Defra and the CIEH believe that consideration should be given to the cogency of other evidence, particularly that of the complainant, before closing the case.

4.2.3.21 The Local Government Ombudsman’s Special Report *Neighbour nuisance and antisocial behaviour*⁴² emphasises strongly that the complainant must be kept informed of action taken and the key events in any investigation. All communications with the complainant or alleged noise-maker, including telephone conversations, emails, etc., should be recorded on file. In some circumstances a simple note of the time, date, subject and parties to the communication may suffice; in others a more detailed note of the content will be needed.

4.2.3.22 It may be useful to confirm at an early stage whether the complainants are willing to go to court should the need arise, so that the case can be handled accordingly if there is no possibility of council staff witnessing the alleged noise nuisance. However, even if a complainant is unwilling to go to court, the local authority still has a statutory duty to take reasonable steps to investigate their complaint and can take legal action based on the evidence of their staff alone.

³⁹ At: http://security.homeoffice.gov.uk/news-and-publications1/publication-search/ripa-cop/covert-cop?view=Standard&pub_ID=215420

⁴⁰ *A Review of Published Research on Low Frequency Noise and its Effects*, Leventall G, Pelmeur P and Benton S (Defra research study 2003), at: www.defra.gov.uk/environment/noise/research/lowfrequency/pdf/lowfreqnoise.pdf

⁴¹ *Procedure for the assessment of low frequency noise complaints*, Moorhouse A, Waddington D and Adams M (University of Salford research study for Defra 2005) at: www.defra.gov.uk/environment/noise/research/lowfrequency/pdf/nanr45-procedure.pdf

⁴² Advice and guidance from The Local Government Ombudsmen – Special Report – *Neighbour nuisance and anti-social behaviour*, The Commission for Local Administration in England, (February 2005) at: www.lgo.org.uk/pdf/neighbour-nuisance-asb.pdf

4.2.4 Resolution/closure

4.2.4.1 The resolution of a noise case can be defined as where the policy and procedure adopted by the local authority for dealing with noise has been followed through to completion, resulting in one of the following:

- the complainant withdraws their complaint and no instance of statutory nuisance has been identified; or
- informal action has been taken, e.g. mediation or warning letter, and the nuisance abated; or
- formal action has been taken and the nuisance abated; or
- the matter has been referred to an external agency; or
- the local authority investigates the complaint and determines that the matter complained of is not a statutory nuisance; or
- the local authority determines that investigation of the complaint or effective local authority action is not reasonably practicable.

4.2.4.2 The Ombudsman has found that it is not acceptable for the local authority to assume that a case has been resolved merely because a complainant has not contacted it after their initial complaint or following contact by local authority staff. Instead, local authorities should continue to manage the case, maintain contact with complainants and keep them apprised of progress of their case⁴³. If complainants are simply left 'in the dark' about their case they may assume there is nothing the Council can or will do about the problem and resign themselves to living with an on-going noise problem.

4.2.4.3 A good practice example would be where the complainant and the recipient of a statutory notice are advised of the imminent expiry of the compliance period and requested to confirm that the nuisance has either been abated or continues. In this way, a case may be deemed resolved or identified for further action.

4.2.4.4 It is important to encourage thoroughness and consistency in the way enforcement officers approach the task of interviewing complainants. One way of achieving this is to use a standardised questionnaire for interviewees or *aide-memoire* for interviewing officers to prompt them to ask appropriate questions. The results obtained are unlikely to be conclusive in deciding whether a complaint is sufficient or of a kind to amount to a statutory nuisance, however, self-reported effects will be an important part of the evidential background enabling the local authority to make a fully informed decision whether a complaint amounts to a nuisance.

4.3 THE REQUIREMENT TO SERVE AN ABATEMENT NOTICE

4.3.1 The primary duty of local authorities is not to satisfy complaints per se but to abate statutory nuisances. In determining whether a noise problem amounts to a statutory nuisance, regard should be had to a number of factors, including:

- the level and type of noise;
- its duration;
- the time of day or night when the noise occurs;
- whether any aggravating characteristics are present;
- any particular sensitivity of the complainant;
- the character of the neighbourhood where the noise occurs;
- the number of persons affected; and
- whether best practicable means have been used to control noise emanating from industrial, trade or business premises.

4.3.2 Once an authorised officer has formed the view that a statutory nuisance exists or is likely to occur or recur, subject to the power to defer for up to seven days, the local authority is under a duty to serve an abatement notice⁴⁴. In the interests of efficiency, the power to serve such notices should be formally delegated to all suitably qualified officers.

⁴³ Local Ombudsman's Complaint 88/A/1864 against Barnet LBC, 3 May 1990, Commission for Local Administration in England

⁴⁴ S 80(1) EPA 1990 a.a. by s 86 Clean Neighbourhoods etc Act 2005

- 4.3.3 In cases involving trade or business premises, the ground of appeal of ‘best practicable means’ may be available to the recipient of an abatement notice. Though, where the local authority is of the view that an appeal on this ground would be successful, the service of a notice may appear futile, notwithstanding the question of costs, a failure to observe the duty in section 80(1) would appear still to lay the authority open to judicial review or to a complaint to the Local Authority Ombudsman⁴⁵.

Important note

If an officer of the council is empowered to sign a notice under delegated power, some evidence of that, e.g. the minutes of the meeting at which this delegation was made, must be available when attending court in order to defend any challenges to the legitimacy of notices served.

- 4.3.4 An amendment to section 80 of the Environmental Protection Act 1990 made by section 86 of the Clean Neighbourhoods and Environment Act 2005 has regularised the practice common to many local authorities of allowing a short period for alternative means of dispute resolution before service of an abatement notice through, for example, mediation or the use of the Noise Act 1996, where appropriate. Section 80(2A)-(2D) of the 1990 Act now permits a deferral of service for up to seven days after the council has satisfied itself of the existence of a statutory nuisance but the notice must still be served if abatement is not achieved within that time.
- 4.3.5 An example of where an informal approach may be more appropriate than formal procedures is provided in a report of an Ombudsman’s investigation⁴⁶, a summary of which concluded:

‘Mr Gough’ (not his real name) complained about the way the Council was tackling

undoubted problems of noise and vibration from a heavy engineering works close to his house. It was the latest in a succession of complaints made about this issue. The Ombudsman accepted that it was reasonable for the Council to adopt a negotiated, incremental and non-formal approach when trying to resolve problems of noise. Whilst the Council might consider the use of formal powers, there was a very real risk of losing any appeal – which could leave Mr Gough in a significantly worse position than he is under the current arrangements. Nevertheless, the Ombudsman felt that care was needed by the Council in making sure that it followed through any agreements entered into with the relevant company and in not taking irrelevancies into account. Overall, however, the Ombudsman felt that it would be unfair to say that the Council had acted with maladministration.

4.4 THE SEIZURE OF EQUIPMENT

- 4.4.1 Section 10 of the Noise Act 1996 applies to all local authorities in England, Wales and Northern Ireland. Section 10(2) provides that an officer, or authorised person:

“may enter the dwelling [or other premises] from which the noise ... is being or has been emitted and may seize and remove any equipment which it appears to him is being or has been used in the emission of the noise.”

- 4.4.2 Before a seizure may be effected under this provision, the local authority is required to have served a warning notice but the power to seize equipment after the noise has stopped enables action to be taken where there are periods of transient compliance followed by further use of the offending equipment.
- 4.4.3 The power to seize equipment under section 10 of the Noise Act 1996 is confined to noise from dwellings (and, from October 2006, licensed premises) and requires a reasonable belief on the part of the officer that noise has been emitted in excess of the ‘permitted

⁴⁵ Local Ombudsman’s Complaint 88/C/1373 against Sheffield City Council 19th September 1989, Commission for Local Administration

⁴⁶ Local Ombudsman’s complaint 03/C/3081 against Derbyshire Dales District Council 8 March 2004, Commission for Local Administration

level' as defined by the Secretary of State⁴⁷. The reference to 'equipment' extends to musical instruments and electrical equipment whether or not their purpose is to make musical sounds. It does not include dogs.

4.4.4 Under section 81(3) of the Environmental Protection Act 1990, the local authority may, where an abatement notice has not been complied with and whether or not it also takes proceedings for an offence under section 80(4), abate the nuisance and do whatever may be necessary in execution of the notice. Though not explicit, many local authorities have relied on this power as authority for the seizure of noise making equipment and, sometimes, animals.

4.4.5 Section 10(7) of the Noise Act 1996 now clarifies that local authority powers under section 81(3) of the Environmental Protection Act 1990 do include the power to seize and remove noise-making equipment from premises. 'Equipment' does not include animals. 'Premises' includes industrial, trade or business premises or open land. Paralleling the Noise Act, the use of this provision requires that an abatement notice has been served and that the noise offender has failed to comply with it. Additionally, in order to obtain a magistrate's warrant to enter the premises, an authorised officer must be able to demonstrate that:

- entry has been refused; or
- refusal is apprehended; or
- the premises are unoccupied; or

- the occupier is temporarily absent; or
- the case is one of emergency; or
- giving notice would defeat the object of the entry;
- there are reasonable grounds for entry into the premises to seize the noise making equipment, e.g. statutory nuisance is on-going or likely to recur; and
- Human Rights concerns are met.

4.4.6 The Noise Act 1996 gives a power to retain any equipment for 28 days beginning with the date of the seizure or until the conclusion of proceedings for a 'noise offence'⁴⁸ provided the information is laid within 28 days of seizing the equipment. A noise offence includes a breach of section 80(4) of the Environmental Protection Act 1990 as well as of section 4 of the Noise Act 1996.

4.4.7 Retention of the property by the local authority is strictly only permitted for so long as is necessary for the local authority's function under the Act to be discharged. The local authority may apply for the equipment to be forfeited but this intention needs to be made clear at the appropriate Magistrates' hearing. More detail on the procedures for seizure of equipment is provided in Note 10 in Appendix 3.

4.5 ALTERNATIVE DISPUTE RESOLUTION INCLUDING MEDIATION

4.5.1 Alternative dispute resolution includes a range of practices from informal approaches or letters by council staff to alleged noise-

GOOD PRACTICE

Some local authorities have successfully seized amplified music equipment without officers witnessing the nuisance in circumstances where a Magistrate's warrant has been obtained and the notice enforced exclusively on residents' evidence.

Seizure procedures have been effective but it is good practice to use anticipatory powers where possible for

noisy parties; doing so may help to secure the co-operation of the police and to pre-empt serious breach of the peace.

When seizing equipment, staff and public safety is paramount. Health and safety policies must be followed and the assistance of the police called upon, if necessary.

⁴⁷ S 10(1)

⁴⁸ S 10(9) and Sch, paras 1(a) and 2(1)(a)

makers, to more structured arbitration, conciliation and mediation methods. In cases where alternative dispute resolution methods are successful they may be quicker, cheaper and more effective than use of the formal statutory nuisance powers. Local authorities are nonetheless bound by their duties under sections 79 and 80 respectively of the Environmental Protection Act 1990 to take reasonable steps to investigate nuisance complaints and, subject to the amendment made by the Clean Neighbourhoods and Environment Act 2005, to serve abatement notices when satisfied of the existence, etc., of a statutory nuisance. Consequently, where alternative dispute resolution methods are appropriate they must still acknowledge the duties to investigate and take action against statutory nuisances.

4.5.2 Benefits claimed for mediation are that it:

- allows people to be heard. In some cases, a simple apology from either or both parties is all that is required to resolve the situation;
- is an empowering process that encourages people to put forward their own suggestions and ideas;
- is less intimidating than legal procedures, and people represent themselves rather than having someone speak for them;

- provides solutions that the parties themselves have decided on, giving them all a sense of ownership of any agreement. As a result, agreements reached in this way tend to last much better than solutions handed down by courts or an arbitrator;
- can be organised quickly. When disagreements are not addressed, they can escalate. Mediation is relatively easy to arrange and can be completed within weeks; and
- is usually affordable by all. Most neighbour mediation is free to those who want to use it, and many other forms of community mediation are available at a reasonable rate.

4.5.3 Mediation can be very helpful when a situation is deadlocked or not easily resolved. It works by giving everyone the opportunity to explain their side of the story, and to talk without being interrupted. It is not, however, an ‘easy option’ – when people are honest and are encouraged to say what they feel, the situation can provoke strong emotions – but once people have had a chance to express their feelings, they are more likely to lose their hostility.

4.5.4 There are four areas where mediation can be considered to be of benefit to a local authority:

INFORMATION

Local Authority experience of the outcome of mediation has been mixed.

Case 1 – London Borough of Hammersmith and Fulham use a voluntary service, CALM, which is funded jointly by a number of bodies including local authorities and housing associations. Benefits are considered to include the ability to resolve a number of intractable neighbour noise cases, as well as being able to get involved in non-noise issues and the possibility of attaining a sustainable solution where noise is merely the vehicle for articulating a whole series of issues.

Approximately 100 noise related cases per year are processed with a positive outcome in 60-70% of cases.

Case 2 – London Borough of Southwark’s Housing Department has a service contract with Southwark Mediation for up to 2,000 referrals with an annual cost of £30k. The environmental health department were referring up to 110 cases per annum, out of more than 10,000 noise complaints per year. However, the benefit was limited – full mediation was only ever accepted in one case and the majority of complainants insisted on maintaining their anonymity.

The lesson here may be that mediation can work but only if all parties are prepared to enter openly and wholeheartedly into the exercise. This may not be the situation in many noise cases and, of course, there may be good reasons why the complainant wishes to remain anonymous.

- the mediation process helps to develop better relations (between neighbours this is especially important);
- mediation may be less resource intensive than formal action;
- the use of statutory enforcement powers can exacerbate a situation, as it can polarise the parties, driving them further apart; and
- mediation is useful for tackling problems not amenable to any legal remedy or of which the noise complaint is just symptomatic.

4.6 ANTI SOCIAL BEHAVIOUR ORDERS (ASBOS) AND ACCEPTABLE BEHAVIOUR CONTRACTS (ABCS)

4.6.1 The Crime and Disorder Act 1998 introduced the anti-social behaviour order (ASBO) which is an important addition to the range of measures the police and local authorities have to tackle anti-social behaviour. ASBOs are an effective way of tackling serious anti-social behaviour which may include persistent noise nuisance.

4.6.2 Circumstances where the use of ASBOs to tackle noise nuisance might be appropriate would include:

- dealing with individuals and households whose anti-social behaviour, when challenged, leads to verbal abuse, or threats;
- where the noise nuisance is just part of a wider pattern of behaviour which harasses, alarms or distresses others; or
- where a noise-maker has not been persuaded or coerced into abating the nuisance they cause by the normal statutory nuisance enforcement procedures, i.e. prosecution.

4.6.3 Reported experience with ASBOs is generally good and their use is becoming more commonplace.

4.6.4 Clearly in some cases, Environmental Health Practitioners can have a crucial role in facilitating the use of ASBOs and noise service managers should familiarise themselves with the process and ensure their service is set up to participate in such actions, where appropriate.

EXAMPLE OF THE USE OF AN ANTI-SOCIAL BEHAVIOUR ORDER

An example of the use of ASBOs to tackle persistent domestic noise nuisance is the case of Sharon McLoughlin (see Environmental Health News – 12 August 2004). This Birmingham City Council tenant became the city's first resident to lose her home and receive an anti-social behaviour order for causing regular and very disruptive noise by insisting on playing loud music. The noise-maker blighted the lives of her neighbours by playing loud music day and night.

The court heard evidence from EHOs that the music was so loud that it prevented normal conversation, vibrated the floors of the flat above, moving furniture and exceeding recognised sound level benchmarks.

The noise-maker was served with a noise abatement notice in June 2003, which she ignored. EHOs subsequently seized noise-making equipment on three occasions, but each time the noise-maker simply replaced it.

An interim ASBO was served on the noise-maker on 30 June 2004. This prohibited her from owning or using hi-fi equipment or televisions. But again the noise-maker ignored the instructions of the court.

Subsequently on the 2 August 2004 a District Judge granted Birmingham CC possession of the noise-maker's flat within 14 days. The District Judge also imposed a full ASBO, prohibiting her from causing harassment, alarm or distress anywhere in England for two years.

Although the case was handled jointly by EHOs, the housing department and the Birmingham Anti-social Behaviour Unit, the majority of evidence gathering leading to the ASBO, including visits to witness the noise and make noise measurements, was carried out by EHOs.

4.6.5 The Anti-social Behaviour Act 2003 extended the application of the Noise Act 1996 to all local authorities in England and Wales and gave local authorities the power to summarily close noisy licensed premises in certain circumstances. The government has published a variety of guidance on the use of anti-social behaviour powers relevant to the noise context.^{49 50 51 52}

ASBOs on conviction

4.6.6 An ASBO on conviction, under section 1C of the Crime and Disorder Act 1998 as amended, may be considered to prevent the recurrence of problems in cases of very distressing and persistent nuisance by persons who are not deterred or influenced by the sanctions available under the Environmental Protection Act 1990. ASBOs on conviction can be applied for after having obtained a conviction for breach of an abatement notice. ASBOs on conviction can also be used where the noise nuisance is part of a bigger scheme of anti-social behaviour that includes problems that could not be covered by an abatement notice.

4.6.7 The ASBO on conviction can be used to prohibit the offending behaviour, rather than focussing on breaches of any abatement notice. The sanctions for non-compliance with an ASBO are more varied and flexible than an abatement notice and problem behaviour difficult to control with, or not covered by, the Environmental Protection Act 1990 can also be covered.

4.6.8 An order on conviction has the same effect as an ASBO; it lasts for a minimum of two years and a breach of the terms of the order

is a criminal offence. Orders on conviction can be made by the magistrates' court, the youth court or the crown court. The form of these orders is set out in the Magistrates' Court Rules and the Crown Court Rules⁵³.

4.7 THE APPLICATION OF APPROPRIATE PLANNING AND LICENSING CONDITIONS

4.7.1 The government's Planning Policy Guidance Note 24⁵⁴ or, in Wales, the Technical Advice Note (Wales) 11⁵⁵, gives guidance to local authorities on the use of their planning powers to minimise the adverse impact of noise. Noise may be a 'material consideration' in planning decisions and local authorities must take the content of this guidance into account in preparing local development documents.

4.7.2 The local authority should determine whether areas within their control require specific conditions to address noise and in these cases, the relevant boundaries should be illustrated on the proposals map. For example, Westminster City Council designates areas of significant cumulative impact as 'Stress Areas'⁵⁶ and it also has a defined Central Activities Zone (CAZ) to which planning policy directs new growth of central London activities and where, as a consequence, noise is of particular concern. More onerous noise conditions may be attached to planning consents granted for sites in these areas.

4.7.3 When determining the degree to which noise control measures are included in the planning or licensing process, local authorities will need to balance the commercial as well as residential requirements of the local area.

⁴⁹ *A Guide to Anti-social Behaviour Orders and Acceptable Behaviour Contracts*, Home Office, March 2003, at: www.crimereduction.gov.uk/asbos/asbos9.pdf

⁵⁰ *Anti-social Behaviour Orders – Guidance on drawing up Local ASBO Protocols*, Home Office, June 2000.

⁵¹ *Anti-social Behaviour: Policy and Procedure Code of guidance for local housing authorities and housing action trusts*, ODPM, August 2004, at: www.communities.gov.uk/pub/43/AntisocialBehaviourPolicyandProcedurePDF234Kb_id1153043.pdf

⁵² See: www.defra.gov.uk/environment/localenv/pdf/asbact-guidance.pdf

⁵³ See: www.together.gov.uk/cagetfile.asp?rid=708

⁵⁴ *Planning Policy Guidance Note PPG 24 – Planning and Noise*, Department of the Environment, September 1994, at: www.communities.gov.uk/index.asp?id=1144098

⁵⁵ *Planning Guidance (Wales) Technical Advice Note (Wales) 11 – Noise (TAN 11)*, Welsh Assembly Government, October 1997, at: <http://new.wales.gov.uk/about/departments/depc/epcpublications/PlanPubs/TANS/TAN11?lang=en>

⁵⁶ City of Westminster – *Statement of Licensing Policy*, 7 January 2005, at: www.westminster.gov.uk/licensing/upload/Licensing_Policy_2005_web.pdf

- 4.7.4 The government's Planning Policy Statement 23⁵⁷ (PPS23) advises that "*the controls under the planning and pollution control regimes should complement rather than duplicate each other*". Where pollution issues are likely to arise, intending developers should hold informal pre-application discussions with the local planning authority, the relevant pollution control authority and/or the environmental health departments of local authorities, and other authorities and stakeholders with a legitimate interest. In circumstances where it will save time and money, PPS23 recommends that consideration should be given to submitting applications for planning permission and pollution control permits in parallel and co-ordinating their consideration by the relevant authorities.
- 4.7.5 Planning conditions should be imposed only where they are:
- necessary;
 - relevant to planning;
 - relevant to the development to be permitted;
 - enforceable;
 - precise; and
 - reasonable in all other respects.
- Noise emission limits should be stated in unambiguous terms for specific locations. Examples of model conditions are given in Annex 4 of PPG 24.
- 4.7.6 The ease and practicability of monitoring compliance with any particular planning or licensing condition should always be considered. If licensing conditions require that "music is inaudible within nearby habitable rooms", then the interpretation of this should be reasonable and practical in the absence of an agreed objective measure. One option would be to listen in the middle of the room or at the bed head and not directly at an open window, however, this is unlikely to be an option available to the licensee wishing to monitor his/her own compliance. In such a case, the local authority should advise the licensee of the precise music noise level thresholds within the licensed premises below which are inaudible in the target noise sensitive premises.
- 4.7.7 The Licensing Act 2003 has significantly altered the way in which the liquor and public entertainment licensing regimes are administered. The Act gives responsibility for these licensing functions to local authorities and establishes a single integrated scheme for licensing premises which are used:
- for the supply of alcohol;
 - to provide regulated entertainment; or
 - to provide late night refreshment.
- Permission to carry on some or all of these licensable activities will now be contained in a single licence – the premises licence.

LIAISON WITH PLANNING DEPARTMENTS

In a typical authority the applications list is scanned each week by the environmental health department and details requested for applications where noise may be a concern. Appropriate comments are made, including the need for noise surveys to be undertaken; applicants' reports are then audited and planning conditions recommended. However, officers generally do not attend all planning committee meetings usually confining attendance to contentious matters where noise control is a significant issue.

Potentially conflicting uses are common, e.g.

development of playing field site adjoining residential properties and issues arising from 'living over the shop' and regeneration initiatives. Local priorities have to be considered in the light of national guidance.

Often, liaison meetings may be held between planning and environmental health staff to consider individual cases.

Generally it is good practice for **all** environmental health department comments to be included in the committee report.

⁵⁷ Planning Policy Statement 23: Planning and Pollution Control, ODPM, 2004

- 4.7.8 It is the duty of all licensing authorities to carry out their functions under the Act with a view to promoting the ‘licensing objectives’ which are:
- the prevention of crime and disorder;
 - public safety;
 - the prevention of public nuisance; and
 - the protection of children from harm.
- 4.7.9 The Act provides certain rights of appeal to the magistrates’ court for both the applicant and those who made relevant representations in relation to an application. For example, a local resident who made such representations and is aggrieved by the grant of a licence has a right to appeal against the decision of the licensing authority. Other than in the case of personal licences an appeal is made to the magistrates’ court.
- 4.7.10 Key measures contained in the Act include:
- flexible opening hours for premises, with the potential for up to 24 hour opening, seven days a week, subject to consideration of the impact on local residents, businesses and the views of consultees in relation to the licensing objectives;
 - a single premises licence which can permit premises to be used to supply alcohol, to provide regulated entertainment and to provide refreshment late at night. This will bring together the six existing licensing regimes (alcohol, public entertainment, cinemas, theatres, late night refreshment house and night cafés) and permit conditions to be applied to regulate the impact of noise from licensed premises;
 - a new system of personal licences relating to the supply of alcohol which will enable holders to move more freely between premises where a premises licence is in force;
 - premises licences to be issued by licensing authorities after notification to and scrutiny of all applications by the police and other responsible authorities. Those living in and businesses operating in the vicinity of the premises will also be able to make representations on applications; and
- personal licences to be issued by licensing authorities after scrutiny by the police where the applicant has been convicted of certain offences.
- 4.7.11 Section 182 provides for the Secretary of State to issue guidance to licensing authorities on the discharge of their functions under the Act and this was published in March 2004⁵⁸.
- 4.7.12 Part 8 of the Licensing Act 2003 extends the existing powers of the police:
- to seek court orders to close licensed premises in a geographical area that is experiencing or likely to experience disorder; and
 - to close down immediately individual licensed premises that are disorderly, likely to become disorderly or are causing a ‘public nuisance’ as a result of noise from the premises.
- 4.7.13 These powers apply in relation to premises licensed for the provision of regulated entertainment and late night refreshment and to premises in respect of which a temporary event notice has effect. The Act does not define ‘public nuisance’ and whilst it is for senior police officers to judge reasonably whether the noise is causing a nuisance, the benefit of prior liaison with local authority enforcement officers should be evident.
- 4.7.14 Government guidance⁵⁹ on this power of closure encourages police forces to liaise with the local authority “to draw on their experience and establish guidelines for officers about noise issues. Chief officers of police may find it valuable and helpful to agree a protocol with the local authority for the handling of noise nuisance issues associated with premises licensed under the 2003 Act or in respect of premises

⁵⁸ *Guidance issued under section 182 of the Licensing Act 2003 and Guidance to Police Officers on the Operation of Closure Powers in Part 8 of the Licensing Act 2003*, Department for Culture Media and Sport, July 2004, revised June 2006 at: www.culture.gov.uk/NR/rdonlyres/7B118F40-5BCC-4195-8DA0-9E1A3A1FDAD1/0/Guidanceissuedundersection182.pdf

operating under temporary event notices. This would enable a consistent approach to be taken by the police and other local authority enforcement officers”.

- 4.7.15 Guidance⁶⁰ for environmental health department and licensing authorities produced by LACORS (Local Authorities Coordinating Office on Regulatory Services) with the CIEH is published on the LACORS website. This includes a section on “the prevention of public nuisance” within which is a sub-section on the noise issues arising on licensed premises.

⁵⁹ *ibid*

⁶⁰ *The Licensing Act 2003 – Environmental Health Practitioners – LACORS Guidance for Environmental Health Departments & Licensing Authorities, CIEH and LACORS, May 2005*

5.0 Public awareness and education initiatives

- 5.1** CIEH and Defra recognise the importance of public education on issues relating to noise and believe this to be a vital component of any local authority's noise strategy. Information on promoting public awareness of noise issues can be obtained from Defra's website⁶¹. Two information leaflets have been produced by Defra, *Bothered by noise? There's no need to suffer*⁶² and *Is your dog barking too much?*⁶³. These can be downloaded from the Defra website.
- 5.2** Local authorities should examine opportunities to raise awareness of noise issues in the community. Examples of successful local authority initiatives include:
- attending tenant-management meetings and making presentations;
 - promoting a considerate contractor scheme for construction sites;
 - promoting the noise service on the council's website where extensive information on noise is published and regularly updated, e.g. code of practice for construction sites with applications for permission to work outside 'standard' hours;
 - working with youth groups, e.g. poster competitions;
 - leaflets, lamp-post posters promoting noise service; and
 - initiatives for Noise Action Week, e.g. shouting competition.
- 5.3** Two initiatives which are supported by Defra and which the CIEH consider to be worthy of support by local authorities are Noise Action Week, promoted by the NSCA, and the annual John Connell Awards promoted by the Noise Abatement Society.
- 5.4** Noise Action Week is an annual event organised by the NSCA. Information about it can be found on the NSCA website⁶⁴. For many local authorities it provides a focus for awareness raising and education work on noise. The stated aims of Noise Action Week are:
- to promote practical solutions to everyday neighbour noise problems;
 - to promote communication and consideration between neighbours;
 - to encourage local authorities and mediation services to inform the public of the services that are available;
 - to educate and inform both noise-makers and noise sufferers about noise reduction; and
 - to encourage everyone to take a quiet moment to consider the noises they make and the noise that affects them and to consider what can be done to reduce the impact of noise.
- 5.5** Examples of local initiatives include:
- the encouragement of responsible dog ownership;

EXAMPLE OF GOOD PRACTICE: DONCASTER METROPOLITAN BOROUGH COUNCIL

Use of DAT recorders

Persistent disturbances are recorded with digital audio tape (DAT) equipment and the recordings are subsequently analysed in an environment where they can also be played back to all parties, e.g. the noise-

maker and the complainant. In this way, those creating the noise can be confronted with an objective demonstration of the impact their behaviour has on others. Additionally, a room is also set aside at the local magistrates' court to enable magistrates to assess offending noises when cases go to trial.

⁶¹ See: www.defra.gov.uk

⁶² Department of the Environment, Transport and the Regions, 2001, at: www.defra.gov.uk/environment/noise/suffer/pdf/botheredbynoise06.pdf

⁶³ Defra, May 2005, at: www.defra.gov.uk/environment/noise/pdf/barkingdog.pdf

⁶⁴ See: www.nasca.org.uk/pages/index.cfm

- the registration of intruder alarms;
- the promotion of responsible and considerate behaviour by tenants;
- issuing guidance on the sound insulation of flooring;
- the education of schoolchildren at an early age about the social and health impacts of noise.

The annual John Connell awards set up by the Noise Abatement Society⁶⁵ are aimed at local authorities and seek to encourage them to develop schemes to raise awareness of noise problems and to mediate and settle conflicts arising from noise complaints.

EXAMPLE OF GOOD PRACTICE: ROYAL BOROUGH OF KENSINGTON & CHELSEA

Metropolitan Police's 'Junior Citizen' initiative

The environmental health directorate has contributed to this annual educational event since 1996. In 2002 the programme, which was linked to schools, involved promoting a noise display presentation entitled 'Be

responsible with noise'. Consisting of a twofold message under the headings 'Hear today, deaf tomorrow' and 'Noise annoys', the initiative targeted nearly 1000 children from over 20 schools. This effort earned the council an award in the Noise Abatement Society's annual John Connell Award.

⁶⁵ See: www.noiseabatementociety.com

6.0 Reviewing a noise service

6.1 CONSULTING OTHERS

- 6.1.1 A local authority's policies on noise, like those in any other service area, occasionally need systematic review. The corporate policies on noise should be considered against the area profile of the local authority so that the following questions can be answered:
- are the policies adequate, comprehensive and complementary?
 - do the policies address the needs of the authority and local communities?
 - how are the policies resourced?
 - how are the policies delivered?
 - how is performance measured and evaluated?
 - what is the mechanism to review local noise services?
- 6.1.2 There are many ways in which service reviews can be undertaken but an essential element is the analysis of feedback from customers, internal service partners such as officers in other departments, e.g. housing and social services, and from external service partners such as the local police and registered social landlords.
- 6.1.3 Regular customer surveys can inform and assist the review process. A survey of all local authorities in England, Wales and Northern Ireland undertaken during the preparation of this Guide found that less than 70% of responding authorities carried out any form of regular customer satisfaction surveys. Only 5% of responding authorities reported that they surveyed the opinions of noise-makers.
- 6.1.4 A number of authorities report good results from simple postal questionnaires sent to the users of the noise service.
- 6.1.5 The views and recommendations of officers in other departments of the local authority, such as housing and social services, should be sought. A simple questionnaire sent via internal email can be effective but internal service colleagues may also welcome the opportunity for a face-to-face discussion about the service.

EXAMPLE OF GOOD PRACTICE: LONDON BOROUGH OF WANDSWORTH

Customer surveys

In May 1997, a telephone survey of 296 recent users of the noise service was conducted. The purpose of the survey was to explore customer feedback on the service in more detail than had been the practice using standard feedback questionnaires. The survey covered such matters as the types of noise sources complained of, whether users would use the service again, as well as general satisfaction with the service. It was significant that some 62% of users were satisfied with the service and over 90% said that they would use the service again.

A number of issues were raised. These included a request for quicker response times and a dislike for the answering machine which had been provided to take calls out-of-hours. At the time, the environmental services division was not always able to respond to some calls because of the hours covered by the service and the answering machine was seen as a

cost-effective means of taking calls. The issues were reviewed and changes made to the service. This included the provision of a personal answering service which, following a tendering exercise, was provided by the housing department. An extension of hours to the service was also approved in order to meet the customer demand for a quicker response. The number of hours covered by the service at that time was 49 hours per week and this was increased to 98 hours.

In December 1999, a further survey was conducted to monitor the success of the personal call answering service. Ninety-three percent of users of the service preferred calls to be received under the new arrangements rather than on the answering service. Despite the extension of hours some respondents still felt the service should be available over longer hours. This was considered but it was felt that it was not possible to extend the hours further as the additional resources required could not be justified by the number of calls received during the periods not presently covered.

- 6.1.6 With external service partners such as the police, local authorities may wish to consider setting up a small focus group of the key partners.
- 6.1.7 Several local authorities have reported that it was beneficial to involve relevant elected members at an early stage of the consultation and review process.
- 6.1.8 Some authorities also reported favourably on the early appointment of a neutral external organisation to critically review the current service and to probe comments received from customer satisfaction surveys.
- 6.1.9 Service reviews may be appropriate on a five yearly cycle, or more frequently if local circumstances and needs change significantly.

6.2 THE COLLECTION OF NOISE COMPLAINT STATISTICS

- 6.2.1 The BRE's report *Domestic Noise Complaints – furthering our understanding of the issues involved in neighbourhood noise disputes*⁶⁶ identified the need for greater detail in local authority records and national statistics. It commented that "Better quality information is an important corollary to local and national policy initiatives".
- 6.2.2 'Best Value' (below) and the forthcoming requirements of the Environmental Noise Directive provide further pressures on authorities to collect relevant data and the CIEH and Defra believe that the dataset now requested by the CIEH in its annual surveys represents no more than that which every local authority ought to be able to provide for its own management purposes as well as for the development of services and policy nationally.
- 6.2.3 Further information on that dataset, its rationale and how the CIEH facilitates its collection are provided in Appendix 8.

6.3 THE REFORM OF PUBLIC SERVICES

- 6.3.1 Until earlier this year, the Prime Minister's Office of Public Services Reform (OPSR) was the lead department for the government's policy of reforming public services. Its work is now being taken forward as part of the wider programme of work of the Cabinet Office, in particular by the Economic and Domestic Secretariat, Government Communication Group and the Strategy Unit but it still has relevance for both the provision and review of a local noise service.
- 6.3.2 The OPSR established four principles of Public Service Reform⁶⁷ which are:
- national standards to ensure that people have the right to high quality services wherever they live;
 - devolution to give local leaders the means to deliver these standards to local people;
 - more flexibility in service provision in light of people's rising expectations; and
 - greater customer choice.

How the reforms are being achieved

- 6.3.3 'Best Value' has now been seen for several years by government as the main framework for achieving public service reform. If a council is delivering Best Value, it is economic, efficient and effective and it is making continuous improvement. In addition, the government and the Local Government Association (LGA) have agreed a set of seven 'shared priorities' for central and local government. These are intended to focus the efforts of government and councils on improving public service, the key priority being "creating safer and stronger communities"⁶⁸, with local authority regulatory services being seen as playing a vital role in delivering improvements.
- 6.3.4 The findings of each authority's Comprehensive Performance Assessment, and subsequent evaluations by the Audit

⁶⁶ Grimwood C, Ling M, BRE, December 1999, see: www.defra.gov.uk/environment/noise/research/domestic/pdf/domestic.pdf

⁶⁷ *Reforming our Public Services – Principles into Practice*, Office of Public Services Reform, March 2002 at: <http://archive.cabinetoffice.gov.uk/opsr/documents/pdf/principles.pdf>

⁶⁸ See: www.local-regions.odpm.gov.uk/bestvalue/indicators/pi2003-04/annexb.htm

Commission, determine how much discretion a local authority is given in its review programme. More information is available via the audit commission website⁶⁹, however, all councils are still required to:

- undertake Best Value Reviews and measure performance against local and national indicators and targets;
- make plans and set targets for future improvements;
- consult with customers and other stakeholders on reviews; and
- publish an annual Best Value Performance Plan (BVPP). The BVPP must include a statement of the council's main objectives, its performance and how it intends to carry out a five-yearly review of its services.

