Review of Use of Noise Abatement Notices Served Under Section 80 of the Environmental Protection Act 1990

July 2006

Prepared by

RUPERT TAYLOR FIOA

Consultants in Acoustics and Noise Control

Spring Garden, Fairwarp, Nr Uckfield, E. Sussex, TN22 3BG
Telephone: 01825 712435 Fax: 01825 712542

Website: ruperttaylor.com
Email: rmtt@ruperttaylor.com
EXECUTIVE SUMMARY

The Department for Environment, Food and Rural Affairs (Defra) is preparing a Noise Strategy that will be ready by the end of 2007. Neighbourhood noise will be addressed as part of that strategy and an important first step in developing this part of it is to examine how the existing methods of dealing with neighbourhood noise are put into practice.

Neighbourhood noise includes noise from all sources except transport and thus covers noise from industrial and commercial activity, recreation and entertainment noise, and noise from neighbours.

Local Authorities have a duty under the Environmental Protection Act 1990 to serve an abatement notice to require a statutory noise nuisance to be abated or to prevent its occurrence or recurrence. This is an important factor in controlling neighbourhood noise.

Defra therefore let a research contract to Rupert Taylor with the following principal aims:

- To inform the development of Defra's emerging Noise Strategy by establishing how Local Authority Environmental Health Departments currently operate enforcement by the use of Noise Abatement Notices under Section 80 of the Environmental Protection Act 1990 (as amended)

- To identify areas in which the current approaches can be improved, and alternative methods adopted, where they are more appropriate to the circumstances

The study was intended to report on where improvements could be made to the current methods of using Noise Abatement Notices, suggest alternatives that could be used, and explain why they are not used at present.

Most of the information required to inform the study rests with local authorities.

The approach that was adopted to engage with Local Authorities (LAs), was to utilise existing Pollution Control Groups formed by LA officers in neighbouring authorities. Such groups meet regularly to discuss and debate current pollution topics and in some cases have specialist sub-groups dealing with noise issues. The principal source of information from the study was a series of eight meetings with such groups. A hundred and twenty-five Environmental Health Practitioners (EHPs) from eight-five Local Authorities attended the meetings.

Other relevant bodies (eg the Chartered Institute of Environmental Health) were also contacted to determine whether they held any views or information that would assist the study.

The study found that S80 notices were typically drafted in a simple way without specifying
the steps required to abate the nuisance. A large number of proposals was put forward by
the LAs as suggestions for improving the way in which they deal with noise. The proposals
affected every stage of the process from the gathering of evidence, through the exact powers
that are available (and the addition of new ones), to the hearing of evidence, sentencing
policy, and the forum for hearing some types of case.

Many of the proposals have ramifications for other parts of Government and/or the justice
system. Further consultation is therefore necessary to prioritise them and determine which
would be most cost effective in terms of any benefits they would bring.

This report should not be taken as representative of Government policy. The
recommendations and interpretations of legislation in this report are those of the author and
the local authorities consulted in its drafting.
CONTENTS

1 INTRODUCTION ................................................................................................................. 5
  1.1 BACKGROUND AND PURPOSE .................................................................................. 5
  1.2 SCOPE OF AND APPROACH TO THE STUDY ............................................................ 6

2 OVERVIEW AND CONTEXT OF SECTION 80 OF THE EPA ........................................ 8
  2.1 HISTORICAL INTRODUCTION ................................................................................. 8
  2.2 DEVELOPMENT OF SECTION 80 .............................................................................. 8
  2.3 OTHER LOCAL AUTHORITY POWERS RELATING TO NOISE CONTROL .............. 9

3 CONSULTATION ON USE OF S80 NOTICES ............................................................. 11
  3.1 PRELIMINARY REVIEW ............................................................................................ 11
  3.2 CONSULTATION WITH LOCAL AUTHORITIES ....................................................... 14
  3.3 CONSULTATION WITH OTHER BODIES ................................................................. 15
  3.4 FEEDBACK FROM LOCAL AUTHORITY CONSULTATION .................................. 16

4 RESULTS OF CONSULTATION ....................................................................................... 17
  4.1 VARIATION IN THE DETAIL ON SECTION 80 NOTICES ....................................... 17
  4.2 CONTEXT IN WHICH LOCAL AUTHORITIES USE SECTION 80 NOTICES ............. 18
  4.3 POINTS OF CONSIDERATION USED BY LAS IN DRAFTING OF NOTICES .......... 19
  4.4 AREAS WHERE IMPROVEMENTS COULD BE MADE TO THE CURRENT NOISE ABATEMENT NOTICE REGIME ........................................................................................................... 23
  4.5 WHY ARE PARTICULAR NOTICES USED IN FAVOUR OF OTHER ENFORCEMENT OPTIONS (WHERE THEY EXIST) OR NOT USED AT ALL, AND ARE THERE OTHER TYPES/ALTERNATIVE ENFORCEMENT OPTIONS THAT COULD BE USED BUT ARE NOT BEING USED AND WHAT ARE THE REASONS FOR THIS. 24
  4.6 WHAT OPTIONS ARE AVAILABLE IF THE NOISE, THOUGH A PROBLEM, IS NOT CONSIDERED TO BE A STATUTORY NUISANCE ........................................................................................................... 33
  4.7 SUGGESTIONS AND COMMENTS FROM LOCAL AUTHORITIES ............................ 34

5 SUMMARY OF FINDINGS ............................................................................................... 39
  5.1 THE VARIATION IN THE DETAILS SPECIFIED IN NOTICES .................................. 39
  5.2 THE DIFFERENT NOISE SOURCES FOR WHICH NOTICES ARE USED, AND WHETHER THAT AFFECTS THE DRAFTING OF THE NOTICE ........................................................................................................... 39
  5.3 IF A NOTICE IS USED, HOW THE REQUIREMENTS INCLUDED IN IT ARE DETERMINED ........................................................................................................... 39
  5.4 HOW THE DECISION IS MADE TO USE A NOTICE, OR SOME OTHER METHOD OF CONTROLLING THE NOISE ........................................................................................................... 39
  5.5 WHY SOME TYPES NOTICE ARE NOT USED ....................................................... 40
  5.6 WHY SOME OTHER ENFORCEMENT OPTIONS ARE NOT USED ...................... 40
  5.7 WHAT OPTIONS ARE AVAILABLE IF THE NOISE, THOUGH A PROBLEM, IS NOT CONSIDERED TO BE A STATUTORY NUISANCE ........................................................................................................... 40

6 DISCUSSION AND PROPOSALS ................................................................................. 41
  6.1 INTRODUCTION ....................................................................................................... 41
ACKNOWLEDGEMENTS

Appendix A  Comparison of Noise Act 1996 and Antisocial Behaviour (Scotland) Act 2004

Appendix B  Discussion of Environment Agency Issues

Appendix C  Consultation Response from Mediation UK
1 INTRODUCTION

1.1 Background and Purpose

1.1.1 The Department for Environment, Food and Rural Affairs (Defra) is preparing a Noise Strategy that will be ready by the end of 2007. Neighbourhood noise will be addressed as part of that strategy and an important first step in developing it is to examine how the existing methods of dealing with neighbourhood noise are put into practice.

1.1.2 Neighbourhood noise includes noise from all sources except transport and thus covers noise from industrial and commercial activity, recreation and entertainment noise, and noise from neighbours.

1.1.3 If a Local Authority’s officers consider that noise from any of these sources is a ‘statutory nuisance’, they have powers that can result in the noise being reduced in level or controlled in other ways – eg only being permitted at specific times. Not every annoying noise is a ‘statutory nuisance’, however. There is no set noise level that determines whether a noise is classified as a statutory nuisance. As well as the level of the noise, the decision takes into account other factors including the time of day, how often the noise occurs, and how long it lasts.

1.1.4 Defra therefore let a research contract to Rupert Taylor with the following principal aims:

- To inform the development of Defra’s emerging Noise Strategy by establishing how Local Authority Environmental Health Departments currently operate enforcement by the use of Noise Abatement Notices under Section 80 of the Environmental Protection Act 1990 (as amended)

- To identify areas in which the current approaches can be improved, and alternative methods adopted, where they are more appropriate to the circumstances

1.1.5 The study was intended to report on where improvements could be made to the current methods of using Noise Abatement Notices, suggest alternatives that could be used, and explain why they are not used at present.

1.1.6 This report should not be taken as representative of Government policy. The recommendations and interpretations of legislation in this report are those of the author and the local authorities consulted in its drafting.
1.2 Scope of and Approach to the Study

1.2.1 Information on the following aspects of the use and operation of S80 notices was sought:
- The variation in the details specified in notices
- The different noise sources for which notices are used, and whether that affects the drafting of the notice
- If a notice is used, how the requirements included in it are determined
- How the decision is made to use a notice, or some other method of controlling the noise
- Why some types of notice are not used
- Why some other enforcement options are not used
- What options are available if the noise, though a problem, is not considered to be a statutory nuisance

1.2.2 The study was conducted in two stages

**Stage I**
- Review of the types of noise abatement notices that are currently used by Local Authorities – ie the variation in the details specified in notices
- Review of the context in which noise abatement notices are currently used by Local Authorities – ie the different noise sources for which notices are used, and whether that affects the drafting of the notice
- Report on the points of consideration used by Local Authorities when drafting and preparing noise abatement notices – ie if a notice is used, how the requirements included in it are determined
- Report on the points of consideration used by Local Authorities to explain why particular notices are used in favour of other enforcement options where they exist – ie how the decision is made to use a notice, or some other method of controlling the noise
- Report on the points of consideration used by Local Authorities to explain why particular notices are not used

**Stage II**
- Further consideration of items in Stage 1
- Report on areas where improvements could be made to the current noise abatement notice regime
- Suggestions of other types/alternative enforcement options that could be used, but are not being used at present
- Suggested reasons why other types/alternative enforcement options that could be used, are not being used at present
- Report on what options are available if the noise, though a problem, is not considered to be a statutory nuisance
1.2.3 Most of the information required to inform the study rests with Local Authorities (LAs). However, Defra was concerned not to overburden LAs with survey requests. It was considered that consultation in person would be more effective and less of a burden (for the respondents) than a postal survey. Many LAs have formed Pollution Control Groups at which EHPs from neighbouring LAs meet regularly to discuss and debate current pollution topics. In some cases they have specialist sub-groups dealing with noise issues. Several such meetings were attended (2 in Stage I and 5 in Stage II).

1.2.4 The above meetings with groups of local authorities were supplemented by meetings with at least one of the two authorities that have been awarded Beacon Status for their Environmental Health Services.

