

## BACKGROUND

The subject of noise pollution is rapidly moving higher up the political agenda both in the United Kingdom and Europe. The general public is becoming less tolerant of this ubiquitous pollutant and is increasingly willing to complain to local authorities. There is also an apparent willingness by those affected by noise to sue landlords (including local authorities) under the common law and statute.

This Guidance Note deals with the subject of neighbourhood noise.

## HEALTH RISKS

The significance of noise pollution has been recognised for some time. Noise can disrupt human activities and make the environment unpleasant for large numbers of people. The effect of noise on human health both physically and psychologically is undoubted. Noise damages hearing and is the greatest single cause of preventable sensorineural loss in the world. Noise, unlike other forms of pollution, has prompted members of the public to commit acts of violence against each other, against enforcement officers and has, unfortunately, also led to the suicide of those unwillingly exposed to it.

## LEGISLATIVE POSITION

### Noise Nuisance

Under Part III of the Environmental Protection Act 1990 (EPA) a local authority is placed under a duty to abate a statutory nuisance occurring within its area. Under section 79(1)(ga) noise from any premises found to be prejudicial to health or a nuisance is made a statutory nuisance.

Whether any given noise source is prejudicial to health is a question of fact, to be determined by the court.

Whether noise ranks as a nuisance in any particular situation, is again, a question of fact. Courts have tended to assimilate the meaning of 'nuisance' as used in environmental statutes, with that at common law. One, therefore, has to look to the common law for guidance as to what constitutes a nuisance. The court has to decide whether the noise in question is *plus quam tolerabile*, that is to say, more than can reasonably be endured. The various factors which the courts can take into account in determining whether any given state of affairs is a question of law. The factors include:

- Duration of the noise
- Social utility of the defender's (ie the person who is creating the noise) conduct.
- Motive of the defender
- Time of day
- Locality
- Sensitivity of the complainer

### Culpa (or blame)

To what extent, if any, it is necessary to prove that the defender was at fault in creating the relevant noise nuisance has not yet been authoritatively determined by the courts. If it is a necessary element a good working rule in order to ascertain if the defender is culpable, would be whether a reasonable person would have avoided creating the noise in question.

Under section 80(1) of the EPA a local authority is placed under a duty to serve an abatement notice if a nuisance exists or is likely to occur or recur in its area. The notice must impose all or any of the following requirements:

- requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence
- requiring the execution of such works and the taking of such steps as may be necessary for those purposes.

The notice must also specify the time or times the requirements of the notice are to be complied with. The terms of the abatement notice require to be both precise and practicable in its terms-*Strathclyde Regional Council v Tudhope* 1983 SLT 22. However, it is sufficient that the recipient of the notice knows what is wrong, taking all external factors into account-*Myatt v Teignbridge DC* [1994] Env.LR 18.

The requisite notice can be worded to take immediate effect-*Strathclyde Regional Council v Tudhope*.

It is not necessary for the relevant notice to specify a time limit simply for the prohibition of the recurrence of a nuisance-*R v Birmingham Justices ex p Guppy* (1988) 86 LGR 264.

In *Budd v Colchester BC* [1999] Env.LR 739 the local authority had served notice requiring the appellant to abate a statutory nuisance arising from the barking of dogs. It was held by the English Court of Appeal that it is at the discretion of the local authority whether it opts for the course of action contained in subsections '(a)' or '(b)'. Therefore, it is sufficient for the local authority to simply require the author of the nuisance to abate the relevant nuisance, that is to say, that there is no general requirement that the authority should go on to specify the relevant steps which need to be adopted. However, the Court stated, *obiter*, that one could envisage circumstances whereby it would be wholly unreasonable for the local authority simply to specify that the recipient of the notice simply abate the relevant nuisance. The Court did not, unfortunately, give illustrations of such circumstances. *Budd*, of course, is not binding on the Scottish courts. However, it will, probably, be followed. It is suggested that if it is followed a good working rule for environmental health officers serving abatement notices under Part III of the EPA should be that if an ordinary person would have reasonable difficulty in ascertaining which measures require to be employed to abate the nuisance in question, the requisite remedial steps should be specified. This would be the case if the remedial measures required esoteric skills or knowledge.

Under S80(4) of the EPA if a person on whom an abatement notice is served, without reasonable excuse, fails to comply with any requirement or prohibition imposed by the notice, he commits an offence.

The abatement of street noise falling within the scope of S79(1)(ga) of the EPA is dealt with specifically under S80(A)(1).