- 6.3.5 The latest information from government is to be found on the LGA's Improvement and Development Agency's website⁷⁰.

Supporting excellence in service delivery

- 6.3.6 As part of the government's reform of public services, the Cabinet Office now champions a revised Charter Mark Scheme. The current scheme includes sub-contracting organisations that provide a service to the public.

- 6.3.7 The Charter Mark Scheme is seen as a tool for delivering improvements to public services by requiring them to:

- set and publish standards;
- provide choice; and
- deliver services as flexibly as possible.

The Charter Mark website⁷¹ provides details of the award scheme, as well as an on-line 'self-assessment'.

6.4 BEST VALUE AND BEST VALUE PERFORMANCE INDICATORS

- 6.4.1 Local authorities must now complete an annual checklist of enforcement best practice for Environmental Health and Trading Standards – known as BV 166.

- 6.4.2 BV 166 was introduced in 2001/2 to provide information on the performance of local authority Environmental Health and Trading Standards departments. BV 166 should be viewed as a checklist rather than a performance indicator, however, the government has indicated that it intends to move away from checklists to performance indicators. In preparation for this, 2003/04 indicators were amended and following further review, the BVPI for 2005/6⁷² now are intended to be left largely unchanged for a period of two or three years. BV 166 now aims⁷³ to enable local authorities to check that they are meeting standard service requirements. Details of the revised arrangements, including time scales for reporting, can be found on the website of the Department of Communities and Local Government.

- 6.4.3 Local noise services are included under 'pollution control' within BV 166 and there is an expectation that every local noise service:

- has been or will be bench marked against similar services;
- is provided within a stated policy. In particular, the policy will need to set out how the service integrates into the regulatory framework of the authority;
- operates to defined service standards and objectives;
- is responsive to the needs of customers and that it is provided at the times requested; and
- is provided having regard to appropriate professional advice.

⁶⁹ See: www.audit-commission.gov.uk/index.asp

⁷⁰ See: www.idea-knowledge.gov.uk

⁷¹ See: www.chartermark.gov.uk

⁷² *Best Value Performance Indicators for 2005/06: Guidance Document*, ODPM, at: www.communities.gov.uk/index.asp?id=1136118

⁷³ *Guidance on BV 166 for 2003/04*, ODPM at: www.communities.gov.uk/index.asp?id=1136156

- 6.4.4 For the purposes of BV 166 the predecessor to this Guide was recognised by the ODPM as one source of “appropriate professional guidance and standards”.
- 6.4.5 In order to make a meaningful return, authorities will need to ensure they have in place arrangements for data collection. These data will need to be collected via established routes such as customer satisfaction surveys and questionnaires to service partners, both internal and external to the authority.
- Consultation in best value**
- 6.4.6 Consultation with service customers and stakeholders can be a valuable tool that helps with the consolidation and building of existing practices where feedback is positive and securing change where feedback is negative.
- Challenging the existing service**
- 6.4.7 As part of the process for continuous review it is important that authorities should challenge the way that their existing service is delivered.
- Regulatory reform**
- 6.4.8 Practitioners will also want to note the influence of the Better Regulation Executive⁷⁴, established following the ‘Hampton’ Review in May 2005 within the Cabinet Office with the aim of minimising bureaucracy for businesses and front-line staff in the public sector and to help charities and the voluntary sector to make a greater contribution to society.
- 6.4.9 The BRE works across government to support and challenge departments and regulators as they reduce and remove regulation across the private, public and voluntary sectors and has overall responsibility for the government’s commitments to:
- regulate only when necessary;
 - set exacting targets for reducing the cost of administering regulations;
 - rationalise the inspection and enforcement arrangements for both business and the public sector.
- 6.4.10 Contributing more directly to regulatory reform at local level, the Local Better Regulation Office (LBRO)⁷⁵, being set up under the DTI, will also minimise burdens on business, building on the work of the Local Authority Better Regulation Group and initial proposals for a Consumer and Trading Standards Agency (CTSA). Working in partnership with local authorities and the national regulators to deliver a more

EXAMPLE OF GOOD PRACTICE: WESTMINSTER CITY COUNCIL

Best value review

Westminster City Council carried out a Best Value Review of the Environmental Health Service in 2000/2001. As part of this review, a consultation exercise was carried out in which the following parties were consulted:

- the local ‘Environmental Network’;
- the police and alarm manufacturers regarding the design of car alarms and the use of silent intruder alarms;

- public utility companies regarding measures to reduce noise when carrying out street works;
- construction companies on measures to control noise nuisance and the use of section 61 consents;
- housing associations regarding measures to control neighbourhood noise through the use of tenancy conditions;
- local amenity and resident groups; and
- Magistrates regarding their availability to issue warrants out of hours and the enforcement policy for noise.

⁷⁴ See: www.betterregulation.gov.uk

⁷⁵ See: www.dti.gov.uk/consumers/enforcement/lbro/index.html

consistent and co-ordinated approach to business inspection and enforcement, it aims to drive up standards within the wider local government performance framework and ensure a single coordinated set of priorities for local authority regulatory services including environmental health.

EXAMPLE OF GOOD PRACTICE: SUSSEX LOCAL AUTHORITIES

Inter authority review

In 2002, 13 Sussex Authorities took part in a review exercise to compare the provision of noise services across both West and East Sussex. The review was in two parts. The first part comprised a self-assessment questionnaire and the second part an inter-authority audit. The principal conclusions were as follows:

- the criteria for operating an 'out of hours' noise service varied considerably, with three authorities choosing to outsource this work to a private contractor;
- considerable variation in how complaints were counted and recorded. The review also identified that only a minority of authorities routinely visited

complainants;

- less than half of authorities involved carried out any regular customer satisfaction surveys in respect of their noise service;
- significant variation in the numbers of FTE (full time employed) staff appointed by each authority to deal with noise; and
- two neighbouring authorities successfully operated a joint 'out of hours' noise response service.

In addition, the review identified a number of examples of good practice and the authorities concerned intend to repeat the questionnaire part of the review in 2004 and carry out a further audit in 2006.

Recommendations for further reading

- CIEH Research – Noise Complaints and Prosecutions (annually)
- NSCA National Noise Survey (annually)
- Noise Abatement Society website: www.noiseabatementociety.com
- Greater London Authority – *Sounder City*, the Mayor’s Ambient Noise Strategy, March 2004
- *Neighbour and Neighbourhood Noise – A review of European Legislation and Practices 2002 parts 1 and 2*, reports by Environmental Resources Management for Defra, 2002 and 2003
- ‘Air Pollution and Noise Bulletin’, an information service for Local Government published monthly by Birmingham Central Libraries
- *Guidelines for Community Noise*, World Health Organisation, 1999
- *Domestic Noise Complaints*, Grimwood C, and Ling M, BRE Report No. 204732, December 1999
- *Effects of environmental noise on people at home*, Grimwood C, BRE Information Paper IP 22/93, December 1993
- Future Noise Policy, Commission of the European Communities, Coin (96) 540 Final, 4 November 1996, Brussels
- *Garner’s Environmental Law Vols. 1-3*, Butterworth and Co. (Publishers) Ltd
- *Noise Control, The Law and its Enforcement*, 3rd Edition, Penn C, 2002 Shaw and Sons Ltd
- *Report of the Noise Review Working Party*, 1990, HMSO
- *Statutory Nuisance: Law and Practice*, Malcolm R, Pointing J, 2002. Oxford University Press
- *The Future for Mediation*, Holder P, February, 1994, NSCA
- *The UK National Noise Attitude Survey 1999/2000*, Grimwood C, Skinner C, Raw G, BRE for Defra. Full reports available on Defra website at: www.defra.gov.uk/environment/noise/research/nas9900/index.htm
- *The UK National Noise incidence Study 2000/2001*, Grimwood C, Skinner C, Wright P, BRE for Defra. Full reports available on Defra website at: www.defra.gov.uk/environment/noise/research/nis0001/index.htm
- *Towards a National Ambient Noise Strategy: A consultation paper from the Air and Environmental Quality Division*, November 2001, Defra
- Defra’s website: www.Defra.gov.uk/environment/noise/neighbour.htm
- National Society for Clean Air & Environmental Protection’s website: www.nasca.org.uk/pages/index.cfm
- Health and Safety Executive’s website: www.hse.gov.uk
- Mediation UK Case Study: Neighbour Noise, at: www.mediationuk.org.uk/template.asp?lv=2&MenuItemID=56&MenuID=1
- *A comparison of Noise Service Surveys*, Temple Environmental Consultants Ltd (DETR research study, 1998)
- *Guidance on BV 166*, DCLG, at: www.communities.gov.uk/index.asp?id=1136141
- ISO 9001:2000, Quality Management Systems – Requirements
- ISO 9004:2000, Quality Management Systems – Guidelines for Performance Improvements

Glossary

ABCs and ASBOs	ABCs (Acceptable Behaviour Contracts) and ASBOs (Anti-Social Behaviour Orders) are measures for controlling anti-social behaviour by the individuals on whom they are imposed. The ASBO is statutory, and carries legal force whilst the ABC is an informal procedure, though not without legal significance. The Crime and Disorder Act 1998 empowers Local Authorities to issue an anti-social behaviour order to anyone causing 'harassment, alarm or distress', which can include noise.	<i>"The loss or limitation of opportunities that prevent people who have impairments from taking part in the life of the community on an equal level with others due to physical and social barriers."</i>
Ambient noise	Totally encompassing sound in a given situation at a given time composed of sound from all sources near and far.	DAT A Digital Audio Tape (DAT) is a tape recording format developed by Sony and Philips in the 1980s. When introduced it offered a number of advantages over traditional reel to reel tape recorders including high definition, a total record time of up to five hours and the ability to date and time stamp events which can be accessed at high speed. However, the latest generation of sound equipment, is able to record audio information direct to card based storage media for playback via a computer which is often more convenient.
Background noise	Noise normally present at a given site when ambient noise levels have subsided to typically low levels, usually described by the LA ₉₀ level, e.g. the A weighted level exceeded for 90 percent of the time period.	dB(A) A measure of the overall noise level of sound across the audible frequency range (20 Hz – 20,000 Hz) with a frequency weighting (e.g. 'A-weighting') to compensate for the varying sensitivity of the human ear to sound at different frequencies.
Benchmarking	There are numerous definitions of benchmarking but essentially benchmarking involves learning by sharing information and adopting best practices to bring about step changes in performance – "improving ourselves by learning from others".	Entertainment management zone This is an area including entertainment venues and other elements of the evening economy, designated by boroughs in their Unitary Development Plans, in which planning, licensing, policing, transport and street management issues are managed and co-ordinated.
Best value	A duty under the Local Government Act 1999 requiring local authorities to deliver continuous improvement in services by having regard to the efficiency, effectiveness and economy of their service delivery.	Emission This is a measure of sound emitted by a given source (see also immission).
BPM	Best Practicable Means (see section 79(9) Environmental Protection Act 1990).	Environmental noise This is defined in the European Environmental Noise Directive (2002/49/EC) as <i>"unwanted or harmful outdoor sound created by human activities, including noise emitted by means of transport, road traffic, rail traffic, air traffic, and from sites of industrial activity."</i>
CAD Room	Computer Aided Dispatch Room – a dedicated facility found in many police stations which provides intelligence and support to Police Officers on duty.	Immission This is sound received in the environment rather than emitted, i.e. looking at it from the perspective of the receptor.
Disability	The Disability Discrimination Act 1995 defines disability as: <i>"A physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day to day activities"</i> . However, disabled people's organisations prefer a social approach which defines disability as:	Infrasound This is sound at frequencies below about 20 Hz (see also Low Frequency Noise).



Integrated Pollution Prevention and Control (IPPC)	A permit system for controlling pollution, including noise, from industrial activities, introduced to comply with European Commission Directive 96/61.		periodic fluctuation in pressure, typically in air. Noise is classified as a pollutant in the European Directive on Integrated Pollution Prevention & Control.
Inter-rater Comparisons	Measure of consistency between interviewers.	Noise Abatement Zone (NAZ)	The Control of Pollution Act 1974 introduced powers to declare Noise Abatement Zones. These gave local authorities power control and, where justified, reduce noise from commercial and industrial premises. Noise Reduction Notices can be served in a NAZ. Although in reality less than 100 zones have been implemented, the powers remain extant.
Low frequency noise	This is sound below a frequency of about 100 to 150 Hz, especially in the 40 to 60 Hz range. Compared with sound of mid and high frequencies, low frequency sound is much less attenuated by passage through air or by passage over acoustically soft ground such as grassland. Low frequencies can thus become more prominent at greater distances. Includes infrasound (see above).	Noise nuisance	This has been defined by the World Health Organisation as “a feeling of displeasure evoked by noise”. Statutory nuisance has a more specific meaning and is subject to legal action under the Environmental Protection Act 1990.
Music noise	The noise from the music and vocals during a concert or sound checks, and not affected by other local noise sources, such as traffic.	Noise sensitive location (receptor)	Any dwelling, hotel or hostel, health building, educational establishment, place of worship or entertainment, or any other facility or area of high amenity, which may be susceptible to noise.
Music Noise Level (MNL)	The A-weighted continuous equivalent sound level of the Music Noise measured at a particular location. The <i>Code of Practice on Environmental Noise Control at Concerts</i> Noise Council (1995) refers.	NOSP	Notice of Seeking Possession (NOSP) is one of the legal remedies that may be open to landlords (including social landlords) when faced with problems of neighbour nuisance in and around their properties.
Neighbourhood noise (also neighbour noise)	The definition used for this Guide includes noise produced by a person’s neighbours; noise in the street, including that from vehicles, machinery and equipment but excluding noise from traffic and persons; noise from pubs, clubs and other recreational or leisure sources; and noise from commercial, local industrial and construction sites.	ODPM	Office of the Deputy Prime Minister (now the Department for Communities and Local Government).
Night noise offence	Defined in the Noise Act 1996 as a noise from neighbours that exceeds the ‘permitted level’ between the hours of 23:00 and 07:00. The permitted level is exceeded when the measured noise level is 35 dB(A) or above and the noise also exceeds the ‘underlying level’ by a margin of at least 10 dB(A). The ‘underlying level’ is the sound level not exceeded for a period of 0.6 second in a time interval of not less than 1 minute and not greater than 5 minutes.	PACE	The Police and Criminal Evidence Act 1984.
Noise	This was defined in the Wilson report published in 1963 as ‘unwanted sound’. Noise includes vibration, except where the context indicates otherwise. Sound is a	Peer review	An established method of quality assurance for scientific research in which a panel of experts review the subject study and comment via an appropriate academic or professional organisation or in-house.
		PEL	Public Entertainment Licence.
		SIANCE	‘Standardised Interview to Assess Domestic Noise Complaints and their Effects’ (SIANCE) Final Report December 200050 (via: www.dh.gov.uk/PolicyAndGuidance)

Stakeholder	Put in its simplest terms, anyone with an interest in the subject, be they customer, consumer, provider or enthusiast (prospective influencer) can be considered to be a stakeholder.
Statutory nuisance	Statutory nuisance includes states of affairs and acts or omissions or consequences there from which are either prejudicial to health or a nuisance and which have been so designated by parliamentary statute (see, in particular, s 79(1) Environmental Protection Act 1990).
Tinnitus	A hearing disorder often described as 'ringing in the ears'. The disorder can also take the form of a buzzing or an engine sound in the ears, either continuously, or intermittently. Some sufferers can associate onset with a particular period of high noise exposure or trauma.
Ultra Vires	An action outside the proper authority or purposes of a corporation or corporate officer. (Latin for 'Beyond the Powers').
Vibration	Ground borne vibration is typically measured in terms of velocity (millimetres per second) or acceleration (metres per second per second).

For impulsive or intermittent sources, peak particle velocity or acceleration is measured, this being the maximum value recorded during the event. BS 7385 Part 1:1990 gives advice on measurement of vibration in buildings. Peak particle velocity is the preferred unit for assessing the risk of building damage.

Either velocity or acceleration is used for assessing effects on people. BS 7385 Part 2: 1993 gives guidance on acceptable vibration levels to avoid vibration-induced building damage. Vibration can be felt by people at levels much lower than those which could cause structural damage. BS 6472:1992 provides guidance on satisfactory magnitudes of vibration in terms of human response. It defines Vibration Dose Values (VDV) which are expected to be acceptable, although a wide range of individual sensitivity is found in practice.

Appendices

Appendix 1: The law

1.0 CURRENT NOISE LEGISLATION

- 1.1 A brief summary of the principal current noise controls applying in England and Wales is presented below in chronological order⁷⁶. A description of the legislative regime in Northern Ireland follows⁷⁷.

England and Wales

- 1.2 **The Land Compensation Act 1973, the Noise Insulation Regulations 1975 and the Noise Insulation (Railways and Other Guided Transport Systems) Regulations 1996** – this Act and the Regulations made under it allow for grants to be made towards the cost of sound insulation in premises subjected to noise from new and altered roads or railways. It cannot be applied retrospectively but may be useful where existing roads or railways are up-graded with the result that noise levels exceed stated thresholds. In addition, insulation grants schemes are in operation in areas surrounding Heathrow, Gatwick and Stansted airports.
- 1.3 **The Control of Pollution Act 1974** – this Act contains powers for local authorities to deal with noise and vibration from construction and demolition sites. It also contains powers concerning the use of loudspeakers in the street (which have been used successfully in connection with loud car stereos), together with powers for the Secretary of State to approve codes of practice for the minimisation of noise. Codes currently exist for audible intruder alarms, ice cream van chimes, model aircraft and construction noise and these may be used in evidence in legal proceedings.
- 1.4 **The Health and Safety at Work, etc. Act 1974** – though aimed primarily at the protection of workers (and providing, through Regulations, controls over workplace noise), this Act also places a duty on employers (and the self-employed) to

conduct their businesses so as to ensure that others too are not exposed to risks to their health. This can include risks arising to the public at large from noisy work activities.

- 1.5 **The Town and Country Planning Act 1990** – this Act is aimed at prevention rather than control and requires local authorities to draw up strategic local plans to reconcile the conflicts inherent in development. It permits conditions to be attached to planning consents which may include controls on the emission of noise and gives a basis for protecting tranquil areas. Advice on the use of these powers is given to authorities in England by the Secretary of State in Planning Policy Guidance Note 24. This document recommends maximum noise exposure levels for new residential developments near major noise sources. It is currently under review and is likely to be replaced by Planning Policy Statement 24 during 2006.
- 1.6 **The Environmental Protection Act 1990** – this Act provides the principal controls over so-called ‘statutory nuisances’, including noise emitted from premises so as to be prejudicial to health or a nuisance. Within the Act, ‘noise’ includes vibration and ‘premises’ includes land and a vessel (but not a vessel powered by steam reciprocating machinery). By virtue of the Noise and Statutory Nuisance Act 1993, it also applies to nuisances arising from vehicles (e.g. from car alarms but not traffic noise), machinery and other equipment such as loudspeakers, in the street. Under the 1990 Act, local authorities have a duty to inspect their areas from time-to-time to detect statutory nuisances and (subject to the discretion in the case of noise to defer for seven days inserted by the Clean Neighbourhoods and Environment Act 2005), when satisfied that a statutory nuisance exists or is likely to occur or recur, to serve an abatement notice on the person responsible. They also have a duty to take

⁷⁶ The full unamended texts of English statutes and statutory instruments dating from 1988 and 1987 respectively can be found on the website of the Office of Public Sector Information at: www.opsi.gov.uk/legislation/about_legislation.htm

⁷⁷ The updated texts of NI statutes 1921-2003 can be found at: www.opsi.gov.uk/legislation/northernireland/nisr/ni-welcome.htm; full texts of NI statutory rules dating from 1991 can be found at: www.opsi.gov.uk/legislation/northernireland/ni-srni.htm

such steps as are reasonably practicable to investigate any complaint made by a person living within their area. Though businesses have a defence of 'best practicable means', failure to comply with a notice is a criminal offence. Local authorities have a power of entry to private premises, power to seize noise-making equipment and powers to carry out works where an abatement notice has not been complied with.

- 1.7 **The Criminal Justice and Public Order Act 1994** – this Act, as amended by the Anti-social Behaviour Act 2003 and the Licensing Act 2003, provides powers for the police to disperse and prevent 'raves', being unauthorised gatherings of 20 or more persons on land, whether trespassers or not or in the open air or not, at which amplified music is played during the night to the serious distress of local residents. It includes powers to seize sound equipment which may become forfeit subsequently.
- 1.8 **The Noise Act 1996** – this Act introduced an offence of emitting excessive noise from a dwelling at night, i.e. between 23:00 and 07:00. Following an initial complaint from someone in another dwelling and the subsequent service of a warning notice, if the noise measured from within the dwelling of the complainant continues to exceed a permitted level, the local authority may prosecute and any equipment used in the commission of an offence can be forfeit. Alternatively, the local authority can offer the person who has committed the offence the opportunity to discharge liability to conviction with the payment of a fixed penalty⁷⁸ within 14 days. The Noise Act 1996 was amended by section 42 of the Anti-social Behaviour Act 2003 so that it is no longer adoptive and local authorities have discretion in the investigation of night noise complaints under the Noise Act 1996, although the duty to take reasonably practicable steps to investigate complaints of noise amounting to a nuisance still applies under the Environmental Protection Act 1990.
- 1.9 **The Clean Neighbourhoods and Environment Act 2005** – will extend the night noise offence provisions to licensed premises through provisions that are expected to be implemented in October 2006.
- 1.10 **The Housing Act 1996 and The Crime and Disorder Act 1998** – these Acts both provide powers to deal with anti-social behaviour which may include creating undue noise.
- 1.11 **The Pollution Prevention and Control Act 1999** – this Act imposes duties on both local authorities and the Environment Agency to control environmental emissions from many industrial processes through a system of prior consents. Among the emissions which may be controlled in this way is noise.
- 1.12 **The Building Regulations 2000** – these govern standards of construction for new buildings and major conversion and repair work. Part E of schedule 1 deals with resistance to the passage of sound and addresses the welfare and convenience of building users. Part E requires, among other things, that dwelling houses, flats and rooms for residential purposes shall be designed and constructed in such a way that they provide reasonable resistance to the passage of sound from other parts of the same building and from adjoining buildings. Part E also requires that rooms in new school buildings have the acoustic conditions and the insulation against disturbance by noise appropriate to their intended use.
- 1.13 **The Anti-social Behaviour Act 2003** – this Act extends to all local authorities, powers previously adoptable under the Noise Act 1996. It gives local authorities the power to close down, for up to 24 hours, licensed establishments that cause a public nuisance by virtue of noise.
- 1.14 **The Licensing Act 2003** – this Act establishes a single integrated scheme administered by local authorities for licensing premises which are used for the supply of alcohol, to provide 'regulated entertainment'

⁷⁸ See s 8(8) Noise Act 1996 or alternatively reg 2(2)(c) Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006

or to provide 'late night refreshment'. Licensing authorities are obliged through their licensing policies to pursue certain objectives, among them the prevention of public nuisance, e.g. through noise. The Act also contains powers for the police summarily to close licensed premises which cause a public nuisance through noise.

- 1.15 **The Fireworks Act 2003** – this Act provides for the making of 'Fireworks Regulations' for the purpose of ensuring that fireworks do not cause death, injury or distress to persons or animals and for prohibiting public displays unless certain conditions are met. The Fireworks Regulations 2004 create a curfew on the use of fireworks, generally between 23:00 and 07:00 with exemptions for certain traditional and special celebrations and limit the noise output of fireworks available to the public.
- 1.16 **The London Local Authorities Act 2004** – this Act gives London boroughs the option of issuing a fixed penalty notice instead of prosecuting when an abatement notice under section 80(4) Environmental Protection Act 1990 is breached. The charge applied by the fixed penalty notice, to be set by the boroughs themselves, can reflect the costs of the investigation of the complaint leading to the service of the notice, and the money raised is hypothecated for similar work.
- 1.17 **The Housing Act 2004** – this Act provides local authorities with the powers to reduce the likelihood of harm occurring within dwellings as a result of 29 specified hazards, of which noise is one. The powers provided by the Act allow the local authority to require improvement works to be carried out and even permit the closure or demolition of the dwelling in order to reduce the likelihood of harm from the hazard under investigation. The Act allows the local authority to consider the effect of both neighbourhood and ambient noise upon the dwelling.
- 1.18 **The Clean Neighbourhoods and Environment Act 2005** – this Act provides local authorities in England and Wales with new powers to deal with noise from intruder alarms and extends the powers for dealing

with night-time noise in the Noise Act 1996 to also cover licensed premises. It also contains a new provision allowing local authorities to defer the serving of an abatement notice for up to seven days once satisfied that a statutory nuisance relating to noise from premises exists, provided that other steps are taken (such as mediation or use of the Noise Act 1996) to abate the nuisance. If the nuisance continues after seven days, an abatement notice must be served.

- 1.19 **Byelaws for Good Rule and Government** – local authorities may adopt byelaws to help control issues that do not come within the remit of other statutory controls. Such byelaws may be enforced by the police and with the advent of community support officers assisting the police by enforcing low level street issues, this option could provide an efficient and effective response in limited circumstances.

Northern Ireland

- 1.20 **The Pollution Control and Local Government (Northern Ireland) Order 1978** – this is the principle legislative instrument for N Ireland, containing provisions to deal with 'statutory noise nuisances' arising from premises and including noise from industrial, leisure and domestic sources. The Order also enables district councils to deal with noise (including vibration) arising from road works, construction and demolition sites. Additionally it includes specific controls to deal with noise from loudspeakers in the street. Under the Order, four codes of practice have been approved by the Secretary of State to help minimise noise disturbance. These codes of practice relate to audible intruder alarms, ice cream van chimes, model aircraft and construction noise and they may be used in evidence in legal proceedings. It should be noted that Article 43 of the Order relating to the designation of noise abatement zones has not yet been brought into force in Northern Ireland. Furthermore, the provisions of the Environmental Protection Act 1990, Noise and Statutory Nuisance Act 1993 and anti-social behaviour orders are not applicable in Northern Ireland. Exceptionally, the Noise Act 1996 does, however, apply here.

1.21 **The Local Government (Miscellaneous Provisions) (Northern Ireland) Order 1995**

– this Order provides powers under which district councils can use entertainment licence conditions to control noise arising from venues used for public entertainment. Closing Orders may also be made under this legislation to protect nearby residents from noise arising from hot food bars or noise disturbance resulting from people loitering outside these premises.

1.22 **The Noise Insulation Regulations (Northern Ireland) 1995**

– these enable residents subjected to increased traffic noise at or above a specified level to benefit from improved noise insulation. It cannot, however, be applied retrospectively and it relates specifically to new or up-graded highways rather than to noise from increased traffic flow on existing roads. It should also be noted that in Northern Ireland no insulation regulations apply regarding railway noise.

1.23 **The Planning (NI) Order 1991** – the planning system plays an important role in noise prevention. The Department of the Environment's Planning Service takes account of the potential impact of noise when considering applications for planning permissions. It also takes noise into account when preparing development plans. District councils are consulted and have an input into local and regional development plans. Under this Order, the Planning Service is required to consult with district councils. It also provides scope for members of the public to make representations to the Planning Service on noise problems during the formulation of development plans and the determination of planning applications.

1.24 **The Pollution Prevention and Control Regulations (NI) 2003** – these implement integrated pollution prevention and control in Northern Ireland. The Industrial Pollution and Radiochemical Inspectorate controls environmental emissions (including noise) from industrial processes.

1.25 **The Health & Safety at Work (NI) Order 1978 and the Building Regulations (NI) 2000** – contain similar controls to the equivalent measures applying in England and Wales.

2.0 OVERVIEW OF NOISE NUISANCE

2.1 Common law principles

2.1.1 The common law since its earliest days has been able to offer some succour to those affected by noise, mainly by way of an action for the tort of nuisance. The rapid urbanisation and industrialisation of England in the 18th and 19th centuries later spurred the development of that concept which became, and remains, one of the main planks of statutory nuisance.

2.1.2 Common law nuisances are divisible into public nuisances and private nuisances. The first deals with interferences with the comfort of the general public and is a crime (and, almost uniquely, an absolute offence); the latter deals with the unreasonable and substantial interference with the 'enjoyment', i.e. use, of a complainant's land or some right over it and is merely a civil wrong (tort).

2.1.3 Local authorities have the power to take proceedings in public nuisance in their own names⁷⁹ and these may be considered where the nuisance is particularly serious or where there is a substantial public health risk. The availability of prison sentences and fines – unlimited fines in the Crown Court – make it suitable for more serious offences than statutory nuisance. In recent years 'raves' and 'acid house parties' have sometimes been prosecuted as public nuisances⁸⁰, perhaps reflecting some additional public disapproval.

2.1.4 Local authorities nevertheless generally restrict themselves to using enforcement powers under section 80 of the Environmental Protection Act 1990, which apply to public as well as to private forms of

⁷⁹ See s 222 Local Government Act 1972

⁸⁰ See *R v Shorrock* [1993] 3 All ER 917; *R v Ruffell* [1992] 13 Cr App R(S) 204; *R v Taylor* [1991] 13 Cr App R(S) 466

nuisance. Note, however, that the remedies for statutory nuisance include obtaining an injunction in the High Court⁸¹ where the use of ordinary criminal proceedings to enforce an abatement notice is likely to be ineffective.

- 2.1.5 In ascertaining if a nuisance exists the courts take a variety of factors into account, among them the reasonableness of the interference, how material or substantial it is (in which factors such as the time of day, the locality, its duration etc. may be relevant), the motivation and usefulness of the defendant's conduct and the sensitivity of the complainant. None of these factors is per se conclusive and new factors may always be introduced by the courts.

The 'give and take' principle

- 2.1.6 Noise cases – as with all forms of nuisance – are subject to the concept of reasonableness: the principle of give and take⁸². This requires the person causing the nuisance to consider not whether his own use of the land is reasonable but the effect this use has on his neighbour. The point was well made with regard to private nuisance by Lord Millett in *Baxter v London Borough of Camden* who said:

"It is not enough for a landowner to act reasonably in his own interest. He must also be considerate of the interest of his neighbour. The governing principle is good neighbourliness, and this involves reciprocity. A landowner must show the same consideration for his neighbour as he would expect his neighbour to show for him"⁸³.

The way a property is used

- 2.1.17 Does this mean that neighbours must go around on tip-toe if their movements would otherwise disturb one-another? Poor sound insulation between adjoining properties often triggers complaints and whether or

not this is a factor, neighbours often do cause annoyance to each other. Moreover, individuals' toleration of noise is variable and often there is an inequality between the maker and victim of the noise; a disc jockey working in a nightclub is unlikely to perceive noise in the same way as his elderly, housebound neighbour.

- 2.1.8 In these circumstances the law appears to be settled, however; everyday noise arising from the normal use of the premises cannot, as a matter of law, constitute a common law nuisance; there can therefore be no statutory nuisance under the 'nuisance' limb of the definition. In other words it is not reasonable to expect neighbours to behave especially quietly because the sound insulation between their properties is poor. Lord Hoffmann in *Baxter v London Borough of Camden*⁸⁴ argued that:

"I do not think that the normal use of a residential flat can possibly be a nuisance to the neighbours. If it were, we would have the absurd position that each, behaving normally and reasonably, was a nuisance to the other."

- 2.1.9 The words 'normal use' are key, however; using a residential premises as a workplace, for example, would not be its normal use, moreover a nuisance (and therefore a statutory nuisance) may arise if, despite a normal use, there were some additional, unreasonable aspect, e.g. placing domestic appliances against an adjoining wall unnecessarily, using such equipment at unsociable times, or playing musical instruments loudly for long periods or late at night.

- 2.1.10 Similarly, where the noise of everyday living is exacerbated by alterations made to a property such as the removal of carpets or the laying of laminate flooring without adequate insulation, it is possible that a statutory nuisance may arise (see Note 19).

⁸¹ S 81(5) Environmental Protection Act 1990

⁸² *Bamford v Turnley* (1860) 3 B & S 62, at p.84; *Cambridge Water Co. Ltd v Eastern Counties Leather plc.* [1994] 2 AC 264; *Hunter and Others v Canary Wharf Ltd & LDDC* [1997] Env LR 488

⁸³ [2000] Env LR 112, at p.132

⁸⁴ [2000] Env LR 112, at p.126

Abnormal sensitivity

- 2.1.11 Whereas to the lay person anything that annoys him is a nuisance, the legal test for noise nuisance is both more rigorous and objective: the noise must be unreasonable and excessive; mere annoyance is not enough and questions of personal taste are irrelevant. In addition, nuisance pays no regard to the sensitivities of particular individuals. As was said long ago by Lord Selborne LC in *Gaunt v Fynney*⁸⁵:

“... a nervous, or anxious, or prepossessed listener hears sounds which would otherwise have passed unnoticed, and magnifies and exaggerates into some new significance, originating within himself, sounds which at other times would have been passively heard and not regarded.”

This case concerned noise and vibration produced from the working of a steam engine in which the court found for the defendant, holding that the level of noise had not become worse over time but that the complainant’s sensitivity to noise had increased.

- 2.1.12 These objective requirements mean that an invalid suffering from noise has no right to expect a higher standard of protection than a person in good health. However, illness would provide a good reason to ensure that he enjoyed his rights to be protected from noise nuisance to the full⁸⁶.
- 2.1.13 The consequences of this traditional concept of noise nuisance can lead to apparent injustices. Life-style is not always a simple matter of choice. For example, necessity may force the manual worker to work night shifts and to sleep during the day. However, his neighbour’s ordinary, everyday, daytime noise which prevents him from sleeping is unlikely to amount to a nuisance for that reason.

2.2 Statutory noise nuisance

- 2.2.1 All statutory nuisances have in common the characteristics that they are established by legislation passed by Parliament (most of the matters which may amount currently to statutory nuisances are to be found in section 79 (1) of the Environmental Protection Act 1990) and that their consequences must be either ‘prejudice to health’ or a ‘nuisance’. Though in some cases the matter complained of may give rise to both, the two limbs are, in fact, independent and only one ever need be shown.
- 2.2.2 The ‘prejudice to health’ limb originated in Victorian legislation and the meaning of that phrase has been held to mean the same today. It is concerned with the likelihood of organic disease and has little, if any, application to noise. The ‘nuisance’ limb was borrowed from the common (case) law made by judges and nuisances in the context of statutory nuisance must amount to nuisances at common law with all the incidents of that, among them that the interference must come from outside the affected premises and that the complainant must have an interest in the land.
- 2.2.3 In addition, however, case law has established that statutory ‘nuisances’ must also observe the spirit of the Act, that is have some connection to health. Precisely how strong that link must be is still a moot point; though a number of authorities describe it in terms of personal comfort or discomfort, some of those (and their language) are rather old and it is suggested that a more modern, if still somewhat vague, equivalent might be ‘well-being’. Though it may be difficult to define and much will depend on the view taken by the court of the seriousness of the harm, the standard is a high and an objective one, based on the ‘ordinary reasonable man’.
- 2.2.4 Statutory nuisance prosecutions differ from those brought in private nuisance because it is the opinion of the local authority as set

⁸⁵ (1872) 8 Ch App 8 at 13

⁸⁶ *Spruzen v Dossett* (1896) 12 TLR 246. Cf. *Bloodworth v Cormack* [1949] NZLR 1058 at 1064, per Callan J: *This branch of the law pays no regard to the special needs of invalids*

down in the abatement notice which defines the boundary of the nuisance. Crucial in establishing the reasonableness of that opinion is the quality of the evidence justifying service of the abatement notice. Evidence that may assist the court includes victims' noise diaries (see also Appendix 3.3) and noise monitoring, which needs to be supervised by competent persons (see also section 3.3).