1.2.5 At an intermediate meeting between Stage 1 and Stage 2, Defra asked for additional matters to be covered in the consultations, in particular the use of third-party evidence and experience of the Noise Act.

1.2.6 Finally, other relevant bodies (e.g., the Chartered Institute of Environmental Health) were contacted to determine whether they held any views or information that would assist the study.
OVERVIEW AND CONTEXT OF SECTION 80 OF THE EPA

2.1 Historical Introduction

2.1.1 The first powers applicable nationally in modern times enabling Local Authorities (LAs) to control noise were contained in the Noise Abatement Act 1960 (NAA). The NAA provided that noise and vibration which was a nuisance at common law was a statutory nuisance for the purpose of the Public Health Act 1936 (PHA). LAs were therefore under a duty to cause their areas to be inspected from time to time to detect nuisances and if satisfied that the noise amounted to a nuisance to serve an abatement notice. Subsequently, the NAA benefited from the powers contained in the Public Health (Recurring Nuisances) Act 1969 which enabled an LA to take action in cases where a nuisance had ceased but was likely to recur.

2.1.2 The NAA also introduced the ‘private action’ procedure whereby action can be taken in the magistrates’ courts without recourse to the LA. One of the principal differences between this procedure under the NAA and subsequent Acts is that under the NAA the complaint had to be laid by three or more persons. This could lead to practical difficulties in circumstances where the noise only affected one person. If the LA were unable to confirm the existence of a statutory noise nuisance the person affected was then without a remedy (short of action at common law).

2.1.3 The NAA was repealed by the Control of Pollution Act 1974 (CoPA) which came into force in 1976. This act dealt with a range of pollutants and noise was included in Part III. Under CoPA ‘private action’ could be initiated by one individual. However, CoPA did not only include powers relating to statutory nuisance and ‘private action’. CoPA contained specific provisions related to noise (and vibration) from Construction Sites, Loudspeakers in Streets, the concept of Noise Abatement Zones, and a procedure for approving Codes of Practice relating to noise. Many of these provisions are still in force and are discussed in Section 2.3.

2.1.4 The parts of CoPA dealing with statutory nuisance and ‘private action’ were replaced by similar provisions in Sections 79 – 80 and Section 82 of the Environmental Protection Act 1990 (EPA).

2.2 Development of Section 80

2.2.1 The EPA did not merely re-enact the statutory nuisance provisions relating to noise within CoPA. It introduced a duty on LAs to investigate complaints (including those relating to noise) in addition to requiring them to cause their districts to be inspected from time to time to detect any statutory nuisances. It also extended the power of the LA to deal with noise emitted from premises so as to be ‘prejudicial to health’ [or a nuisance].
2.2.2 The scope of Section 79 of the EPA was extended by the Noise and Statutory Nuisance Act 1993 (NSNA) to cover noise emitted from or caused by a vehicle, machinery or equipment in a street.

2.2.3 The Noise Act 1996 (NA) clarified the extent of the power of the LA to abate a nuisance under S81(3) of the EPA by confirming that under that section the LA could seize and remove any equipment which in the LA’s opinion was being used to emit the noise in question. (The Noise Act also contained procedures for seizure and forfeiture of such equipment for use with the Night Noise Offence that the Noise Act created.)

2.2.4 The Clean Neighbourhoods and Environment Act 2005 (CNEA) introduced a discretion to the duty imposed by S80 of the EPA whereby the LA ‘shall’ serve an abatement notice after being satisfied that a nuisance exists (or is likely to occur or recur). Under the CNEA the LA now has the alternative of deferring the service of a notice by up to seven days during which time it can take such steps as it thinks appropriate to persuade the appropriate person to abate the nuisance.

2.2.5 The London Local Authorities Act 2004 (LLAA) provided a power for LAs in London to issue fixed penalty notices in respect of breaches of an EPA abatement notice.

2.3 Other Local Authority powers relating to noise control

2.3.1 There is a range of powers under which LAs can deal with noise that can in some cases also be dealt with under S80 of the EPA. These powers are summarised in Table 1.
<table>
<thead>
<tr>
<th>Scope of power</th>
<th>Source of power</th>
<th>Relationship to S80</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction sites</td>
<td>S60 – S61 CoPA</td>
<td>S80 an alternative if there is a statutory nuisance</td>
</tr>
<tr>
<td>Loudspeakers in the street</td>
<td>S62 CoPA (as amended by the NSNA 1993)</td>
<td>S80 an alternative if there is a statutory nuisance and if a speaker is considered to be ‘equipment’.</td>
</tr>
<tr>
<td>Night noise offence</td>
<td>Noise Act 1996 (as amended by S42 of the Anti-social Behaviour Act 2003 (ASBA))</td>
<td>S80 an alternative if there is a statutory nuisance</td>
</tr>
<tr>
<td></td>
<td>Extended by CNEA to licensed premises (not yet in force)</td>
<td>S80 an alternative if there is a statutory nuisance</td>
</tr>
<tr>
<td>Fixed penalty notices</td>
<td>Extended concept from Noise Act to cover S80 of EPA by LLAA 2004</td>
<td>Alternative enforcement of S79 ‘powers’ – London LAs only</td>
</tr>
<tr>
<td>Noise from licensed premises</td>
<td>Power to close for up to 24 hours under S40 of the ASBA, if public nuisance</td>
<td>Alternative power to S80 if sufficient numbers of people affected</td>
</tr>
<tr>
<td>Anti-social behaviour</td>
<td>Provision for ABCs, ASBOs and CrASBOs under the ASBA</td>
<td>S80 could be used if there is a statutory nuisance</td>
</tr>
<tr>
<td>Licensing Act 2003</td>
<td>S 161 – power for senior police officer to make closure order for up to 24 hours on premises identified as causing public nuisance by noise.</td>
<td>Similar powers to those in the repealed Licensing Act 1964, as amended by section 17 of the Criminal Justice and Police Act 2001.</td>
</tr>
<tr>
<td>Promotion or protection of the interests of the inhabitants of their area</td>
<td>S222 of Local Government Act 1972</td>
<td>Wider power than S80</td>
</tr>
</tbody>
</table>
3  CONSULTATION ON USE OF S80 NOTICES

3.1  Preliminary Review

3.1.1  Before attending any of the consultation meetings consideration was first given to the two principal objectives of the Stage 1 consultations:

- the range of types of notices and their context, and
- the process for deciding on a notice and its form.

3.1.2  By S80 of the EPA 'Where a Local Authority (LA) is satisfied that a statutory nuisance exists, or is likely to occur or recur, in the area of the authority, the local authority shall serve a[n abatement] notice'.

3.1.3  In the exercise of their duty to serve an abatement notice, a LA is empowered by S80 to 'impose all or any of the following requirements' [in an abatement notice]:

"(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;
(b) requiring the execution of such works, and the taking of such other steps, as may be necessary for any of those purposes "

3.1.4  Given the terms of the section, it is evident that notices can include a range of content encompassed by the categories listed below (note that a notice could contain items from more than one of these categories):

Possible categories of requirements for abatement notices:
- No specific measures specified (ie notice states ‘abate the nuisance’)
- Specific ‘management’ controls specified eg prohibiting times, locations, or types of machine or activity
- Works specified (but still not in dB terms) eg provide double glazing, or wall having minimum thickness, surface mass, height, etc
- Acoustic requirements: noise limits (eg $L_{A90}$, $L_{Aeq}$, or band levels), noise reduction (eg $L_{Aeq}$, or band levels,), or a detailed sound insulation specification

3.1.5  Some examples of noise sources for which notices could be used, and the likely context in which they occur, are summarised in Table 2 below:\(^1\):

---

\(^1\) This list is not exhaustive but illustrates the wide range of noise sources and circumstances covered.
### Table 2  Possible categories of noise sources covered by Section 80

<table>
<thead>
<tr>
<th>Location</th>
<th>Potential noise sources</th>
</tr>
</thead>
<tbody>
<tr>
<td>Industrial premises</td>
<td>machinery, processes, deliveries</td>
</tr>
<tr>
<td>Commercial premises</td>
<td>machinery, processes, deliveries, music, animals</td>
</tr>
<tr>
<td>Domestic premises</td>
<td>machinery (eg DIY, lawn-mower), vehicles, music, animals, people</td>
</tr>
<tr>
<td>Street</td>
<td>vehicle, machinery or equipment</td>
</tr>
<tr>
<td>Open land</td>
<td>motor cross, clay pigeon shooting, music</td>
</tr>
<tr>
<td>Construction sites</td>
<td>construction and demolition</td>
</tr>
</tbody>
</table>

Notes 1 The sources listed for each type of location are illustrative and not necessarily exhaustive
2 Although the side note to the relevant sections refers to ‘construction sites’, this term is not defined and the sections make it clear that the provisions extend to any land, including roads, on which the specified activities are taking place or it appears to the LA that they are going to take place.

### 3.1.6
It might be expected that the form of notice would become less complex as one moved down the above list. Thus, a case involving, say, music from domestic premises would be dealt with by a notice merely requiring the nuisance to be abated (ie no specific measures defined), but a nuisance from an industrial complex would be more likely to include specific mitigation measures and/or noise limits. This presumption was tested at the meetings.

### 3.1.7
Two additional aspects of the notice were also identified before the consultation: the suspension of a notice in the event of an appeal, and the statutory defence of ‘best practicable means’ (bpm – defined in S72(9) of the CoPA and in S79(9) of the EPA).

### 3.1.8
The Statutory Nuisance (Appeals) Regulations 1995\(^2\) set out the procedures to be followed in lodging an appeal and the appeal process. These regulations also define the circumstances in which a notice should be suspended in the event of an appeal against it. Those provisions are set out below:

```
3.—(1) Where—
(a) an appeal is brought against an abatement notice served under section 80 or section 80A of the 1990 Act, and—
(b) either—
(i) compliance with the abatement notice would involve any person in expenditure on the carrying out of works before the hearing of the appeal, or
(ii) in the case of a nuisance under section 79(1)(g) or (ga) of the 1990 Act, the noise to which the abatement notice relates is noise necessarily caused in the course of the performance of some duty imposed by law on the appellant, and
(c) either paragraph (2) does not apply, or it does apply but the requirements of paragraph (3) have not been met,
```

\(^2\) Statutory Instrument 1995 No. 2644
the abatement notice shall be suspended until the appeal has been abandoned or decided by the court.

“(2)  This paragraph applies where—
(a) the nuisance to which the abatement notice relates—
(i) is injurious to health, or
(ii) is likely to be of a limited duration such that suspension of the notice would render it of no practical effect, or
(b) the expenditure which would be incurred by any person in the carrying out of works in compliance with the abatement notice before any appeal has been decided would not be disproportionate to the public benefit to be expected in that period from such compliance.