### Construction site noise

Because of its capacity to generate annoyance, construction site noise receives special legislative attention. Under S60(2) of the EPA a local authority is empowered to serve a notice imposing requirements on the way in which the works are to be carried out. There is no requirement that a nuisance should exist before notice is served.

The terms of the relevant notice require to be both practical and precise-*Strathclyde regional Council v Tudhope* 1983 SLT 22.

In *Adam(Scotland)Ltd. V Bearsden and Milngavie District Council* 1996 SLT(Sh.Ct.) 21 it was held lawful to stipulate that no noise emanating from the site should travel further than the site boundary. Under S60(4) the local authority must have regard to the relevant provisions of any code of practice-see, Control of Noise(Codes of Practice for Construction and Open Sites) Order 1984(SI 1984 No.1992).

Under S61 of the EPA a person who intends to carry out building works can apply to the local authority for consent to carry out the works. The local authority is placed under an obligation to give consent if it believes that it would not serve notice under S60. The applicant can appeal to the Sheriff Court against any condition or qualification attached to the consent. If consent is granted the authority is precluded from taking any statutory action in terms of S80 of the Act.

### Noise abatement zones

Under S63 of the Control of Pollution Act 1974 (COPA) a local authority is empowered to designate all or any of its area a noise abatement zone. The relevant order must specify the classes of premises to which it applies. Following the establishment of a noise abatement zone the local authority is required to measure the level of noise emanating from the premises and record the same in a noise level register which must be kept by the authority. After recording the level of noise emanating from the premises the local authority must serve a copy of that record on both the owner and occupier of the premises concerned [S64(3)].

Any person on whom a notice is served can appeal to The Scottish Executive against the notice. The Scottish Executive has complete powers of review in the matter. Under S65(1) the level of noise recorded must not be exceeded except with the written consent of the local authority concerned. Under S65(5) it is made an offence to emit noise from any premises in contravention of either S65(1) or of any condition attached to a consent [S65(5)].

Section 66(1) gives a local authority power to reduce the level of noise emanating from any premises situated in a noise abatement zone if the level of noise is such that it is not acceptable having regard to the purposes for which the order was made.

## OTHER FORMS OF NOISE CONTROL

### Civic Government (Scotland) Act 1982

Under S49(1) of the Civic Government (Scotland) Act 1982 it is an offence, *inter alia*, for any person to suffer or permit any creature in his charge to give a person reasonable cause for annoyance.

Section 54(1) makes it an offence for any person who:

- sounds or plays any musical instrument
- sings or performs
- operates any radio or television receiver, record player, tape-recorder or other sound-producing device so as to give any other person cause for annoyance, to fail to desist on being required to do so by a constable in uniform.

Section 49(3) makes exception in relation to certain types of vehicles and loudspeakers, for example loudspeakers used by the police or fire brigade.

Section 24 of the Crime and Disorder Act 1998 amends section 54 of the Civic Government (Scotland) Act 1982 to allow a police constable who reasonably suspects that an offence has been committed in relation to the above to enter any premises on which he reasonably suspects that an instrument or device to be and seize any such instrument or device he finds there.

**Crime and Disorder Act 1998**

Section 19 of the Act allows a local authority in Scotland to apply to the Sheriff Court for an anti-social behaviour order if it appears that the following conditions are met. The person concerned must be over the age of 16.

The person must have acted in an anti-social manner, that is to say, has acted in a manner that caused or was likely to cause alarm or distress, or, pursued a course of conduct that caused or was likely to cause alarm to one or more persons not of the same household as himself in the authority's area, and, that such an order is necessary to protect persons in the authority's area from further anti-social acts or conduct by him.

**Byelaws**

Local authorities have power under S201 of the Local Government (Scotland) Act 1973 to make byelaws, inter alia, for the prevention and suppression of nuisances including noise nuisances.

**CIVIL LIABILITY****Liability in negligence.**

With the growing public and legal professional interest in noise one can reasonably anticipate that soon, civil actions will be brought before the courts based on claims that individuals have sustained psychological(emotional) injury by virtue of having been subjected to noise.

On current legal authority it would be possible for a person injured by noise to successfully sue the creator of the noise in question.

It is also possible that those affected by noise may choose to sue a local authority for failing to take the necessary action in securing the abatement of noise nuisances. Civil actions could be brought both in terms of the law of negligence and in terms of the law of breach of statutory duty which are similar but quite distinct heads of action.

On current legal authority, it would seem unlikely that one could successfully sue a local authority under either head. In order to avoid liability in negligence, officers investigating noise complaints should make it clear to complainants that they should not rely on the local authority taking statutory action to abate the nuisance in question.

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