Planning consent

- 2.2.5 Where noise limits have been specified in a planning consent this does not provide immunity in respect of a statutory nuisance prosecution. A planning authority is entitled to specify noise limits and PPG 24 in England and TAN 11 in Wales provide guidance⁸⁷ but neither a planning consent⁸⁸ nor a waste management licence⁸⁹ can be used as a defence against a statutory nuisance prosecution⁹⁰.
- 2.2.6 If, however, the general rule is that planning consent for a noisy activity does not, in itself, authorise a resulting nuisance, a grant of planning permission may nonetheless lead to a change in the character of a neighbourhood so that what would have been a nuisance before the grant of permission is no longer so afterwards. In *Gillingham BC v Medway Dock Co. Ltd*⁹¹, road traffic levels increased substantially as a result of planning permission being given for a change of use from a naval base to a commercial port but the court found that the resulting increases in noise levels did not constitute a public nuisance. It is suggested, however, that a major change of use is required before the court should decide against a nuisance.

Noise emitted from industrial, trade and business premises

- 2.2.7 Questions of planning aside, the fact that a locality is a noisy one or of an industrial character, whilst it may similarly raise the threshold, also does not in itself provide a defence to nuisance. In *Rushmer v Polsue and Alfieri Ltd*, Cozens-Hardy LJ said:

*"It does not follow that because I live, say, in the manufacturing part of Sheffield I cannot complain if a steam-hammer is introduced next door, and so worked as to render sleep at night almost impossible, although previously to its introduction my house was a reasonably comfortable abode, having regard to the local standard; and it would be no answer to say that the steam-hammer is of the most approved pattern and is reasonably worked"*⁹².

- 2.2.8 Noise produced by industrial and manufacturing processes or by using equipment associated with such activities provide a complicated area of control. As the above words of Cozens-Hardy LJ show, taking the best available steps to mitigate the noise does not necessarily mean that a common law nuisance cannot be established.

The defence of best practicable means

- 2.2.9 Statutory noise nuisances are subject to the 'best practicable means' (BPM) defence where the noise is emitted from industrial, trade and business premises⁹³. It can be raised by the recipient of an abatement notice at two stages:
- when appealing against an abatement notice; or

⁸⁷ In *R v Kennet DC ex p Somerfield* [1999] JPL 361 the court accepted that the planning authority was entitled to specify noise limits of 41 dB as a condition for planning consent

⁸⁸ *Wheeler v Saunders* [1995] 2 All ER 697

⁸⁹ *Blackburn v ARC Ltd* [1998] Env LR 469

⁹⁰ In contrast to noise on construction sites, where, under s 80(9) of the Environmental Protection Act 1990, if the local authority serves a notice under s 60 Control of Pollution Act 1974 or gives prior consent under s 61, this provides a defence to proceedings under s 80 Environmental Protection Act 1990

⁹¹ [1993] QB 343

⁹² [1906] 1 Ch 234, at 250

⁹³ S 80(7) Environmental Protection Act 1990

- as a defence in a prosecution for non-compliance.

2.2.10 In either case, it will be up to the noise polluter to prove, to a civil standard, that BPM have been used to prevent or to counteract the effects of the nuisance.

2.2.11 Local authorities will wish to consider whether BPM have been used before serving an abatement notice. This may require expert advice, in which case the authority will need to consider whether to accept expert advice obtained from the polluter or to instruct its own, independent expert. Such advice may be needed when deciding whether a statutory nuisance has been caused and, if so, when considering the form of the abatement notice to be served, however, the council still has a duty to serve an abatement notice when satisfied that a statutory nuisance exists and the investigation of possible BPM defences should not unreasonably delay that.

Standard of abatement

2.2.12 In such cases, nevertheless, local authorities' duty under Part III of the Environmental Protection Act 1990 cannot require the best possible means of abatement, in particular regardless of expense, to reduce noise problems to a minimum⁹⁴. Rather, they must have regard to practicality in seeing that enough is done to prevent or counteract the effects of the nuisance: a somewhat ill-defined concept.

2.2.13 The BPM defence is available to protect commercial interests and sometimes this results in a nuisance being allowed to continue. The origins of the defence were to prevent such interference in the activities of

the manufacturing and business classes, as would have harmful economic consequences⁹⁵ and some of this philosophy still attaches. *Manley v New Forest DC*⁹⁶, illustrates this point. This case concerned the commercial keeper of a pack of Siberian huskies, kennelled in a mixed residential/commercial area. The problem arose from the howling of the pack. The Divisional Court accepted the findings of the Crown Court (on appeal from the magistrates' decision) that glazing the kennels would be impracticable, however, it rejected the judge's finding that BPM required the kennels to be relocated elsewhere; accepting that the nuisance would continue, the Divisional Court considered this too onerous a requirement to impose upon a legitimate business.

Statutory authority

2.2.14 Statutory authority can provide a defence for activities which otherwise would be a nuisance. A statutory authority is sufficient justification particularly where the public benefit is great and the nuisance comparatively small⁹⁷, however, the precise scope of the defence depends on the statute which provides the authority.

2.2.15 Railway operations, for example, are exempt from common law nuisance actions, subject to operators exercising reasonable diligence in avoiding making unnecessary noise⁹⁸. However, a statutory authority defence does not necessarily apply to all operations, e.g. a statute authorising tramways did not authorise the setting up of stables for horses. Even though such stables were necessary to the operation of the tramway, they were not included in the statute and therefore they did not attract statutory authority immunity⁹⁹. Where a nuisance has been

⁹⁴ *Welton v North Cornwall DC* [1997] 1 WLR 570

⁹⁵ See Malcolm R & Pointing J, *Statutory Nuisance: Law & Practice* (2002: OUP) chapter 3, for an historical analysis of nuisances

⁹⁶ *Manley and Manley v New Forest DC* [1999] 4 PLR 36

⁹⁷ *Edgington v Swindon BC* [1939] 1 KB 86

⁹⁸ Previous unreported cases indicate that railway companies have been successfully prosecuted for breach of s 80 notices for making excessive noise in associated activities, such as track repairs. In February 1993, the London Borough of Kensington and Chelsea successfully prosecuted the British Railways Board for disturbing the sleep of local residents because of track re-alignment works (cited in Penn C, *Noise Control* (1995) p.78)

⁹⁹ *Rapier v London Tramways* [1893] 2 Ch 588

committed incidentally whilst carrying out an authorised act and the nuisance was a necessary consequence of the act, then the courts have been prepared to find that a statutory authority defence will apply.

- 2.2.16 To what extent can statutory authority provide a defence to statutory nuisance proceedings? Usually the position for statutory nuisance will be the same as for common law nuisance, but there is doubt. The case of *Camden LBC v London Underground Ltd*¹⁰⁰ involved service of an abatement notice under the Environmental Protection Act 1990 on the company in respect of noise emanating from the lift-winding mechanism and generator at Russell Square underground station. The court gave a ‘provisional view’ that the defence to common law nuisance provided in section 122(3) Railways Act 1993 did not apply to all statutory nuisances, reasoning that the prejudice to health limb in section 79 of the act meant that a statutory nuisance differed from common law nuisance and that Parliament could not have intended the 1993 Act to authorise a defence where prejudice to health was shown.

Who is ‘the person responsible’?

- 2.2.17 An abatement notice must be served on the person responsible for the nuisance. This is defined in section 79(7) of the Environmental Protection Act 1990 as “the person to whose act, default or sufferance the nuisance is attributable”. An ‘act’ implies a positive intervention; ‘default’ implies a permissive or passive act and

‘sufferance’ implies that the person responsible has tolerated the nuisance. Where the nuisance arises from any defect of a structural character, the owner of the premises is the person responsible¹⁰¹. ‘Owner’ is not defined in the Environmental Protection Act 1990, however, in *LB Camden v Gunby*¹⁰², the Court of Appeal decided that for the purposes of the act, the owner of a premises was the person entitled to receive the rack rent (as per the predecessor provisions in the Public Health Act 1936). Consequently, depending on the circumstances, the ‘owner’ may be a freeholder or a leaseholder and several people may, individually or collectively, fulfill the definition in different capacities at the same time. Where the person responsible cannot be found, an abatement notice may be served on the occupier or owner¹⁰³.

- 2.2.18 In the case of a statutory nuisance arising in respect of noise in the street, which has not yet occurred¹⁰⁴, or in respect of noise from an unattended vehicle, machinery or equipment¹⁰⁵, the person to be served is the person responsible for the vehicle, machinery or equipment¹⁰⁶. If that person cannot be found, the notice can be served by fixing it to the vehicle, machinery or equipment¹⁰⁷. This last provision is aimed at the situation where a vehicle alarm on an unattended car is causing a statutory nuisance. If the person responsible is found within an hour of the notice being affixed, then a copy is served on that person¹⁰⁸. The time for compliance can then be extended in the copy of the notice that has been served on the person responsible¹⁰⁹.

¹⁰⁰ [2000] Env LR 369

¹⁰¹ S 80(2)9b) Environmental Protection Act 1990

¹⁰² [2000] 1 WLR 465

¹⁰³ S 80(2)(c) Environmental Protection Act 1990

¹⁰⁴ S 80A(1)(a) Environmental Protection Act 1990

¹⁰⁵ S 80A(1)(b) Environmental Protection Act 1990

¹⁰⁶ S 80A(2)(a) Environmental Protection Act 1990. In relation to a vehicle, the person responsible includes the person in whose name the vehicle is for the time being registered under the Vehicles (Excise) Act 1971 and any other person who is for the time being the driver of the vehicle (Environmental Protection Act 1990, s 79(7))

¹⁰⁷ S 80A(2)(b) Environmental Protection Act 1990

¹⁰⁸ S 80A(3) Environmental Protection Act 1990

¹⁰⁹ S 80A(4) Environmental Protection Act 1990

- 2.2.19 The object of the legislation is, as far as possible, to serve the abatement notice on the person who is culpable for the nuisance. This may be someone who causes the nuisance either by their act or their failure to act, thus an owner who allows a nuisance to continue, having been alerted to its existence, may be responsible alongside the occupier who is, in fact, the person directly causing it. This would also apply where a trespasser had caused the nuisance¹¹⁰. There may be a question as to whether the owner knew of the nuisance (or ought to have known of it). If they do have knowledge then any delay in remedying it will be a relevant factor in determining their liability¹¹¹.
- 2.2.20 Since more than one person can be responsible for the nuisance, more than one person can be served with the notice¹¹² (yet need not be). In such a case, unless different notices are served on each person responsible, then an appeal by one will have the effect of suspending the notice against all, until the appeal is resolved.

¹¹⁰ *Leanse v Egerton* [1943] KB 323

¹¹¹ "The occupier continues a nuisance if, with the knowledge or presumed knowledge of its existence, he fails to take reasonable means to bring it to an end, though with ample time to do so"; *Sedleigh-Denfield v O'Callaghan* [1940] AC 880, per Viscount Maugham at 894. See also *Sampson v Hodson-Pressinger* [1981] 3 All ER 710 where it was held that a purchaser of a freehold who buys with knowledge that a leaseholder is causing a nuisance to another, may also acquire liability in nuisance; and *Delaware Mansions Ltd and Flecksun Ltd v Westminster CC* [2001] 3 WLR 1007 where there was continuing liability for damage caused by encroaching tree roots once the local authority had been made aware of the problem

¹¹² S 81(1) Environmental Protection Act 1990

Appendix 2: Summary of current technical standards

1.0 DOMESTIC NOISE

- 1.1 With the exception of the limited applications of the Noise Act 1996, no specific standards or codes of practice have been written for the purposes of giving guidance or an objective assessment methodology to assist officers investigating routine neighbour and neighbourhood noise. The criteria of the Noise Act 1996 do not, of course, define statutory nuisance which may exist even when those criteria are not exceeded and local authority officers are therefore left to extract guidance from an assortment of publications on other noise-related topics. What follows is a synopsis of some of the sources.
- 1.2 Some of these standards may be used to provide guidance on the judgement of what may, in given circumstances, be considered reasonable but it must be emphasised that they do not provide absolute criteria for deciding whether a noise is or is not a nuisance. It is important that every case is decided on its merits and it is up to the competent person (normally an Environmental Health Practitioner) to determine through a process of independent investigation whether, in their opinion, a nuisance exists.
- 1.3 **BS 8233: 1999 Sound Insulation and Noise Reduction for Buildings: Code of Practice** – this British standard is a code of practice that gives recommendations for the control of noise in and around buildings, and suggests appropriate criteria and limits for different situations. These criteria and limits are intended primarily to guide the design of new or refurbished buildings undergoing a change of use, rather than to assess the effect of changes in the external noise level.
- 1.4 Lower and upper design noise limits are recommended for ‘good’ and ‘reasonable’ conditions though the code of practice advises that “normally, only the upper noise limit will need to be decided” (section 7.3). The noise is assumed to be steady and anonymous, such as that due to road traffic, mechanical services or continuously running plant and should be the noise level in the space during normal hours of occupation but with no-one present. The time period T

should be appropriate for the activity involved (e.g. 23:00-07:00 for bedrooms).

Criterion	Typical situations	Design Range $L_{Aeq,T}$ (dB)	
		Good	Reasonable
Reasonable resting/sleeping conditions	Living Rooms	30	40
	Bedrooms ^a	30	35

^a For a reasonable standard in bedrooms at night, individual noise events (measured with F time-weighting) should not normally exceed 45 dB L_{Amax} .

- 1.5 It should be noted that these noise levels relate to steady intrusive noise only; they cannot be taken to apply to music noise or intermittent events. A competent person may consider measured noise levels below these levels to be a nuisance and conversely, may consider moderately higher noise levels not to be a nuisance, depending on the local circumstances.
- 1.6 **PPG 24 ‘Planning and Noise’, ODPM, 1994** – the aim of this guidance is to provide advice on how the planning system can be used to minimise the adverse impact of noise without placing unreasonable restrictions on development or adding unduly to the costs and administration burdens of business. It is a government document which local authorities must take into account. The guidance, introduces the concept of ‘Noise Exposure Categories’ (NEC) ranging from A – D to help authorities in their consideration of applications for residential development near existing transport-related noise sources. Annex 2 to PPG 24 explains how the noise range of each NEC (specified in terms of $L_{Aeq,T}$ dB) has been derived. This document is currently under review and is expected to be replaced by PPS 24 probably in late 2006.
- 1.7 **BS EN ISO 140: 1998 (formerly BS 2750) and BS EN ISO 717-1: 1997 (formerly BS 5821: 1984)** – these British Standards and European Norms relate to sound insulation testing of buildings and building elements. Testing of airborne noise insulation and impact noise insulation is covered. BS EN ISO 140 specifies test methods in various situations and the equipment to be used.

Detailed recommendations for source and measuring positions and corrections for reverberation times are laid out. The corrected levels are then assessed against a set of standard curves to give a rating level (BS EN ISO 717-1).

1.8 **The Building Regulations 2000 – Approved Document E (2003 edition)** – this edition of Approved Document E – Resistance to the passage of sound, replaces the 1992 edition. The main changes are:

- to E1 – Protection against sound from other parts of the building and adjoining buildings – this requirement now includes rooms for residential purposes as well as dwelling houses and flats. ‘Room for residential purposes’ means a room, or suite of rooms, which is not a dwelling-house or flat and which is used by one or more persons to live and sleep in, including rooms in hotels, hostels, boarding houses, halls of residence and residential homes but not including rooms in hospitals, or other similar establishments, used for patient accommodation.
 - performance standards are given for walls, floors and stairs having a separating function, in new buildings and buildings formed by change of use. Site testing of sound insulation is intended on a sampling basis.
- to E2 – Protection against sound within a dwelling-house, etc.
 - this is a new requirement that sets standards for the sound insulation of walls and floors in dwelling houses, flats and rooms for residential purposes. Site testing is not intended.
- to E3 – Reverberation in the common internal parts of buildings containing flats or rooms for residential purposes
 - this is a new requirement to control reverberation in the common parts of buildings containing flats or rooms for residential purposes. Site testing is not intended.
- to E4 – Acoustic conditions in schools
 - all new school buildings are now controlled under the Building

Regulations, and this requirement covers sound insulation, reverberation times and indoor ambient noise levels. Guidance on meeting the requirement is given in Building Bulletin 93 (BB93), published by the Department for Education and Skills (DfES) in November 2003¹¹³.

Performance standards

1.9 The new Document E provides specific performance standards that have to be met on site. A regime of post-completion testing is stated in the document, although the minister has amended the Regulations to approve an equivalent system of ‘robust standard details’, which if used as prescribed, do not require testing (to qualify as a robust standard detail each construction type has had to pass the minimum performance standards given opposite by a mean of at least 5 dB, in at least 30 real world tests).

1.10 **World Health Organisation Guidelines for Community Noise, WHO, 1999** – the introduction to the WHO Guidelines describes their scope as follows:

“The scope of WHO’s effort to derive guidelines for community noise is to consolidate actual scientific knowledge on the health impacts of community noise and to provide guidance to environmental health authorities and professionals trying to protect people from the harmful effects of noise in non-industrial environments. Guidance on the health effects of noise exposure of the population has already been given in an early publication of the series of Environmental Health Criteria. The health risk to humans from exposure to environmental noise was evaluated and guideline values derived. The issue of noise control and health protection was briefly addressed.”

and the Introductory chapter on Guideline Values notes that (our emphasis):

“In the following, guideline values are summarized with regard to specific environments and effects. For each

¹¹³ Available for download at: www.teachernet.gov.uk/acoustics

TABLE 1a: DWELLING-HOUSES AND FLATS – PERFORMANCE STANDARDS FOR SEPARATING WALLS, SEPARATING FLOORS AND STAIRS THAT HAVE A SEPARATING FUNCTION

	Airborne sound insulation $D_{nT,w} + C_{tr}$ dB (Minimum values)	Impact sound insulation $L'_{nT,w}$ dB (Maximum values)
Purpose built dwelling-houses and flats		
Walls	45	–
Floors and stairs	45	62
Dwelling-houses and flats formed by material change of use		
Walls	43	–
Floors and stairs	43	64

TABLE 1b: ROOMS FOR RESIDENTIAL PURPOSES – PERFORMANCE STANDARDS FOR SEPARATING WALLS, SEPARATING FLOORS AND STAIRS THAT HAVE A SEPARATING FUNCTION

	Airborne sound insulation $D_{nT,w} + C_{tr}$ dB (Minimum values)	Impact sound insulation $L'_{nT,w}$ dB (Maximum values)
Purpose built rooms for residential purposes		
Walls	43	–
Floors and stairs	45	62
Rooms for residential purposes formed by material change of use		
Walls	43	–
Floors and stairs	43	64

environment and situation, the guideline values take into consideration the identified health effects and are set, based on the lowest levels of noise that affect health (critical health effect). Guideline values typically correspond to the lowest effect level for general populations, such as those for indoor speech intelligibility. By contrast, guideline values for annoyance have been set at 50 or 55 dBA, representing daytime levels below which a majority of the adult population will be protected from becoming moderately or seriously annoyed, respectively.”

- 1.11 Note that the guideline values presented in this document are essentially values for the

onset of health effects for the general population from noise exposure whereas, arguably, it would have been preferable to establish guidelines for exposure-response relationships. Such relationships would indicate the effects to be expected if standards were set above the WHO guideline values and would facilitate the setting of standards for sound pressure levels (noise immission standards). Currently, however, exposure-response relationships cannot be established with confidence, as the scientific literature is very limited. The best-studied exposure-response relationship is that between Ldn and annoyance¹¹⁴. Some of the most recent results are

¹¹⁴ WHO 1995; Berglund & Lindvall 1995; Miedema & Vos 1998

included in a subsequent and even more comprehensive meta-analysis published by Miedema in 2001¹¹⁵.

- 1.12 The guideline values are for the **onset** of the health effect in the general population and the document goes on to state:

“4.2.3 Sleep Disturbance Effects

... Measurable effects on sleep start at background noise levels of about 30 dB L_{Aeq}. ... Where noise is continuous, the equivalent sound pressure level should not exceed 30 dBA indoors, if negative effects on sleep are to be avoided. When the noise is composed of a large proportion of low-frequency sounds a still lower guideline value is recommended, because low-frequency noise (e.g. from ventilation systems) can disturb rest and sleep even at low sound pressure levels. It should be noted that the adverse effect of noise partly depends on the nature of the source.

... If the noise is not continuous, L_{Amax} or SEL are used to indicate the probability of noise-induced awakenings. Effects have been observed at individual L_{Amax} exposures of 45 dB or less. Consequently, it is important to limit the number of noise events with a L_{Amax} exceeding 45 dB. Therefore, the guidelines should be based on a combination of values of 30 dB L_{Aeq,8h} and 45 dB L_{Amax}. To protect sensitive persons, a still lower guideline value would be preferred when the background level is low.

... Therefore, to avoid sleep disturbance, guidelines for community noise should be expressed in terms of equivalent sound pressure levels, as well as L_{Amax}/SEL and the number of noise events. Measures reducing disturbance during the first part of the night are believed to be the most effective for minimising sleep disturbance.”

Recommendations

- 1.13 The WHO document recommends the following:

“In dwellings, the critical effects of noise are on sleep, annoyance and speech interference. To avoid sleep disturbance, indoor guideline values for bedrooms are 30 dB L_{Aeq} for continuous noise and 45 dB L_{Amax} for single sound events. Lower levels may be annoying, depending on the nature of the noise source. The maximum sound pressure level should be measured with the instrument set at ‘Fast’.

To protect the majority of people from being seriously annoyed during the daytime, the sound pressure level on balconies, terraces and outdoor living areas should not exceed 55 dB L_{Aeq} for a steady, continuous noise. To protect the majority of people from being moderately annoyed during the daytime, the outdoor sound pressure level should not exceed 50 dB L_{Aeq}.

At night, sound pressure levels at the outside façades of the living spaces should not exceed 45 dB L_{Aeq} and 60 dB L_{Amax}, so that people may sleep with bedroom windows open. These values have been obtained by assuming that the noise reduction from outside to inside with the window partly open is 15 dB.”

- 1.14 It is the job of the Environmental Health Practitioner, as the competent person, to assess noise perceived to be a nuisance. Whilst the above gives some guidance, the following points should be borne in mind:
- i) The WHO guideline levels have been set at the threshold of detectable effects in the population. A court of law may consider that this includes people who are more sensitive to noise than the average and so may regard the WHO guideline values as not representative of the tolerances of the ‘normal’ population (‘normal’ in this context can be regarded as having both its colloquial and statistical meaning). This is indicated by the setting of approximately 5 dBA higher values for ‘reasonable’ noise levels in BS 8233:1999, which post-dates the initial publication of the current WHO guideline values.

¹¹⁵ Miedema H. M. E. and Oudshoorn C. G. M. *Annoyance from Transportation Noise: Relationships with Exposure Metrics DNL and DENL and Their Confidence Intervals*, Environmental Health; Vol 109: 4, 2001, 409-416.

- ii) The Court of Appeal has expressly stated that exceedance of the WHO guidelines does not per se constitute an actionable nuisance. All the other tests for nuisance still apply and the WHO Guidelines for Community Noise are exactly that; the individual case must be judged on its merit and noise measured at below WHO guidelines may be considered a statutory nuisance just as, conversely, noise measured above them do not necessarily prove that a statutory nuisance exists.
- 1.15 **Institute of Acoustics Good Practice Guide on Noise from Pubs and Clubs, 2003** – in 1994, the (then) Noise Council surveyed members of its founding bodies and identified that there was a demand for a code of practice that would provide guidance on how to assess and deal with noise problems from pubs and clubs. The Institute of Acoustics (IOA) then set up a working party comprising environmental health officers, acoustic consultants and, initially, members of the pub, club and entertainment industries to examine the issue. Objective noise level based criteria and performance standards have been dropped from the final version of the code although a “working draft on criteria, measurement, guidelines and other relevant information” was included in an annex to the last version of the draft guide. Defra has since sponsored research into noise from entertainment sources such as pubs and clubs¹¹⁶ and on possible methodologies for assessing night-time noise from licensed premises for the purposes of the Noise Act 1996¹¹⁷.
- 1.16 **NC and NR Curves** – Noise Criteria (NC) curves were developed in America as a means for specifying suitable noise levels for offices and other internal working environments. They are based on criteria of interference with speech communication and of annoyance and consist of a set of curves indicating sound pressure levels at various octave band frequencies. The shape of the curve is similar to that of equal loudness contours with levels highest at low frequencies decreasing progressively with increasing frequency. Subjectively less annoyance is caused by low frequency noise than by a high frequency noise at the same sound pressure level.
- 1.17 To use NC curves, an octave analysis of the noise needs to be carried out and the levels plotted onto the curves. The NC value of the noise is the lowest curve which is not exceeded by the plot. Comparison can then be made with recommended NC values that have been determined for different situations. Recommended NC values for homes in suburban/rural areas are NC 20-25, and for urban areas are NC 25-30.
- 1.18 Noise Rating (NR) curves are very similar to NC curves but are of European origin. They can also be used to evaluate a wider range of noise sources and be used for both indoor and outdoor situations, whereas NC curves are only intended for use indoors. NC and NR curves are particularly useful for dealing with noise from fans, ventilation and air conditioning systems when considering specifications for design purposes¹¹⁸.
- 1.19 Noise rating (NR) is a graphical method for assigning a single number rating to a noise spectrum. Annex B of BS 8233:1999 discusses the use of NR curves and provides a method of calculating NR values. NR curves are often erroneously referred to as ISO Rating Curves. The misconception arises out of the fact that this system of noise evaluation was placed before the International Standards Organisation in draft form in 1961 to be considered for ratification as an ISO recommended standard. They have not as yet been ratified and there must be some doubt as to whether they ever will be.

¹¹⁶ At: www.defra.gov.uk/environment/noise/research/pubs-clubs-phase1/pubsclubs-phase1.pdf

¹¹⁷ At: www.defra.gov.uk/environment/noise/research/pubs-clubs-phase2/index.htm

¹¹⁸ See *Noise and Man*, Burns W, J Murray (publ) 1975, pp 148-155

2.0 COMMERCIAL NOISE

- 2.1 **BS 4142: 1997 Rating Industrial Noise Affecting Mixed Residential and Industrial Areas** – this standard is only concerned with the rating of noise of an industrial nature, based on the margin by which it exceeds a background noise level, with an appropriate allowance for the acoustic features present in the noise. Its primary purpose is as a planning tool and it states in the Foreword that:

“Although, in general, there will be a relationship between the incidence of complaints and the level of general community annoyance, quantitative assessment of the latter is beyond the scope of this standard, as is the assessment of nuisance.”

- 2.2 The method described in the document requires the measurement or prediction of fixed equipment or plant noise (specific noise level) and a correction for the acoustic character and intermittency to give a rating noise level such that a comparison can be made between the rating level (predicted/measured with any relevant corrections) and the background noise level. To assess the likelihood of complaints, the measured background noise level is subtracted from the adjusted rating level. (Note that more than one assessment may be appropriate.)
- 2.3 The greater the difference between the two, the greater the likelihood of complaints. A difference of around +10 dB or more indicates that complaints are likely whereas a difference of around +5 dB is of marginal significance. If the rating level is more than 10 dB below the measured background noise level, complaints are unlikely. Whilst the standard is not a predictor of nuisance, the result could be used as background information to assess the expected likelihood of complaint if the general population were exposed to the same noise level.

- 2.4 **BS 5228 (1992/1997) – Code of Practice for the Control of Noise on Construction and Open Sites** – this standard is approved by the Secretary of State under the provisions of section 71 of the Control of Pollution Act 1974 and consequently provides a definitive guide to the control of noise from construction and open sites that courts and planning inspectors give great weight to. It consists of the following Parts:

- Part 1. Code of Practice for Basic Information and Procedures for Noise Control (revised in 1997).
- Part 2. Guide to Legislation for Noise Control Applicable to Construction and Demolition, including Road Construction and Maintenance (revised in 1997).
- Part 3. Code of Practice for Noise Control Applicable to Surface Coal Extraction by Open cast Methods (revised in 1997).
- Part 4. Code of Practice for Noise and Vibration Control Applicable to Piling Operations. (This Part is a revision issued in 1992).
- Part 5. Code of Practice Applicable to Surface Mineral Extraction (except coal) Sites (1997).

- 2.5 The standard is a substantial document providing methods and data for predicting the noise and vibration levels to be expected from particular construction activities using a limited range of plant and equipment selected from the tables of data given for typical or specified circumstances. Research commissioned by Defra in 2005 has provided an update of the plant noise emission database¹¹⁹.
- 2.6 Reference is made to the need for the protection of persons living and working in the vicinity of construction sites and other open sites, as well as for the protection of those working on the sites, from noise and vibration. It recommends procedures for noise and vibration control and aims to assist architects, contractors and site operatives, designers, developers, engineers,

¹¹⁹ See: www.defra.gov.uk/environment/noise/research/construct-noise/constructnoise-database.pdf

local authority environmental health officers and planners, regarding the control of noise and vibration. It draws attention to the provisions in the Control of Pollution Act 1974 relating to the abatement of nuisances caused by noise and vibration. The standard offers examples of good practice, although adherence to its guidance does not in itself confer immunity from prosecution.

- 2.7 **‘Procedure for the assessment of low frequency noise complaints’ – Salford University, for Defra, 2005** – this guidance was developed following on from two earlier research projects commissioned by Defra. The first¹²⁰ considered the properties of low frequency noise sounds, their perception, effects on people and the criteria that have been developed for assessment of their effects. The study was comprehensive containing approximately 200 authoritative references, the results of a simple survey carried out with respect to low frequency noise sufferers and provided recommendations for further research.
- 2.8 As a result of these recommendations, three further research projects were let to Salford University and completed in 2005, the first titled *Proposed Criteria for Assessment of Low Frequency Noise Disturbance*, the second, *Procedure for the assessment of low frequency noise complaints* and the third, *Field trials of proposed procedure for the assessment of low frequency noise complaints*. The second report presented a guidance note and a pro-forma report with step-by-step instructions to assist environmental health practitioners to form their own opinion of an alleged low frequency noise nuisance. This was refined by the third report following the completion of field trials of the method.
- 2.9 **BS 6472: 1992 Evaluation of Human Exposure to Vibration in Buildings** – this standard specifies a method for measurement and assessment of intermittent, impulsive and blast induced

vibration. Weighting curves related to human response to vibration of buildings are provided. Consideration is given to the time of day and use made of the building under occupancy and guidance given on the magnitudes of vibration at which ‘adverse comment’ may be expected.

- 2.10 **Minerals Policy Statement 2, Controlling and Mitigating the Environmental Effects of Mineral Extraction in England, Annex 2 Noise, ODPM, 2005** – the purpose of this annex to the main policy statement, MPS2, is to advise minerals planning authorities (county councils, unitary authorities) and the minerals industry on how the environmental performance of the industry can be improved by the control of noise from operations. It replaced MPG 11. The guidance provides advice on how both planning controls and good environmental practice can be used to keep noise emissions to environmentally acceptable levels. Waste disposal operations share many common features with surface mineral workings and much of the advice contained in the guidance will be appropriate to the control of noise from waste disposal operations. Recommended noise limits are suggested which may form part of the conditions attached to any planning permission.
- 2.11 **Code of Practice on Noise from Audible Intruder Alarms 1982 (DoE approved)** – this provides guidance on the installation and operation of alarms to reduce misfiring and enable their disarming or deactivation with the minimum of difficulty. It suggests alarms be fitted with twenty minute cut-off devices and that police be notified of key-holders who can give access and deactivate continually ringing alarms.
- 2.12 **Code of Practice on Noise from Ice Cream Van Chimes, etc. 1982 (DoE approved)** – this code gives guidance on the methods of minimising annoyance by noise from ice cream van chimes. The guideline deals with noise levels, the playing time of chimes and their frequency of use in sensitive areas.

¹²⁰ A Review of Published Research on Low Frequency Noise and its Effects, Leventhall G et al, Defra, 2003 at: www.defra.gov.uk/environment/noise/research/lowfrequency/index.htm

The code does not create offences or have force in law but will be taken into account by local authorities and the courts in determining, amongst other things, the application of best practicable means.

- 2.13 **National Farmers Union Code of Practice on Bird Scarers** – this advises on the types of scarer available and alternatives to reduce the need for such devices. Recommended noise controls include use only between sunrise and sunset (not before 06:00 hours if sunrise is earlier), firing no more than four times per hour, liaison with other farmers who may also be using them to limit the noise in any one locality, siting as far as possible from noise sensitive buildings and the use of noise absorbent shields.

3.0 RECREATION NOISE

- 3.1 **Code of Practice on Noise from Model Aircraft 1982 (DoE approved)** – this deals with the legal noise control powers available and provides operating guidelines; including the use of mufflers; maximum recommended noise limits; times of operation; the numbers of model aircraft that should be operated simultaneously and the use of noise barriers and separation distances. It also specifies the method of measurement of noise emitted by model aircraft.
- 3.2 **Control of Noisy Parties – a Joint Guidance Note, Department of the Environment and the Home Office, 1992** – this details the powers available to police and local authorities when dealing with problems caused by noisy parties. Whilst statutory nuisance powers are the only ones considered for acting against private parties there is a much broader range of legislation that may be appropriate for use when the party involves an element of private gain, i.e. a ‘pay party’. Its guidance is applicable to England and Wales.
- 3.3 **Clay Target Shooting – Guidance on the Control of Noise, CIEH, 2003** – this document is concerned with the ways in which shooting noise can occur and the methods to minimise or prevent annoyance and intrusion. It includes a recommended

method for the measurement of noise and its subsequent rating that was produced by the BRE. The British Association for Shooting and Conservation and other shooting organisations were consulted in the drawing up of this code but have not endorsed it.