“(3)  Where paragraph (2) applies the abatement notice—
(a) shall include a statement that paragraph (2) applies, and that as a consequence it shall have effect notwithstanding any appeal to a magistrates' court which has not been decided by the court, and
(b) shall include a statement as to which of the grounds set out in paragraph (2) apply.”

3.1.9 Thus a key issue for the LA in deciding whether to suspend a notice or not is whether abatement would require any expenditure, or, if it would, whether this is proportionate to the expected benefit. The potential costs and benefits of mitigation therefore have a critical role in the process of defining a notice at time when the information available on these factors might not be particularly detailed or robust. (A related point is determining how much time to allow for compliance.)

3.1.10 The statutory defence of bpm applies in the case of a trade or business. S80(7) of the EPA provides that the bpm can be raised ‘in any proceedings for an offence’ for contravention of a notice. Bpm also constitutes one of the grounds of appeal against the service of a notice.

3.1.11 The intention appears to be that the question of whether bpm have been implemented in a particular case is a decision for the court. That would occur naturally in a contested case where the LA was of the view that bpm had not been applied. However, the situation could arise in which the LA took the view either before the service of a notice, (or after works had been carried out) that bpm had been employed. Two questions arise from these circumstances. Firstly, does the LA form a view about bpm, and, if so, how? If the LA believes that bpm have been implemented, does that affect any decision to serve a notice or to prosecute for a contravention?

---

3.2 Consultation with Local Authorities

3.2.1 Most meetings were held with local pollution control groups or their specialist noise sub-groups. A separate meeting was held with Coventry City Council in view of its Beacon Award for Environmental Health work. Some individual EHPs sent comments after the meetings and Rugby BC made contact after the MJAC meeting (which they were not able to attend).

Table 3 Schedule of Meetings

<table>
<thead>
<tr>
<th>Body</th>
<th>Meeting Location</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coventry City Council</td>
<td>Coventry</td>
<td>30 November 2005</td>
</tr>
<tr>
<td>YAHPAC</td>
<td>Wakefield</td>
<td>8 December 2005</td>
</tr>
<tr>
<td>LACOs</td>
<td>Ormskirk</td>
<td>14 December 2005</td>
</tr>
<tr>
<td>Bristol Gloucester and North Somerset</td>
<td>Bristol</td>
<td>9 January 2006</td>
</tr>
<tr>
<td>Environmental Control Advisory Committee</td>
<td>Winchester</td>
<td>11 January 2006</td>
</tr>
<tr>
<td>Cambridgeshire Group</td>
<td>Cambridge</td>
<td>18 January 2006</td>
</tr>
<tr>
<td>London Pollution Study Group</td>
<td>London (Camden)</td>
<td>24 January 2006</td>
</tr>
<tr>
<td>Midlands Joint Advisory Committee (MJAC)</td>
<td>Kidderminster</td>
<td>15 February 2006</td>
</tr>
</tbody>
</table>
### Table 4  Local Authorities represented

<table>
<thead>
<tr>
<th>Meeting</th>
<th>Local Authorities represented</th>
<th>LAs/Members</th>
</tr>
</thead>
<tbody>
<tr>
<td>Coventry</td>
<td>Coventry City Council</td>
<td>1/3</td>
</tr>
<tr>
<td>Wakefield</td>
<td>Wakefield MDC, York CC, Leeds CC (2), Harrogate DC, Kirklees MBC (2), Hull CC, East Riding of Yorkshire Council.</td>
<td>7/9</td>
</tr>
<tr>
<td>(YAHPAC)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ormskirk</td>
<td>W Lancs DC (2), Fylde DC, Blackpool Council, Blackburn with Darwen Council, Burnley BC, Ribble Valley BC, Preston City Council (2), Lancaster City Council, South Ribble BC, Wyre BC.</td>
<td>10/12</td>
</tr>
<tr>
<td>(LACOs)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Bristol</td>
<td>North Somerset Council, South Gloucester Council, Mendip DC, Cheltenham BC, Bath &amp; North-East Somerset Council, Sedgemoor DC, Bristol City Council</td>
<td>7/7</td>
</tr>
<tr>
<td>Winchester</td>
<td>Isle of Wight, East Hants (2), Basingstoke &amp; Deane, Hart DC, Southampton CC (2), Winchester City, Havant BC, Rushmoor BC (2), Portsmouth CC, Eastleigh BC, New Forest, DC, Fareham BC, Gosport BC, JayJo Consulting</td>
<td>13/17</td>
</tr>
<tr>
<td>Cambridge</td>
<td>Peterborough City Council (2), Huntingdonshire DC (2), Cambridge City Council (5), South Cambridge DC</td>
<td>4/10</td>
</tr>
<tr>
<td>London</td>
<td>Camden (9), Lewisham (3), Islington, Merton, Bromley (2), Croydon (3), Hounslow, Barking &amp; Dagenham, RB Kingston (2), Hammersmith &amp; Fulham, City of London, Sutton, Enfield (2), Southwark (2), Hillingdon, Greenwich, Newham, Tower Hamlets, Richmond upon Thames, Waltham Forest, Westminster (2), Wandsworth, Haringey (2), GLA, Lambeth</td>
<td>27/45</td>
</tr>
<tr>
<td>Kidderminster (MJAC)</td>
<td>Tamworth BC, Telford &amp; Wrekin BC, Walsall MBC, Redditch BC, Wyre Forest DC, Bridgnorth DC (2), Malvern Hill DC, Sandwell MBC (2), Dudley MBC (2), South Staffordshire DC, Birmingham City C, Stratford on Avon DC, Wychavon DC, North Shropshire DC, Cannock Chase DC, Bromsgrove DC (3).</td>
<td>16/21</td>
</tr>
<tr>
<td>Other</td>
<td>Rugby BC</td>
<td>1/1</td>
</tr>
<tr>
<td><strong>Total LAs/Members</strong></td>
<td></td>
<td><strong>86/126</strong></td>
</tr>
<tr>
<td><strong>Total LAs/Members – excluding London LAs</strong></td>
<td></td>
<td><strong>62/81</strong></td>
</tr>
</tbody>
</table>

### 3.3 Consultation with other bodies

#### 3.3.1 The approved Press Release announcing the start and scope of the project was emailed to the CIEH’s publications department and the item appeared in EH News on 25 November. The press release was also sent to the IOA and the NSCA with an invitation for comments to be sent direct to Rupert Taylor’s practice.

#### 3.3.2 Direct contact was made with the following bodies to provide an opportunity for them to make observations:
- Chartered Institute of Environmental Health (CIEH)
3.4 Feedback from Local Authority Consultation

3.4.1 Notes of the principal points raised at the meetings were made and subsequently the secretary/convenor of each meeting was invited to comment on the relevant note.

3.4.2 The main topics from the consultation drawing on all the meetings, discussions, feedback and direct communications from individual EHPs are incorporated into Section 4.
4 RESULTS OF CONSULTATION

4.1 Variation in the Detail on Section 80 Notices

4.1.1 It had been expected that there would be a range of types of notice, from a simple requirement to ‘abate the music’ in the case of such noise from domestic premises, to a notice with a schedule of noise control requirements and/or noise levels to noise from an industrial site.

4.1.2 In practice however, it was found that there was limited variation; most Local Authorities (LAs) use ‘simple’ notices, inasmuch as they did not specify works or noise levels, most of the time. There were several reasons for this:

i Within a particular LA there might be limited variation because their area principally dealt with complaints about music from domestic premises.

ii Some LAs had been advised that legally there was no requirement for them to specify details on a notice and it was preferable not to do so.

iii There was concern that if measures were specified but they failed to abate the nuisance, the LA would either have an unresolved statutory nuisance or might be liable for the cost of the works.

iv In a complex case (which might therefore benefit from guidance on a notice) it might not be straightforward to determine what action should be taken (eg if there were multiple noise sources).

v If a notice is served by an out-of-hours team there would not be the time/opportunity to investigate methods of control and include details on the notice. (Such notices were not exclusively issued in respect of music from domestic premises.)

vi There might be a range of methods for dealing with the problem and the offender should be able to select the method they prefer to ensure compliance.

vii The Falmouth & Truro v SW Water case was referred to by many of the LAs and seemed to be understood by some to effectively prohibit the LA from specifying works. However, the court appears to have held that the LA has an option as to whether to specify works or not.

---

4 Regina v Falmouth and Truro Port Health Authority Ex parte South West Water Ltd [QB 2001 445]

5 Stuart-Smith LJ at p 3 ibid “I would, therefore, overrule the Kirklees case, 96 LGR 151 and hold that in all cases the local authority can if it wishes leave the choice of means of abatement to the perpetrator of the nuisance. If, however, the means of abatement are required by the local authority, then they must be specified.”
4.1.3 Notwithstanding the prevalence of ‘simple’ notices, some EHPs said they did or had specified works. This usually arose where the EHP’s experience/training enabled him/her to be confident that their proposed works would abate the nuisance. Most of these were cases where the EHP considered the remedial works were straightforward/obvious but one EHP had used a notice specifying detailed requirements where there were several activities on the site that needed to be controlled. It was considered more effective to describe the steps required in each case to ensure that the overall result was achieved. The steps in that case mainly required management procedures rather than physical works to be implemented.

4.1.4 It was pointed out by a few EHPs that an important advantage of specifying on a notice the steps to be taken (which might include works) was that progress could be readily monitored. Furthermore, in the event of a prosecution for breach of a notice it was not necessary to prove that a statutory nuisance existed; only that the terms of the notice had not been complied with.

4.1.5 Attention was drawn to the need for care if specifying noise levels in a notice. It was possible to be too specific and this might have unexpected results. For example, if a frequency of concern was described too precisely, then a small change to the plant might change the frequency slightly. If the frequency had been described too narrowly, the notice might then be complied with although the noise problem was not resolved (because the noise had shifted to a slightly different frequency).

4.2 Context in which Local Authorities use Section 80 Notices

4.2.1 A wide range of sources is encountered across LAs as a whole. These include:

- **Domestic Premises**
  - Music (individuals and parties)
  - Animals (eg barking dogs)
  - Audible Intruder Alarms

- **Licensed Premises (Pubs and Clubs)**
  - Music

- **Commercial and Industrial Premises**
  - Machinery (including fans)
  - Vehicle movements

- **Open Land**
  - Motor cycles (including trespassers)

- **Construction and Demolition Sites**
  - Construction plant/activity
4.2.2 The split between complaints about noise sources on domestic premises (principally music) and noise from non-domestic premises varies. In many LAs, almost all the complaints are about (music from) domestic premises, and it is typical for a LA to have about 90% of their complaints about this source. However, one LA reported a split of about 50:50 between these two types of premises as sources of noise.