- 3.4 **Code of Practice on Noise from Organised Off Road Motor Cycle Sport 1984** – this code of practice was produced by the Noise Council in association with other organisations including the Auto Cycle Union and the Amateur Motor Cycle Association. It advises on noise controls for enduro/grass track racing, motocross, rallycross/sand track/trials/trial cross and beach cross. Different maximum noise limits are specified for machines competing in various types of event. The method of noise measurement has to comply with The Official Federation of International Motor Cyclist tests.
- 3.5 **Code of Practice on Powerboat Racing and Water-ski Racing, British Water Skiing Federation, 1999** – this code describes the main sources of boat noise and addresses the range of skiing disciplines at club and tournament level. It provides guidelines for minimising the impact of noise from water skiing on the surrounding community including factors such as the noise output of the boats, course layout, hours of operation, the number of boats in use at any one time, screening of noise, the siting and use of public address systems and how to control the effect of cars arriving at and leaving from events. The maximum permissible noise levels from individual boats varies from L_{Amax} 75 dB for recreational, tournament and ‘barefoot’ skiing, to L_{Amax} 105 dB for international or world championship water ski racing events under specified noise measurement conditions.
- 3.6 **Code of Practice for the Control of Noise from Oval Motor Racing Circuits, 1996** – the National Society for Clean Air and Environmental Protection (NSCA) has published this code of practice which aims to control noise from short oval raceways. It covers race cars such as stock cars/bangers/ministox and rods. The code seeks to control noise in the following two ways:

- i) by controlling noise from race cars and its attenuation by the fitting of exhaust silencers; despite the wide variety of vehicles racing on short oval tracks, tight engine restrictions mean that it is possible for the code to stipulate a standard silencer for each type (formula) of race car. The only exception to this standard silencer policy is for the Formula One Stock Cars class, where there is no restriction on the engine type or size. For these cars, a noise level has been set and, as the RAC already has a noise level test technique in place at venues under its control, the code adopts this as the control method for Formula One Stock Cars;
 - ii) noise from other sources; the code provides general advice on various techniques which can be used to control noise from the race site, including guidance on site access and car parking location, the use of physical barriers, site layout, the positioning, orientation and number of public address loudspeakers and times and duration of race meetings.
- 3.7 The code also discusses the various legislative controls which must be observed when land is used for short circuit motor racing. Annexes to the code contain a description of the sport of stock car racing, the various formulas of racing car, silencer specification for these different types and contact details of relevant organisations.
- 3.8 **Code of Practice on Environmental Noise Control at Concerts, The Noise Council, 1995** – this code of practice addresses environmental noise control at concerts and similar large music events involving high powered amplification when held in sporting stadia, arenas, open air sites and within lightweight buildings. Various guidelines and criteria are described. The code is not designed to address the question of environmental noise arising from discotheques, clubs and public houses.

Appendix 3: Practice notes

Note 1: Investigating a complaint¹²¹

1.0 OUTLINE

1.1 The aim of this guidance is to suggest a structure to provide a consistent approach to the investigation of noise and nuisance complaints. The complainant will have a named officer (sometimes referred to as the case officer or lead officer) who has overall responsibility and will be accountable for supervising and progressing the investigation of a complaint to resolution.

1.2 There are five main components to a full and proper investigation into a complaint:

- i) interviewing the complainant;
- ii) keeping the complainant informed;
- iii) deciding on a strategy for gathering additional evidence;
- iv) gathering evidence; and
- v) assessing and evaluating the evidence.

This guidance addresses each of these components. It then remains, of course, to decide what course of action can be taken and to implement it, and/or to close the case. This note should be read in conjunction with section 4 of the main Guide.

2.0 INTERVIEWING THE COMPLAINANT

2.1 This is the critical stage of any investigation and is the first opportunity for the complainant and case/lead officer to have a full exchange of information. It is essential for the case/lead officer to obtain and record key information at the earliest stage. The information obtained from the interview will be used by the case/lead officer to decide on the most appropriate strategy to adopt for gathering any additional evidence needed to properly assess the complaint.

3.0 KEEPING THE COMPLAINANT INFORMED

3.1 It is essential to give the complainant information on how the investigation will proceed; what they can expect from the service and what the service expects of them.

It is important from the beginning that the complainant is informed of the name and contact details of the officer responsible and accountable for supervising and progressing the investigation of their complaint until completion, i.e. the case/lead officer.

3.2 It will also be appropriate at this stage to issue the complainant with details of the service's performance standards and targets and the case/lead officer should be aware that the service's performance will be monitored against these targets in the future. In addition, the complainant will have the opportunity to comment on the quality of service measured against these targets at any stage during the investigation by completing and returning the customer satisfaction survey form.

4.0 DECIDING ON A STRATEGY FOR GATHERING ADDITIONAL EVIDENCE

4.1 The service has a duty under the Environmental Protection Act 1990 to investigate complaints by residents of nuisance from noise. When satisfied of the existence of a nuisance or that a nuisance is likely to occur or recur, the local authority has a further duty to serve an abatement notice on the person responsible for causing the nuisance. Any person served with a notice has a right of appeal which must be made to a Magistrates' Court within 21 days of service of the notice.

4.2 To successfully defend any such appeal, the environmental health service must have sufficient evidence to refute any contention that, on the balance of probabilities, on the date the notice was served a nuisance did not exist, nor was likely to occur or recur, and be able to justify any abatement specified. In order to prosecute a person for contravention of a notice, evidence must be sufficient to establish beyond all reasonable doubt that the notice has been contravened. The standard of proof is greater for the contravention of a notice as it is a criminal offence.

¹²¹ Extracted and adapted from a procedure in use in the Royal Borough of Kensington & Chelsea

4.3 It is therefore necessary to gather good quality, robust evidence so that a proper assessment of the complaint can be made. This will allow the case/lead officer to determine whether the complaint is substantiated and a notice must be served.

4.4 The best evidence is that witnessed first hand at the time of occurrence by an independent qualified person and the operation of an officer-led 'out-of-hours' service will help to facilitate this. A range of alternative strategies may be required to discharge the service's duty to investigate different types of complaint and also to secure efficiency.

4.5 One of the aims of this guidance is to enable complaints to be assessed and evaluated so that any formal action required can be taken within a target time frame (depending on the relative complexity of the case, any 'best practicable means' defence and the noise characteristics, e.g. intermittency). To achieve this, the case/lead officer may need to review the progress of the investigation after an initial period and implement alternative strategies to gather evidence. If all appropriate strategies to gather evidence have been tried and there remains insufficient evidence for the Service to act formally, the case/lead officer may close the case with the agreement of the service manager. This will entail writing to the complainant confirming the efforts made to gather evidence, the reasons why the matter is not actionable formally by the council, the details of any informal action taken and advice as to how the complainant may pursue the matter themselves under section 82 of the Environmental Protection Act 1990 – see Note 11.

4.6 The majority of noise complaints can be classified into one of three categories, as follows:

i) **Category 1: Definitely able to obtain adequate evidence** – this includes noises which are continuous for long periods, e.g. plant noise, air conditioning units, kitchen extracts, etc. and also noise of moderate duration (i.e. greater than half an hour) with a predictable pattern, e.g. commercial music, plant noise, etc. The case/lead officer

should arrange to visit the complainant personally, or arrange an appointment for the Duty Officer of the 'out-of-hours' service to visit the complainant, depending on the availability of the case/lead officer within the shift pattern and the best time to witness the alleged nuisance. The case/lead officer may also consider meeting the person responsible for the noise to discuss the allegation informally and carry out tests.

In the majority of cases of this type this strategy should result in adequate evidence being obtained to assess the problem. However, if this is not the case before the end of the review period and complaints continue to be received, the case/lead officer will be expected to implement alternative strategies, e.g. use of the Duty Officer Service, digital audio tape recorder (DAT) installation, etc.

ii) **Category 2: Uncertain whether able to obtain adequate evidence** – this includes noise of moderate duration (i.e. greater than half an hour) on a frequent or intermittent basis but without any discernible pattern, e.g. residential loud music, DIY works, etc.

Due to the random nature of the alleged nuisance, it is unlikely that evidence will be gathered by arranging an appointment. The duration of the noise is nevertheless sufficient for there to be a reasonable chance of an enforcement officer or a Duty Officer responding quickly to witness the event and therefore they need to be briefed in advance so that they can respond accordingly.

It would also be prudent to request the complainant to complete diary sheets for a reasonable period, often two – four weeks, and obtain details of any other neighbours or professional witnesses who may be able to substantiate the complaint (e.g. police, estate officers, other council officers etc.), however, if difficulty is experienced in witnessing the noise and there is genuine concern the installation of a DAT recorder should be considered.

iii) **Category 3: Unlikely to be able to obtain adequate evidence** – this includes intermittent, short duration (i.e. less than half an hour) noise at random intervals, e.g.

slamming doors, anti-social behaviour, shouting, etc.

These are the most difficult and frustrating cases both for the complainant and for the noise service to address. It is unlikely that an enforcement officer or Duty Officer will be able to witness noise of an intermittent and short-term nature. The chances of gathering evidence by appointment are also remote. The complainant should be advised of this as early as possible.

Where, at least, there is sufficient evidence of similar repeated events, the recommended strategy for these complaints is to require the complainant to complete diary sheets and time plots – see specimen examples in Note 3. The case/lead officer must attempt to obtain corroborative evidence using remote monitoring equipment, or from other independent witnesses. If the complainant is unwilling to give evidence in court and/or it is not possible to gather other corroborative evidence to substantiate the complaint, it is unlikely that formal action by the council will be possible.

In such cases, the case/lead officer would be expected to provide basic mediation between the complainant, alleged perpetrator and, in relevant cases, the landlord or other third party. This may involve a meeting between the parties if all are agreeable. There are some registered social landlords that provide a mediation service for their tenants. The case/lead officer should investigate the possibility of this. If the complainant has indicated they are willing to pursue the matter to court and has produced diary sheets indicating the possibility of a nuisance but the service has been unable to corroborate this after undertaking all reasonable attempts, the case may be closed with the agreement of the service manager, and the complainant advised on section 82 action – see Note 11.

- 4.7 In any event, complainants should be interviewed within a reasonable time period. This period is, in general, likely to vary between 2 hours and 3 to 5 working days depending on the nature and alleged severity of the noise problem. Where complaints are

deemed of ‘low priority’, a response time towards the upper end of the range may be justifiable, see section 3.4 of Note 2, but regardless of what priority a complaint is afforded, the results will assist the case/lead officer in determining which of the above three categories the complaint fits into and the most appropriate strategy to be adopted to gather any further evidence required.

5.0 GATHERING EVIDENCE

- 5.1 The information and evidence necessary to act formally (or close a case) may comprise:
- information obtained through interviewing the complainant;
 - diary sheets completed by the complainant;
 - statement from the complainant to accompany a DAT recording and diary sheets;
 - statements from officers who have visited the complainant and/or perpetrator;
 - statements from other persons or professional witnesses;
 - transcripts of PACE interviews with the perpetrator;
 - DAT recordings; and
 - reports containing the outcome of any noise monitoring exercise;

and the following are examples of the type of information which needs to be recorded:

- time complaint received;
- time of officer’s arrival outside the complainant’s premises;
- observations of any noise noted outside the premises;
- detailed observations of noise inside the complainant’s premises, both extraneous noise and the noise complained of, i.e. volume (subjective and measured), frequency and tone (heavy bass beat, high pitched, whine or drone, etc.), type of music, vocals audible, continuous or intermittent, windows open/closed, most affected room(s);
- detailed description as to how the noise is affecting the complainant’s use of their property, e.g. disturbing sleep, unable to study/concentrate, interferes with watching TV, unable to relax;
- confirmation as to how the source of the noise was established, if no visit made at

- the time (e.g. listen at the letterbox, standing next to the outlet of the extraction system), etc.;
- time the officer left complainant's premises;
- time of arrival of the officer at the perpetrator's premises;
- detailed account of discussions and outcome of visit to the perpetrator's premises including name and description of person responsible, caution if given, etc.; and
- time officer left perpetrator's premises.

Interviewing the perpetrator under caution

- 5.2 This is only indicated when investigating the contravention of a notice and should be carried out at the perpetrator's premises at the time of the incident, if possible. Alternatively, the perpetrator may be invited to attend a PACE interview regarding the incident on a later date at the council's offices – see Note 8.

Diary sheets, time plots and DATs

- 5.3 It is unlikely that complainants with Category 1 complaints will need to complete diary sheets and time plots but officers may wish to encourage the completion of these sheets for Category 2 and Category 3 complaints where repetition is a factor. Time plot sheets are to be used in conjunction with DAT recorders or automated Annoyance Recording Systems and diary sheets in order to plot an accurate history of the offending noise(s) and provide a visual record of disturbance that may be submitted to the court. The case/lead officer should draw up the time plot based upon information contained in the diary sheets summarising the frequency and brief description of the noise events being complained of.
- 5.4 The complainant should return the completed diary sheets to the case/lead officer after a representative time period, e.g. two-four weeks, for assessment. That done, the complainant should be advised to continue maintaining these sheets as they

may be useful to them should they wish to pursue their own action under section 82 of the Environmental Protection Act 1990. The diary sheets and time plots alone may present insufficient evidence for a notice to be served by the Council on the perpetrator and further corroborative evidence may be required in the form of DAT recordings or recordings made on an automated Annoyance Recording System, statements by professional witnesses or other affected parties. In addition, the complainant will be required to give evidence in court concerning the contents of these sheets and also to testify that any noise captured on a DAT recording is from the source premises. The case/lead officer therefore must also be satisfied that the complainant would be capable of performing adequately as a witness.

- 5.5 The case/lead officer should advise the complainant on how to complete the diary sheets and time plots and their relevance to the investigation. The completed sheets should be kept on file until the investigation is complete and a decision has been made as to whether formal action can be taken or not. If there is insufficient evidence to pursue formal action, the sheets should be returned to the complainant with a covering letter confirming this and a copy retained on the file. If it is decided there is sufficient evidence to pursue formal action, the original sheets must be retained. In the event of an appeal against a notice or prosecution, the diary sheets and time plots should be exhibited in a section 9 (Criminal Justice Act 1967) statement¹²² taken from the complainant by the case/lead officer. The complainant should be provided with a copy of the diary sheets.

6.0 ASSESSING AND EVALUATING THE EVIDENCE

- 6.1 A review of the investigation into a complaint should be undertaken within a maximum time period if a notice has not been served by then. The case/lead officer should first discuss the case with the complainant if there has been no recent contact between them, and establish the

¹²² For the current form, see: www.dca.gov.uk/criminal/procrules_fin/contents/formssection/pdf/f37page1.pdf

current position. The case/lead officer should then meet with the service manager and decisions will be made regarding:

- the use of alternative strategies to gather evidence;
- whether a (further) warning letter should be sent to the perpetrator;
- if a meeting with the perpetrator is appropriate; and
- referring and/or sharing the matter and any evidence gathered with other enforcement agencies.

- 6.2 After a further maximum period (to be agreed on a case by case basis), if formal action still has not been taken, the case/lead officer must fully consider all of the evidence gathered, including visits by Duty Officers, diary sheets, time plots, DAT recordings, statements from other persons, noise monitoring reports, etc. The officer must then decide if there is sufficient evidence to establish statutory nuisance in court. Obviously, a notice must be served if the case/lead officer is satisfied there is sufficient evidence to act. If the case/lead officer decides there is not, the case must be discussed with the service manager who will review the investigation and may agree to close the case if satisfied that all reasonable steps have been taken to investigate the matter properly. Otherwise, the service manager will extend the investigation period further, identifying further strategies and/or alternative action that should be implemented.

7.0 CLOSURE OF CASE¹²³

- 7.1 A file record must be prepared summarising the reasons for closing the case, e.g. efforts made to gather the evidence; inability to gather sufficient, reliable evidence; complainant unwilling to act as witness in proceedings.

¹²³ Suggested criteria for the resolution/closure of a noise case are given in section 4.2.4 of the main Guide

Note 2: The prioritisation of complaints¹²⁴

1.0 INTRODUCTION

1.1 Local authorities' duty in respect of complaints by residents is an absolute duty to investigate but one nonetheless expressly limited to such steps as are reasonably practicable. It is that limit which permits some flexibility in their policies and practices among which some prioritisation of complaints is likely to be unavoidable. In determining those policies and practices, section 4 of the main Guide will be relevant.

1.2 In particular, the Act does not dictate timescales for responding to a complaint, nor the nature or extent of that response. Provided that both the 'office hours' and 'out-of-hours' responses to a complaint are appropriate and proportionate to the nature and severity of the complaint and to the likely effect on the complainant, it is likely to be within the law.

1.3 The system set out below was devised for an inner London authority but it may not be appropriate to replicate it everywhere. It is for individual authorities to establish their own systems for prioritising complaints, taking account of their unique circumstances and the outcome of any Needs Assessment of the service which might have been undertaken.

2.0 RECEIVING THE COMPLAINT

2.1 Details should be noted on what action the complainant has taken themselves i.e. have they spoken to the complainant or contacted any other agency, e.g. the police or housing department. If the noise is occurring at the time and likely to continue, and the priority action list (see below) assessment is Priority 1, officers should visit to witness the noise, if possible. If not, the complainant should be advised that the complaint will be recorded and to call back if the problem recurs and/or the out-of-hours noise service if the noise happens at night.

Inform the caller of what action can be taken

2.2 Complainants should be told where relevant that noise from road traffic, railways and aircraft cannot generally be dealt with by the council. Noise from licensed premises should be investigated in the normal way and the Licensing Team should be notified of the outcome.

2.3 It should be explained that while efforts will be made to maintain the anonymity of the complainant, this is not fail-safe, i.e. noise-makers can sometimes work out who has complained and a complainant's name and address may have to be revealed if legal action is taken. Anonymous complaints or complaints where access to assess any nuisance is denied will not be investigated.

2.4 Where the contact is an initial complaint and/or does not warrant a visit under the priority action list, the noise leaflet should be sent.

3.0 ASSIGNING A PRIORITY TO A COMPLAINT

3.1 In order to ensure that the worst noise cases are dealt with first and that noise complaints do not unreasonably interfere with higher priority work, the environmental health department has chosen to instigate a priority action list for daytime noise complaints. The priority action list is a mechanism whereby the priority of daytime noise complaints is assessed and action taken strictly in response to this assessment.

3.2 When a daytime noise complaint is made, the receiving officer should interrogate the priority action list to determine what action is appropriate in response to the complaint. Unless the priority action list assessment indicates that an urgent visit is appropriate, the complainant should be advised that there will be some delay; however he/she should be advised that the details of their complaint have been recorded. Complainants should also be advised to record any further incidents of noise as this

¹²⁴ Extracted and amended from a system adopted by the London Borough of Islington

may be critical for the progressing of this and any future complaints.

- 3.3 Where the complainant has literacy or language difficulties they will have to be interviewed by environmental health staff, with translation support if necessary, to obtain adequate information.
- 3.4 The definitions of the priorities are as follows:

(a) **Priority 1: High** – high priority daytime noise complaints warranting a visit within the daytime target response time of two hours and intervention where appropriate, must meet the following priority 1 criteria:

- the complainants give full details of their name and address and are willing to allow access for the assessment of statutory nuisance and the noise occurs regularly, i.e. more than once a week; and
- there has been more than one complaint about the same noise from the noise source within the last three months, whether:
 - multiple complaints by several households on the same or different dates; or
 - multiple complaints by one household on different dates;
- noise diary sheets, where necessary, have been satisfactorily completed and returned; or
- the noise is likely to seriously affect several households e.g. premises alarms or vehicle alarms in the street; or
- the noise is persistent, i.e. occurs for more than 60 minutes or if for a shorter period, for not less than 15 minutes at least twice during the daytime period (07:00 to 19:00).

The priority 1 response is to be made within one working day. This means that a visit and investigation should occur within this time if environmental health staff are available. Any notice or letter that is required should be served or sent as soon as practicable and no later than two working days after conclusion of the investigation.

(b) **Priority 2: Medium** – these are medium priority daytime noise complaints not warranting a visit as an immediate response, but the details of which should be recorded as they are likely to progress to priority 1. To qualify as priority 2, complaints must meet the following criteria:

- the complainants give full details of their name and address, and are willing to allow access for the assessment of statutory nuisance but the noise is not persistent, i.e. it lasts for less than 60 minutes and does not recur more than twice in the day time period (07:00 to 19:00) and does not recur regularly, i.e. less than once a week; or
- this is a repeat complaint but there is a time lag of more than three months between the current complaint and the last; or
- the noise is unlikely to be affecting several households.

Priority 2 noise complaints have a maximum five working day response. This means that complaints should be acknowledged by sending a noise leaflet within five working days. Complainants should be advised to use the noise diary sheet in the leaflet to record incidents of noise if it appears that this is needed to progress any future complaints. A visit to inspect or investigate, if appropriate, should be carried out within five working days, followed by a notice or letter within five working days.

(c) **Priority 3: Low** – all other daytime noise complaints have a maximum 15 working day response. This means a noise booklet, acknowledgement letter or phone call within five working days. If necessary, a visit or an investigation should be instigated within 10 working days. A notice or letter explaining the intended course of action and possible timescales should be sent out within 15 working days.

(d) **Priority 4: Other cases** – certain complaints cannot be dealt with by the environmental health department and

will not be progressed, these include:

- anonymous complaints;
- complaints where access to the complainant's premises to witness noise and assess nuisance is necessary and is not allowed by the complainant; and
- complaints of very short-term, irregular, unpredictable noise, e.g. door slamming, single vehicle movements, etc., which clearly do not amount to a nuisance.

Note 3:

Diary sheets and time history plots

1.0 DIARY SHEETS (NOISE RECORD SHEETS)

- 1.1 Many authorities make use in appropriate cases of a noise record sheet (or 'diary sheet'), sometimes as part of, or in association with information material on noise and their noise services. If this is completed by complainants, it can indicate the severity and frequency of the noise and can help determine the best method of trying to witness the nuisance (e.g. through a reactive out-of-hours service or daytime visit, pre-programmed visits, installation of DATs, etc.) or that it is unlikely that the council will be able to establish statutory nuisance. If the complainant does not return the record sheet within one month, in the absence of further complaints the complainant should be contacted and advised that the case will be closed.
- 1.2 There may be cases where a complainant is not able to provide written evidence or complete the Noise Record Sheet. In these cases, a statement from the complainant should be obtained which outlines their evidence on the noise problem and gives details of when the noise is occurring. This can be prepared from the complainant's oral account to officers who can then draw up a statement for them to sign. In certain cases the assistance of a translator or interpreter may be required.
- 1.3 Complainants should be advised that the more information they provide on the diary sheet the more useful they are likely to be. When assessing a diary sheet officers should consider the following:
- is it legible?
 - is the noise source and type identified?
 - how often does the noise occur?
 - how long does the noise go on for?
 - does the occurrence of the noise follow a predictable pattern?
 - what are the impacts of the noise?
- 1.4 Examples of two different diary sheets follow.

Diary of disturbances

DIARY OF DISTURBANCES									
Date of issue		Environmental Services Office name and address		Environmental Services Office		Premises where the noise is originating		Ref No.	Page No.
				Name					
				Tel No.					
Date	Time started	Time ceased	Duration	Room affected	Nature of noise	Describe how you were disturbed			

Note: Any neighbour/witness, if relevant, should sign their initials against the particular disturbances verified. This form may be used as an exhibit appended to a section 9 witness statement.

Neighbours/witnesses verifying disturbance

Name _____

Signature _____

Address _____

Person keeping diary

Name _____

Signature _____

Address _____

Noise time plot¹²⁵

Work date:	Officer:																								
Address complained of:	Complaint ref:																								
Diary kept by occupants of:	Sheet No.:																								
	Time of day (hour ending)																								
Date	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	
1/09/05															x	xx									
2/09/05																									
3/09/05																					/////	/////	/////	/////	
4/09/05																					/////	/////	/////	/////	
etc.																									

Key: ///// – amplified music
 xxxxx – vocal noise
 +++++ – recording of music or vocal noise
 ***** – DAT installation

Note: Any neighbour/witness, if relevant, should sign their initials against the particular disturbances verified. This form may be used as an exhibit appended to a section 9 witness statement.

¹²⁵ Based on format developed by Peter Long, Chartered Environmental Health Practitioner

Note 4: The use of notes and statements¹²⁶

1.0 INTRODUCTION

1.1 For very practical reasons, the use of notebooks by officers in the field is commonplace. They are essentially public documents, however, and may be open to examination. The uses to which their contents may be put can also be subject to legal restrictions. Formal statements may be made both by officers and others for a similar purpose, i.e. recording something for future reference, but their use too is subject to control.

1.2 Entries in notebooks should be:

- made in chronological order;
- dated and timed;
- legible; and
- recorded in a manner having regard to the fact that the contents may be open to inspection. Particular care should be exercised when recording matters which may be referred to during legal proceedings

but notebook entries are not intended to be duplicates of information recorded on other service documentation.

1.3 When using notebooks for the purpose of recording interviews with suspected offenders, officers should have regard to Note 8 on PACE interviews, below.

2.0 USE IN COURT PROCEEDINGS

Refreshing memory from contemporaneous statements

2.1 Prior to any hearing, and whether they asked for them or not, witnesses may be shown the statements they made about the events which are the subject of the hearing. Where they do refresh their memories from their statements, the defence should be so informed. This applies in both civil and criminal proceedings and, in the latter, to both prosecution and defence witnesses. The defence is entitled to see documents from which memory has been refreshed.

2.2 When giving evidence, a witness may, at the discretion of the court, refresh his memory by referring to a document made at a time when he had a distinct recollection of the facts stated therein and which was made by him or under his supervision or had been read over by him at the time he had a recollection of the facts. The document may be a copy. A copy or extract has been allowed to be used for refreshing memory in court where it was made or verified by the witness while the facts were fresh in his recollection:

- where an original was lost;
- where it was substantially the same as original notes although not exact;
- but not where the original document was in existence and the witness had no recollection of the facts apart from what he saw on the copy; and
- a log kept by an investigating officer of his own observations and what was transmitted to him over the radio, verified by other officers, is no different from other statements referred to by a witness to refresh the memory.

2.3 Though the contents of a notebook are generally not themselves evidence (and do not corroborate the witness' oral testimony), a witness can be cross-examined upon the material from which he has refreshed his memory without that being made evidence in the case. If he is cross-examined beyond those limits, however, the risk is taken of the document being exhibited as evidence and available for use by the court. Similarly, counsel who is cross-examining is entitled to inspect a witness' aide-memoire in order to check its contents or to cross-examine on the material used by the witness without causing the document to become evidence. However, a distinction is to be drawn between looking at notes used by a witness to refresh his memory and calling for and looking at other documents. If a party calls for and inspects a document held by the other party, he is bound to put it in evidence if required.

¹²⁶ Extracted and modified from South Northamptonshire Council's guidance notes

2.4 Obviously it would be wrong if several witnesses were handed statements in circumstances which enabled one to compare with another what each one had said but there is no objection to two witnesses who have acted together refreshing their memories from notes made in collaboration (provided that is made clear in the notes, e.g. by the corroborating signatures of both officers). Where officers rely on their notes when giving evidence and deny collaboration in the making of the notes, the court should have an opportunity of examining the notebooks.

2.5 Whether a document used in court is sufficiently contemporaneous or not is a matter of fact and degree; it must have been written or checked either at the time of the events described or so shortly afterwards that the facts were still fresh in the witness's memory.

Refreshing memory from statements which are not contemporaneous

2.6 The court, in the exercise of its discretion and in the interests of justice, may permit a witness who has begun to give evidence to refresh his memory from a statement made near to the time of events in question, even though it does not come within the definition of contemporaneous, provided the court is satisfied:

- that the witness indicates that he cannot now recall the details of events because of the lapse of time since they took place;
- that he made a statement much nearer the time of the events and that the contents of the statement represented his recollection at the time he made it;
- that he has not read the statement before coming into the witness box; and
- that he wishes to have an opportunity to read the statement before he continues to give evidence.

2.7 It does not matter whether the witness withdraws from the witness box and reads his statement, as he would do if he had had the opportunity before entering the witness box, or whether he reads it in the witness box. It is important, however, if the former

course is adopted, that there is no communication with the witness, other than to see that he can read the statement in peace. Moreover, if either course is adopted, the statement must be removed from him when he comes to give his evidence and he should not be permitted to refer to it again, unlike a contemporaneous statement which may be used to refresh memory while giving evidence.

Note 5: The taking of witness statements¹²⁷

1.0 GENERAL

- 1.1 The general principle in criminal proceedings is that witnesses should give their evidence orally in court. However, a written statement, in compliance with the appropriate legislative requirements can be admissible as evidence “... to the like extent as oral evidence ... by the person making it ...” thus avoiding the trouble and expense of personal attendance.
- 1.2 If not challenged by the defendant, the statement – or a summarised version – will be read to the court. It is nonetheless often desirable that principal witnesses should attend to give oral evidence whether or not their statements have been accepted so that the proper impact can be made upon the court.
- 1.3 Witnesses may provide negative statements, e.g. stating that a person was not at a particular place at a particular time or did not sell certain food to an identified individual, as much as positive statements.
- 1.4 There is no property in a witness – other than experts (as to facts and their opinion of those facts). Though witnesses will be called by one side or the other, they do not appear for or against the prosecution or the defence.

2.0 LEGISLATION

- 2.1 The Criminal Procedure Rules 2005 currently govern all aspects of criminal procedure in all criminal courts. They consolidate all existing procedural rules with new provisions aimed at ensuring that cases are dealt with efficiently and expeditiously and improving case management¹²⁸.
- 2.2 The conditions governing the admissibility of written statements in summary proceedings are set out in Rule 27.1¹²⁹. Statements must be made on prescribed forms¹³⁰.

- 2.3 Advance disclosure to the defendant/defence of all relevant evidence, both unfavourable and otherwise and whether to be used or not is required under the Attorney General’s Guidelines 2005 and the Criminal Procedure and Investigations Act 1996. The service of statements in accordance with section 9 of the Criminal Justice Act 1967 can go to satisfy this requirement.

3.0 METHOD OF OBTAINING STATEMENTS

- 3.1 Different circumstances and the variable nature of the contents of statements dictate that only general guidelines can be indicated as to the most appropriate method for obtaining witness statements.
- 3.2 Certain ‘standardised’ statements, e.g. from a business producing records of previous transactions or from trademark holders giving evidence of the examination of allegedly counterfeit goods, would normally be obtained by agreeing the content through telephone contact or written correspondence. Other statements, e.g. from complainants or from experts giving opinions, may more usefully be taken in person so that an assessment can be made of their suitability and credibility.
- 3.3 A statement should be taken at the earliest possible opportunity. It is normally more convenient for an officer to write down the witness’s dictated words so that only relevant matters are included and that there are no important omissions, however, witnesses should always be given the opportunity to write their own statements. In either event, an initial oral account from the witness outlining the chronological order of events will aid sequencing and avoid omissions. Officers should question ambiguities and suggest alternatives when opinions are put forward; it is preferable for the officer to ‘cross-examine’ at this stage rather than for embarrassing inconsistencies to be revealed in court.

¹²⁷ Extracted and adapted from South Northamptonshire Council’s guidance notes

¹²⁸ See: www.dca.gov.uk/criminal/procrules_fin/rulesmenu.htm

¹²⁹ Formerly Rule 70 of the Magistrates’ Courts Rules 1981

¹³⁰ See Magistrates’ Courts (Forms) Rules 1981 as amended and for former Form 13 in particular, see: www.dca.gov.uk/criminal/procrules_fin/contents/formssection/pdf/f37page1.pdf

- 3.4 All relevant information known to the witness should be recorded in logical manner using the witness's actual words – attempts should not be made to improve grammar if the meaning is clear. Thought should be given to the detail which is necessary for certain aspects of the evidence, for example, whilst it may be self-explanatory for a witness to state "I went to Joe Bloggs Motors in the High Street" (i.e. not "to Joe Bloggs Excellent Vehicles (Northampton) Limited, 82-84 High Street") reference to actual dates (if known) should be recorded rather than a phrase such as 'last Monday'.
- 3.5 Where a person who can give corroborative evidence is referred to in the statement, that person's full name and relationship with the principal witness should be given. A statement should also be obtained from the corroborative witness though statements should not be obtained in the presence of another witness.
- 3.6 It is essential for the witness to read carefully through the statement and to make any amendments or additions before signature. Errors should be struck through – but not obliterated – with corrections written above and initialled by the witness. The officer should ensure that statements are properly signed both at the completion of each page of evidence and against the statutory declaration. Witnesses should be aware that they may be called upon to give evidence in a court – their attention should be drawn to the statutory declaration and its meaning should be made clear.
- 3.7 The wording of statements should comprise continuous text – without paragraphs. If typed, double spacing should be used. One side only of the page should be used. Hand written statements should be accompanied by a typed copy. Officers should check that the full name of the witness is stated (not initials), the date (including the year) and the number of pages are completed correctly and, for statements not obtained in person, that the signature corresponds with the maker's name.
- 3.8 Special provisions exist for evidence from witnesses who are:
- (a) persons who cannot read;
 - (b) persons who make statements in a language other than English;
 - (c) children or young persons (although no actual age limits apply);
 - (d) persons who are mentally ill or of 'defective intellect'; and
 - (e) dying persons (and deceased persons who made statements before their death).
- 3.9 Witnesses, unless accepted as 'expert' witnesses, are generally permitted to give evidence, whether in person or in writing, only of facts which they have perceived directly (though see section 5.0 below). In addition, to be admissible, evidence must be relevant, i.e. go to prove a fact in issue. Where a statement does contain inadmissible, prejudicial or irrelevant material it may be edited; usually a fresh statement will be drawn up although the original should be retained.
- #### 4.0 EXHIBITS
- 4.1 Any document or object which is referred to in a witness statement and which is of evidential value should be:
- (a) clearly identified; and
 - (b) produced in evidence.
- 4.2 Reference should not be made to exhibits as 'attached' or 'enclosed' – they must either be produced or identified. Officers should distinguish and recognise the difference between 'production' and 'identification'. A person who owns, has possession, control or responsibility over the actual exhibit will produce it – other persons who may previously have seen it, owned it, etc., will identify it, thus, witness A may say that they read an advertisement in a particular newspaper which they retained and produce as exhibit A/1 whereas staff at the newspaper company may identify the advertisement as being produced by them in response to certain procedures.
- An exhibit slip should be attached or fastened to the exhibit. All witnesses who refer to the exhibit should sign the exhibit slip. For report purposes:

- (a) documentary exhibits do not need exhibit slips – it is sufficient for them to be marked with the exhibit number; and
- (b) photographs may often provide an acceptable alternative to the actual items.

An exhibit must be described in sufficient detail within the statement to enable it to be identified. Exhibit numbers customarily originate from the initials of witnesses – John Smith produces JS/1 etc. There should be no duplication of exhibit numbers.

5.0 DOCUMENTARY EVIDENCE, BUSINESS RECORDS AND COMPUTERISED EVIDENCE

- 5.1 Provisions of Part 11 (Evidence) of the Criminal Justice Act 2003¹³¹ relate to the admissibility of certain documentary evidence which would otherwise be excluded as hearsay. Computerised records can be admissible providing certain conditions are proved and the computer is shown to be reliable (i.e. providing the conditions in section 69 Police and Criminal Evidence Act 1984 are met).

¹³¹ See in particular s 114 (admissibility of hearsay evidence), s 117 (business and other documents) and s 118 (preservation of certain common law categories of admissibility)

Note 6: Checklist for ensuring correct service of a notice¹³²

Category	Yes	No	Notes
APPROPRIATE SERVICE			
Has the source responded to previous informal action?			If, more than six months since the latest complaint, the source has resolved a noise problem satisfactorily in response to an informal request, this may be more appropriate than serving a notice immediately.
Does the source have a history of non-compliance?			If the source has not responded satisfactorily to informal request or the problem has recurred after less than six months, service of a notice may be needed to secure abatement.
Is the case a serious or deteriorating situation?			If the noise nuisance is serious i.e. long-term, long duration or getting worse, service of an abatement notice will be necessary.
Is the case a 'one-off' or isolated occurrence?			If the nuisance is unlikely to recur, an initial informal approach, followed by a notice if there is no improvement is recommended.
Is the case part of a series of related incidents?			Are the noise-makers causing serial nuisance i.e. moving from one premises to another – if so, service of an abatement notice is recommended to discourage return.
Is the nuisance in existence at present?			If a nuisance has ceased, abatement notices should not be served unless there are reasonable grounds for the view that the nuisance will recur.
If the nuisance does not exist at present, is it likely to occur?			Abatement notices can be served in advance to prevent the occurrence of a nuisance. This needs to be supported by firm evidence of the likely occurrence of a nuisance.
If the nuisance has occurred, it is likely to recur?			If the nuisance is likely to recur, an initial informal approach, followed by a notice to reinforce is recommended.

¹³² Extracted and amended from a note produced by the London Borough of Islington

Category	Yes	No	Notes
ADMINISTRATION			
Is a RIPA 2000 authorisation needed?			Only exceptionally will authorisation be needed for 'directed surveillance'.
If so, is a signed authorisation pro-forma on file?			
Are sufficient copies of the Abatement Notice provided for premises file/noise patrol/licensing, etc?			
Proof of service			A pro-forma endorsement confirming hand delivery or 1st class posting to be applied to copies of the notice or copy of recorded delivery slip to be attached to file copy and details of notice service recorded i.e. Systemware/note book.
LEGISLATION APPLIED			
EPA '90 section 79(1)(g) – noise emitted from premises			Check that the legislation quoted on the notice is correct and applies to the circumstances.
EPA '90 section 79(1)(ga) – noise from vehicles, machinery or equipment in street			
CPA '74 section 60 – noise from construction site			
NOTICE CONTENTS			
Correct service on all persons responsible/owners/occupiers			Check for evidence (section 16 Local Government (Miscellaneous Provisions) Act 1976 questionnaires, interview notes, land registry returns, etc.) that the person/organisation being served is a person responsible for the nuisance, i.e. the nuisance arises due to their 'act, default or sufferance'.
Individuals – is the notice served on named persons at their last known address?			N.B. See section 160 EPA '90.
Limited Companies – the notice should be served on the named company at their registered office, with the envelope addressed to the 'Company Secretary' at the company's registered office?			

Category	Yes	No	Notes
NOTICE CONTENTS (continued)			
Partnerships – is the notice served on a partner or partners exercising control of the business at the principal office of the partnership?			N.B. See section 160 EPA '90.
Schedule – does any schedule correspond to the notice?			
Is service of notice notified to other persons responsible and interested parties?			Should be indicated on the notice and copies.
Covering letter			If used, check covering letter. Make sure this does not contradict or confuse the notice.
Is the notice signed by an appropriately authorised officer?			Either: 1. the officer who witnessed the statutory nuisance, if authorised; or 2. an appropriately authorised officer in possession of detailed information that could be incorporated in a witness statement justifying service.
Readability – does the notice read well? Is it intelligible? Is the language used as plain and simple as possible?			
Checked for typing/spelling errors.			
Identification of the Nuisance – does the notice identify the nuisance precisely?			i.e. for plant noise, state the location, type and model of noisy plant if possible. For domestic noise state the address and type of the noise. For vehicles, machinery and equipment in street state the registration number, make, model and position in street relative to a fixed point/address.
Notice Requirements/Schedule – two types of abatement notice can be served. Either: simple 'abate the nuisance' notices, in which case make sure no explicit or implicit reference is made to works in the notice or covering letter;			Ensure that statements along the line of 'or other works of an equivalent effect' or 'to the local authorities satisfaction' are not added to the abatement notice schedule. The Court of Appeal has decided (<i>Falmouth & Truro PHA v SWW 2001</i>) that LAs have discretion whether to serve abatement notices that simply require abatement of the nuisance or to specify the steps or works necessary to adequately restrict or abate the nuisance.

Category	Yes	No	Notes
NOTICE CONTENTS (continued)			
<p>Notice Requirements/Schedule – two types of abatement notice can be served. (continued)</p> <p>or</p> <p>precise specification of works and steps, in which case make sure these have been discussed with the noise team and the works are specified sufficiently precisely for the recipient to abate the nuisance without reference back to the Council.</p>			<p>The High Court has held that the statement “cease the playing of amplified music at levels which cause a nuisance at neighbouring premises” means effectively the same as ‘abate the nuisance’ (<i>SFI Vs Gosport DC 1998</i>). The High Court has also held that simply specifying noise level targets is acceptable (<i>Sevenoaks DC v Brands Hatch Leisure Group Ltd 2000</i>).</p> <p>A precise specification of works is often useful as all parties know what needs to be done to comply with the notice and monitoring of compliance is relatively straightforward. The test of compliance is then whether the specific steps/work or agreed alternatives are executed in the relevant time period, there being no need to revisit the question of whether nuisance is still occurring etc.</p>
<p>Time period for compliance – is it reasonable?</p>			<p>Is the time given demonstrably ‘reasonable’? i.e. does it allow sufficient time for the necessary measures to abate/adequately restrict the nuisance to be implemented?</p> <p>N.B. ‘Forthwith’ or ‘immediate’ are allowed for noise that can be resolved easily and quickly reduced i.e. by turning down music or shutting open doors/windows (See <i>Brighton & Hove Council v Ocean Coachworks (Brighton) Ltd [2001] Env LR4</i>)</p> <p>Where more complex steps are necessary, i.e. sound insulation works, fabrication of bespoke acoustic attenuation units, noise surveys by acoustic consultants etc, does the reasonable time for compliance take these factors into account? Discuss with the Noise Team.</p>
<p>Should the abatement notice be suspended if appealed? If not, on what grounds is suspension withheld?</p>			<p>Check that the relevant sections of the suspension paragraph have been included if the intention is for the notice not to be suspended if appealed. Ensure that denying suspension can be justified on appeal.</p>



Category	Yes	No	Notes
NOTICE CONTENTS (continued)			
Is the notice signed, dated and timed where appropriate?			
Are the case/lead officer's name and contact details given on the notice?			
Are the standard notices regarding appeals attached to the notice?			

Note 7: Abatement notices¹³³

1.0 DUTY TO SERVE AN ABATEMENT NOTICE

1.1 Where the local authority is satisfied that a statutory nuisance:

- (a) exists; or
- (b) is likely to occur; or
- (c) is likely to recur.

it is required to serve an abatement notice:

- (a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence;
- (b) requiring the execution of such works or steps as may be necessary for these purposes; and
- (c) specifying the time or times within which the notice is to be complied with¹³⁴

The notice must also indicate the rights of the recipient and time limits for appeal.

1.2 A notice may be served by a local authority to deal with a nuisance partly or wholly arising outside its area but suffered within its area¹³⁵. In such a case, though not obliged to, it should inform the local authority for the area in which the nuisance arises.

1.3 Section 86 of the Clean Neighbourhoods and Environment Act 2005 amends section 80 of the Environmental Protection Act 1990 so as to enable a local authority to defer the service of an abatement notice for noise emitted from premises which it is satisfied constitutes a statutory nuisance. The deferral is only permissible for a period of up to seven days while the authority takes any other appropriate steps to persuade the potential recipient to abate the nuisance. If the notice is deferred but the nuisance is not abated after seven days the local authority must serve an abatement notice

under section 80(1). It may serve the notice earlier if it becomes apparent during the deferment that this will be necessary.

2.0 PERSON RESPONSIBLE

2.1 The abatement notice is to be served:

- (a) except as in (b) and (c) below, on the person(s) responsible for the nuisance;
- (b) on the owner of the premises where the nuisance arises from any defect of a structural character; and
- c) where the person responsible cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises¹³⁶.

2.2 Where more than one person is responsible, the notice may be served on each¹³⁷. Note that it is quite possible for a noise nuisance to result from the concurrent act of one person and the default or sufferance of another.

2.3 Where the person primarily responsible is a minor, the notice should be served both on them and on the adult residing with them and having parental responsibility for them. Note that a child under 14 would not normally be prosecuted for a breach of a notice although noise-making equipment belonging to a child can be seized.

Identifying the person responsible

2.4 The Data Protection Act 1998 regulates the disclosure of information relating to individuals. Where another council department holds details which record the identity of the individual(s) owning property, those details will constitute 'personal data'¹³⁸.

2.5 The data controller for the authority may process¹³⁹ that information to a third party if

¹³³ Extracted and modified from guidance notes produced by the London Borough of Islington and South Northamptonshire Council

¹³⁴ S 80(1) Environmental Protection Act 1990

¹³⁵ S 81(2) Environmental Protection Act 1990

¹³⁶ S 80(2) Environmental Protection Act 1990

¹³⁷ S 81(1) Environmental Protection Act 1990

¹³⁸ See s 1(1) Data Protection Act 1998

¹³⁹ The definition of 'processing' includes disclosing

it is necessary for the administration of justice, for the exercise of any functions conferred by or under any enactment, for the exercise of any other functions of a public nature exercised in the public interest or for the purposes of legitimate interests pursued by the data controller and/or the third party¹⁴⁰.

- 2.6 For these reasons, where direct approaches to the occupier of premises have failed to obtain sufficient ownership details for the purpose of serving statutory notices, it is perfectly lawful, fair and proportionate for the data controller managing e.g. council tax data, to disclose relevant details of council tax declarations to the environmental health service as a third party, several schedule 2 conditions having been satisfied.

2.7 Alternatively, another method of obtaining confirmation of the identity of the owner available to the local authority is to search the Land Registry entry for the property.

2.8 Finally, another method available to the local authority is by serving a statutory notice pursuant to section 16 of the Local Government (Miscellaneous Provisions) Act 1976. Such a notice can be served on the occupier, any person known to have an interest in the premises or any person managing or authorised to let them. The notice must specify a deadline for reply, not less than 14 days following service. A person who, served with a notice, fails to respond or who knowingly or recklessly gives false information, commits a summary offence.

QUESTION OF LAW: WHAT CONSTITUTES 'GOOD SERVICE'?

"What constitutes good service of a statutory notice, bearing in mind the council's delegation of powers? For example, is the custom of pre-signing notices with the chief officer's facsimile signature lawful?"

Opinion

This question relates to content as much as to service, refer to Appendix 3.8. This opinion therefore deals with the instant (signature) question only and assumes that 'statutory notice' refers to an abatement notice pursuant to the Environmental Protection Act 1990.

Section 80 of the Environmental Protection Act 1990 does not require an abatement notice to bear any authenticating signature. Indeed the Act does not prescribe a form for that notice nor includes any provision for the Secretary of State to prescribe one.

In such circumstances authentication should follow the general requirements of the Local Government Act 1972¹⁴¹.

That means that the abatement notice must be signed on behalf of the authority by the proper officer of the authority¹⁴². The 'proper officer' is the officer appointed for this purpose by the local authority¹⁴³. Where the authority is a London borough this is the proper officer appointed by the borough¹⁴⁴. A 'proper officer' should be the competent person within the council.

A notice purporting to bear the signature of the 'proper officer' is deemed, until the contrary is proved, to have been duly given by the authority of the local authority¹⁴⁵. That signature can include a facsimile of a signature by whatever process produced¹⁴⁶.

¹⁴⁰ See sch 2 Data Protection Act 1998

¹⁴¹ Specifically s 234 Local Government Act 1972 ('authentication of documents')

¹⁴² S 234(1) Local Government Act 1972

¹⁴³ S 270(3) Local Government Act 1972

¹⁴⁴ S 270(4)(c) Local Government Act 1972

¹⁴⁵ S 234(2) Local Government Act 1972; *Basildon District Council v Railtrack plc* (unreported decision of the Divisional Court dated 10 February 1998); *Wilhelm Henriques v Swale Borough Council* (unreported decision of Lands Tribunal dated 23 May 1995)

¹⁴⁶ S 234(2) Local Government Act 1972

3.0 THE SERVICE OF NOTICES

3.1 Section 160 of the Environmental Protection Act 1990 states:

“ 1. ...

2. Any notice required or authorised [by or under this Act] to be served on or given to a person other than an inspector may be served or given by delivering it to him, or by leaving it at his proper address, or by sending it by post to him at that address.
3. Any such notice may:
 - (a) in the case of a body corporate, be served on or given to the secretary or clerk of that body; and
 - (b) in the case of a partnership, be served on or given to a partner or a person having the control or management of the partnership business.
4. For the purposes of this section and of section 7 of the Interpretation Act 1978 (service of documents by post) in its application to this section, the proper address of any person on or to whom any such notice is to be served or given shall be his last known address, except that:
 - (a) in the case of a body corporate or their secretary or clerk, it shall be the address of the registered or principal office of that body; and
 - (b) in the case of a partnership or person having the control or the management of the partnership business, it shall be the principal office of the partnership;

and for the purposes of this subsection the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom

shall be their principal office within the United Kingdom.

5. If the person to be served with or given any such notice has specified an address in the United Kingdom other than his proper address within the meaning of subsection (4) above as the one at which he or someone on his behalf will accept notices of the same description as that notice, that address shall also be treated for the purposes of this section and section 7 of the Interpretation Act 1978 as his proper address.
6. The preceding provisions of this section shall apply to the sending or giving of a document as they apply to the giving of a notice.”

3.2 The case of *Lambeth London Borough Council v Mullings*¹⁴⁷ confirms that service of an abatement notice through a letterbox is acceptable. The council appealed a dismissal by justices of an information alleging the respondent’s breach of a noise abatement notice on the basis that the council were unable to prove they had served the notice on the person of the respondent. The High Court decided that although section 58(2) of the Control of Pollution Act 1974 provided that other methods of service required statutory authorisation, section 233(2) of the Local Government Act 1972 provided that local authority notices could also be served by leaving them at the respondent’s proper address. Accordingly the council had satisfied section 58 of the 1974 Act by inserting the notice through the respondent’s letterbox and the council’s appeal was allowed.

3.3 It should be noted that where some of the requirements are contained in a separate letter or schedule, great care should be taken in drafting those documents since the courts consider them to be part of the notice and hence they will be subject to the same principles for validity as the principal part of the notice¹⁴⁸. In particular, the letter

¹⁴⁷ The Times LR, 16 January 1990

¹⁴⁸ *LB Camden v London Underground Ltd* [2000] Env LR 369

or schedule may be called by the court in aid when construing the notice. This is because there remains no prescribed form for abatement notices and it is considered sensible to look at any accompanying documents in order to determine objectively how the notice would be understood by its recipient.

4.0 REQUIREMENTS OF AN ABATEMENT NOTICE

4.1 The requirements of an abatement notice should be carefully drafted to make it clear how they should be fulfilled by the recipient. Enforcement may be impossible where the wording leaves any doubt about what the recipient must do or refrain from doing, however, a notice does not have to be so precise as to leave the recipient with no discretion as to how to comply. Thus, supplying a full builder's specification is not required provided that it is clear from the notice what works must be undertaken¹⁴⁹ and in many cases it would be appropriate to leave it to the recipient to decide how he wishes to conform to a simple abatement notice, for example a notice served on the keeper of barking dogs causing a nuisance¹⁵⁰.

4.2 The nature of the noise problem to be resolved is the starting point for the local authority in deciding what form of notice to serve. Just because it has discretion whether to serve a simple abatement notice or a specific works notice¹⁵¹ does not in any way imply that only simple notices should be served; a specific works notice might provide a fairer solution as well as being an easier one to enforce since it is only necessary to prove non-compliance with the notice rather than that a nuisance was occurring when the notice was breached.

4.3 Specifying the required works or providing sound level targets in an abatement notice also permits the recipient to know how he can avoid prosecution for breach of the notice. Specifying noise limits was held in *Sevenoaks DC v Brands Hatch Leisure Group Ltd*¹⁵² to be valid. Although the notice apparently required steps to be taken, the court held that this did not trigger the requirement in section 80(1)(b) of the Environmental Protection Act 1990 so as to oblige the authority to specify the work to be undertaken to abate the nuisance; the recipient of the notice could decide on the way in which the noise was to be prevented from causing a nuisance and the notice simply prescribed a yardstick against which the abatement works could be tested. Similarly, in *R v Crown Court at Canterbury, ex p Howson-Ball*¹⁵³ an abatement notice which specified that the sound pressure of noise from the playing of live or recorded amplified music when measured "at a distance of 2 metres from any speaker shall not exceed 75 dB L_{Aeq} (1 minute) slow response", was considered valid and enforceable.

4.4 Currently local authorities have a wide discretion as to whether or not an abatement notice should give details of the works and steps necessary to abate a noise nuisance (or any other nuisance) as a consequence of the Court of Appeal's decisions in *Falmouth & Truro PHA v Southwest Water*¹⁵⁴ that although consultation before serving an abatement notice would often be appropriate, an enforcing authority was not under a duty to consult the alleged perpetrator before serving an abatement notice; and, perhaps more importantly, that in all cases, the local authority could, if it wished, leave the choice of means of abatement to the perpetrator of the nuisance. If, however, the means of abatement were required by the

¹⁴⁹ *Network Housing v Westminster LBC* (1995) 27 HLR 189.

¹⁵⁰ *Budd v Colchester BC* [1999] Env LR 739.

¹⁵¹ *R v Falmouth & Truro PHA ex p South West Water Ltd* [2000] 3 All ER 306

¹⁵² [2001] Env LR 86

¹⁵³ [2001] Env LR 36

¹⁵⁴ (2001) LTL 30/3/2000; (2000) EGCS 50; TLR 24 April 2000; (2000) 3 All ER 306; (2000) 3 WLR 1464; (2000) Env LR 658

- local authority, then they had to be specified precisely (*Network Housing* (supra) remaining good law).
- 4.5 There is nonetheless a range of noise nuisances where a specification of the works or measures to abate the nuisance clearly is not needed, i.e. domestic amplified music, however precise specifications of works or steps to abate a nuisance are often useful in other cases, i.e. noise from economically valuable operations, as all parties then know what needs to be done to comply with the notice and monitoring of compliance is relatively straightforward. Consequently each case must be considered on an individual basis before deciding whether details of the works or other steps necessary should be given on an abatement notice or simply that the nuisance be required to be abated.
- 4.6 Alternative works clauses, such as “or carry out alternative works that will abate the nuisance” should never be included in the schedule of an abatement notice, as this will provide a specific ground for the notice to be dismissed on appeal¹⁵⁵.
- 4.7 The time period for compliance with an abatement notice should be ‘reasonable’, i.e. allowing sufficient time for the necessary measures to abate or adequately restrict the nuisance to be implemented. However ‘Forthwith’ or ‘Immediate’ are allowed for noise that can be resolved easily and quickly reduced, i.e. by turning down music noise levels or shutting open doors/windows¹⁵⁶.
- 4.8 Where more complex steps are necessary, i.e. sound insulation works, the fabrication of bespoke acoustic attenuation units, noise surveys by acoustic consultants, etc, the time period prescribed for compliance should take these factors into account.
- 4.9 The time period given for compliance with an abatement notice can take either of the following forms:
- i) a single time or date by which all the requirements of the notice must be met; or
 - ii) a phased timetable giving times and/or dates in respect of each requirement of the notice.
- 4.10 When drafting an abatement notice for noise nuisance, it will be useful to consider how the recipient might resist such a notice and its requirements. Trying to anticipate any counter arguments that could be used to appeal the notice or as a defence against enforcement can help obviate weaknesses and prepare for the event of an appeal or enforcement proceedings. In order to do this effectively prior to serving a notice for other than simple noise nuisances, it may be helpful to contact the person(s) the notice will be served on and advise them of the nuisance and what the outline requirements of the intended abatement notice may be and ask them:
- i) for any comments on the occurrence or recurrence of the noise complained of;
 - ii) whether there are already plans in hand to address the problem and, if so, for details of those plans and a timescale for implementation; and
 - iii) whether they have any comments on the local authority’s outline proposals for abatement and if they have any suggestions for alternatives which will abate the nuisance with a timescale for their implementation.
- 4.11 Obviously the service of the abatement notice should not be unreasonably delayed by asking for the above information. Time-limiting the response to your enquiry after which period the abatement notice will be served lets the recipient know this is not an informal pre-service appeal process and that the local authority takes the matter seriously. If the person contacted does not respond or responds inadequately to the enquiry, an abatement notice can be served and if challenged by way of appeal or during any enforcement action the local authority’s position is strengthened by the

¹⁵⁵ *Network Housing v Westminster City Council* (1995) 27 HLR 189

¹⁵⁶ *Brighton & Hove Council v Ocean Coachworks (Brighton) Ltd*, 11 April 2000 CO/0897/00

lack of any such response. If an adequate response is received, this can be incorporated into the abatement notice where appropriate, placing the local authority in a strong position should they face an appeal or in the event of any attempted defence against any subsequent enforcement action that might be necessary. Whilst inviting comments in this way introduces an initial delay in issuing the notice, this can pay dividends, speeding the overall abatement process by opening up communication with those responsible for remedying the nuisance, with the backup of the abatement notice and its enforcement, if necessary.

- 4.12 The local authority nevertheless needs to be careful to avoid giving the impression that it is holding a consultation process about whether to serve an abatement notice. There is no requirement for a council to undertake any form of consultation in respect of statutory nuisances yet where it creates a 'legitimate expectation' of that, it is required to undertake the process fully and properly¹⁵⁷.

5.0 APPEALS

- 5.1 The recipient of an abatement notice may appeal to a Magistrates' Court¹⁵⁸ to have it quashed or to have the requirements varied to make them less onerous¹⁵⁹. The appeal is a civil matter which is commenced by way of making a complaint to the court¹⁶⁰. The grounds for appealing the notice need to be specified and are set down in the Statutory Nuisance (Appeals) Regulations 1995. All grounds of appeal can be included and the appellant can subsequently withdraw those they do not wish to proceed with.

6.0 DEFENCES

- 6.1 The defences under section 80 of the Environmental Protection Act 1990 available to a person contravening any requirement of the notice are:
- (a) the defendant had a reasonable excuse for the contravention; or
 - (b) that in the case of industrial, trade or business premises, the 'best practicable means' were used to prevent or counteract the effects of the nuisance; or
 - (c) the alleged offence was covered by a notice served under section 60 (control of noise on construction etc sites) or a consent given under section 61 (prior consent for work on construction sites) or under section 65 (approval to increase noise levels from premises subject to control in a Noise Abatement Zone) of the Control of Pollution Act 1974; or
 - (d) the alleged offence was committed at a time when the premises were subject to a notice under section 66 of the 1974 Act (power to require reduction of noise levels in Noise Abatement Zone), and the level of noise was not such as to constitute a contravention of the notice under section 66; or
 - (e) the alleged offence was committed at a time when the premises were not subject to a notice under section 66 of the 1974 Act and when a level fixed under section 67 (acceptable noise level from new or altered premises coming within a class covered by a Noise Abatement Order) was not exceeded at that time.

Paragraphs (d) and (e) apply whether or not the relevant notice was subject to appeal at the time when the offence was alleged to have been committed. Matters which may have been raised on appeal may only exceptionally be raised subsequently as a defence.

¹⁵⁷ Note the warning in Falmouth (supra) of Simon Brown LJ, at 318: "Often, certainly, it will be appropriate to consult the alleged perpetrator, at least on some aspect of the matter, before serving an abatement notice, but the enforcing authority should be wary of being drawn too deeply and lengthily into scientific or technical debate, and warier still of finding itself fixed with all the obligations of a formal consultation process".

¹⁵⁸ S 80(3) Environmental Protection Act 1990. In Scotland, appeal is by summary application to the sheriff

¹⁵⁹ Reg 2(5), Statutory Nuisance (Appeals) Regulations 1995, SI 1995/2644

¹⁶⁰ Rule 34, Magistrates' Courts Rules 1981, SI 1981/552

7.0 SUPPLEMENTARY POWERS – INJUNCTIVE PROCEEDINGS

7.1 Injunctions are a civil remedy, granted always at the discretion of the court. A local authority may apply to the High Court for an injunction against the person responsible for the statutory nuisance¹⁶¹ where it is of the opinion that criminal proceedings under section 80(4) of the Environmental Protection Act 1990 would afford an inadequate remedy¹⁶².

Requirements for seeking an injunction

7.2 Care is needed to ensure that the injunction is being sought on proper grounds. The inconvenience of the standard procedure would not in itself be sufficient grounds for making an application but where combined with a reasonable belief that the alleged offender was likely to ignore a conviction, seeking an injunction would be justified. It would be unreasonable if the authority failed to consider before applying for an injunction whether the respondent might respond favourably to prosecution for breach of the abatement notice or to the service of a new notice¹⁶³, however, a local authority may still seek an injunction¹⁶⁴ where it has served an abatement notice but not taken summary action in respect of a breach.

7.3 The local authority must satisfy itself that without the injunction the statutory nuisance would continue or be repeated and that the likely consequences of the nuisance would also be serious. Examples of grounds appropriate for an injunction include:

- urgency, e.g. holding a ‘rave’ party in the very near future;

- where there has been a deliberate and flagrant flouting of the law, e.g. where previous proceedings have been tried but without effect¹⁶⁵; and
- evidence that the nuisance offender intended to carry on with the conduct complained of, come what may¹⁶⁶.

7.4 Where the local authority has imposed conditions in a notice to control noise from construction sites, served under section 60 of the Control of Pollution Act 1974, it can seek an injunction where local residents need protection which is not provided by the notice. A deliberate and flagrant breach of the law is not a requirement in these cases¹⁶⁷.

Procedure

7.5 The action is commenced in the authority’s own name¹⁶⁸ by way of an originating summons on a ‘without notice’ basis (previously termed an *ex parte* application). Access to the High Court is very speedy and in a case of sufficient urgency an injunction can be granted over the telephone. It is more usual, however, for the application to be made before a High Court judge at the start of the day’s business.

7.6 A sworn statement, fully setting out the grounds for the application will be needed. This should include:

- details of the nuisance, including whether it is occurring, recurring, or likely to recur;
- the statutory basis of the nuisance in section 79 of the Environmental Protection Act 1990;
- the reasons why an injunction is being sought and why the criminal procedure afforded by section 80 of the

¹⁶¹ *Bradford City Metropolitan Council v Brown* (1986) 84 LGR 731. As an alternative, the local authority can seek an injunction in public nuisance using its powers under s 222 Local Government Act 1972 where it considers that expedient for the protection of the inhabitants of its area

¹⁶² Under s 81(5) Environmental Protection Act 1990

¹⁶³ *Vale of White Horse DC v Allen & Partners* [1997] Env LR 212

¹⁶⁴ *Hammersmith LBC v Magnum Automated Forecourts Ltd* [1978] 1 WLR 50

¹⁶⁵ *Stoke-on-Trent CC v B & Q (Retail) Ltd* [1984] AC 754.

¹⁶⁶ *Vale of White Horse DC v Allen & Partners* [1997] Env LR 212

¹⁶⁷ *City of London Corp. v Bovis Construction Ltd* (1988) 86 LGR 660.

¹⁶⁸ See s 222 Local Government Act 1972

- Environmental Protection Act 1990 provides an inadequate remedy; and
- the basis for the decision to seek the injunction, by whom it was made and under what authority.

- 7.7 Granting an injunction is a discretionary remedy in which the applicant must provide full and frank disclosure of the circumstances of the nuisance, including any factors suggesting that the remedy might not be appropriate. If granted, the injunction has immediate effect once served on the person responsible for the nuisance. A return date will also be set by the court, since any such application will have a limited duration. This is to provide the respondent with the opportunity to say why the injunction should not continue or ought not to have been granted in the first place.

Liability to give undertakings in damages

- 7.8 A local authority, like central government, will not usually be required to give an undertaking in damages before an interim injunction is granted. The effect of this is that, provided it is exercising its lawful enforcement functions, it will not be liable to pay compensation in respect of losses incurred by the respondent should an injunction later be overturned or its terms made less onerous¹⁶⁹.

Penalties

- 7.9 A breach of an injunction is a contempt of court, the penalty for which includes a prison sentence of up to two years and/or an unlimited fine¹⁷⁰. These penalties are considerably greater than those available for a criminal prosecution under section 80(4) of the Environmental Protection Act 1990. The power to order an unlimited fine normally acts as a disincentive to those commercial offenders who may be minded to make an economic calculation in deciding whether to cause or continue causing a nuisance.

¹⁶⁹ *Kirklees MBC v Wickes Building Supplies* [1993] AC 227

¹⁷⁰ S 14 Contempt of Court Act 1981

Note 8: PACE interviews¹⁷¹

1.0 INTRODUCTION

- 1.1 This guidance note is designed to assist officers comply with the requirements of the Police and Criminal Evidence Act 1984 (PACE) and relevant Codes of Practice issued under it. Although PACE and PACE Codes are primarily concerned with police related matters, section 67(9) of PACE states:

“Persons other than Police Officers who are charged with the duty of investigating offences or charging offenders shall in the discharge of that duty, have regard to any relevant provisions of such a Code.”

- 1.2 PACE Code C¹⁷², which deals with the Detention, Treatment and Questioning of Persons by Police Officers, itself states that the notes for guidance are included in the Code to inform police officers and others about its application and interpretation.

2.0 THE PURPOSE OF INTERVIEWS

- 2.1 Guidance on the purpose of interviews is given in Code C as follows:

“An interview is the questioning of a person regarding his involvement or suspected involvement in a criminal offence or offences. Questioning a person only to obtain information or his explanation of the facts or in the ordinary course of the officer’s duties does not constitute an interview for the purposes of this Code.”

- 2.2 The primary purpose of an interview should be to confirm or establish the legal identities of potential defendants, the ownership of equipment, for example, and other facts, such as steps taken to minimise noise, etc. In questioning, the officer will take account of any information which reduces the likelihood of legal proceedings being necessary or successful, including information relating to statutory defences,

however the burden of proof for establishing a defence rests with the suspected offender.

3.0 INTERVIEWS IN PERSON

- 3.1 Officers carrying out pre-planned PACE interviews should ensure that a copy of Code of Practice C is available and where the interview is tape-recorded, that Code E is available in addition.
- 3.2 Whether conducted at the premises of the suspected offender or of the investigating officer, PACE Code C indicates certain requirements for interviews in person.

Preliminary matters

- 3.3 Prior to a formal interview, a summary of the alleged offence should be given and the suspected offender should be advised that he is not under arrest; that he is not obliged to remain with the officer; and that he has the right to obtain legal advice.

Cautions

- 3.4 Although there may be circumstances when the courts may accept evidence obtained without a caution having been given¹⁷³, enforcement officers should in all cases seek to conduct interviews in accordance with the provisions of the PACE Codes. Where, nevertheless, at the start of questioning it is not clear whether an offence has been committed, or, if one is thought to have been committed, it is not suspected that it was committed by the person under questioning, there is no requirement to caution that person.
- 3.5 When, notwithstanding, there are grounds to suspect the interviewee of an offence, he must be cautioned before any questions about it (or further questions if it is his answers to previous questions that provide grounds for suspicion) are put to him for the

¹⁷¹ Extracted and modified from South Northamptonshire Council’s guidance notes

¹⁷² Revised July 2006, see: <http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/PACECodeCH.pdf?view=Binary>

¹⁷³ See e.g. *Pennycuk v Lowe*, Times Law Reports, 13 December 1991

purpose of obtaining evidence which may be given to a court in a prosecution. He therefore need not be cautioned if questions are put for other purposes, for example, to establish his identity.

- 3.6 The caution should be in the following terms:
- “You do not have to say anything. But it may harm your defence if you do not mention, when questioned, something which you later rely on in court. Anything you do say may be given in evidence.”*
- Minor deviations do not constitute a breach of this requirement provided that the sense of the caution is preserved.
- 3.7 When there is a break in questioning under caution, for example, a ‘comfort break’, the interviewing officer must ensure that the person being questioned is aware that he remains under caution. If there is any doubt, the caution should be given again in full when the interview resumes. If it appears that a person does not understand what the caution means, the officer who has given it should go on to explain it in his own words.
- 3.8 Note that company representatives cannot speak on behalf of the company unless they have been authorised to do so by the company secretary. Company representatives should therefore not be cautioned unless they indicate they are authorised or they themselves are thought to have committed an offence.
- Interview records**
- 3.9 An accurate record must be made of each interview with a person suspected of an offence. The record should contain references that the aforementioned preliminary matters and caution were given.
- 3.10 The record must state the place of the interview, the time it begins and ends, the time the record is made (if different), any breaks in the interview and the names of all those present. It should also include the full name, address, telephone number and date of birth of the interviewee, the name and home address or registered office address of the organisation they represent, their occupation/position, and whether he/she is authorised to speak under caution for the company.
- 3.11 The record must be made during the course of the interview, unless in the investigating officer’s view this would not be practicable or would interfere with the conduct of the interview, and must constitute either a verbatim record of what has been said, or failing this, an account of the interview which adequately and accurately summarises it. If an interview record is not made during the course of the interview, the reason must be recorded and it must be made as soon as practicable after its completion.
- 3.12 Written interview records must be timed and signed by the maker. Unless it is impracticable, the person interviewed should be given the opportunity to read the interview record and to sign it as correct or to indicate the respects in which he considers it inaccurate. A written record should also be made of any comments made by the person, including unsolicited comments, which are outside the context of an interview but which might be relevant to the offence. If the person’s solicitor is present during the interview, he should also be given an opportunity to read and sign the interview record.
- 3.13 If the person concerned cannot read or refuses to read the record or to sign it, the officer should read it over to him and ask him whether he would like to sign it as correct (or make his mark) or to indicate the respects in which he considered it inaccurate. The officer shall then certify on the interview record itself what has occurred.
- Interviews – general provisions**
- 3.14 Officers should not try to obtain answers to questions or to elicit a statement by the use of oppression or indicate, except in answer to a direct question, what action will be taken on the part of the authority if the person being interviewed answers questions, makes a statement or refuses to do so either. If the person asks the officer directly what action will be taken in the

event of his answering questions, making a statement or refusing to do either, then the officer may inform the person what action the authority proposes to take in that event provided that the action is itself proper and warranted (e.g. the matter will be reported to the Chief Officer for consideration as to the institution of legal proceedings).

- 3.15 As soon as the officer believes that a prosecution should be brought against the person and that there is sufficient evidence for it to succeed he should inform him that he may be prosecuted for the offence and he should then ask the person if he has anything further to say. If the person indicates that he has nothing more to say the officer should without delay cease to question him about that offence, and should refer the decision on whether to prosecute to the appropriate officer or Committee as soon as practicable. If the officer is himself authorised to decide whether to prosecute, he should consider the matter and decide as soon as practicable.

Written statements under caution

- 3.16 Should a person who has been cautioned wish to make a written statement the procedures detailed in Annex D of PACE Code C must be observed.

Tape-recording of interviews

- 3.17 Where interviews are tape-recorded the procedures in PACE Code E on Tape-recording must be observed.

4.0 INFORMATION OBTAINED THROUGH CORRESPONDENCE

- 4.1 The investigation of many alleged offences may not permit or require formal interviews in person with offenders but any letters seeking a response to questions about a matter which may be the subject of legal proceedings (and their replies) may be produced in evidence and it is therefore essential that the caution referred to previously is incorporated.

5.0 SELF-INCRIMINATION

- 5.1 Although various statutes enforced by the service create an offence of failing without reasonable cause to give an authorised officer reasonable assistance or information, the basic principles regarding persons not being required to incriminate themselves are usually included in the statutes concerned. In any event, the Convention on Human Rights provides the like protection.
- 5.2 The investigation of alleged offences may require the questioning of employees about the performance of their duties. An employee may legitimately refuse to answer questions or give any information only if, were he to do so, he would incriminate himself rather than his employer.
- 5.3 Subject to this rule, in certain circumstances adverse inferences may be drawn by the court from a failure to answer questions put during interviews.

Note 9: Formal cautions

1.0 INTRODUCTION

- 1.1 A non-statutory alternative to prosecution (in England and Wales) is for the local authority to issue the offender with a simple (formerly a formal) caution. The principal advantage of doing so from a public policy point of view is that this will save the time and expense required to bring a prosecution. Issuing a caution is an entirely separate procedure from giving a written warning that unless a person complies with a requirement then some form of enforcement action may follow.
- 1.2 A simple caution can be issued only when certain conditions are fulfilled and a decision to issue one should be seen as equivalent to a decision to prosecute. The use of cautions in enforcing the statutory nuisance provisions is more restricted than for other areas such as health and safety or food safety. This is because minor and technical breaches of regulatory statutes, which are a common reason for issuing a caution, are not a cause for prosecution in statutory nuisance since, except for obstruction offences, it is only with a breach of the abatement notice that a statutory nuisance offence can be committed.