4.2.3 For a number of reasons, not all complaints regarding noise from domestic premises result in a statutory nuisance being substantiated and a notice being served. However, given the very large proportion of complaints about such premises, in many authorities these will be the principal type of notice.

4.2.4 For the reasons discussed in Section 4.1, even in LAs where notices are served in respect of noise from industrial/commercial premises, the notice will often be little different from the ‘simple’ type used for music from domestic premises.

4.2.5 However, there are matters other than the measures required to abate the nuisance that the LA has to consider when drafting a S80 notice. These can be affected by the context and are discussed in the following section.

4.3 Points of Consideration used by LAs in Drafting of notices

4.3.1 The principal matters (other than abatement measures) that need to be considered are:

i) Time period to allow for compliance

ii) Whether to suspend the notice in the event of an appeal

iii) When to serve the notice

iv) Correct person(s) on whom to effect service

v) Whether best practicable means have been employed

vi) Use of ‘side letter’

4.3.2 A further matter relevant here is the use of pro-formas for notices.

i) Time for compliance

4.3.3 In the case of music from domestic premises, the general view was that compliance should be immediate (but see, too – iii) When to serve the notice on page 20).

4.3.4 If the music is from a Pub or Club some LAs still specify immediate compliance; others might allow several days.
4.3.5 For other sources (typically from industrial premises), the period for compliance would need to take account of the practicability of carrying out any works that might be necessary (even if these were not specified in the notice). The period might need to include time for investigating the specific source(s) and devising the works, together with procuring, installing, and commissioning them. In some cases it might be necessary for the noise-producer to obtain planning consent for an abatement measure (e.g. for a high noise barrier). This period could range from a few days up to about 6 months.

4.3.6 LAs would typically attempt to contact the offender to try to determine what would represent a reasonable time in the circumstances (bearing in mind that the nuisance would continue in the meantime). In the absence of contact or co-operation, some EHPs would use their judgement and professional experience to set a period for compliance.

   ii) Suspension of the notice in the event of an appeal

4.3.7 If works are involved many LAs will suspend the notice to protect the LA from expense if the appeal is successful.

4.3.8 Some EHPs will take a view on the likely cost of works and the public benefit and decide not to suspend a notice even though expenditure is involved in complying with it. This can be a difficult decision since reliable information on the cost of works might not be available at this time.

   iii) When to serve the notice

4.3.9 Many LAs make some out-of-hours service provision that enables officers to witness noise about which complaints have been received during the night-time (or perhaps in the daytime at weekends). However, the period between a complaint being made, confirmation of a statutory noise nuisance, and the service of an abatement notice might amount to several days (or longer) for a number of reasons.

4.3.10 Some LAs use their out-of-hours service to respond to complaints received during the EHPs’ period of duty, others use these officers to monitor premises that have already been the subject of complaint or where a notice is in force.

4.3.11 Another factor affecting when a notice is served is safety. It might be unwise to attempt to identify the occupier or offender at premises where a party is in progress, or to do so might require police presence that might be unavailable within a reasonable period. Consequently, the response to a noise complaint can vary from attendance and service of a notice during the same night, to attendance on the night with service the following day or week, or even a preliminary response later than that.
iv) **Correct person(s) on whom to effect service**

4.3.12 The EPA requires the notice to be served on the person responsible for the nuisance or, where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, on the owner or occupier of the premises\(^6\).

4.3.13 There are two aspects to this topic.

4.3.14 Firstly, there can be difficulties in determining the correct person at the time of the visit. This can be because safety considerations preclude approaching the people in the property, or the giving of misleading/evasive information by the individuals concerned. Consequently, LAs will sometimes serve notices on several people believed to have different capacities. This information might need to be obtained from council tax and electoral roll records during normal office hours. (Note, too, footnote 9, on page 22, where this topic is mentioned in Section 4.3.24 under vii) **Pro-formas**.

4.3.15 The second problem that can arise in the course of an appeal or when taking a prosecution is proving that the person in question was ‘responsible’. One LA has found that occupiers or owners might claim that they were not on the premises at the time, or that even if they were present, some other person (relative, friend, visitor) was actually operating the music equipment. Magistrates’ Courts are believed to be reluctant to doubt such assertions. This could lead to a notice being quashed, a prosecution found not proved, or delay by the LA in serving a notice because of the perceived need to be certain of proving that the person (whatever their capacity) was ‘responsible’ for the noise at the time.

v) **Whether the best practicable means have been employed**

4.3.16 The situation can arise where the LA believes that although they have confirmed the existence of a statutory nuisance, the offender is already using the best practicable means to control the noise. The question arises whether the LA is still under a duty to serve a notice.

4.3.17 If a notice is served and no appeal is lodged against it, one LA suggested that they could exercise their discretion not to prosecute for a breach of the notice (which might merely say that the nuisance had to be abated, without specifying works in detail).

4.3.18 However, in the event of an appeal against the notice, the LA would need to go to court to prove the nuisance existed, even though it expected that the notice would be quashed.

---

\(^6\) or, where the nuisance arises from any defect of a structural character, on the owner of the premises [only].
4.3.19 There is a general recognition among the LAs that the decision on bpm is one for the courts. However, some LAs would be reluctant to serve a notice in such a case if they knew there would be an appeal. It was believed that there had been LGO reports both ways (ie criticising a LA for serving and in other circumstances for not serving a notice when they believed that bpm had been employed). An LGO report has been identified which does suggest that the LA might be justified in not serving a notice in such a case7. However, there is genuine legal uncertainty about this issue, which is referred to in Section 6.

vi) Use of a ‘side letter’

4.3.20 In a case where detailed measures for abatement are not included on the notice, some LAs will consider the use of a so-called ‘side-letter’. A side letter is separate from the notice but might include information about works that could be implemented in order to abate the nuisance identified in the S80 notice.

4.3.21 Some EHPs believed that the courts had held that a side letter constituted part of the notice8, and so there would be no point in including details of specific abatement measures in a side letter if the object of the letters was to avoid having the details on the notice. Consequently, many LAs do not use side letters.

4.3.22 In those LAs where they are used there are different approaches. Some LAs put a disclaimer on the letter (eg advising the offender to seek their own advice since there might be a range of methods of reducing noise in their case). Another approach is to give generic advice about noise control. Other practices are: sending a letter before serving a notice, or giving advice orally – eg when touring the site with the offender in an early stage of the investigation.

vii) Pro-formas

4.3.23 Most LAs used pro-formas to some degree; several had developed their own.

4.3.24 Historically Shaw & Sons Ltd has provided pro-formas for a whole range of notices used by LAs. One LA considered that there were disadvantages in using the Shaw’s pro-forma for S80 notices. There was a risk of over-reliance on them since these forms attempted to include optional wording for every eventuality envisaged by the EPA, and this could lead LAs to include a section on matters that could properly be omitted in many cases9.

---

7 In LGO report 88/C/1373 (1989) (against Sheffield City Council) the LGO stated that the defence of bpm is strictly a matter for the courts to decide. However, (s)he would be reluctant to criticise the council for not taking proceedings if it was satisfied beyond reasonable doubt that a bpm defence would have been successful. (The council in this case was criticised inter alia for prevaricating in deciding whether bpm had been employed.)

8 No reference has been provided. However, one officer said he had been criticised by the court for using a side letter (rather than including detail on the notice itself). In ‘Statutory Nuisance’ op cit, it is reported that Rose LJ considered it was ‘sensible … to look at any accompanying letter … ’ (London Borough of Camden v London Underground [2000] Env LR 369, DC).

9 eg the EPA requires the notice to be served on the ‘person responsible’ or, if that person cannot be found, on
4.4 Areas where improvements could be made to the current noise abatement notice regime

4.4.1 Suggestions from the consultation for improvements to the current S80 regime are shown in Table 5.

Table 5 Suggestions for improvements to current Section 80 regime

<table>
<thead>
<tr>
<th>Topic</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Clarification of powers and duties</td>
<td></td>
</tr>
</tbody>
</table>
Does the LA have the power/duty to investigate/take enforcement action where the complaint is from commercial premises (ie involving a non-residential use) (see also Section 4.7)  
Does the LA have a power to withdraw a S80 Notice? (see also below)  
Is the LA under a duty to serve a notice when the LA believes that bpm have been employed?  
Is it a reasonable exercise of the LA’s discretion in prosecuting to refrain from doing so when the LA believes that bpm have been employed but there is still a statutory nuisance?  
S80 notices appear to last indefinitely – is this correct?  
Low frequency noise – Can this be a statutory nuisance even when the source can be located (ie by measurement) if the complainant can hear it but not the EHP? |
| Additional powers | 
Power to extend time for compliance in an existing S80 EPA Notice  
Explicit power/procedure to withdraw a S80 Notice |
| Improved understanding by/better liaison with other agencies of the problems caused by noise nuisance | 
The degree of Police co-operation varies.  
Assistance required can take the form of providing safety for EHPs (eg when serving a notice or seizing equipment), or using their own powers or access to information to acquire data for EHPs that the EHPs would otherwise not be able to obtain and the absence of which could thwart the LA’s enforcement action. (eg powers under the Police Reform Act, and DVLA data.)  
Magistrates’ Courts can be influenced by decisions in appeals/prosecutions in Magistrates’ Courts even though such decisions are not even persuasive (EHPs can also be influenced in this way).  
The standard of proof they require from the LA when hearing an Appeal against a notice can be set too high (ie legal rather than civil).  
Even upon conviction, fines are usually very low and costs are not always awarded to the LA despite the fact that the resources expended can be substantial.  
The time required to get a hearing date can be many months in some areas and even if the notice is not suspended (eg for music from domestic premises) the nuisance can continue unabated in the meantime.  
NB seizure of equipment will usually require Police assistance. Attendance by other parties might also be required eg locksmith, Social Services.  
Although it appears that a S80 notice remains in force indefinitely, some LAs have found that lawyers and/or the courts are reluctant to consider a prosecution for the breach of a notice more |

the owner or occupier (of the premises from which the noise is or would be emitted). However, the Act does not require the LA to state what the capacity they consider the person on whom they serve the notice to have. If the LA specify the wrong capacity, the notice might be quashed on appeal. If the notice is silent on this point, then the appellant has to prove his own capacity, and also demonstrate why the notice could or should have been served on a person having a different capacity.
than 6 months old. Consequently, the LA has to start its investigation and action anew.

4.5 Why are particular notices used in favour of other enforcement options (where they exist) or not used at all, and are there other types/alternative enforcement options that could be used but are not being used and what are the reasons for this.