2.0 FORMAL REQUIREMENTS

- 2.1 The following requirements must be fulfilled before a caution can be issued:
- there must be sufficient admissible evidence to justify a prosecution – the evidential requirement. The standard required for administering a caution is the same as for deciding whether to prosecute, i.e. are there reasonable prospects for obtaining a conviction? The test is similar to that contained in the Attorney-General's Guidelines¹⁷⁴. Administering a caution where the evidence is insufficient to justify prosecution would be improper;
 - there must be an admission of guilt; and
 - the offender must give his informed consent to the caution – if the caution is

refused then the likely result will be a decision to prosecute, however, this is not automatic and prosecution should not be used as a sanction in respect of a refusal to accept a caution. Prosecuting automatically for refusal to accept a caution is arguably improper, possibly oppressive and a breach of human rights. If the refusal to accept a caution occurs because the person is mentally ill, but not so ill that he cannot give his informed consent, then prosecution is hardly in the public interest.

- 2.2 It may be that an offence is so trivial that a prosecution is not merited. It would be better for the local authority to adopt a prosecution policy which allows the decision to prosecute to be reconsidered after the person proposed to be dealt with by caution has had the opportunity of accepting or rejecting the caution.

3.0 PUBLIC INTEREST FACTORS

- 3.1 Once the evidential test above is satisfied, the local authority will need to consider relevant public interest factors. These include:
- the nature and seriousness of the offence; and
 - the likely penalty.
- 3.2 Trivial offences, such as a minor breach of an abatement notice, where it is decided that some formal action is required could be dealt with by caution. On the other hand, it may be hard to justify administering a caution for a serious or repeated breach of the notice since this would tend to bring into question why the notice was issued in the first place.

4.0 THE CHARACTERISTICS OF THE OFFENDER

Age and health

- 4.1 Youth or old age are persuasive factors in favour of informal sanctions, as are frailty in physical health, mental illness or mental disability. Underlining this, offenders under

¹⁷⁴ The Code for Crown Prosecutors (2000), issued pursuant to s 10 Prosecution of Offences Act 1985 (see Appendix 6)

18 are subject to a system of reprimands and final warnings instead of cautions¹⁷⁵.

Previous offence history and attitude to the offence

- 4.2 A person with previous cautions or offences for related offences to the instant offence would be unlikely to respond positively to a caution. Someone who trivialises their offence, or is abusive to investigating officers, or is contemptuous of complainants is unlikely to change their offending behaviour. In such instances it would be difficult to justify administering a caution.

5.0 ADMINISTERING THE CAUTION

- 5.1 This can be done orally, or, more usually, by letter, which should be signed by an officer with sufficient authority. A corporation as well as a natural person may receive a formal caution. Cautions can also be administered at court, even on the day of the trial. A pro-forma example of a written caution is reproduced below.

Admissibility and records of cautions

- 5.2 Though not convictions, cautions form (part of) an individual's criminal record and if, at the sentencing stage for a fresh offence, there is a guilty plea or finding of guilt, cautions going back three years from the date of that offence can be adduced before the court. The Office of Fair Trading (OFT) maintains a register of cautions. It is important that copies of all cautions are sent to:

The Office of Fair Trading
Central Register of Convictions
Craven House
40 Uxbridge Road
Ealing
London W5 2BS

- 5.3 Formal cautions will be relevant to any future decision whether to prosecute for a fresh offence. If during a subsequent prosecution the defendant asserts previous good character, a record of cautions as well as previous convictions may also be introduced into the trial in rebuttal. A copy of both should be served on the defendant at least seven days in advance of the trial¹⁷⁶.

¹⁷⁵ S 37 Crime and Disorder Act 1998

¹⁷⁶ Notice to cite previous convictions should be served using Forms 29 and 30 of sch 2 to Magistrates' Courts (Forms) Rules 1981, SI 1981/533

Caution

Surname:

.....

Fore Name:

.....

Address:

.....

Date of Offence:

.....

Place of Offence:

.....

Brief Circumstances of Offence:

.....

e.g. Failure without reasonable excuse to comply with a statutory notice served by [local authority] under section 80 of the Environmental Protection Act 1990 on [date] which required the subject to [abatement/steps required by notice] within [time allowed].

Declaration

I hereby declare that I admit the offence and agree to accept a caution in this case. I understand that a record will be kept of this caution and that it may influence a decision to institute proceedings should I infringe the law in future. I further understand this caution may be cited should I subsequently be found guilty of an offence by a Court of Law.

Signed

.....

Date

.....

Name

.....

.....

Signed

.....

Witness

.....

Name

.....

.....

Date

.....

.....

For and on behalf of [insert name and address of local authority]

Note 10: Entry by warrant and powers of seizure

1.0 ENTRY BY WARRANT

- 1.1 Provided an authorised officer is acting within his statutory powers, consent to entry is not required, however, this does not give an officer the right to make a forced entry, even to unoccupied premises. Any refusal of entry requires that an application be made to the Magistrates' Court for a warrant, which if granted, will authorise an entry using reasonable force.
- 1.2 An application to obtain an entry warrant from a magistrate (or a district judge) is made by sworn Information in writing¹⁷⁷. This should be made in duplicate, one copy being left with the court. A magistrate who is connected with the council should not grant a warrant. Entry to residential premises can normally only be demanded on 24 hours notice unless the giving of notice will defeat the object of entry, entry has been refused or is apprehended, the premises are unoccupied or it is an emergency. The authorised officer has to attend before a magistrate, usually before the court sits as such, with a written Information and a pre-prepared warrant and has to swear on oath that the contents are accurate. The Information should set out the statutory basis of the power of entry and the reasons why entry is required.
- 1.3 A pro-forma Information is provided below. The magistrates' court should utilise a duty rota whereby out-of-hours applications can be made via a named duty clerk. All 'on call' enforcement officers should be provided with the current rota.
- 1.4 The grant of a warrant is discretionary and the reasons why it is needed should be stated clearly in the Information. It would be improper for a magistrate not to consider the grounds carefully before issuing a warrant, not least because it authorises interference by the state in rights of property. In order to exercise his powers properly, the magistrate must be satisfied that one or more of the following factors applies:
- admission to any premises has been refused; or
 - refusal is apprehended; or
 - the premises are unoccupied; or
 - the occupier is temporarily absent; or
 - the case is an emergency; or
 - an application for admission would defeat the object of the entry.
- 1.5 Additionally, in all cases, the magistrate must be satisfied that there is a reasonable ground for entry into the premises for the purpose for which entry is required¹⁷⁸. Human rights considerations mean that officers applying for warrants must be prepared to explain why forced entry is a proportionate response to the nuisance and why there is no alternative.

¹⁷⁷ Magistrates' Courts Act 1980, s 125 sets out the procedure for execution of a warrant

¹⁷⁸ Sch 3, para 2(3) Environmental Protection Act 1990

Information for Warrant to Enter Premises Environmental Protection Act 1990

The **INFORMATION** of **†** a duly authorised officer

of ***** Council, who on [Oath] [Affirmation] states that

for the purposes of paragraph 2 of schedule 3 to the Environmental Protection Act 1990, s/he has a right at any reasonable time to enter the premises situate at in the district of the said Council and in the occupation of

And for the purpose of exercising that right, s/he applies for a warrant to be issued for the reason that

On admission to the said premises was refused to the said

[it is apprehended that admission to the said premises will be refused]

[the premises are unoccupied]

[the occupier is temporarily absent from the premises]

[the case is one of emergency]

[an application for admission would defeat the object of the entry]

And that there is reasonable ground for entry into the said premises for the purpose of the performance by the Council of their functions under Part III of the Environmental Protection Act 1990 and specifically to

Wherefore the said **†** applies for a warrant authorising him/her

to enter the said premises, if need be by force, pursuant to Schedule 3 to the Environmental Protection Act 1990.

Dated the day of 2006

[] Delete any words in square brackets which do not apply

* Insert name of local authority

† Insert name of Officer

Warrant to Enter Premises Environmental Protection Act 1990

In the

Petty Sessional Division of

INFORMATION on [Oath] [Affirmation], on behalf of the *

having been laid before me, one of Her Majesty's Justices of the Peace for the said that

[on the _____ day of _____ 2006 it became necessary] [it is necessary]

that †

a duly authorised Officer of the said Council should enter the premises situate

at

in the District of the said Council under the Environmental Protection Act 1990

[of which premises _____ is the Occupier], for the purpose of

And that [admission to the said premises on the _____ day of _____ 2006

was refused _____ to the said † _____]

[it is apprehended that admission to the said premises would be refused]

[the premises are unoccupied]

[the occupier is temporarily absent from the premises]

[the case is one of emergency]

[an application for admission would defeat the object of the entry]

And it having been shown to my satisfaction that the allegations in the said Information are true:

And that there is reasonable ground for entry into the said premises for the purpose aforesaid:

Now I do by this Warrant authorise the said Council by any authorised Officer to enter the said Premises, if need be by force.

Dated the _____ day of _____ 2006

Signed _____ *Justice of the Peace*

[] Delete any words in square brackets which do not apply

* Insert name of local authority

† Insert name of Officer

2.0 POWERS OF SEIZURE¹⁷⁹

Abatement of Nuisances – Seizure of Noise-making Equipment – Powers of Entry including under Warrants – Environmental Protection Act 1990

2.1 Scope

2.1.1 This Practice Note provides guidance on the use of warrants to abate noise nuisances by the seizure of noise making equipment. Seizure is an effective, if essentially temporary, remedy to a nuisance or the emission of excessive noise whose use is growing. The note does not aim to cover every circumstance in which warrants can be sought but the principles outlined in this document can be applied in other circumstances provided care is exercised; in cases of doubt, officers should refer back to the primary legislation.

2.2 General considerations

2.2.1 Any magistrate will need to be satisfied on two counts before putting their name to a warrant. The first count is that all the requirements of the legislation under which the application for the warrant is made have been met. The second count is that it is reasonable, in all the circumstances, to permit the authority to break into someone's home and remove property which may or may not be theirs.

2.2.2 Officers applying for a warrant should bear in mind that a magistrate must also look at the application from the point of view of the person on whom the notice was served and/or the owner of the property which is going to be removed. The magistrate is likely to ask questions such as:

- is the offender aware of the consequences of their actions?
- has every reasonable effort been made to make the offender aware of the consequences of their actions? and
- is the removal of the equipment the only

or most appropriate course of action available to abate the nuisance, etc.?

2.2.3 In an emergency, an application for a warrant can be made to magistrates, with their prior agreement, outside of normal court hours. In such a case, the Information and the draft warrant should be prepared before contacting magistrates at home. Particularly when contacted at night, it is important to keep the intrusion into their private lives as brief as possible to ensure their future co-operation.

2.3 Service of notice

2.3.1 A notice under section 80 of the Environmental Protection Act 1990 must have been properly served and, generally, the time given in the notice for compliance must have expired, before an application for a warrant can be made. Only in exceptional circumstances may it be possible to satisfy a magistrate that undue delay would be caused by waiting for expiry of the notice before making an application if the officer has reasonable grounds for anticipating that entry will, in the event, be refused.

2.3.2 Where the person responsible for the nuisance cannot be found at the time of visit, the notice will have been served on 'the occupier' by leaving it at the premises. Where the door is answered by persons who disclaim responsibility/knowledge, it may nevertheless be appropriate to explain to them the consequences of failure to comply with the notice.

2.3.3 When application is made for a warrant, officers may be questioned in some detail about the service of the notice. They should be able to demonstrate that the notice was effectively served. Though service of a notice by delivery through the letterbox of the occupier of the subject premises has been held to satisfy the requirements of the Act¹⁸⁰, if it has not been possible to serve a notice on an identified person, the magistrate may question the validity of the

¹⁷⁹ Extracted and modified from guidance notes produced by the London Borough of Islington and South Northamptonshire Council

¹⁸⁰ *Lambeth LBC v Mullings*, The Times, Jan 16 1990

service. In that case, it may be helpful to draw their attention to the provisions of section 160 of the Environmental Protection Act 1990 or to section 3(3)(b) of the Noise Act 1996 which states in relation to a warning notice that *“if it is not reasonably practicable to identify any person present at or near the dwelling as being a person responsible for the noise on whom the notice may reasonably be served, [it may instead be served] by leaving it at the offending dwelling”*.

2.4 Conditions to be met

2.4.1 The primary sanction in the legislation for a breach of a statutory notice is a fine of up to level 5 (currently £5,000) (£20,000 for statutory nuisances on industrial, trade or business premises). If circumstances permit, it is best to inform the recipient of the notice of the legal consequences of breach at the time of service. A standard letter accompanying the notice is adequate and can mention the possibility of seizure in addition. Seizure should not be threatened as an automatic response.

2.4.2 If a nuisance continues after the expiry of a notice and an offence has been committed, the person responsible for the breach of the notice should be informed that they are committing an offence if safe and practicable to do so. A caution must be given if it is wished to question the person and in particular if it is wanted to quote any statement they make in legal proceedings.

2.4.3 On expiry of the notice the officer applying for a warrant must be in a position to satisfy a magistrate that there are reasonable grounds for entry into the premises, and that of one of the following conditions apply:

- (a) admission to the premises has been refused; or
- (b) refusal of admission to the premises is anticipated; or
- (c) the premises are unoccupied; or
- (d) the occupier is temporarily absent; or
- (e) the case is one of emergency; or
- (f) an application for admission would defeat the object of the entry.

2.4.4 In the absence of a warrant, entry may still be requested to remove noise making equipment whenever the officer is satisfied that a notice has been breached. If access is refused, the officer should point out to the offender that they have just satisfied one of the conditions required to justify a warrant application. This may have the desired effect of having the noise abated by the offender in anticipation of the warrant.

2.4.5 The most commonly used ground for application for a warrant, however, is that *“refusal of admission ... is anticipated”*. If an officer intends to seize noise-making equipment it is reasonable to anticipate that access will be refused and a warrant should usually be applied for; even though the warrant has been granted, however, it should not be assumed that entry will be refused. Officers should therefore ask for permission to enter before producing the warrant.

2.4.6 The ground that *“the premises are unoccupied”* is most likely to be invoked in the case of alarms and can be justified repeated attempts to gain entry have brought no response. The ground that *“application for admission would defeat the object of the entry”* may be applicable where a persistent offender’s equipment is to be removed and it is anticipated that he may relocate it temporarily in order to avoid seizure.

2.5 Power to seize equipment

2.5.1 A local authority’s principal power to seize noise equipment is contained in section 81(3) of the Environmental Protection Act 1990 which states:

“Where an abatement notice has not been complied with the local authority may, whether or not they take proceedings for an offence under section 80(4) above, abate the nuisance and do whatever may be necessary in execution of the notice.”

2.5.2 This power was supplemented by section 10(7) of the Noise Act 1996 which states:

“The power of a local authority under section 81(3) of the Environmental Protection Act 1990 to abate any matter, where that

matter is a statutory nuisance by virtue of section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), includes power to seize and remove any equipment which it appears to the authority is being or has been used in the emission of the noise in question.”

Note that this power is not anticipatory and does not extend to equipment in the street.

Safety

- 2.5.3 For safety reasons seizures ordinarily should not be carried out without the police in attendance. If the police are present when the breach is observed, the offender may be told of the intention to remove their noise-making equipment at that point. Provided access is not then refused, by word or gesture, officers may enter the premises accompanied by the police in order to carry out the intention. Though rarely, on occasions offenders have been sufficiently worried about the consequences for them that they volunteer to let the equipment be removed nevertheless, if the person changes their attitude and requires officers to leave, they should do so, returning with a warrant and police support if necessary.

Equipment which may be seized

- 2.5.4 ‘Equipment’ is not defined in the Noise Act 1996 and should be interpreted as including anything which could be described as ‘equipment’ in normal usage (i.e. including amplifiers, speakers, decks, associated cables and leads, builder’s tools, portable generators, etc.). By virtue of section 79(7) of the Environmental Protection Act 1990 (as amended by the Noise and Statutory Nuisance Act 1993) ‘equipment’ includes musical instruments. ‘Equipment’ does not include dogs or other animate objects.
- 2.5.5 Environment Circular 8/97 gives guidance on the Noise Act 1996. Paragraph 66 states:
- “66. It should be noted that section 10(2) of the 1996 Act is widely phrased to cover*

any equipment which it appears to the officer is being or has been used in the emission of the noise. During the Second Reading of the Noise Bill James Clappison [the Minister responsible] stated “the equipment that causes the noise ... could certainly include tapes, records, compact discs and do-it-yourself equipment”.”¹⁸¹

- 2.5.6 Officers are not justified in removing equipment which they do not reasonably believe to have been used in making the noise referred to in the notice. For example, if loud amplified music at a party was the noise type and on entering the premises only domestic electrical equipment is found, it may be justified to remove a midi-system which appears to be capable of emitting the volumes experienced earlier but the removal of smaller personal stereos, portable systems or TV sets which are unlikely to have been the cause of the problem, should not be removed. Similarly if the warrant was obtained to silence a loud TV, it would not be justified to remove amplification equipment for music.

Retention of seized equipment

- 2.5.7 The provisions of the Noise Act 1996 allow the local authority to retain seized equipment for up to 28 days. The person from whom the equipment is seized should have been advised whom they should contact to reclaim their property. Equipment can be retained beyond 28 days only if:
- it is related equipment in proceedings for a noise offence, instituted within that period; or
 - the local authority wish to make an application for its permanent forfeiture and information for prosecution of the recipient of the abatement notice has been laid before the magistrates’ court within 28 days of the seizure of the noise making equipment.
- 2.5.8 Before releasing the property to any person, an authority must be sure that the person is entitled to receive it and that they can be

¹⁸¹ Official Report, 16 February 1996; Vol 271, Col 1299

identified and/or traced in future. It is not unknown for 'John Smith' to turn up at the local authority to collect his equipment, only to have the real John Smith turn up later claiming the return of the property which the local authority has 'lost'!

3.0 FORFEITURE OF SEIZED EQUIPMENT

- 3.1 The Noise Act 1996 provides that where a person is convicted of a noise offence the court may make a forfeiture order in respect of any 'related equipment'¹⁸². Note, no formal application is necessary as the court has inherent power in any event. The court can only make an order on conviction and it is nevertheless up to the local authority to ask the court to make the order at that point. As a rule, this course should only be pursued where there are reasonable grounds for believing that returning the equipment to the owner would result in its being used again to breach the abatement notice.

¹⁸² S 10 and sch, para 3(1)

Note 11: Taking private action

1.0 AN EXAMPLE OF PUBLIC INFORMATION ON TAKING A PRIVATE PROSECUTION¹⁸³

TAKING ACTION IN THE MAGISTRATES' COURT YOURSELF

If noise from a neighbour is materially interfering with your use of your property, you have been unsuccessful in resolving the problem informally and, for whatever reason, the Council has been unable to help or you do not want to involve them, you may be able to take action in the Magistrates Court yourself under section 82 of the Environmental Protection Act 1990. Here is how:

Getting started

- You must advise the noise maker in writing of your intention to go to Court, giving at least three days notice – the Court will ask if you have done this.
- Magistrates' Courts deal with these actions and can be contacted directly.
- Go in person to the Court before 10:00 Monday to Friday. Ask the uniformed

attendant for the Clerk's Office where you should ask for the Court Officer dealing with that day's 'applications'.

- You should take legal advice as to the strength of your case first as, should you lose the case, you may have to meet the Defence legal costs.

Making an application

A small fee is payable in order to pursue the matter. You will need to prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Have your diaries copied to give to the Clerk.

When, later, it comes to actually applying for a summons, the Magistrate will ask you questions. Even after starting these proceedings, you should continue to keep a diary of the disturbances and keep copies of all correspondence you write or receive in date order and make notes of any conversations.

What next

The court serves the summons by recorded delivery or by personal service and will advise you of a date to return to court, usually about six weeks later. You must return to Court on this day. Check the lists of cases posted up inside or ask for help to find out which court room you should attend.

- If the accused admits causing the nuisance, the Court will hear the case on that day. You will normally be asked to make a statement in support of your claim.

- If the accused fails to attend and makes no plea by post, the case will usually be adjourned.
- If the Court is satisfied that the accused was served with the summons, it may, in some cases (although these are generally rare), decide to hear the case in his absence.

* If the accused attends but denies causing the nuisance, the Court may hear the case or adjourn to another date, depending on the time available.

¹⁸³ Extracted and amended from a leaflet produced by the London Borough of Southwark

When you return to court	You do not need to be represented in Court by a lawyer. If you are however, you will have to pay as Legal Aid is not available for these actions. Local Neighbourhood Law Centre(s) may be able to offer free assistance in preparing your case but not in presenting it.	Prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Bring any witnesses with you and have your diaries copied to give to the Court. The Magistrate will ask you questions, so may the accused, and you will have the opportunity of asking him/her questions on their evidence.
Likely outcomes	<ul style="list-style-type: none"> • If the Court is satisfied that you have proved beyond all reasonable doubt that a nuisance exists or is likely to recur, they will make an Abatement Order requiring the accused to cease the noise and/or prohibit its recurrence. The Court may also impose a fine of up to £5,000, although smaller sums are more usual. 	<ul style="list-style-type: none"> • You may, in addition, ask for reasonable costs e.g. for lost earnings, to be paid for bringing your case to Court. Any claim must be made at the hearing and any award is at the discretion of the Magistrate. A copy of the Abatement Order served on the accused will be given to you for your information.
Paying costs	If you are unsuccessful, you may be ordered to pay the defendant's costs. The costs awarded may include any reasonable costs in defending the case, including legal costs	
If you are successful but the problem continues	Return to the same Court (before 10:00) as soon as possible and apply for a "summons for failure to comply with the court order". There is no need to notify your intention to the person causing the noise.	You will be able to start a prosecution for breach of the Abatement Order from which further financial penalties are likely to be imposed if the accused is found guilty.
Further assistance	If you require assistance on court proceedings, the Clerk of the Court may advise you in person on a weekday afternoon, usually after the courts have finished proceedings.	Alternatively, it may be possible to take civil proceedings, i.e. in the County Court, for a 'private nuisance'. Again, take legal advice first.

2.0 AN EXAMPLE OF PUBLIC INFORMATION ON DEALING DIRECTLY WITH A NEIGHBOUR¹⁸⁴

DIRECT NEGOTIATION WITH A NEIGHBOUR		
Be prepared	<p>There are several ways to make it more likely that you and whoever you are in dispute with can sort things out – and some that will definitely make matters worse.</p>	<p>This section sets out some ‘do’s and don’ts’ that you may find it helpful to read through and think about before speaking or writing to the other person.</p>
Think about what you want to say	<p>Be clear in your mind about:</p> <ul style="list-style-type: none"> • what the problem is; • how it affects you; • what you want. <p>Talk to someone who is not involved, who can help to work these out. You may wish to consult a local Law Centre, Citizens Advice</p>	<p>Bureau or a solicitor; and decide whether it would be better to talk face to face or to write a letter.</p> <p>If you decide to talk face-to-face, you may find it helpful to write down what you want to say to help you order your thoughts and make sure you cover all the points you want to make.</p>
If your dispute is with a neighbour	<ul style="list-style-type: none"> • talk to them face-to-face. This is much better than pushing notes through the door or banging on the wall; • try to choose a good time to make the first approach, when neither you nor your 	<p>neighbour are busy; and</p> <ul style="list-style-type: none"> • arrange a suitable time and place, free as far as possible from distractions, so that you can talk about the problem properly.
Speaking face-to-face	<ul style="list-style-type: none"> • be calm and friendly. Say you are glad you have got together to sort things out; • tell your neighbour what the problem is, how you feel and how it affects you. Express how you feel but without blaming your neighbour. This will help you get your message across. For example, “<i>When I hear your TV after 11.30 p.m. I can’t get to sleep and I get angry</i>” is much 	<p>better than “<i>You’re very inconsiderate with your loud TV, keeping me awake all night</i>”; and</p> <ul style="list-style-type: none"> • listen to what your neighbour has to say in return: they have a point of view, even if you don’t agree with it. By listening as well as talking, you help to build a good atmosphere. Problems are often solved when people feel they have been listened to.

¹⁸⁴ Based on information contained in a fact sheet produced by Broadcasting Support Services to accompany the Channel 4 programme *Cutting Edge: Neighbours’ Quarrels*, original source: Resolving Disputes Without Going to Court – Scottish Courts Administration, August 1996



Trying to solve the problem	<ul style="list-style-type: none"> • look for common ground. Even agreeing to differ is a start; • make sure that you bring all the issues into the open. Work on the easier issues first; • separate the problem from the person. Approach this as if you and your neighbour are getting together to solve a common problem. Two heads are better than one: 	<ul style="list-style-type: none"> • be open to your neighbour’s suggestion; • try to find a co-operative solution in which both you and your neighbour participate; • look at all the options before picking the best one for you both; and • if you are unable to talk things through amicably with your neighbour, you may wish to try a community mediation service.
When you reach agreement	<ul style="list-style-type: none"> • make sure you know who has agreed to do what, and by when. It may be a good idea to write this down, and both sign it and keep a copy. 	<ul style="list-style-type: none"> • agree a date to check how your agreement is working out • agree how you will let each other know about any future problems.
Don’t	<ul style="list-style-type: none"> • interrupt, shout or verbally abuse • assume others have the same values as you do • assume people are doing things just to annoy you • imagine your neighbours know what is really bothering you if you have never told them • retaliate: it will make things worse and put 	<ul style="list-style-type: none"> • you in the wrong • argue about exactly who did what – concentrate on what you want to happen in the future • bring up things which have nothing to do with the present problem • agree to solutions you think are unfair, just for a quiet life.
<p>These tips assume there is no threatening behaviour or danger of physical violence. If there is, you should go to the police.</p>		

Note 12: Acceptable Behaviour Contracts (ABCs)¹⁸⁵



Anti-social Behaviour Team Acceptable Behaviour Contracts

1.0 INTRODUCTION

- 1.1 Anti-social behaviour on social housing estates can cause neighbouring tenants severe distress and have a detrimental effect on their quality of life. Traditionally it has been a problem that the police have not prioritised and it has been difficult for social landlords to tackle in any depth.

2.0 WHAT ARE ABCs?

- 2.1 Pioneered by the Islington Crime Reduction Partnership, Acceptable Behaviour Contracts, or ABCs are a multi-agency approach to tackle anti-social behaviour primarily caused by young people. Aimed at 10-18 year olds, with Parental Control Agreements for the under-10s, they address the type of behaviour that can really affect the quality of life for many local residents. ABCs aim to:

- stop the behaviour rather than punish the offender; and
- encourage the young person to take responsibility for their actions.

- 2.2 The young person and their parent(s) or guardian are invited to agree with both police and the housing provider what behaviour is and isn't acceptable. They are then asked to sign a contract to that effect, which is monitored for an initial period of 6 months.

3.0 HOW DO ABCs WORK?

- 3.1 An ABC is not a legal contract but a voluntary commitment by the young person to curb their behaviour. The contracts work by highlighting the link between the young person's behaviour and their family's housing. The implications for a young person's whole family encourage them to take the contract seriously, by using the ultimate sanction of eviction if the contracts are breached.

Effectiveness

- 3.2 There are many advantages to ABCs:
- parents are encouraged to take more responsibility for the behaviour of their child, as the threat to their own tenancy is made apparent;
 - they enable police and housing officers to better monitor problems as they occur, reminding the young person of their contract obligations throughout the monitoring period and strengthening their position if legal action becomes necessary;
 - they are confidential. This helps alleviate the risk of malicious complaints about a young person 'under contract' and encourages the youth to trust the scheme;
 - for Social Landlords they can prove that other methods have been tried prior to resorting to a possession order;
 - ABCs are flexible – each contract is different. They can be tailor-made to include 'positive' clauses; joining a football league for example;
 - because the youth service is involved, the young person has an element of support, which can extend throughout the monitoring period; and
 - they create a 'second chance' for the young person.
- 3.3 The scheme in Kensington & Chelsea has closely involved the Youth Service. A full time Youth Worker was appointed to support Young People 'under contract'.
- 3.4 Anecdotal evidence suggests that the ABCs already in place are having a positive effect on young people's behaviour and a team was created to co-ordinate the project across Kensington & Chelsea. Based in the Community Safety Team, the team aims to be a focus point for initiatives to deal with anti-social behaviour across the borough's estates.

¹⁸⁵ Extracted from a joint Royal Borough of Kensington & Chelsea/Metropolitan Police document on Acceptable Behaviour Contracts

Note 13: Dealing with persons with mental disorder

1.0 INTRODUCTION

- 1.1 There is no specific source of guidance on recognising and dealing with noise issues presented by people in mental ill-health, however, this Note seeks:
- to draw on several different sources of advice and good practice by local authorities;
 - to encourage appropriate liaison between different agencies;
 - to ensure the special considerations that may be necessary for such people are met and understood.
- 1.2 Mental ill-health in one of its many varied forms is thought to affect at least one in six of the population at some time in their lives and a proportion of people both who cause or suffer from noise nuisance may do so as a result of mental ill-health. This section concentrates on the special considerations, including the legal considerations, which apply to people who cause noise nuisance and are diagnosed, labelled or treated as being in mental ill-health, including those with developmental or age-related problems but excluding those whose behaviour results only from alcohol or other drug abuse.

2.0 PRINCIPLES

- 2.1 An authority's enforcement policy should contain specific policies and arrangements for dealing with people with mental illness nevertheless a balance still has to be struck between the special needs of people who are mentally disordered and the need to protect the amenity and quality of life of their neighbours. Recognising that a noise nuisance case may be part of a wider social and health problem, remedies other than abatement notices, etc., including alternative legal remedies, may be available to secure a better and longer lasting solution.
- 2.2 For broader reasons, environmental health departments should develop partnerships and liaise closely with their own social services and housing departments, and external agencies such as the police, health services, Community Psychiatric Nurses and other organisations involved in the care and treatment of people who are mentally ill. Legal enforcement action

should be used as a tool of last resort and new and innovative steps should be developed for dealing with mentally ill people who cause noise nuisance.

- 2.3 Based on experience in similar contexts, both an holistic and an integrated approach is recommended but the CIEH does not believe that people should be prosecuted for the consequences of mental illness unless all other remedies have been exhausted and that the offence is so serious that a prosecution would be in the public interest and would meet the tests set out in the Code for Crown Prosecutors.
- 2.4 Noise nuisance cases should be handled sensitively if the person responsible for causing the noise nuisance is known to be mentally ill, not least for reasons of officer safety. The person's mental state must be taken into consideration and advice sought from mental health professionals on how to deal with such persons. The person's friends, relatives and other agencies should be involved and consulted as far as possible to achieve a long lasting resolution of the noise nuisance. The agencies may include:
- social services departments;
 - general practitioners;
 - community psychiatric services; and, possibly,
 - other agencies involved in the care and treatment of mentally ill people such as MIND and local mental health NGOs.
- 2.5 The relevant authorities should be notified if a person exhibits apparent serious mental disorder because the person may need treatment, however, referral to other agencies should not be seen as the end of environmental health involvement with a case involving a mentally disordered person. The environmental health department should liaise with other agencies to secure a lasting resolution which strikes a balance between the needs of the mentally disordered person and the need to prevent others suffering statutory noise nuisance. The progress of the case should be monitored and liaison with other agencies involved should be regularly reviewed. If the partnership with other agencies is unable to secure resolution of the nuisance, however, noise enforcement action may have to be considered.

3.0 SUGGESTED PROCEDURE FOR DEALING WITH MENTALLY-ILL PERSONS RESPONSIBLE FOR NOISE NUISANCES

3.1 It is not usually until a statutory nuisance has been established and officers approach the person responsible for causing the nuisance that they may be suspected as being mentally unwell. If a person responsible for a noise nuisance is believed to be mentally ill, an abatement notice may be served in accordance with usual enforcement policies, however, the opportunity to defer will usually be taken and special arrangements may be necessary to explain the requirements of the notice. A visit should be carried out and the person should be given advice about the steps that should be followed to comply with the notice. Where appropriate, the environmental health department should liaise with social services and the community psychiatric services before the notice is served, as their involvement may:

- result in the noise problem being resolved;
- enable the noise-maker to more fully understand the consequences of their actions; and
- result in seriously ill persons accessing effective treatment.

3.2 Liaison with social services and the housing officer (if the ill person is a tenant of the council or registered social landlord) is important throughout the case. Upon initial suspicion of a person being mentally ill, both these agencies need to be notified of environmental health involvement with the person. Social services may be able to provide assistance by explaining to the person the meaning of a notice or warning letter and can clarify the nature of the mental illness so that an action plan for resolving the problem can be tailored to the needs of both the noise-maker and the noise victim.

If upon contacting social services the person who is believed to be mentally ill is not known to them, a referral can be made for the person to be assessed by social services. If environmental health staff become aware that there is a risk of the mentally ill person causing harm to themselves or others, the Emergency Duty Social Worker and/or and

3.3 psychiatric crisis teams need(s) to be contacted immediately. In extreme cases of imminent risk of serious self-injury or injury to others the police should be contacted straight away.

4.0 SEIZURE OF NOISE-MAKING EQUIPMENT

4.1 Seizure of noise-making equipment may be a short-term solution to a contravention of an abatement notice. If seizure does become necessary, it is advisable to plan the seizure with the police in advance and to inform social services and psychiatric services of the need for seizure and invite them to be present at the time. The effect of the seizure on the person needs to be considered and the advice of mental health professionals sought. If the mentally ill person is a council or registered social landlord tenant, the housing department or landlord may be able to provide door keys if necessary.

5.0 COMPLAINANTS WITH MENTAL HEALTH PROBLEMS

5.1 Though it might sometimes be claimed, there is actually little evidence that environmental noise is a direct cause of mental ill-health. Some forms of mental ill-health are nonetheless associated with increased noise sensitivity or even the imagining of noises which may be blamed on neighbours or other sources. The evaluation of noise nuisance must, however, be based upon an objective test and consequently any special sensitivities of the complainant due to mental illness cannot be catered for. Social isolation too may lead people to complain unjustifiably about noise, among other things, as a way of gaining attention.

5.2 Under these circumstances, it would be appropriate to enlist the support of the specialist agencies, as described above, in an attempt to achieve a degree of amelioration for the complainant. It should be emphasised however, that mentally ill people do suffer from genuine noise nuisances; officers should avoid the possibility of stereotyping and bearing in mind the Disability Discrimination Act 1995, remember that their complaints should be investigated appropriately.

Note 14: Dealing with planning applications¹⁸⁶

1.0 INTRODUCTION

- 1.1 This guidance applies to all planning applications under the Town and Country Planning Act 1990 upon which comments are sought from the environmental health department (or equivalent). This includes the approval of details for planning permissions that have already been given.
- 1.2 When a planning application is referred to the environmental health department, the field officer to whom the case is allocated will examine the proposal and, if necessary, visit the site to identify any aspects of it that give rise to concern on the grounds of noise or other environmental nuisance. If there is any doubt about who should be commenting on a particular aspect, the lead officer should take responsibility and comment. It is better to have comments duplicated rather than comments omitted.

2.0 MATTERS FOR CONSIDERATION

- 2.1 It is first necessary to consider the type of application. An outline application is generally seeking approval of the principle of the development. If this is granted, a further application will be necessary for the details to be approved whereas a full application will include all the details that the applicant feels are necessary to allow the council to grant the permission. In addition, some applications are simply to approve details that were not submitted at the previous application or required as a condition of a previous application.
- 2.2 Some applications are for new construction. Others are for a new or additional use for an existing building. Any conditions will be limited to the proposal: an existing continuing use cannot be affected by the new application.
- 2.3 Matters which should be considered when deciding how to respond to the application include, but are not limited to:

- noise or vibration from operation of the proposed development;
- noise or vibration from fixed plant (e.g. ventilation systems);
- sound insulation;
- noise incidental to the proposed development (e.g. because of increased traffic); and
- noise from external sources affecting the proposed development.

2.4 If it appears to the case officer that an external agency or other department has not been consulted but should have been, the referring planning officer should be asked to ensure that they are consulted as soon as possible.

2.5 If permission is granted, the use that is approved will normally cover not only the buildings but also the open areas of the site. If this is not appropriate, it can be dealt with by conditions and 'informatives'. If permission is granted, the use will normally also include anything in the same Use Class (e.g. permission for light industrial use will allow the property to be used for any office or light industry, not just the immediate use the applicant is considering). Again, if this is not appropriate, it can be restricted by conditions and/or informatives.

3.0 FURTHER INFORMATION

- 3.1 If the officer requires further information to be able to consider the application properly this can be obtained in three ways:
- ask the planning officer to obtain it from the applicant;
 - write to or telephone the applicant directly; and
 - request a condition that requires details to be submitted and approved before the development starts. This would normally be appropriate where it is clear that any noise concerns can be met but the applicant has not indicated within the application how this will be achieved (e.g. details of a sound insulation scheme might be required).

¹⁸⁶ Extracted and amended from London Borough of Southwark Noise Team Work Instructions

4.0 GOVERNMENT AND OTHER GUIDANCE

4.1 There is some government and British Standards Institution guidance on noise level criteria, see also Appendix 2. This includes:

- **PPG 24** – this government document details how proposed housing developments that will be affected by existing noise sources should be considered and points to relevant advice on other planning and noise issues;
- **BS 4142** – this gives a method of assessing whether complaints of noise are likely with regard to any new industrial development that may affect residential areas;
- **BS 8233** – this gives guidance on design criteria and limits for steady noise in different situations and some limited advice on designing to minimise noise intrusion.

5.0 POSSIBLE ACTIONS

5.1 Provided the environmental health department has had sufficient information, there are three possible outcomes from their examination of a proposal:

- if the proposed development raises no immediate concerns, the officer should comment to that effect; or
- if the development is one that the officer considers is totally *unsuitable even if conditions are imposed*, the planning department should be recommended to refuse permission. They should be informed of the reason why refusal is recommended; or
- if there are concerns that can be overcome, the planning department should be recommended to impose particular conditions or include specific ‘informatives’ on the consent if granted.

6.0 USE OF PLANNING CONDITIONS

6.1 Any planning conditions may be imposed provided that they pass the six tests laid down in DoE Circular 11/95: The Use of Conditions in Planning Permission. The tests require the conditions to be:

- necessary;
- relevant to planning;
- relevant to the development;
- enforceable;
- precise; and
- reasonable.

6.2 It should be noted that it is unreasonable to impose a condition that seeks to control activities that are not under the control of the applicant. If a condition is imposed which cannot be met, it does not nullify the permission but the council would have to accept the best compromise.

6.3 Any condition must have a reason for its imposition. If a standard condition is used, there is a standard reason associated with it. If an ad hoc condition is used, a reason should accompany it.

6.4 Types of condition that may be imposed include the following:

- restricting hours of operation;
- restricting noise emissions;
- defining standards of sound insulation against impact and airborne noise from the development and against external noise affecting the development;
- requiring further details or samples of materials to be submitted and approved before work commences (or before the building is occupied, if that is more appropriate);
- restricting operations to within the buildings;
- requiring the development, or some aspect of it, to be carried out according to the submitted plans;
- requiring that certain types of machinery shall or shall not be used;
- requiring a certain type of construction shall be used; and
- requiring operations on site to be undertaken in a certain way.

6.5 In some circumstances, it may be appropriate to impose conditions that restrict the applicant’s rights under planning legislation. Conditions such as these are exceptional measures and should not be suggested without discussion with the planning officer. These conditions will include:

- limiting future changes within the same use class;
- limiting the time for which a permission is valid;
- limiting the permission to the applicant personally; and
- specifying that future developments that would be permitted development shall require planning permission.

- 6.6 PPS 23 advises that planning conditions should not be used in place of controls that can be applied under pollution control legislation. It is suggested that this refers to prospective controls and thus, for example, unless there is a planning reason for doing so, construction noise should not be controlled using conditions, rather the provisions of the Control of Pollution Act 1974 should be applied.

7.0 USE OF INFORMATIVES

- 7.1 Informatives can be attached to a planning permission where a formal condition would not be appropriate. They inform the applicant that he may be required to do certain things under other legislation. An example might be an informative that a developer should apply for a section 61 consent in respect of construction noise.

8.0 RECORDS

- 8.1 Records to be kept should be defined in a documented procedure (e.g. copies of planning applications and comments will be kept for two years after the decision on the application and plans accompanying an application will be kept for six months from the date when final comments are returned to the planning department).

9.0 VERIFICATION

- 9.1 Adherence to planning conditions relating to noise should be checked after the development is completed and it is in use. The absence of complaints should not be taken to indicate compliance. Apparent breaches of conditions should be reported in writing to the planning department without delay so that appropriate enforcement action can be considered.

Note 15: Liaison on licensed premises¹⁸⁷

1.0 INTRODUCTION

- 1.1 District councils are licensing authorities under the Licensing Act 2003 for activities involving the sale and supply of alcohol and the provision of regulated entertainment or of late night refreshment. As environmental health authorities, they have an additional role as 'responsible authorities', i.e. responsible for making representations, based on the four licensing objectives, to the licensing authority. This guidance applies to all consultations in connection with the Act.
- 1.2 It is the responsibility of the lead officer to whom an application is allocated to ensure that comments and observations are returned to the Licensing Unit by the required date and that details of visits, etc. are recorded on the premises file.

2.0 PROCEDURE

- 2.1 When a consultation is received from the Licensing Unit, the principal officer shall allocate the consultation to an enforcement officer or, in a contentious case, may choose to deal with it himself.
- 2.2 The first step is to examine the application, the operating schedule and any letters of objection. A visit to the premises and surrounding area should be made to identify structural weaknesses or related issues which may permit sound to escape and to note the proximity and nature of noise sensitive premises.
- 2.3 The case/lead officer should check the file for previous complaints, particularly within the last 12 months, and make comment on any complaints found, indicating any noise observations. The case/lead officer should check if the premises currently holds a licence or provides unlicensed entertainment and, if so, arrange for a visit whilst entertainment is in progress.

3.0 RESPONSES

- 3.1 The response to the consultation may take one of four forms as follows:
- i) **Formally object to the application** – Such a stance would normally be taken if, in the officer's considered opinion, the premises could not operate without causing undue disturbance to local residents, even if sound insulation works are undertaken. If opposition is to be lodged, then the response should state the grounds for suggested refusal. The response will be copied by the Licensing Unit to the applicant and will be registered and dealt with as a formal objection. The wording of the opposition should be in the form of a recommendation to the panel/sub-committee.
 - ii) **Not to oppose the application but to require sound insulation works to be carried out at the premises** – in this case, the response should include a copy of a schedule of required works. The Licensing Unit will forward a copy of the schedule to the applicant. The schedule may be incorporated into a larger schedule including other works. In the event that a licence is granted, the licence will be initially constrained by an appropriate condition prohibiting the provision of licensable public entertainments until such time that all specified works have been carried out and have been checked by the relevant officer(s) as being satisfactorily completed.
 - iii) **Not to oppose the application but the licence, if granted, will require special conditions to be attached** – the council has wide powers to include special licence conditions but the inclusion of conditions may be tested by the applicant's appeal rights to the court. Therefore, each special licence condition must be:
 - fair (i.e. have a valid reason for its imposition; be of direct relevance to the operation of the licensed area; make requirements that the licensee can control);
 - enforceable (i.e. officers must be able to

¹⁸⁷ Extracted and amended from London Borough of Southwark Noise Team work instructions

substantiate that the requirement is or is not met); and

- relevant to one or other of the licensing objectives (i.e. officers must not try to introduce matters that should rightly be dealt with under legislation specific to those matters. Compliance with a noise abatement notice should be enforced via the Environmental Protection Act 1990 and not as a licence condition).

iv) **Content for the application to be granted**

If no response is received by the Licensing Unit by the end of the specified consultation period, it will be assumed that the department has no observations or comments to make.

4.0 CONSIDERATIONS

4.1 The following matters will need to be considered in making the assessment:

- the type of entertainment to be provided;
- an electronic sound cut-out or compressor/limiter device will be required for most premises in close proximity to residential or noise sensitive premises;
- whether the music is to be played through an in-house amplification system or a system is brought in on entertainment nights, the appropriate type of sound cut-out or compressor/limiter device that may be required;
- the doors, lobbies and acoustic seals. Doors that open inwards may be required to be locked open for use as a fire exit when the premises is in use under the licence. Assessment should be made as if the front doors are in use, i.e. the outer doors open, to assess the noise escape when patrons are entering or leaving the premises;
- the windows/skylights and any acoustic double-glazing may require to be closed to prevent the escape of noise, although adequate ventilation must be maintained;
- ventilation fans/ducts communicating with the exterior of the building;
- the use of rooms above the premises (are they residential and are they associated with the use of the premises e.g. staff quarters?);
- any other likely sources of noise break-out,

play loud music through the ‘house system’ if possible and listen outside residential premises or in objectors’ premises;

- flanking/structure-borne noise transmission to adjacent premises;
- the hours of use – the later they extend the more intrusive noise will be to nearby residents;
- large venues such as a night-club or venues that pose complex sound containment problems may be required to employ an acoustic engineer to prepare a scheme to make the premises suitable for entertainment purposes; and
- smaller venues that require extensive insulation works may be considered as unsuitable for the purposes of entertainment.

5.0 CONDITIONS

5.1 The comments to the Licensing Unit should include suggested noise conditions, separated into works conditions that are discharged once completed and management conditions that should remain in force as part of the entertainment licence.

5.2 Suggested works conditions may include:

- a sound limiting/cut out device shall be installed and the maximum sound level set and secured to the satisfaction of the Noise Team. *Note: Include a management condition to require that the device is used;*
- a device shall be fitted to (x) doors/fire doors so that a warning light activates when the door is opened and is visible to management;
- a self-closing device shall be fitted to (x) doors/fire doors (in accordance with BS 6459 Part 1 1984);
- acoustic door seals shall be fitted to (x) doors and maintained so as to minimise the escape of sound from the premises;
- sealed acoustic/double/secondary glazing shall be fitted to (x) windows/skylight to minimise sound escape from the premises.
- install an acoustic lobby to (x) entrance to minimise sound escape from the premises, ensuring that all doors open in the direction of escape in case of fire;

- doors/fire doors shall be connected to the sound limiting/cut-out device so that when the door is opened during a performance the device is activated. *This can be used where the building of a lobby is not practicable;*
- works shall be carried out to sound insulate/attenuate the (x) ventilation/extract system so as to prevent sound break-out from the premises. *Note: Noise can escape through an air intake just as easily as through an extract.*

5.3 Suggested management conditions may include:

- all audio and amplified musical equipment on the premises shall be played through the approved sound limiting/cut-out device and maintained at the approved level set with Noise Team Officers;
- all windows shall be kept shut whilst entertainment is being provided;
- all external doors shall be kept closed, allowing access and egress, whilst entertainment is being provided;
- all external fire doors shall be kept closed, allowing emergency egress, whilst entertainment is being provided;
- there shall be no movement of equipment associated with the entertainment from the premises between the hours of 24:00 and 08:00;
- responsible persons appropriately trained in entertainment venue safety and security shall be employed at all times whilst the entertainment is being provided and shall take all reasonable steps to ensure that patrons will not cause a nuisance to the neighbourhood;
- announcements shall be made and notices provided to request that patrons leave in a quiet and orderly manner;
- no parts of the exterior, including the garden/patio, shall be used for the purposes of entertainment;
- the beer garden shall not be used whilst entertainment is being provided within the premises.

6.0 REPORTS

6.1 A typical report would consist of:

- a description of the premises;
- a description of the vicinity including proximity to noise sensitive premises;
- history of the premises, complaints made, visits made, whether noise nuisance was witnessed;
- problems with the premises, e.g. areas of likely noise escape from poor glazing;
- works conditions; and
- management conditions.

7.0 REVIEW

7.1 Responsible authorities (but not licensing authorities) may apply for a review of a premises licence, based on one or more of the licensing objectives.

Note 16: Construction site noise

1.0 SCOPE

- 1.1 To define how noise from construction sites should be controlled. This guidance covers all noise from all construction sites. Only noise (including vibration) is covered. Any action concerning related dust, fumes or any other environmental problems must be dealt with as statutory nuisances under the Environmental Protection Act 1990.

2.0 DEFINITIONS

- 2.1 A construction site is defined as a site where any works of the following descriptions are taking place:
- the erection, construction, alteration, repair or maintenance of buildings, structures or roads; or
 - breaking up, opening or boring under any road or adjacent land in connection with the construction, inspection, maintenance or removal of works; or
 - demolition or dredging work; or
 - any work of engineering construction (whether or not also comprised in the above).
- 2.2 Note that this definition includes works undertaken by statutory undertakers.

3.0 PROCESS

- 3.1 Construction site noise comes to the attention of the council typically either as an application for a prior consent (section 61 Control of Pollution Act 1974) or as a result of a public complaint.

Action under section 60 of the Control of Pollution Act

- 3.2 Officers should first check if there is an existing notice under section 60 or a prior consent under section 61. If there is a section 60 notice or section 61 consent and it is alleged that the conditions may have been breached, the officer should visit to investigate. If the officer who served the original notice or issued the consent is available, it may be advisable to involve that officer.

- 3.3 If a breach of conditions is substantiated, the investigating officer should:

- attempt to have the noise stopped or reduced; and
- consider whether the offender should be prosecuted.

- 3.4 If there is no notice or consent in place and the noise is occurring at the time, the officer should visit to assess the scale of the problem. The officer should then consider whether service of a notice under section 60 is justified. If the noise is not occurring at the time, the complainant should be advised to telephone when the noise recurs. In some circumstances, it may be appropriate to arrange for a planned visit when the noise is most likely to arise. Following the visit, the investigating officer should then decide what action is to be taken.

- 3.5 If the site is being operated in a way that produces any unnecessary or excessive noise, a section 60 notice should be served imposing such conditions as are necessary to make the noise acceptable (in some cases, conditions will be quite specific). No action can reasonably be taken if the investigating officer believes that there are no further steps that can be taken to reduce the noise (e.g. if the site is being operated at reasonable times and other 'best practicable means' have been employed but there is still a noise) but the situation should continue to be monitored.

- 3.6 Before serving a section 60 notice, the officer should discuss the matter with the person responsible. The extent of the discussion will depend on the circumstances of each case. For example, if the likely requirement of a notice is to limit unnecessary out-of-hours working, discussion with the workers on site may suffice; if the requirement is to use a different method of construction, it will be necessary to discuss the matter with a senior engineer.

- 3.7 The investigating officer must have regard to:

- the provisions of any code of practice issued under the Control of Pollution Act 1974, i.e. BS 5228;

- the need for ensuring the ‘best practicable means’ are employed to minimise noise;
- before specifying any particular methods or plant or machinery, the desirability of specifying other methods or machinery which would be substantially as effective in minimising the noise and more acceptable to the recipient of the notice; and
- the need to protect any persons in the locality from the effects of noise.

Application under section 61

3.8 Section 61 of the Control of Pollution Act 1974 provides a procedure whereby a developer or contractor may apply to the local authority for prior consent for a programme of works, to which section 60 applies. The key information that needs to be included within a consent application includes the following:

- a full description of the works;
- a robust rationale/justification for any works which need to be undertaken outside of ‘normal’ working hours;
- a method statement in which working practices and any assumptions are expressly stated;
- a description of the type of plant and noise level specifications of relevant equipment;
- precise details of the proposed ‘best practicable means’ controls for noise;
- the location of noise sensitive properties and proposed noise monitoring positions;
- an accurate set of predicted noise levels; and
- site contact details.

Note 17: Dealing with nuisance from vehicle alarms¹⁸⁸

1.0 SCOPE

- 1.1 To detail the method for investigating statutory nuisance arising the sounding of car alarms in the street.
- 1.2 Action is normally taken under the Environmental Protection Act 1990 as amended by the Noise and Statutory Nuisances Act 1993. In addition, the Road Vehicles (Construction and Use) Regulations 1986 require that a five minute cut-out device is fitted to all vehicle alarms. The police and the Vehicle and Operator Services Agency (VOSA) enforce this legislation and may prosecute if an alarm does not comply.

2.0 DEFINITIONS

Equipment	includes musical instrument.
Noise	includes vibration.
Person responsible	<ul style="list-style-type: none"> • in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable; • in relation to a vehicle, includes the person in whose name the vehicle is for the time being registered under the Vehicle (Excise) Act 1971 and any other person who is for the time being the driver of the vehicle; • in relation to machinery or equipment, includes any person who is for the time being the operator of the machinery or equipment.
Street	a highway and any other road, footway, square or court that is for the time being open to the public.
Works in default	works carried out by the council to abate a noise nuisance.

3.0 PROCEDURE FOR DEALING WITH COMPLAINTS ABOUT VEHICLE ALARMS

Initial enquiries

- 3.1 Where a complaint is received of a misfiring vehicle alarm, the receiving officer will request the following information from the person reporting the disturbance:
- vehicle make, model and colour;
 - registration number;
 - length of time the alarm has been sounding (longer than five minutes); and
 - whether the car has been vandalised or forcibly entered and if so, whether the police have been notified and allowed to deal with the attempted theft.

Service of notice

- 3.2 If the alarm has been sounding for over five minutes the investigating officer, if possible, shall arrange to visit to establish if there is a statutory nuisance. Where a noise nuisance is established and the 'person responsible' for the vehicle is found, a standard section 80 notice shall be served on the person responsible, by hand. The notice must specify the date and time that it was served.
- 3.3 Where a nuisance is established and the 'person responsible' is not found, a section 80 notice (pertaining to an unattended vehicle), shall be served addressed to the 'person responsible' by affixing it in a self-adhesive, waterproof sleeve to the unattended vehicle. Usually it will be attached to the front windscreen. Again the notice must be time and date stamped.
- 3.4 Note that there is a provision in the notice to allow 'additional time'. This concession is to be used where the owner returns to the vehicle within the hour of service and requires extra time to obtain the keys to the vehicle or contact someone else to silence the alarm. The amount of extra time to be allowed is at the discretion of the officers attending the scene.

¹⁸⁸ Extracted and Amended from London Borough of Southwark Noise Team work instructions

Attempting to locate the owner

- 3.5 The officer must attempt to locate the owner/person responsible for the vehicle within the hour following service of the notice, by making all reasonable enquiries including house-to-house visits of nearby properties to ask if the occupiers have seen the vehicle before, know of the owner's whereabouts or possible contact point. If the registered keeper is not available and the nuisance persists, the officer may, following investigations and depending on the time of day and the severity of the nuisance, consider that works to silence the alarm are necessary. No warrant is required to enter the vehicle and there is no requirement that police be in attendance.

Effecting entry

- 3.6 After one hour following the service of the notice, if the owner has not come forward, the car alarm specialist should be contacted. Before entry is attempted, the officer must note on paper the general internal and external condition of the vehicle and, if able, take photographs of any damage to bodywork, tyres, aerials or locks; scratches to paintwork; obvious items left inside the car and visible to the public, etc.
- 3.7 The alarm specialist (locksmith) should be able to enter the vehicle and disconnect the alarm with little damage to the vehicle itself, however, it is damaged or the locks are required to be changed, a detailed file note must be made. Items in the vehicle should not be disturbed unnecessarily. In some instances the alarm may be easily re-set, however, this is usually not the case.
- 3.8 The attending officer should leave an envelope inside the vehicle containing the original notice and a letter of explanation of what works have been carried out and for what purpose; the officer contact name and number and a statement that the cost of the works will be reclaimed from the registered keeper of the vehicle. Copies of the notice and letter should be retained for the office file.

On completion

- 3.9 On completion of the works in default, the vehicle must be re-secured. If the car is parked in an insecure place, or cannot be re-secured or the officer has reason to believe that the vehicle may be tampered with after leaving the site, the car must be towed away to a car pound for collection by the owner.
- 3.10 If the vehicle is removed from site, the police must be informed of the pound address and the council's contact person and telephone number. The police will amend the DVLA records accordingly so that if the owner returns to find the vehicle removed, he or she can ascertain the vehicle's whereabouts from the DVLA records when contacting the police to report the 'theft'.
- 3.11 Officers of the administration team will ensure that the specialist's (locksmith) account is paid and raise an invoice for the registered keeper.
- 3.12 If works are not initiated to silence the alarm, the section 80 notice stands and an offence is committed in its breach. The case/lead officer, on receipt of the DVLA details, should decide in accordance with the enforcement policy whether to prosecute or to issue a warning.

Note 18: Dealing with buildings’ intruder alarms¹⁸⁹

1.0 SCOPE

- 1.1 Dealing with the prolonged sounding of a premises alarm under the Environmental Protection Act 1990 and/or the Clean Neighbourhoods and Environment Act 2005.

2.0 DEFINITIONS

Service request	A request for information or advice, or a request for assistance through direct action.
Complainant	Person making the service request.
Receiving officer	Officer initially receiving the service request.
Investigating officer	The officer assigned to deal with a service request.
Key-holder	A nominated person, whose details have been notified to the local authority, and who has agreed to be contacted and attend the burglar alarm location to de-activate if problems are identified.
Authorisation	Field officer’s identity card and authority card outlining their powers under the relevant legislation.

3.0 PROCESS

Initial enquiries

- 3.1 When a service request is received about the sounding of a premises alarm, an authorised officer should interrogate the computer system for details of any registered key-holders.
- 3.2 On being passed the service request, the investigating officer should contact the complainant to check certain details, for example:
- clarification of the alarmed address;
 - whether the premises are commercial, industrial or residential and if possible the owner/occupier/company details;

- how long the alarm has been sounding and previous history, if any;
- the whereabouts of the owners or occupiers if known, i.e. occupiers on holiday; premises closed; usual hours of opening or operation and expected return of the occupiers;
- whether the police have been contacted or have investigated the alarm; and
- whether there are signs of a break-in.

3.3 The complainant should be given an outline of the process of the investigation and probable time required to resolve the matter.

3.4 If the details of the premises are known, the investigating officers should contact the local police station to report the alarm and enquire whether police are investigating.

3.5 Where details of a key-holder, including a key-holding company, have been notified to the local authority under Part 7, Chapter 1 of the Clean Neighbourhoods and Environment Act 2005 (i.e. in an ‘alarm notification area’), the investigating officer will attempt to contact them and request their attendance to disconnect or re-set the alarm.

Effecting entry

3.6 Authorised officers of the local authority have powers of entry under the Clean Neighbourhoods and Environment Act 2005¹⁹⁰ where:

- the alarm has been sounding continuously for more than twenty minutes or intermittently for more than one hour;
- the sounding of the alarm is likely to give persons living or working in the vicinity of the premises reasonable cause for annoyance; however
- if the premises are in an alarm notification area, reasonable steps must have been taken to get the nominated key-holder to silence the alarm.

There is no requirement for a warrant if the premises can be entered without the use of

¹⁸⁹ Extracted and amended from London Borough of Southwark work instruction

¹⁹⁰ Guidance on the Clean Neighbourhoods and Environment Act 2005 is available at: www.defra.gov.uk/environment/localenv/index.htm

force. This will enable an authorised officer to disconnect an externally mounted alarm, for example.

- 3.7 Alternatively, where a statutory nuisance is witnessed, the officer shall serve a notice under section 80 of the Environmental Protection Act 1990 on 'The Occupier' by posting the notice through the letterbox, affixing the notice to the outside of the premises or some other accepted manner of service. A copy of the notice shall be retained for the file. If, following expiry of the notice, the alarm continues to sound and there is neither any sign or likelihood of the occupier returning to the property nor any record of nominated key-holders, works in default may be considered.
- 3.8 Where the nuisance continues in breach of a notice and in any event force is needed to enter the premises, a justice of the peace may issue a warrant, provided the conditions above are met. An authorised person issued with a warrant may take with him such other persons as are necessary. Once a warrant has been obtained the officers should revisit the site to confirm that the alarm is still sounding before contacting a specialist (locksmith) to attend the site.

Silencing the alarm

- 3.9 When commissioning a specialist (locksmith) to carry out the works in default, the following details should be passed on to the company:
- specification of the alarm including make, if available;
 - whether the external and/or internal sounders are activated;
 - estimated height above ground of the external sounder to give approximate length of ladder required; and
 - access to property – any visible difficulties with access to the premises, e.g. gates, walls; a description of the possible entry points into the building and visible security measures; type of entrance door; type and quantity of locks to be picked.

- 3.10 The specialist (locksmith) should be asked for an estimated time of arrival and to contact the investigating officers on the mobile telephone when nearing the site. The specialist (locksmith) should be told not to start works before the officer arrives on-site.

On completion

- 3.11 Once the alarm, either the external or internal sounder or both, has been silenced, an envelope containing the following shall be left inside the premises or posted through the letterbox:
- original of notice, if retrieved from the property;
 - standard letter of explanation of works in default action including the 24 hour Noise Team contact telephone number; and
 - copy of the warrant of entry.
- 3.12 Where locks to the premises have been changed, the keys shall be retained by the investigating officer and taken to the council offices for collection by the occupiers at a later stage. A discrete sticker, stating "*Please contact [council offices telephone number].*" should be placed adjacent to the lock in all cases where locks have been changed.
- 3.13 When the occupier contacts the council's offices, they should be advised that verification of residence will be required for the collection of the keys. Proper identification may include driving licence, utility bill, council tax bill. During office hours, further checks can be made to verify the occupant. Outside normal office hours, the investigating officer may need to resort to identification methods as described above. Once officers are satisfied that the occupier can provide satisfactory evidence of entitlement, they should arrange to hand over the keys. Where the investigating officer believes there to be a safety risk to him/herself when returning the keys to the occupant they should arrange for the keys to be collected from the local police station.

- 3.14 The keys should be signed-for on collection and a photocopy of the identification papers retained for the case file. If officers are not satisfied with the identification provided then they should liaise with the police or senior management for advice before releasing the keys.

4.0 FURTHER ACTION

- 4.1 Summary proceedings (or, in London, a Fixed Penalty Notice) may be considered in addition in the case of repeated mis-soundings. A sounder is potentially subject to seizure as 'equipment' used in the commission of a noise offence.
- 4.2 Action may also be taken in respect of any failure to notify the details of a nominated key-holder where the premises are in an alarm notification area.

Note 19: Poor sound insulation between dwellings

1.0 THE PROBLEM OF OLDER HOUSING

- 1.1 Many of our older houses, perhaps particularly in the inner cities and some resort towns, being too large for single family use have over the years been divided up into separate dwellings. Encouraged by the economics of the housing market, tens of thousands of such houses now exist with one or more dwellings per floor, in all tenures including social tenures. With many of these conversions preceding the relevant Building Regulations (and, unfortunately, in the case of many undertaken since), little if any care was taken to provide sound insulation between the floors. The noise of neighbours going about even mundane daily chores can be very intrusive as a result.

2.0 BAXTER'S CASE

- 2.1 The position of those affected was examined in the case of *Baxter v Camden LBC*¹⁹¹. B was a tenant of a flat created from the conversion of a house. There were separate flats above and below her. She was disturbed by the noise of the ordinary domestic activities of her neighbours penetrating into her home due to the lack of sound insulation. She claimed that her landlord council was in breach of the implied contractual covenant of quiet enjoyment and in addition that the landlord was liable at common law either for implicitly authorising the nuisance caused by the noise through letting the other flats or for letting B's flat to her in such a condition (lacking sound insulation) that a nuisance was inevitable.
- 2.2 Her claims failed in the County Court and in the Court of Appeal. The House of Lords unanimously dismissed B's further appeal to them, holding in respect of the tortious claim that the ordinary normal use of their homes by the neighbours could not, as a matter of law, constitute a nuisance at common law. Even if there were a nuisance, the landlord could not be liable for having let the

adjacent flats to those neighbours or for permitting their normal use of those flats.

The consequences

- 2.3 Contrary to some commentary on this case, however, the door has not been closed on the use of civil proceedings or those for statutory nuisance; it has merely restricted the circumstances in which such actions can be taken. In particular, the case did not rule that those making alterations to their property (such as by installing laminate flooring) are not liable to statutory nuisance proceedings and where a complaint of noise has been made to the local authority they are still required to fulfil their duties under section 79 and 80 of the Environmental Protection Act 1990. Where an occupier makes a complaint about noise following changes their neighbour has made to their premises, with the effect that normal use of the premises disrupts the complainant's enjoyment of their home, it remains possible that the noise-maker (or whoever made the changes to the property) may be responsible for a statutory nuisance.

Some alternatives ruled-out

- 2.4 The category of statutory nuisance relevant to noise intrusion between domestic dwellings is that described in section 79(1)(g) of the Environmental Protection Act 1990, i.e. "noise emitted from any premises etc". This definition is to be read to give effect to the disjunctive and so creates two limbs, either of which is sufficient to establish the statutory nuisance¹⁹². For a statutory nuisance to be established on the nuisance limb a common law nuisance is required but where the noise complained of emanates as normal domestic noise in the source dwelling it cannot, after *Baxter*, constitute a common law nuisance. It cannot therefore constitute a statutory nuisance either. At least since *R v Bristol CC ex p Everett*¹⁹³, it is clear that 'prejudicial to health', the

¹⁹¹ [1999] 45 EG 179

¹⁹² *Betts v Penge UDC* [1942] KB 154; *Salford City Council Vs McNally* [1975] 3 WLR 87

¹⁹³ [1998] 1 WLR 92

alternative limb of the definition, means likely to cause disease, reflecting the sanitary origins of the provision and it seems unlikely accordingly that this limb is of any application in noise nuisance cases.

- 2.5 If it might be thought, the insulation being part of the structure of the premises, that the category of statutory nuisance described in section 79(1)(a) was more appropriate, authorities should be aware that a defence to that route was provided two years after Baxter by the House of Lords in *Birmingham City Council v Oakley*¹⁹⁴ when allowing (by a 3:2 majority) the local authority's appeal against a finding that a house which was so poorly laid out that anyone using the lavatory had to wash their hands in the kitchen sink or travel through the kitchen to use a basin in the bathroom was in such a state as to be prejudicial to health. Reasoning that what was contemplated by the provision was some deterioration in the condition of the premises, not an inherent defect, the analogy with noise cases was considered by the House with Lords Hoffman and Millet expressing doubts whether the 'classic' traffic noise and inadequate insulation case *London Borough of Southwark v Ince*¹⁹⁵ was correctly decided. The discussion being obiter, however, it was not overruled. Ince was, however, finally disposed of four years later in *Vella v Lambeth LBC et al*¹⁹⁶.

3.0 CONCLUSIONS

- 3.1 It is clear, nevertheless, that abnormal or excessive noise emanating from a neighbour's dwelling can amount to a common law, and hence a statutory, nuisance. Reasonable consideration must still be shown in the use of a dwelling to one's neighbours; as was said by Lord Hoffman:

"It may be reasonable to have appliances such as television or washing machines in one's flat but unreasonable to put them

hard up against a party wall so that noise and vibrations are unnecessarily transmitted to the neighbour's premises."

- 3.2 Occupiers affected by non-deliberate noise nuisance will still be able to bring a civil claim in the County Court (for remedial works and damages) where:

- such noise transmission falls within an express terms of the tenancy;
- the noise transmission arises from disrepair within the landlord's implied repairing covenant (e.g. creaking floorboards¹⁹⁷);
- the property is a new build or conversion created since the sound insulation requirements of Part E of the Building Regulations came into force and do not comply with the same;
- sound insulation work has been carried out but this was done negligently; or
- where the noise is created maliciously.

¹⁹⁴ Reported at [2001] 1 AC 617

¹⁹⁵ Reported at (1989) 21 HLR 504 CA

¹⁹⁶ [2005] EWHC 2473 (Admin)

¹⁹⁷ *Guinan v London Borough of Enfield* (reported in Legal Action magazine June 1990 page 6)

Appendix 4: Personal safety¹⁹⁸

1.0 INTRODUCTION

- 1.1 By its very nature, environmental health work is concerned with the resolution of conflict. This can create tensions that may affect personal behaviour and create aggressive attitudes.
- 1.2 Environmental health practitioners must ensure that in their professional dealings, they are honest, even-handed, fair, considerate and helpful. 'Customer care' in such matters as written notices, letters, counter service, telephone manner and time management of a busy workload all help to ensure harmonious relations.
- 1.3 Nevertheless, safety should be a matter of concern for officers both in the public sector and private practice and research suggests that they are more likely to face aggression now than they were twenty years ago.
- 1.4 Safety is not an exclusively environmental health issue of course and they are probably no more at risk than many others who work with the public, whether in their own premises or elsewhere. Sometimes environmental health practitioners may be at risk because of the work that they do, but they can also be at risk because of the circumstances in which they work and for reasons that have nothing to do with the work itself. Safety, moreover, affects both sexes though clearly, some kinds of hazard, real or perceived, are faced by women more than men; equally, others are faced by men more than women, or both sexes equally.
- 1.5 Personal safety is a responsibility shared by the employer, the manager and the individual member of staff. This advice is addressed to all environmental health practitioners in whatever capacity they act but it is for every organisation and individual to adapt, develop and apply the advice contained in this note to their own circumstances. It is a check-list of good practice, not a rigid code to be followed inflexibly, at all times and in any particular situation, those concerned should make a

sensible judgement based on their training, the advice they have been given, and the circumstances in which they find themselves.

2.0 THE ADVICE

- 2.1 Section 2 of the Health and Safety at Work Act 1974 states:

"It shall be the duty of every employer to ensure, as far as reasonably practical, the health, safety and welfare at work of all his employees."

- 2.2 Employers should therefore ensure that proper systems are in place for the training and protection of their staff. Managers are responsible for ensuring that these systems are operated. Individuals at all levels have a responsibility to themselves and their colleagues to do what they should to ensure their own and their colleagues' safety.
- 2.3 The employer should consider whether new staff need to receive personal safety and awareness training as a part of standard induction procedures. The training needs of existing staff should also be assessed regularly and training provided to meet those needs. Such training should be given in office time. It is every bit as important to provide training for, for example, reception staff as for those who may visit sites.
- 2.4 The focus of training should be to develop inter-personal skills to help staff assess situations and respond in a way to minimise the likelihood of violence. Such training needs to involve more than merely the provision of information and should be based on the following principles:
- staff should stay calm if someone is starting to get angry; body language voice and response can help diffuse a situation. Staff should take a deep breath, keep their voice on an even keel and try to help;
 - staff should offer an angry person a range of options from which to choose – in that way he or she will find it difficult to stay angry;

¹⁹⁸ Advice produced by the Society of Environmental Health Officers (now defunct)

- staff should never be aggressive back; this is how anger can escalate into violence;
- staff should ask themselves if they are the best person to deal with the situation: getting somebody else is often helpful, particularly if the second member of staff can solve a problem which the first member of staff cannot;
- staff should never touch anyone who is angry;
- in extreme cases staff should ensure their own safety by abandoning any attempt to restrain the aggressor physically;
- only the minimum force required to contain the situation must be used (this is a legal requirement designed to prevent cases of assault arising where the aggressor becomes the victim); and
- physical restraint must be used only as a last resort in situations where other responses have failed or are inappropriate.