4.5.1 Most notices are of the ‘simple’ type and the reasons for this are discussed in Section 4.1.

4.5.2 The principal alternative enforcement options available are set out in Table 6. EHPs exercise the main powers concerned with neighbourhood noise (though it is the LA that is designated as the enforcing body). Other powers resting with the LA are not enforced by the EHP and are not therefore available to the EHP at his/her discretion, but a decision on action rests with other parts of the LA. The table shows whether the power is operated by the EH Dept, the LA as a whole, or by/in conjunction with other bodies.

Table 6 Principal alternative enforcement options

<table>
<thead>
<tr>
<th>Method</th>
<th>Power resides with</th>
<th>Incidence of use</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bye-laws</td>
<td>EH</td>
<td>Probably very limited</td>
</tr>
<tr>
<td>CoPA S60 – S61</td>
<td>EH</td>
<td>Used a lot in some LAs</td>
</tr>
<tr>
<td>CoPA S63 – S67</td>
<td>EH</td>
<td>Does not appear to be used at all</td>
</tr>
<tr>
<td>Noise Act</td>
<td>EH</td>
<td>Only one of consulted LAs using it</td>
</tr>
<tr>
<td>Seizure under EPA</td>
<td>EH</td>
<td>Widespread use</td>
</tr>
<tr>
<td>Formal Caution (EPA)</td>
<td>EH (+ Legal Dept)</td>
<td>Not widespread but considered useful</td>
</tr>
<tr>
<td>Planning System</td>
<td>LA</td>
<td>Complimentary to EPA</td>
</tr>
<tr>
<td>Licensing</td>
<td>LA</td>
<td>Under new regime believed to be less opportunity for EH input</td>
</tr>
<tr>
<td>S 222 LGA 1976</td>
<td>LA</td>
<td>Used in special circumstances</td>
</tr>
<tr>
<td>Housing Powers</td>
<td>LA and other landlords</td>
<td>Variable</td>
</tr>
<tr>
<td>ASBOS/CrASBOs</td>
<td>LA + other bodies</td>
<td>Variable</td>
</tr>
<tr>
<td>IPPC</td>
<td>EA (Part A1)</td>
<td>Perception that LA powerless, and EA is under-resourced</td>
</tr>
<tr>
<td>Mediation</td>
<td>Independent (might be LA funded)</td>
<td>Variable availability</td>
</tr>
</tbody>
</table>

4.5.3 Reasons why S80 notices, and some of these alternative powers are used (or not used) are discussed below.
4.5.4 Some LAs do not use these provisions but always use the EPA. There are 3 principal reasons for this decision:
   i  The resources required to investigate etc under S80 are fewer than would be needed to prepare a S60 notice or assess a S61 application
   ii There is concern that a site operating within a S60 or S61 could still cause a nuisance and the LA could not take action under S80 of the EPA
   iii In the event of a prosecution, the fines under COPA are much lower than under S80 of the EPA

4.5.5 Another group of LAs use either S80 or the CoPA provisions depending on the circumstances. Typically, the CoPA procedure would be reserved for large and/or long-term sites.

4.5.6 Finally, some LAs would only use the CoPA procedures for two main reasons:
   i  This provision is specifically to control construction site noise whereas the EPA power is general. The power specific to the noise source should be used.
   ii It is believed that the courts have held that a construction site does not constitute premises and so an EPA notice cannot be served in those circumstances. [The view was also expressed that DIY activity in a dwelling changes the classification from premises and consequently an EPA notice cannot be used in that case either (CoPA provisions must be used)].

Noise Act 1996

4.5.7 This Act created a new night noise offence based on an objective standard for which a special measurement protocol was devised. The Act provided LAs with an additional means of dealing with night-time music from dwellings that did not require proof of a statutory nuisance but could be proved by a short measurement (using appropriate methods).

4.5.8 When first implemented, the new powers in the act were only available if a LA adopted the Act and this resulted in the LA incurring obligations in relation to an out-of-hours service. Subsequent consultation on the Act by Defra resulted in a change (under Section 42 of the Anti-social Behaviour Act 2003) whereby the Act was no longer adoptive and LAs did not incur the obligations that previously applied.

4.5.9 Because a majority of LAs did not take up the Act in its original form there is not widespread experience of its use. This was certainly the case amongst the EHPs attending the consultation meetings for this project. Only one LA was using it (in a pilot scheme) and another EHP had experience of its use in a pilot scheme while with a previous LA.

4.5.10 Nevertheless, several concerns and perceived disadvantages were expressed regarding the night noise office as applied to dwellings in this Act. These are set out in Table 7.
4.5.11 The power to seize equipment under the EPA (that was ‘clarified’ in the S10(7) of the Noise Act) was used by several LAs.

4.5.12 The extension of the night noise offence to licensed premises (though this is not yet in force) is awaited with interest, as is the related measurement protocol/criterion.
Table 7 Concerns with the Noise Act 1996

Concerns with the Noise Act

**Resourcing issues**
The powers are still expensive to operate since two people have to be available (for Health and Safety reasons) out-of-hours (even if only one is an EHP and the other addresses the security issue).

It is time consuming since:

1. Two interventions are required if taken beyond the Warning Notice stage. The Fixed Penalty Notice (FPN) cannot be issued until a period of ten minutes has elapsed from the serving of the Warning Notice. The offence under S4 requires a measurement to be undertaken in the complainant’s premises. Officers typically have other calls to make and might not have the time to allocate to this procedure.

2. One of the factors that adds to the time required is the need to placate/reassure etc the complainant who might be agitated/alarmed etc.

3. Music tracks (ie the noise source) are typically less than 5-minutes long.

**Technical issues**
The measurement must be carried out with closed windows – this might not represent the actual situation (eg during the Summer).

It was noted that by the time the guidance emerged, the SLM standard had changed. There was also the risk that the level/criterion set out would become accepted as the specific level for nuisance rather than it being a judgement based on the circumstances. The forthcoming study from Defra re noise criteria for Pubs & Clubs was awaited with interest on this point. Some LAs might revisit it when the link to Pubs & Clubs (and the control level/method from the current Defra research) comes into force.

**Practical issues**
The offence on which the FPN is based covers a period that expires at 7 am the next day, consequently repeat offenders would not be discouraged; nor would ‘pay-parties’ or even ordinary parties – a ‘collection’ among those attending could cover the cost of the FPN, for example 1.

**Health and Safety Issues**
S80 Notices under the EPA do not require the complainant’s identity/premises to be revealed (though, it might be in any proceedings). However, for the Noise Act, measurements have to be conducted in the complainant’s house, and the Warning Notice requires the address at which the measurements were carried out to be stated. This identifies the complainant. Some complainants do not wish to have a visit at night for this reason.

There can be a risk issue for the Officers in entering the complainant’s premises, which are likely to be close to the source of the noise.

There is a risk issue in carrying expensive sound equipment (worth about £2000) around some areas late at night/early in the morning.

**Other issues**
Clarification needed on ‘proper person’. Is enforcement action against ‘the occupier’ correct?

Note 1 Only 1 FPN can be issued to a person in respect of 1 night-time period. However, a conviction for a further offence under S4 after the giving of the FPN can be pursued – S9(2).
IPPIC Premises having Part A1 Process – the LAs’ view

4.5.13 Some concerns were expressed by LAs about the operation of the IPPC regime with regard to noise.

4.5.14 Since noise was brought into the IPPC regime, there has been a division of responsibility for noise issues depending on the classification of the site. Premises having an A1 process are the responsibility of the Environment Agency (EA), while the LA has no powers in relation to noise from such premises.

Classification of Premises

4.5.15 The EA controls A1 uses, while the LA is responsible for A2 and B uses. However, these classifications are not determined by the potential for noise emission. For example, there might only be a small difference in plant between A2 and A1 uses (if at the boundary of a category), or premises might be classified as A1 (and hence under EA control) because of a specific process on the site that might not be significant in terms of the overall noise output.

Consultation and Permit Conditions

4.5.16 The EA consults LAs in the area of the premises for which they are determining conditions for an authorisation. However, even if the EH Department makes recommendations, the EA is not obliged to take them into account.

4.5.17 Permits might only mirror planning conditions and these might not be sufficient to avoid noise problems.10

4.5.18 Applications start from current baseline – but what if there is already a problem?

4.5.19 There was thought to be inconsistency in the approach to setting conditions and the noise expertise in different regions. The EA set the conditions (sometimes having taken LA advice). However, the documents incorporating the BAT concept (which were not drafted by acousticians) tend to lead the EA down a specific path when setting conditions. The guidance note (H3) has the WHO noise levels embedded in it, which can lead to the use of noise levels without thought for the particular case. On the other hand some regions of the EA use a ‘management plan’ approach and might not set any detailed levels.

4.5.20 Although some EA staff have noise expertise, there are not enough to cover all regions and they can be moved to other areas of the EAs work, losing their ability to contribute to noise issues.

---

10 These are complimentary regimes. PPS23 states ‘the controls under the planning and pollution control regimes should complement rather than duplicate each other’. Thus it is expected that conditions attached to a planning permission will be different from those in a PPC Permit, and hence no question of precedence should arise.
Assessment of complaints and implementing enforcement action

4.5.21 The EA is not localised, is not locally accountable, and has few qualified noise staff\textsuperscript{11}. How do the EA enforce any conditions?

4.5.22 EA staff are not qualified to assess nuisance.

4.5.23 LAs would be the body most likely to be contacted by occupiers with a noise problem from an EA-authorised site. If a site is operating within its permitted level, S80 action is precluded, and so the LA has no enforcement power in the case of nuisance from an A1 site.

4.5.24 In Coventry, the EA has used the LA’s out-of-hours service to investigate noise issues. (Coventry City Council also undertakes out-of-hours work on an agency basis for some neighbouring LAs.)

The Environment Agency’s View

4.5.25 The EA was consulted to ascertain their current approach to noise issues on sites for which they have responsibility.

EA structure and noise capability

4.5.26 The EA has regional groups but permitting is implemented by a centralised Strategic Permitting Group. Two members of the SPG have noise expertise and deal with any noise permitting issues that are out of the ordinary. Thus, there is a national consistency in permitting.

4.5.27 More complex noise cases are referred to the Policy Manager for Industry Regulation who can call on a retained acoustic consultant. The EA has some noise-monitoring capability in-house, but can supplement this as necessary via a call-off contract with an external consultancy.

Issuing of Permits

4.5.28 The LA is always consulted. The degree of response varies. If there are current or historic complaints, there is more likely to be an LA response, perhaps in some detail. However, this is not always the case. Furthermore, detailed responses are sometimes received from the LA where there is no complaint history for a site.

4.5.29 All responses are considered when drawing up the noise aspects of the permit.

\textsuperscript{11} The Institute of Acoustics’ Register of Members for 2005/6 lists 1 Corporate Member and 1 Associate Member under the entry for Environment Agency. The full member is understood to be working on other topics within the EA.
4.5.30 The use of specific noise conditions in permits is rare (although there might be such conditions in the planning consent for the same site). The EA tends to use a more generic approach relying on a management plan (i.e., implementing BAT). One effect of this is that if there is a noise problem, it is likely that the equipment in question is faulty. This could be caused by, e.g., inadequate maintenance. In any event, the site would not be employing BAT and would therefore be in breach of the permit conditions.

4.5.31 Note that the permits relate to equipment/operations within the ‘installation boundary’ which might not extend to the site boundary of the facility. It would be normal to exclude, for example, the office block and the car park.

**Notification and Investigation of Complaints**

4.5.32 The EA is usually alerted to a potential noise problem in one of three ways: direct contact by a complainant, or by the LA, or by the operator who have been contacted by the complainant in the first instance.

4.5.33 There is a 24-hour 7-day-a-week incident hot line (0800 807060) on which individuals can contact the EA re any pollution problem, including noise, relating to an EA-controlled site. Every incident is investigated, involving contact with the site. If the incident were judged sufficiently serious (there are 4 Categories\(^\text{12}\)) then an EA inspector would visit the site, even in the middle of the night. However, this is unlikely to be the case for a noise issue.

4.5.34 For a typical noise incident, an inspector might contact, or possibly visit, the premises during normal hours in the week after the notification. This is unlikely for a single notification, however. Whether or not a visit is made, all incidents are logged and so if there were subsequent complaints then further action would be taken.

4.5.35 If a justifiable complaint with an environmental impact had been confirmed, the EA would usually send the operator a warning letter (note, this has no legal status). If the problem were not resolved, the next stage would be to issue an enforcement notice identifying the non-compliance, and specifying a timescale for compliance.

4.5.36 If there were an imminent risk of serious pollution, then a prohibition notice would be served, effectively shutting down the relevant aspects of the operation\(^\text{13}\).

---

\(^{12}\) They are described on the EA website [http://www.environmentagency.gov.uk](http://www.environmentagency.gov.uk) and subdivided into incidents affecting water, land, and air.

\(^{13}\) The EA website states that for England and Wales in 2004 there were 16 Category 1 incidents (the most serious category). No breakdown is given to show whether any of these were noise related. In any event, it would seem that the circumstances in which a Prohibition Notice would be used in relation to any land-based event are limited.
4.5.37 Prosecution for breach of either of these two notices could be carried out (Magistrates' Court). The operator has a right of appeal to the Secretary of State, who would appoint an Inspector to hear the case. In the event of a serious or major impact on the environment, then the EA would usually take a Prosecution for breach of permit condition.

Statistics

4.5.38 The EA produces an annual Spotlight report\(^{14}\), which lists the number of incidents logged in each of the two most serious categories, ie major or serious pollution, (the latest is for the year to December 2004). It is not easy to separate out noise incidents from other topics; most incidents relate to water, odour is a commonly reported complaint, others include black smoke. There are not many noise complaints.

Areas of Uncertainty – Conflict of conditions

4.5.39 It is possible for a site to have both an EA permit (requiring BAT) and a planning consent with conditions (specifying noise levels). Thus, if the EA were prosecuting for breach of a permit, the operator might counter this by demonstrating compliance with the planning condition. The EA was unsure whether in such a situation the court would give greater weight to the permit requirements on the basis that it was issued under legislation specifically intended to regulate ‘pollution’ (which includes noise in this context)\(^{15}\).

Areas of Uncertainty – Jurisdiction for investigation and enforcement

4.5.40 It was mentioned that the permit sets conditions for one or more activities or items of equipment within the installation boundary. For noise, the conditions would normally be expressed in terms of BAT, but could in principle include specific noise levels. However, noise sources such as building services plant on an office building might fall outside the installation boundary, and guard dogs, even if barking within it, might not be subject to the terms of the permit.

4.5.41 These sources might therefore fall to be controlled by the LA's environmental health department under their normal powers (eg EPA S80).


\(^{15}\) The author’s view is that if there is conflict between noise levels in the two sets of conditions, compliance with the planning consent would not be a good defence to a prosecution for breach of the EA’s permit. (Compare the situation where an EPA S80 notice could have more stringent requirements than a planning consent. A prosecution for breach of the S80 notice would be unlikely to be defeated by reference to a planning condition which was being complied with.) On the other hand, it does not mean that the planning condition is without effect. If the planning consent was not complied with, the LPA could take action for breach of (planning) condition, independently of any action by the EA.
**Mediation**

4.5.42 Mediation is one of a range of methods of Alternative Dispute Resolution. Another is Arbitration. Whereas arbitration results in decision being made by the arbitrator in favour of one party, the mediator’s role is to lead the parties to formulate their own agreement. This is achieved by improving communication between the parties leading to an increased understanding of each other’s point of view.

4.5.43 Mediators are trained and many are volunteers working for a local organisation, though some mediators operate on their own. Mediation is independent though local groups might receive funding from the LA.

4.5.44 The use of mediation was highly variable.

4.5.45 Some LAs offer it as a series of options in their first contact with the parties, others might only turn to this approach if they have not been able to substantiate statutory nuisance.

4.5.46 One LA is operating a pilot scheme with special funding that provides a close link with a local Mediation service enabling them to offer it at the outset.

4.5.47 On the other hand, some LAs find that there can be a delay of several weeks before a local mediation service can deal with a case.

4.5.48 Still other LAs have no Mediation service at all in their area.

4.5.49 There was speculation as to how successful Mediation was and whether the point in the process at which it was introduced affected the outcome.

4.5.50 Some of these points were discussed with Mediation UK and their response is included as Appendix C.

4.5.51 Mediation UK also mentioned pilot schemes whereby mediators are attached to a court. This enables the bench to offer mediation to the parties at the outset.

4.5.52 Mediation UK also made some important points about education with respect to mediation.

4.5.53 Firstly, there needs to be a realisation that this method can be a means of resolving disputes – thus awareness raising courses and programmes are necessary.

4.5.54 However, it is important to understand that some cases are not suited to the mediation process. A second type of training is therefore required for people who might need to consider making referrals in order to ensure that they were appropriate. In courts where the pilot mediation schemes are operating, for example, members of the bench have had this training. Some LAs that have a Service Level Agreement with a mediation service have also had their officers trained to this level in order to maximise the benefit from referrals.
4.5.5 Finally, there is training in acting as a mediator. Some high level members of the judiciary have undertaken this training.

4.6 **What options are available if the noise, though a problem, is not considered to be a statutory nuisance**

4.6.1 The options available in these cases are mediation, private action, and action by a body other than the Environmental Health Department.

**Mediation**

4.6.2 Some EHPs consider that their role can include an element of informal mediation. This can arise as part of their investigation in which the parties articulate their view of the situation to the EHP, and the EHP might provide information about the powers and duties the LA has. This would include explaining the concept of 'statutory nuisance'. Underlying this is the principle of reasonableness. Thus, on the one hand, it would in most circumstances be unreasonable to play loud music or use power tools in a flat in the early hours of the morning, on the other hand it is normally necessary to accept that some noise, in moderation, will be heard from neighbours. So-called 'life-style clashes' can arise from either thoughtless behaviour or unrealistic expectations.

4.6.3 In the case of unsubstantiated statutory nuisance from industrial/commercial premises, some EHPs would try to persuade the alleged noise-maker to make some concession/improvement as a gesture of goodwill.

4.6.4 Some EHPs took the view that their role was a professional one defined by their statutory powers and duties and that informal mediation of the kinds described above were not within their remit.

4.6.5 Formal mediation can also be used. This involves trained mediators and an independent mediation service. Some LAs have a policy of offering to refer the matter for mediation when the complaint is received (ie before any investigation), others carry out their investigation first to establish whether there is a statutory nuisance and only consider a referral when no statutory nuisance has been established.

4.6.6 Mediation can be used whether or not a statutory nuisance has been established, but not all situations are appropriate for mediation and assessors are trained to identify which cases are suitable for referral.

4.6.7 As has been mentioned above, the use of mediation is highly variable since it is dependent not only on policy but also on the availability of a service in the LA’s area. Some LAs have a service agreement with a mediation provider and utilise it in appropriate cases, in some areas no service is available at all.

**Private Action**
4.6.8 All EHPs provide information about ‘private action’ under Section 82 of the EPA.

Other bodies

4.6.9 In the case of tenanted property, the landlord might have powers under the tenancy agreement to control noise or even to seek a control order. The landlord might be the LA itself or a Housing Association. LAs also have Anti-social Behaviour Teams that might have a role, as can the Social Services Department in some cases.

4.6.10 The degree of assistance that these bodies provide is variable. Some LAs have an integrated system of working involving the EHPs with one or more of these bodies and case conferences. One LA reported that in their area these bodies now dealt with most of the domestic noise complaints with limited involvement from EHPs. In other cases, there were not such formal arrangements but there was collaboration.

4.6.11 The degree of co-operation from social landlords was reported to be variable. Some work hard to resolve problems, others play virtually no role.

4.7 Suggestions and Comments from Local Authorities

4.7.1 The suggestions and comments encountered in the consultation covered a wide range of topics. Some of them have been listed in Section 4.4.1. The tables in this section include (in note form) more information on some of those topics, together with other issues that were raised during the study.

<table>
<thead>
<tr>
<th>Table 8 Legislative issues - Proposals</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Consolidation of Noise Legislation</strong></td>
</tr>
<tr>
<td>Would be convenient for the public, and for EHPs, but too complex, so not practicable.</td>
</tr>
<tr>
<td>Not necessarily required, NSCA handbook lists current statutes, for example.</td>
</tr>
<tr>
<td>Note that the source that constitutes the biggest problem in terms of numbers exposed road traffic – is excluded from this legislation; similarly aircraft noise.</td>
</tr>
</tbody>
</table>

| **Amended legislation, not original imprint to be on Govt website** |
| **(with traceable amendments)** |
| The OPSI website only provides copies of statutes (for England and Wales) as originally enacted. |
| Defra (or another part of Government) to provide up-to-date versions of legislation (including SIs) on web. |
| Currently LAs are nationally spending thousands of pounds annually in subscriptions to third party providers of cross-referenced updates. |

Is A4 the best format for viewing legislation on the Web? Ideally, provide a software facility to enable personal annotations to be added. Otherwise, copies will be printed off.
Table 8  Legislative issues - Proposals

Comments from CIEH
i) Up-to-date legislation is provided in this way in respect of NI legislation – see the Pollution Control and Local Government (Northern Ireland) Order 1978. This shows the changes in a contrasting colour with a reference to the amending measure. Thus not only can the current law be understood, but the legal position for past dates can be deduced.
ii) In the absence of this facility, there could still be an improvement. The practice among parliamentary draftsmen of describing amendments by referring to parts of an existing clause make it difficult to determine what the amended text should be. It would be clearer if the whole of the original paragraph was repealed and a complete new paragraph, incorporating the original text that was unamended and the changed text was provided.