- 2.5 It is a good idea to have written material available for staff to take away from training and awareness sessions. Some material is currently available.
- 2.6 Safety awareness should cover safety at meetings within your own offices as well as elsewhere.
- 2.7 No member of staff should be required to attend what is expected to be a particularly hazardous visit or meeting on their own. Legitimate concerns would include matters of gender and race as well as issues specific to the task or venue.
- 2.8 It is strongly recommended that all sections, divisions, departments and offices have clear reporting procedures for cases of violence or aggression towards staff. The benefits of such a system are that files can be marked to alert other staff to cases, places or people who represent a known risk. The employer will have a better idea of the extent and nature of the problem and of the measures that need to be taken. It will also help the employer to review the safety measures already in place and to ensure that they are appropriate and effective.

2.9 Employers should ensure that they have appropriate and adequate insurance cover against any risk to their staff, for example a personal Accident /Assault Policy and a General Accident Policy covering all staff and elected members.

2.10 Safety issues should not provide grounds for discriminating unlawfully against anyone on grounds of sex or race when appointing staff and allocating responsibilities.

3.0 MEETINGS

3.1 Some particular rules to follow when arranging or attending meetings with clients or members of the public are:

- think carefully how you are going to handle potentially difficult meetings in order to reduce the likelihood of conflict;
- when going to a meeting or site visit which you think may be confrontational, discuss it with your senior officer before going;
- on entering a building or premises, make sure you know how to get out in a hurry;
- listen carefully, even to abuse. Agree if possible;
- try to keep relaxed. Don't become rooted to one spot. Move about occasionally;
- be aware of body language. Don't adopt a confrontational or aggressive posture. Turn sideways, i.e. to look at the site under discussion;
- be aware of the effect which your style of dress may have on others;
- don't even try to deal with someone who appears to be under the influence of alcohol or drugs. Make another appointment;
- never reply in kind to abuse, rudeness or threats;
- if necessary, consider postponing the meeting to cool the atmosphere;
- if you are in a room, don't block the other person's line of egress, but also make sure that you don't block your own exit. Let the other person go into the room first, and make sure you have a clear line of escape;
- if the other person produces a weapon of any kind or threatens to use violence, leave at once. Don't try to talk to anyone into putting down a weapon;

- producing a weapon or threatening violence are both breaches of the peace and should be reported to the Police as well as your employer;
- report all cases of aggression and violence, actual or threatened, to your employer.

4.0 ARRANGING SITE VISITS

- 4.1 When meeting someone for the first time, if possible arrange the meeting in the office. If this is not possible, ask for a telephone number and ring back to confirm that arrangement. Make sure you know as much as possible about the identity of the person you are going to see.
- 4.2 Make sure that the phone number is written down with the details of the appointment in your diary or other designated book. This can help to track down the details and confirm that the caller is genuine.
- 4.3 Ensure that trips out on site, whether or not visiting a member of the public, are recorded clearly in the office in a designated book. Ensure that it is someone's responsibility in the section to check the diary every day.
- 4.4 Make proper use of your desk diary. Enter legibly the names of individuals to be visited, the venues of the meetings, the time and if possible a telephone number where you can be contacted. Also, ensure that your diary is in an accessible place not locked in a desk drawer.
- 4.5 Where possible advise a colleague how long you are going to be away from the office. If you are going straight home after a potentially difficult visit at the end of the day, arrange to phone colleagues.
- 4.6 During the winter, if possible arrange site visits on mornings only so that they cannot extend into dusk or darkness.
- 4.7 If you are on a site visit and it is clear that you are going to be back to the office later than anticipated, ring in to let your colleagues know the situation and provide a new estimate of your anticipated absence.
- 4.8 If you have to go to an evening meeting, arrange if possible to go there and back with a colleague. It may be best to use an independent rendezvous and then proceed together to the venue.

5.0 MAKING OUTSIDE VISITS

- 5.1 If you are concerned about a particular visit, arrange for a colleague to accompany you – better to be safe than sorry. The presence of a colleague can also help if the issue is difficult and the client is liable to make an allegation against you.
- 5.2 It is strongly recommended that you carry a personal alarm, and make sure it is loud (at least 115 decibels). Some are too quiet to be effective. Use the alarm as a weapon, to frighten the aggressor. Don't rely on it to summon help: like car alarms, they are generally ignored. At 115 decibels the noise is equivalent to a jet taking off, and can give the aggressor a physical shock. Hold the alarm as close as possible to the aggressor's ear. The aggressor often runs away in fright, and will in any case almost certainly recoil giving you a chance to escape. For this reason, alarms can be effective in remote areas, where there may be no one else in earshot.
- 5.3 The availability and use of mobile telephones should be seriously considered by the employer. It is useful to have a coded message, of perhaps four or five words, for employees to alert the office that they are in trouble.
- 5.4 Always carry an identity card on visits outside the office.
- 5.5 When a meeting is taking place on a building site or in open site conditions try not to position yourself close to scaffolding or foundation trenches, and try to avoid climbing onto scaffolding.
- 5.6 If a colleague fails to return when expected, try to make contact. If this is unsuccessful, at least two members of staff, including the supervisor if available, should go to the location indicated in the diary or designated book.

6.0 ENFORCEMENT ACTION

- 6.1 Enforcement action is usually taken only against people or organisations that have refused to comply with a local authority's requirements after all other avenues have been explored. It is a potential cause of aggression against the authority's officers, whether verbal or physical.
- 6.2 Before undertaking enforcement action for a local authority, attend a course on personal safety and awareness. Local authorities are urged to ensure that such courses are available.
- 6.3 If you have reason to fear a serious confrontation, a senior officer should contact the local police station to seek advice and request a police presence if necessary.
- 6.4 Avoid the use of provocative action, language, demeanour and dress. Do not wear combat jackets, heavy boots or hard hats unless these are necessary.
- 6.5 Try not to become personally committed to the extent that a problem is seen as a personal confrontation between you and the client. Everything possible should be done to avoid such a situation arising. If it does, it may be prudent for the case to be handled by someone else.
- 6.6 In cases involving extreme action, it is likely that you will be dealing with someone whose attitude and actions will be unreasonable and fanatical. It will be necessary to proceed with great caution, and with as much consideration as possible for the person against whom enforcement action is to be taken.
- 6.7 When facing unusual or severe enforcement action, give as little publicity to it as you would routine matters. Do not give the media details of the action and when you intend to take it. If they become aware of impending action, tell them no more than you have to.
- 6.8 Whenever you anticipate enforcement action, basic precautions should be taken. A lead employee should be identified, an

operational strategy prepared and the advice of the authority's solicitor, the safety officer and the police should be sought as necessary.

7.0 CONCLUSION

- 7.1 Aggression can give rise to a wide range of emotions and everybody responds differently. Feelings of anxiety, fear, or panic can continue for a long time after an incident. Sometimes reaction to an incident may be delayed or may go on for some time. This is not unusual. Those who have been subject to aggression may need support or counselling.
- 7.2 Colleagues may be able to offer support and have ideas on how work practices can be changed to prevent such a thing happening again. Staff should be encouraged to tell supervisors, managers or employers about situations where they feel there are current or potential problems. A review of practice, and the issuing of guidelines, may be necessary. All incidents should be recorded.
- 7.3 Taking care of others and ourselves is the basis of all good work practice and helps us improve the service we offer clients. Taking aggression seriously is an important step in creating a safer working environment. Any work situation that makes staff uneasy should be addressed by supervisors, managers and employers, and a solution sought. Reducing aggression at work is something we should all take responsibility for; it will make all our working lives easier.

Appendix 5: The Enforcement Concordat

The following is the text of the 'Enforcement Concordat', published by the Cabinet Office and the Local Government Association in March 1998:

ENFORCEMENT CONCORDAT

The principles of good enforcement: policy and procedures

This document sets out what business and others being regulated can expect from enforcement officers. It commits the local authority to good enforcement policies and procedures. It may be supplemented by additional statements of enforcement policy.

The primary function of central and local government enforcement work is to protect the public, the environment and groups such as consumers and workers. At the same time, carrying out enforcement functions in an equitable, practical and consistent manner helps to promote a thriving national and local economy. Local authorities are committed to these aims and to maintaining a fair and safe trading environment.

The effectiveness of legislation in protecting consumers or sectors in society depends crucially on the compliance of those regulated. Local authorities recognise that most businesses want to comply with the law. Local authorities will, therefore, take care to help business and others meet their legal obligations without unnecessary expense, while taking firm action, including prosecution where appropriate, against those who flout the law or act irresponsibly. All citizens will reap the benefits of this policy through better information, choice, and safety.

Local authorities have therefore adopted the central and local government Concordat on Good Enforcement. Included in the term 'enforcement' are advisory visits and assisting with compliance as well as licensing and formal enforcement action. By adopting the concordat, local authorities commit themselves to the following policies and procedures, which contribute to best value, and will provide information to show that they are observing them.

Principles of good enforcement: policy

Standards

In consultation with business and other relevant interested parties, including technical experts where appropriate, local authorities will draw up clear standards setting out the level of service and performance the public and business people can expect to receive. They will publish these standards and their annual performance against them. The standards will be made available to businesses and others who are regulated.

Openness

Local authorities will provide information and advice in plain language on the rules that they apply and will disseminate this as widely as possible. They will be open about how they set about their work, including any charges that they set, consulting business, voluntary organisations, charities, consumers and workforce representatives. Local authorities will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

Helpfulness

Local authorities believe that prevention is better than cure and that their role therefore involves actively working with businesses, especially small and medium sized businesses, to advise on and assist with compliance. Local authorities will provide a courteous and efficient service and their staff will identify themselves by name. Local authorities will provide a contact point and telephone number for further dealings with them and they will encourage businesses to seek advice/information from them.

Applications for approval of establishments, licences, registrations, etc. will be dealt with efficiently and promptly. Local authorities will ensure that, wherever practicable, their enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

Complaints about service

Local authorities will provide well publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases

where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

Proportionality

Local authorities will minimise the costs of compliance for businesses by ensuring that any action they require is proportionate to the risks. As far as the law allows, local authorities will take account of the circumstances of the case and the attitude of the operator when considering action.

Local authorities will take particular care to work with small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

Consistency

Local authorities will carry out their duties in a fair, equitable and consistent manner. While inspectors are expected to exercise judgement in individual cases, local authorities will have arrangements in place to promote consistency, including effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Co-ordinating Body on Food and Trading Standards (LACOTS)¹⁹⁹ and the Local Authority National Type Approval Confederation (LANTAC).

Principles of good enforcement: procedures

Advice from an officer will be put clearly and simply and will be confirmed in writing, on request, explaining why any remedial work is necessary and over what time-scale, and making sure that legal requirements are clearly distinguished from best practice advice.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstances of the case and, if possible, resolve points of difference, unless immediate action is required (for

example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed). Where immediate action is considered necessary, an explanation of why such action was required will be given at the time and confirmed in writing in most cases within five working days and, in all cases, within 10 working days.

Where there are rights of appeal against formal action, advice on the appeal mechanism will be clearly set out in writing at the time the action is taken (whenever possible this advice will be issued with the enforcement notice).

Note: The ‘Hampton’ Review (*Reducing Administrative Burdens: effective inspection and enforcement*, HM Treasury, 2005) suggested a new set of enforcement principles for business regulation which the government subsequently accepted. Those principles are now being expanded into a new ‘Compliance Code’ for regulators (currently in draft at: www.cabinetoffice.gov.uk/regulation) which will replace the Enforcement Concordat. Though that is a voluntary code, the government is also currently pursuing legislation (The Legislative and Regulatory Reform Bill) containing powers to require regulators to have regard to a statutory code of practice, of which the Compliance Code is expected to form the basis, when exercising their regulatory functions.

¹⁹⁹ Now LACORS

Appendix 6: Code of Practice for Crown Prosecutors

1.0 INTRODUCTION

- 1.1 The decision to prosecute an individual is a serious step. Fair and effective prosecution is essential to the maintenance of law and order. Even in a small case, a prosecution has serious implications for all involved – victims, witnesses and defendants. The Crown Prosecution Service applies the Code for Crown Prosecutors so that it can make fair and consistent decisions about prosecutions.
- 1.2 The Code helps the Crown Prosecution Service to play its part in making sure that justice is done. It contains information that is important to police officers and others who work in the criminal justice system and to the general public. Police officers should take account of the Code when they are deciding whether to charge a person with an offence.
- 1.3 The Code is also designed to make sure that everyone knows the principles that the Crown Prosecution Service applies when carrying out its work. By applying the same principles, everyone involved in the system is helping to treat victims fairly and to prosecute fairly but effectively.

2.0 GENERAL PRINCIPLES

- 2.1 Each case is unique and must be considered on its own facts and merits. However, there are general principles that apply to the way in which Crown Prosecutors must approach every case.
- 2.2 Crown Prosecutors must be fair, independent and objective. They must not let any personal views about ethnic or national origin, sex, religious beliefs, political views or the sexual orientation of the suspect, victim or witness influence their decisions. They must not be affected by improper or undue pressure from any source.
- 2.3 It is the duty of Crown Prosecutors to make sure that the right person is prosecuted for the right offence. In doing so, Crown Prosecutors must always act in the interests of justice and not solely for the purpose of obtaining a conviction.

- 2.4 It is the duty of Crown Prosecutors to review, advise on and prosecute cases, ensuring that the law is properly applied, that all relevant evidence is put before the court and that obligations of disclosure are complied with, in accordance with the principles set out in this Code.
- 2.5 The CPS is a public authority for the purposes of the Human Rights Act 1998. Crown Prosecutors must apply the principles of the European Convention on Human Rights in accordance with the Act.

3.0 REVIEW

- 3.1 Proceedings are usually started by the police. Sometimes they may consult the Crown Prosecution Service before starting a prosecution. Each case that the Crown Prosecution Service receives from the police is reviewed to make sure it meets the evidential and public interest tests set out in this Code. Crown Prosecutors may decide to continue with the original charges, to change the charges, or sometimes to stop the case.
- 3.2 Review is a continuing process and Crown Prosecutors must take account of any change in circumstances. Whenever possible, they talk to the police first if they are thinking about changing the charges or stopping the case. This gives the police the chance to provide more information that may affect the decision. The Crown Prosecution Service and the police work closely together to reach the right decision, but the final responsibility for the decision rests with the Crown Prosecution Service.

4.0 CODE TESTS

- 4.1 There are two stages in the decision to prosecute. The first stage is *the evidential test*. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be. If the case does meet the evidential test, Crown Prosecutors must decide if a prosecution is needed in the public interest.
- 4.2 This second stage is *the public interest test*. The Crown Prosecution Service will only

start or continue with a prosecution when the case has passed both tests. The evidential test is explained in section 5 and the public interest test is explained in section 6.

5.0 THE EVIDENTIAL TEST

5.1 Crown Prosecutors must be satisfied that there is enough evidence to provide a 'realistic prospect of conviction' against each defendant on each charge. They must consider what the defence case may be, and how that is likely to affect the prosecution case.

5.2 A realistic prospect of conviction is an objective test. It means that a jury or bench of Magistrates, properly directed in accordance with the law, is more likely than not to convict the defendant of the charge alleged. This is a separate test from the one that the criminal courts themselves must apply. A jury or Magistrates' Court should only convict if satisfied so that it is sure of a defendant's guilt.

5.3 When deciding whether there is enough evidence to prosecute, Crown Prosecutors must consider whether the evidence can be used and is reliable. There will be many cases in which the evidence does not give any cause for concern. But there will also be cases in which the evidence may not be as strong as it first appears. Crown Prosecutors must ask themselves the following questions:

5.4 Can the evidence be used in court?

(a) is it likely that the evidence will be excluded by the court? There are certain legal rules which might mean that evidence which seems relevant cannot be given at a trial. For example, is it likely that the evidence will be excluded because of the way in which it was gathered or because of the rule against using hearsay as evidence? If so, is there enough other evidence for a realistic prospect of conviction?

5.5 Is the evidence reliable?

- (b) is there evidence which might support or detract from the reliability of a confession? Is the reliability affected by factors such as the defendant's age, intelligence or level of understanding?
- (c) what explanation has the defendant given? Is a court likely to find it credible in the light of the evidence as a whole? Does it support an innocent explanation?
- (d) If the identity of the defendant is likely to be questioned, is the evidence about this strong enough?
- (e) Is the witness's background likely to weaken the prosecution case? For example, does the witness have any motive that may affect his or her attitude to the case, or a relevant previous conviction?
- (f) are there concerns over the accuracy or credibility of a witness? Are these concerns based on evidence or simply information with nothing to support it? Is there further evidence which the police should be asked to seek out which may support or detract from the account of the witness?

5.6 Crown Prosecutors should not ignore evidence because they are not sure that it can be used or is reliable. But they should look closely at it when deciding if there is a realistic prospect of conviction.

6.0 THE PUBLIC INTEREST TEST

6.1 In 1951, Lord Shawcross, who was Attorney General, made the classic statement on public interest, which has been supported by Attorneys General ever since:

"It has never been the rule in this country – I hope it never will be – that suspected criminal offences must automatically be the subject of prosecution."

6.2 The public interest must be considered in each case where there is enough evidence to provide a realistic prospect of conviction. A prosecution will usually take place unless there are public interest factors tending against prosecution which clearly outweigh

those tending in favour. Although there may be public interest factors against prosecution in a particular case, often the prosecution should go ahead and those factors should be put to the court for consideration when sentence is being passed.

- 6.3 Crown Prosecutors must balance factors for and against prosecution carefully and fairly. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.
- 6.4 The following lists of some common public interest factors, both for and against prosecution, are not exhaustive. The factors that apply will depend on the facts in each case.
- 6.5 The more serious the offence, the more likely it is that a prosecution will be needed in the public interest. A prosecution is likely to be needed if:
- (a) a conviction is likely to result in a significant sentence;
 - (b) a weapon was used or violence was threatened during the commission of the offence;
 - (c) the offence was committed against a person serving the public (for example, a police or prison officer, or a nurse);
 - (d) the defendant was in a position of authority or trust;
 - (e) the evidence shows that the defendant was a ringleader or an organiser of the offence;
 - (f) there is evidence that the offence was premeditated;
 - (g) there is evidence that the offence was carried out by a group;
 - (h) the victim of the offence was vulnerable, has been put in considerable fear, or suffered personal attack, damage or disturbance;
 - (i) the offence was motivated by any form of discrimination against the victim's ethnic or national origin, sex, religious beliefs, political views or sexual orientation, or the suspect
- demonstrated hostility towards the victim based on any of those characteristics;
- (j) there is a marked difference between the actual or mental ages of the defendant and the victim, or if there is any element of corruption;
 - (k) the defendant's previous convictions or cautions are relevant to the present offence;
 - (l) the defendant is alleged to have committed the offence whilst under an order of the court;
 - (m) there are grounds for believing that the offence is likely to be continued or repeated, for example, by a history of recurring conduct; or
 - (n) the offence, although not serious in itself, is widespread in the area where it was committed.
- 6.6 A prosecution is less likely to be needed if:
- (a) the court is likely to impose a nominal penalty;
 - (b) the defendant has already been made the subject of a sentence and any further conviction would be unlikely to result in the imposition of an additional sentence or order, unless the nature of the particular offence requires a prosecution;
 - (c) the offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
 - (d) the loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
 - (e) there has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious;
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation.
 - (f) a prosecution is likely to have a bad effect on the victim's physical or mental

- health, always bearing in mind the seriousness of the offence;
- (g) the defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is a real possibility that it may be repeated. The Crown Prosecution Service, where necessary, applies Home Office guidelines about how to deal with mentally disordered offenders. Crown Prosecutors must balance the desirability of diverting a defendant who is suffering from significant mental or physical ill health with the need to safeguard the general public;
 - (h) the defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution solely because they pay compensation); or
 - (i) details may be made public that could harm sources of information, international relations or national security.

- 6.7 Deciding on the public interest is not simply a matter of adding up the number of factors on each side. Crown Prosecutors must decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

The relationship between the victim and the public interest

- 6.8 The Crown Prosecution Service prosecutes cases on behalf of the public at large and not just in the interests of any particular individual. However, when considering the public interest test Crown Prosecutors should always take into account the consequences for the victim of the decision whether or not to prosecute, and any views expressed by the victim or the victim’s family.
- 6.9 It is important that a victim is told about a decision which makes a significant difference to the case in which he or she is involved. Crown Prosecutors should ensure that they follow any agreed procedures.

Youths

- 6.10 Crown Prosecutors must consider the interests of a youth when deciding whether it is in the public interest to prosecute. However Crown Prosecutors should not avoid prosecuting simply because of the defendant’s age. The seriousness of the offence or the youth’s past behaviour is very important.
- 6.11 Cases involving youths are usually only referred to the Crown Prosecution Service for prosecution if the youth has already received a reprimand and final warning, unless the offence is so serious that neither of these were appropriate. Reprimands and final warnings are intended to prevent re-offending and the fact that a further offence has occurred indicates that attempts to divert the youth from the court system have not been effective. So the public interest will usually require a prosecution in such cases, unless there are clear public interest factors against prosecution.

Police cautions

- 6.12 These are only for adults. The police make the decision to caution an offender in accordance with Home Office guidelines.
- 6.13 When deciding whether a case should be prosecuted in the courts, Crown Prosecutors should consider the alternatives to prosecution. This will include a police caution. Again the Home Office guidelines should be applied. Where it is felt that a caution is appropriate, Crown Prosecutors must inform the police so that they can caution the suspect. If the caution is not administered because the suspect refuses to accept it or the police do not wish to offer it, then the Crown Prosecutor may review the case again.

7.0 CHARGES

- 7.1 Crown Prosecutors should select charges which:
- (a) reflect the seriousness of the offending;
 - (b) give the court adequate sentencing powers; and

- (c) enable the case to be presented in a clear and simple way.

This means that Crown Prosecutors may not always continue with the most serious charge where there is a choice. Further, Crown Prosecutors should not continue with more charges than are necessary.

- 7.2 Crown prosecutors should never go ahead with more charges than are necessary just to encourage a defendant to plead guilty to a few. In the same way, they should never go ahead with a more serious charge just to encourage a defendant to plead guilty to a less serious one.
- 7.3

Crown Prosecutors should not change the charge simply because of the decision made by the court or the defendant about where the case will be heard.

8.0 MODE OF TRIAL

- 8.1 The Crown Prosecution Service applies the current guidelines for Magistrates who have to decide whether cases should be tried in the Crown Court when the offence gives the option and the defendant does not indicate a guilty plea. (See the *National Mode of Trial Guidelines* issued by the Lord Chief Justice.). Crown Prosecutors should recommend Crown Court trial when they are satisfied that the guidelines require them to do so.
- 8.2 Speed must never be the only reason for asking for a case to stay in the Magistrates' Courts. But Crown Prosecutors should consider the effect of any likely delay if they send a case to the Crown Court, and any possible stress on victims and witnesses if the case is delayed.

9.0 ACCEPTING GUILTY PLEAS

- 9.1 Defendants may want to plead guilty to some, but not all, of the charges. Alternatively, they may want to plead guilty to a different, possibly less serious, charge because they are admitting only part of the crime. Crown Prosecutors should only accept the defendant's plea if they think the court is able to pass a sentence that matches the seriousness of the offending, particularly

where there are aggravating features. Crown Prosecutors must never accept a guilty plea just because it is convenient.

- 9.2 Particular care must be taken when considering pleas which would enable the defendant to avoid the imposition of a mandatory minimum sentence. When pleas are offered, Crown Prosecutors must bear in mind the fact that ancillary orders can be made with some offences but not with others.
- 9.3 In cases where a defendant pleads guilty to the charges but on the basis of facts that are different from the prosecution case, and where this may significantly affect sentence, the court should be invited to hear evidence to determine what happened, and then sentence on that basis.

10.0 RE-STARTING A PROSECUTION

- 10.1 People should be able to rely on decisions taken by the Crown Prosecution Service. Normally, if the Crown Prosecution Service tells a suspect or defendant that there will not be a prosecution, or that the prosecution has been stopped, that is the end of the matter and the case will not start again. But occasionally there are special reasons why the Crown Prosecution Service will re-start the prosecution, particularly if the case is serious.
- 10.2 These reasons include:
 - (a) rare cases where a new look at the original decision shows that it was clearly wrong and should not be allowed to stand;
 - (b) cases which are stopped so that more evidence which is likely to become available in the fairly near future can be collected and prepared. In these cases, the Crown Prosecutor will tell the defendant that the prosecution may well start again; and
 - (c) cases which are stopped because of a lack of evidence but where more significant evidence is discovered later.

Appendix 7: Example of a local authority – Police Partnership Agreement²⁰⁰

Partnership Agreement

between

the Borough of

and

the Police Service

Noise Pollution

²⁰⁰ Amended from a partnership agreement developed by London Borough of Barnet and the Metropolitan Police

Noise pollution protocol

1.0 INTRODUCTION

- 1.1 This protocol provides guidelines to enable the borough council and the police service to work in partnership in tackling noise pollution deemed as a problem by the local community. Compliance with the protocol will allow the scheme to operate efficiently whilst allowing agencies to be appreciative of each other's limitations.
- 1.2 The Crime and Disorder Act 1998 requires police services and local authorities to work in partnership to deliver community safety in their area and as such encourages contact between the two lead agencies to develop a protocol regarding noise nuisance.
- 1.3 The protocol will focus upon on noise pollution in respect of:
- licensed premises;
 - private premises; and
 - unlicensed 'raves'.

2.0 LICENSED PREMISES

NB. The following does not anticipate the extension of the Noise Act 1996 to licensed premises.

- 2.1 When a complaint is received regarding noise from licensed premises the duty officer for noise nuisances will be responsible for investigating and establishing whether a statutory noise nuisance exists. On witnessing a statutory noise nuisance, the officer will try to resolve the problem informally if it is the first complaint.
- 2.2 If this is not successful (or if it is the second occurrence witnessed), a statutory notice will usually be served on the person identified as being responsible under section 80 of the Environmental Protection Act 1990 requiring the abatement of the statutory nuisance. Personal safety of the officer will be taken into consideration through a risk assessment carried out by himself.
- 2.3 Service of a notice usually results in the nuisance being abated. In the event of non-compliance of the notice the officer has the following options:

- completion of action necessary to abate the noise nuisance i.e. seizure of noise emitting equipment; and/or
- referring the case for prosecution.

- 2.4 The ability of officers to seize noise equipment is dependent upon:
- availability of the investigating officer depending on the number of other commitments;
 - ability to obtain a warrant from a magistrate;
 - ability to contact a specialist (locksmith) to access the premises if necessary;
 - ability to obtain police support for such an operation; and
 - ability to seize the amount of noise equipment present.
- 2.5 Where the noise amounts to a public nuisance and temporary closure of the premises is necessary to abate that, the officer will request an urgent meeting with the police to ascertain if a Closure Notice is appropriate. Identical powers are available to police and local authorities under the Licensing Act 2003 and the Anti-social Behaviour Act 2003 respectively. Which it is most appropriate to use may be indicated by the type of noise, i.e. rowdy crowds or music.
- 2.6 In either case, the serving of a notice acts as the starting point for magistrates' court proceedings to be initiated against the licensee leading to possible revocation of the licence.
- 2.7 Whichever course is chosen, each can corroborate the other. The officer will be able to provide evidence that the licensed premises is causing a statutory nuisance to at least one neighbouring premises.
- 2.8 Each should also co-operate in undertaking and recording a risk assessment in relation to the entry and service of the Closure Notice.
- 2.9 The senior police officer present will ensure there are sufficient police officers present to implement the proposed course of action.
- 2.10 In the event that there are insufficient local police officers available to deal effectively with

the situation consideration should be given to obtaining additional non-borough resources such as the Territorial Support Group (TSG).

3.0 RESIDENTIAL AND NON-LICENSED PREMISES

3.1 In cases involving residential and non-licensed premises, the action of the officer is the same as noted above in paragraphs 2.1 to 2.4, in addition to which, action under the Noise Act 1996 might be considered.

3.2 Police Duty Officers and police CAD controllers should be aware that if police are requested to attend private premises on behalf of the investigating officer then the likelihood of a breach of the peace occurring is a real possibility. A risk assessment must again be undertaken and an adequate police response provided (i.e. at least two officers).

4.0 ‘RAVES’

4.1 Due to the large numbers of people who gather at ‘raves’, there is a potentially serious risk to the safety of any officers attending through public disorder. Due to different responsibilities placed upon both authorities it is imperative that close liaison is established between the Duty Officer and the investigating officer. This will ensure the public are not given conflicting information or advice and are made aware of the limitations of the service that can be provided by both authorities.

4.2 Assistance will usually be required by the officer from the police in order to serve a statutory notice and to take any subsequent necessary enforcement action.

4.3 Investigating officers and the police are reminded that these events are unlawful unless licensed. Attempts should be made by the police to try to ascertain the identity of any person concerned in the organisation of management of the event so that the matter can be investigated later by the local authority Licensing Officer and evidence obtained for possible prosecution.

5.0 POINTS IN RELATION TO WARRANTS OBTAINED BY OFFICERS

5.1 Warrants are issued to council officials on application to magistrates; they are not issued to the police. Therefore, although such warrants may authorise entry by the police, the police should play no part in actually seizing property from the premises. Their purpose is to ensure that no crime occurs or where it does to consider arresting those responsible. Seizure of equipment remains the responsibility of those in possession of the warrant, i.e. the local authority officer.

Signatories to this agreement:

 Local Authority Representative

 Police Borough Commander

Date: _____

Appendix 8: Noise statistics

1.0 THE CIEH NOISE SURVEY

- 1.1 Requests for statistics are, like paying taxes, never popular yet they are as essential in their way, for monitoring, planning and other management purposes. For many years, local authorities have submitted an annual report to the CIEH which provides a summary of their noise complaints and how they have dealt with them. The format had, until recently, changed little and was relatively simple. The CIEH collects, verifies and collates these data which are then published and used to highlight trends in complaints and in enforcement.
- 1.2 As well as being much quoted in the press, the figures have also been of increasing interest in recent years to government which publishes them in its annual digest of environmental statistics, as a sustainability indicator, and in 'Social Trends'. The Devolved Administrations and other bodies such as the GLA take a keen interest in them too. Comparable data being available from no other source, the survey enhances the reputation of the CIEH and of the environmental health community as a whole.
- 1.3 Interesting as they have been, however, both the CIEH and Defra had long realised that the small amount of data collected, and in particular the paucity of qualitative data among it, limited the value of the survey for policy purposes; it described enforcement activity but little else. That is as true for responding authorities as it is for government and the CIEH. Both, but in particular the CIEH (responding to members' requests), also wanted a framework which Northern Ireland authorities could, with their different legislation, participate in and take value from too. Consequently, following many informal discussions, both organisations began in the latter part of 2002 to work on the development of a new, expanded survey in a project run, under the UK noise research programme, by Defra.

2.0 CONSULTATION

- 2.1 Local authorities were first informed of the intention to broaden the survey in 2002. During the development phase, 11 local authorities, selected for their geographical spread and varying size and resources were closely involved. The resulting draft framework was published as part of the draft Noise Management Guide in June 2003 and hard copies were sent to every local authority in England, Wales and N Ireland. At the same time, a number of free regional events were hosted by the CIEH at which the proposed changes to the survey were introduced and discussed. The draft remained on the CIEH's website for a considerable time afterwards. Despite increasing demands for figures from other purposes, the response from local authorities was almost uniformly positive, all appreciating the benefits of better quality data and a larger, common, database.
- 2.2 Simultaneously, discussions were held with the major software suppliers. These confirmed that though their various packages were written in different codes and the data are saved in different types of database, the information stored in these databases is all compatible and a revised list of noise complaint categories and templates for pre-defined Defra and CIEH statistical reports could be supplied, free of charge, quite readily. Following the outcome of the stakeholder consultation, the suppliers were told of the decision to go ahead.
- 2.3 Representatives of government – of the Devolved Administrations and of various central government departments – have had the opportunity to comment and been kept informed by way of the cross-departmental Noise Research Advisory Committee and the Noise Forum as well as through informal discussion. Local authorities have been kept informed of progress towards introducing the changes through regular communications from the CIEH.

3.0 THE NEW FRAMEWORK

3.1 Whereas the survey form for the year 2002/3 asked for just 48 pieces of data (including 'nil', if applicable) broadly collating outcomes (e.g. notices served, prosecutions) against five categories of noise sources (industrial, commercial/leisure etc), from 1 April 2005 (the beginning of the first 'collection year'), the full dataset has been represented by the three larger matrices reproduced²⁰¹ below:

- the first collating noise type (alarms, barking dogs etc) against noise sources;
- the second, outcomes (i.e. stage of handling) against noise sources; and
- the third, outcomes against noise types.

3.2 The second matrix is essentially the same as the current requirement though with some detailed changes to accommodate some newer legislation but the capture of data on noise types is entirely new while the existing categories of noise sources in the first and second matrices have been sub-divided to provide extra detail here too. The result, not least bearing in mind that the first of the matrices asks for numbers not just of complaints made, as now, but of complaints resolved, is an increase to several hundred pieces, in fact almost 600 pieces, of data (potentially all of the correlates which are not blanked out though some, of course, may only rarely be used).

3.3 Though it may appear to be a tall order, consultation with the focus group confirmed that some already actively collect data in this volume. In the case of others, most if not all of this additional data is also already captured in the course of their investigations and the challenge is not so much to collect it but rather to collate it electronically when they would have left it in paper form in the past.

4.0 THE FUTURE

4.1 The development of the new format for noise complaint statistics is expected to bring a major improvement in consistency and accuracy of this data. The percentage of annual returns should also increase as local authorities begin to see the benefits of sharing in the creation of a detailed UK-wide database.

4.2 It was recognised from the outset, nevertheless, that collating the more than 10-fold increase in data in these returns would both test local authorities' systems and, in particular, be beyond the capability of the CIEH's manual processing system and that some degree of automation would be required. The CIEH has now provided that via a dedicated website at: <http://noisestats.cieh.org/Home.aspx>. From the start of this first 'reporting year' (2006/7), as they have responded to the CIEH's request for data, authorities have been sent a user ID and password which while preventing unauthorised access enables them to add their authority's data to the database.

System overview

4.3 Initially, the hope had been for all authorities to use a web-enabled reporting system based on an XML schema whereby their data could be automatically submitted to the CIEH. Recognising, however, that at the current stage of local authorities' development, that is not yet generally feasible, a simpler solution has been presented. That rests on most authorities ability, helped by their software suppliers, to collect the appropriate data in their databases and present it in CSV format (a transmissible spreadsheet), suitable for central collection. Data can be submitted in this form via web up-load or by e-mail and an SQL database has now been created to receive this data. Procedures and software have also been formulated for validating, cleaning and reorganising the data prior to entry into the database.

²⁰¹ For ease of reading, the first two matrices described above have each been split into two halves

- 4.4 Provision has nevertheless also been made temporarily for the minority of authorities which cannot generate compatible reports, either because they use bespoke software or because their systems are still manual. In these cases, users can prepare files in a standard format manually.

5.0 PARTICIPATION

- 5.1 A high (approaching 100%) return rate by local authorities is important for the statistical integrity of the survey and the efforts of those authorities which do respond are undermined, unfairly, by those which do not. The CIEH and Defra do not believe that local authorities can perform their noise functions adequately without most of the data sought and note that response rates to similar surveys, by the Food Standards Agency or on LAPC for example are consistently high. Whereas the data might be required from authorities in addition under the Freedom of Information Act or the Environmental Information Regulations, the CIEH and Defra are committed to achieving and maintaining a high rate of return and strongly encourage all local authorities in England, Wales and N Ireland to participate.

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