A suitable body (perhaps Defra or CIEH) to co-ordinate case law (for all topics affecting statutory nuisance, not only noise)
It would be useful if the Defra website had up-to-date information on the relevant statutes and case law, including LGO decisions. Two issues to be resolved, however, were that it should be easy to locate on the site, and that it should be accurate.

Comment from CIEH
Up-to-date case law should not be difficult to obtain. There is relatively little litigation in noise cases, perhaps because there is not usually much at stake financially in such cases. Consequently, there are few cases that establish a precedent. (Although decisions of Magistrates’ Courts, and reports of the Local Government Ombudsman will understandably influence future policy and actions locally, EHPs often fail to realise that they are not relevant in terms of precedent.) Cases that establish precedents will be reported in eg The Times, specialist series such as Sweet & Maxwell’s Environmental Law Reports, and possibly the All England or the Weekly Law Reports. The Times can simply be purchased daily, the other sources, and online systems such as Lexis, will be available to a LA’s legal department. Thus each LA has access to legal specialists in-house and appropriate liaison, probably set out in an SLA, should enable the required case law and interpretation to be available to the EHPs to enable them to take account of it at all stages of an investigation.

Table 9  Proposals re S60 and S61 of CoPA (Construction sites)

Power to require S61 (CoPA) application
There is no power for a LA to compel a S61 application. Although the LA can serve a S60 notice, to do so would require them to have more knowledge about the proposal (even if they are aware of it), than they are likely to have.

LA to be empowered to charge fees for consideration of S61 Applications
cf Planning Fees – there might then be a possibility of resourcing the work involved.
Table 10  Proposals for Defra Guidance

Citizen’s Guide for Noise
This would explain what is reasonable behaviour and noise level for different times of etc. Each LA have their own websites with useful data but no national overview – cf Public Information Broadcasts. The guide could educate both offenders and complainants on what is reasonable in terms of behaviour and expectations – the right to complain is not without limits. Some problems arise from life-style clashes and guidance might help.

Supplementary Guidance to the EPA
What constitutes an appropriate standard? It is currently related to the ‘character of the area’ by 19 century and early 20-century cases (eg St Helens Smelting Co v Tipping). It was therefore considered that there might be scope for ‘supplementary guidance’ to the EPA on what constituted reasonableness and similarly bpm. If using the supplementary guidance approach it could refer to the appropriate Act(s) that contain powers relevant to noise. (eg the New Housing Act has some relevance to noise insulation)

Standard Notice in Plain English
Shaws’ forms or LA’s own are used – unnecessary clauses can be deleted, especially if electronic copy.

Not a nuisance
Guidance would be welcome as to what options are available.

Table 11  Further Proposals

Courts used for neighbour noise cases
Specialist courts are used abroad and in other parts of the judicial system in this country (eg Family Courts). Should residents refer the issue to a ‘peoples court’ in the first instance, rather than to the LA?

Extend requirements for planning consent
Require it to be obtained for any changes to a site that result in an increase on noise off-site (eg new machinery). This is suggested because planning use classes are such that, although a specific user on a site might be acceptable, another in the same use class might give rise to noise problems.

DVLA liaison
A direct line for the LAs to the DVLA would be helpful and save time when dealing with car alarms under the Noise and Statutory Nuisance Act. (Currently access to the data is via the police.)
Table 12  Comments from EHPs

Most LAs write to inform the alleged offender at the outset of an investigation that monitoring might be carried out; although one LA does not do so until after a nuisance has been confirmed. When RIPA was first enacted LAs could authorise surveillance in respect of nuisance. When RIPA was amended this power was passed to the EA (apparently despite objections from LA bodies). Currently, therefore LAs have no power to authorise surveillance to gather evidence for nuisance and writing to the alleged offender is effectively a courtesy. (They rely on the non-invasive nature of the monitoring rendering it of type that does not require authorisation). However, LAs are able to authorise surveillance undertaken to acquire evidence of criminal activity, and hence can gather data for a breach of a notice. The situation is considered to be unsatisfactory and has it is believed has yet to be tested in the courts.

Identification of perpetrator ref domestic night noise
Under EPA can be difficult to identify perpetrator (eg there may be H&S issues). FPN better but needs measurement (so takes time).

Level of fines/other sanctions
General point was made that courts tend not to impose high fines for noise offences. Perhaps more options for sentencing could be helpful eg Community Service Orders for domestic cases/‘damages’ for affected residents. NB higher for EPA than for CoPA (YAHPCAs). [The EA reports the use of other sanctions in its own prosecutions.]

Fixed Penalty Notices under the Noise Act
How does this approach relate to provision in the CNEA for 1-week’s discretionary delay?

1 week delay – CNE Act
For industrial sources, dialogue is needed before service; this can be longer than 1 week. Because a specific period is now set out, there could be appeals to the LGO if there was no service within 1 week although there were legitimate reasons for the delay. Therefore, the period of 1-week should be increased or deleted. (NB: EPA says ‘shall serve’ but no specific timescale). Thought to be case law that it is acceptable for a LA not to serve notice while using an informal approach in active pursuance of resolving the matter. (NB still need to collect/collate info for notice if needed in due course).

Third-party evidence
Some LAs would use ‘professionals’ as witnesses eg Police Officer, Housing Officer, by interpreting the observations of those officers to draw their own conclusions about the noise (eg ‘it could be heard 100m away’). Some LAs have concerns about non-EHPs giving an opinion on nuisance.
Some LAs would be prepared to serve an EPA notice using a combination of complainant evidence (eg logs, diaries) plus a DAT recording; more than one complainant corroborating the events would also be preferable. However, most LAs would only prosecute on the basis of the direct evidence of an EHP.

DTI’s Enforcement Concordat
This has been widely adopted but it voluntary (it promotes a collaborative approach, and proportionate action.)
There was a concern lest any new version that might emerge was more prescriptive, and/or
Table 12  Comments from EHPs

compulsory.

Noise Act – Permitted Level
Concern re Measurement methodology – measured level has poor correlation with nuisance

Table 13  Requests for clarification

Application of S80 of the EPA to commercial occupiers
The EPA is ambiguously worded and it is not clear whether an LA is able to act in case where the disturbance affects a commercial occupier.  *Wivenhoe Port Ltd v Colchester BC* is used to justify no LA action in such a case.  However, one LA was advised that they should investigate a case where a restaurant above a pub or club experienced disturbance from karaoke.

Anonymity of complainant – Guidance in relation to S80 of EPA
Preservation of a complainant’s anonymity can be an important consideration.  This can be compromised in the initial investigation (ie by entering their premises) or in the wording of the notice.  To obtain evidence for a FN under the Noise Act it is necessary to enter complainant’s premises.  Opinion was divided on whether it was necessary to enter (a complainant’s) premises before deciding whether to serve an EPA notice.  For example, when giving evidence in court, one officer had had to identify each of the premises at which a nuisance occurred.  Another view was that evidence could be obtained by checking whether the noise was audible at some distance (eg 100m) from the immediate vicinity of the source; this evidence could be used in support of the service of a notice (ie if there were occupied premises adjacent or near to the source of the noise).

Guidance on 2 issues relating to S80 notices (*need to enter premises*, and the *wording of the notice re complainant’s premises*) would therefore be welcomed.

Noise Act – correct person for service of Notice
Is subsequent enforcement action against ‘the occupier’ correct?
5 **SUMMARY OF FINDINGS**

5.1 **The variation in the details specified in notices**

5.1.1 Most LAs in the study use a ‘simple’ form of notice – ie one that requires the nuisance to be abated without describing the method or works required. There is in practice limited variation.

5.2 **The different noise sources for which notices are used, and whether that affects the drafting of the notice**

5.2.1 Section 80 notices are used for noise sources from domestic and commercial/industrial premises. The most common domestic source is music but notices have been served in relation to noise from animals (dogs, poultry). Noise sources on commercial/industrial premises include music from pubs and clubs.

5.2.2 Section 80 notices are also used to control noise from construction sites instead of the sections of the CoPA that deal with this specific source (S60, S61). Some LAs only used S80 of the EPA for this type of noise, some use the EPA or CoPA depending on the scale/duration of the construction activity, and some LAs only use CoPA. Of those only using CoPA there were some of the opinion that it was the correct power because it dealt specifically with construction site noise. There was also a suggestion that a construction site did not constitute ‘premises’ and therefore fell outside S79\(^\text{16}\) even for DIY activity.

5.3 **If a notice is used, how the requirements included in it are determined**

5.3.1 As noted above, the principal matter with the potential for variation – the requirements that the offender must follow – is, in practice, limited. However, there are several other matters that need to be decided (eg time for compliance) and these are usually decided on the basis of the circumstances and professional judgement/experience.

5.4 **How the decision is made to use a notice, or some other method of controlling the noise**

5.4.1 EPA notices are used because (even though there are some aspects on which clarification and/or guidance would be helpful), they represent the most flexible and often the most practical option in many situations.

\(^{16}\) Neither would it constitute a street and so it would not be covered by the extension to the EPA [S79(1)(ga)] brought about by the Noise and Statutory Nuisance Act 1993
5.5 Why some types notice are not used

5.5.1 The principal distinction is between ‘simple’ notices and those specifying works or measures. The latter type is not used for several reasons. The principal ones appear to be in order to protect the LA (from claims against it) or because it would be impractical for the LA to specify the works.

5.6 Why some other enforcement options are not used

5.6.1 Many LAs use CoPA for construction noise. However, a large number do not. Those LAs that do not use CoPA for construction sites wish to retain the option of using the EPA.

5.6.2 The Noise Act is very little used by the LAs encountered in the consultation. Its procedures are considered to be more time-consuming, less flexible, and perhaps more dangerous than using the EPA.

5.7 What options are available if the noise, though a problem, is not considered to be a statutory nuisance

5.7.1 Some EHPs refer the complainant to S82 of the EPA and do not consider that they can or should do more. Other EHPs might refer the parties to mediation (if there is a service available) or try to act as informal conciliators. In the case of noise from non-domestic premises, several EHPs would still try to persuade the noise-maker to reduce or restrict the noise. In some instances the matter might be referred to other parts of the LA or to a social landlord where that was applicable.
6 DISCUSSION AND PROPOSALS

6.1 Introduction

6.1.1 This section considers the principal issues that have emerged from the consultation and makes proposals where appropriate. Any proposals are the views of the author and do not represent the policy of Defra or any other Government Department or of any other body.

6.1.2 The issues have been grouped under the following headings:

- Strength and weaknesses of the S80 EPA procedure
- The Noise Act
- The Environment Agency
- The Courts and Police Services
- Guidance and information

6.2 Strengths and weaknesses of the Section 80 EPA procedure

6.2.1 The powers are primarily founded on the legal concept of nuisance. The principle strength of this approach is that it is flexible and uses the approach of reasonableness in the specific circumstances. The powers are executed by EHPs who have experience of applying this approach. EHPs appear to value this adaptability and the reliance on their professional skills and judgement.

6.2.2 This ‘strength’ of the system does however have an associated problem. Members of the public, and others not used to this approach, can find it difficult to understand the extent of the power and what behaviour is permitted or constrained.

6.2.3 This is probably best addressed by guidance documents and education rather than by changing the basis of the system.

6.3 The Noise Act

6.3.1 The Noise Act has some potential benefits over the S80 EPA procedure. Firstly, proof of an offence under S4 (of the Noise Act) is based on a short duration, objective, measurement, not on the EHP’s professional opinion, and there is a defined measurement protocol. These features should make it more straightforward to provide the evidence needed for a prosecution.

6.3.2 Secondly, there is possibility of levying a £100 fine by way of a Fixed Penalty Notice (FPN).

\[17\] ‘Statutory nuisance’ also includes ‘prejudicial to health’
6.3.3 Nevertheless, there was only limited use of the Noise Act among the EHPs consulted in the study, and a number of reasons were put forward to explain why the Noise Act was not preferred to the EPA procedure. Those reasons are listed in Table 7 (page 27) and some are discussed below.

6.3.4 The initial stage of the Noise Act Procedure – the issue of a Warning Notice – is similar to the EPA procedure whereby an abatement notice is served. No measurement is required and the assessment can be carried out at a location the EHP deems appropriate.

6.3.5 To prove an offence under the Noise Act is then necessary to wait at least 10 minutes and then carry out a measurement in the complainant’s premises. Under the EPA procedure, a notice can have immediate effect and it is not essential to carry out a measurement or to enter any premises.

6.3.6 There is an additional power under the Noise Act to administer a FPN; this is not available under the EPA (except in London). However, this is generally believed to require the measurement described above to have been carried out, and so its potential for constraining the noise-maker by imposing an immediate £100 fine must be balanced against the time required for the measurement. Since a ‘noise-maker’ can only be served with one FPN in any single night period, there is also the possibility that the fine having been incurred the noise will continue. This would not preclude later prosecution for subsequent breaches of the Warning Notice during the same night period based on further measurements.

6.3.7 Note that Section 8 of the Noise Act only requires the EHP to have ‘reason to believe’ that an offence under S4 has been committed. This form of words might not require that a measurement has been carried out. However, this is not how EHPs interpret the FPN procedure, and the author is not aware that it has been tested in the courts.

6.3.8 Proceeding without a measurement would lead to a problem if the FPN were not paid within the statutory period (14 days). In that case, prosecution for an offence under S4 of the Act would not be possible.

6.3.9 However, if this interpretation of the FPN procedure (ie in not requiring a measurement) is valid, there might still be a means of imposing a FPN but with the reserve position of a later prosecution if it was not paid. The suggestion is to serve both a Noise Act Warning Notice and a S80 EPA notice at the same time. This could be carried out based on the same observation/assessment by the EHP. If the FPN was not paid there could still be a prosecution for breach of the S80 notice. This approach does not use the Noise Act in the manner intended (which was to avoid the use of the EPA) but might enable the FPN power to be used as an adjunct to the EPA. If the FPN were to be paid then the LA could exercise its discretion not to prosecute for the (first) breach of the EPA notice. This proposal would also make it easier to obtain evidence for prosecution of offences (ie breaches of the EPA notice) during the same night period if the music did not stop.
6.3.10 A further benefit of this approach (assuming that is sound) would be that it would overcome a limitation in the Noise Act regime whereby the Warning Notice only applies to the night period in which it is served, whereas a S80 EPA notice subsists for longer (in principle it persists indefinitely).

6.3.11 Reference was made above to the powers in Scotland that are similar to the Noise Act. It is reported that in the City of Edinburgh these powers have been applied enthusiastically and effectively. The two sets of powers are compared and other aspects of the procedures are discussed in Appendix A.

6.3.12 Key differences in the provisions and circumstances are that in Scotland:

- Prescribed level for night-time lower (though the rounding method can offset this effect)
- Joint responsibility with Police Service (note that police involvement is agreed at a local level)
- Specific funding provided (by Scottish Executive) for LAs.

6.3.13 It is not certain whether or how these might contribute to the difference in application of the powers in Scotland. However, the last two points constitute a major distinction in the circumstances between the two countries. Note, too, that in England, some LAs have about 25 years’ experience of using the EPA (and its forerunner – the CoPA) in providing an out-of-hours service in relation to music at night from domestic premises. Any new procedure must therefore offer major benefits if it is to supplant established and honed systems.

6.4 The Environment Agency

6.4.1 Issues raised by the consultation with the LAs and the EA are discussed in Appendix B.

6.4.2 There appears to be scope for improved liaison/understanding of the respective roles and powers, and the context in which each of them operates.

6.4.3 In support of the joint Environment Agency and Local Government Association/Welsh Local Government Association memorandum of understanding ‘Working Better Together 2003’ eight protocols were introduced – number 8 covers IPPC. The format of these protocols is in two parts – the first part sets out national agreements about roles and responsibilities, and working arrangements, the second part enables local agreements to be established. It is possible that this might provide an appropriate framework for a protocol in relation to Environmental Health, in particular regarding enforcement. Suitable topics for inclusion in any protocol or liaison document are:

---

19 The full list is

1 Air Quality Management
2 Fire Service Issues
i Description of EA’s Structure for permitting and policy in relation to noise and LA consultation

ii Clear statement of noise sources and activities covered by EA

iii Confirmation for each permitted site of the installation boundary and the sources within it that are subject to EA control

iv Consideration of more widespread use by the EA of LA (EHPs) in agency role for investigating noise complaints for sources over which the EA has jurisdiction

v Upgrading the way in which the topic of noise is dealt with in the EA website

vi Clarifying for LAs the context in which the EA views noise complaints, and for the EA of the importance of noise as local pollutant capable of giving rise to serious effects.

6.5 The Courts and Police Services

6.5.1 The relationship with the Police service is reported to vary between LAs. Some have close working relationships and regular liaison group meetings (perhaps involving the courts service, too). In other cases, there is reported to be little co-operation and noise cases are accorded a low priority by the police, even where their powers can be used to assist the EHPs.

6.5.2 Despite the existence of a Noise Liaison Guide published jointly by the Association of Chief Police Officers and the CIEH[^20], the consultation reported some lack of co-operation. The project scope did not enable the reasons for this to be investigated. However, the potential means to improve the situation where there are problems might be by a combination of education and resourcing, better communication both between the Police and LA and between different strata or parts of the police service, and by the dissemination of the benefits of successful partnership working by forces and LAs where this has occurred.

6.5.3 The consultation revealed some difficulties apparently experienced with the approach of the courts to noise cases. These include:

- Requiring a higher standard of proof in an appeal against an EPA notice than is needed
- Imposition of very low fines for prosecutions for breach of S80 Notice, and
- Not awarding costs to the LA even after a successful prosecution

6.5.4 The solution to these problems is likely to be similar to those suggested above in relation to the police service

6.6 Guidance and information

6.6.1 EHPs consulted made suggestions to how they could be more easily informed and kept up-to-date with regard to the law (as it is amended) and decided cases. Proposals for guidance documents and some specific queries were also raised.

6.6.2 In relation to the availability of the up-to-date versions of statutes, this is not trivial problem either to work with or to resolve. Although, as the CIEH has pointed out, the OPSI website provides amended versions of Northern Ireland legislation, applying this for English (and Welsh) laws would probably be more difficult.

6.6.3 Although EHPs can, by paying a subscription obtain either loose leaf or online third-party services to provide updated legislation, this is not available to the private citizen who would find it impracticable to determine the current state of the law.

6.6.4 Consideration should therefore be given to providing a guide to the legislation. This could be in the form of a Defra leaflet and/or as FAQs on the Defra website, outlining the principal Acts and those that have amended them. The CIEH and NSCA already provide material from which such documents could be generated (though the costs of using it have not been considered).

6.6.5 In relation to decided cases, the CIEH has pointed out that in practice cases that establish a precedent are few in number and that Magistrates’ Courts decisions and LGO reports are not relevant outside the context of the case they decide. Although this is legally true, it is understandable that EHPs, lawyers, and the Magistrates’ Courts should refer to and perhaps be influenced by material that has no legal weight when considering broadly similar circumstances. An unfortunate by-product of this tendency is for an established wisdom to take root in relation to cases/reports of this kind where the reference for the case/report is ‘lost’. Consequently, the ‘legal principle’ that the case/report is thought to ‘establish’ cannot be examined and if necessary distinguished or dismissed.

6.6.6 The effect can be regional whereby in one part of the country one view is believed to have been decided as the ‘law’ while in another part the opposite view is believed be the result of a (different) decision.

6.6.7 Some EHPs consulted were able to provide a reference (to a case or LGO report) or even a copy of the decision, but in many instances it was not possible to identify a specific case or report that gave rise to the principle in question.

6.6.8 Moreover, in relation to some important principles there may be no decided case that definitively establishes the law. This is arguably true of the following matters:

- Whether LAs can withdraw a S80 EPA notice
• Whether a S80 notice subsists in perpetuity
• Whether a LA believing that bpm would form a successful defence against the service of a S80 notice should serve a notice

6.6.9 The solution to correcting any misplaced received wisdom is not straightforward. A paper would probably need to be produced eg by/for the CIEH, providing references to decisions (where they existed) concerning some of these principles. A commentary could be included on the weight to be attached to the decision (ie depending on the body making it). The lack of a decision (of any sort) could be highlighted for topics that are currently believed to have been decided in a particular way. Such a document would need to be regularly reviewed.
7 CONCLUSIONS AND RECOMMENDATIONS

7.1.1 The LAs consulted showed a great deal of consistency in some matters (e.g., use of simple S80 notices, avoidance of the Noise Act) but diversity in others (whether the EPA or CoPA was used for construction site noise). These issues did not cause them particular difficulties in applying the legislation as they saw fit.

7.1.2 There were also a large number of suggestions for assistance or improvements in matters related to controlling neighbourhood noise. Some of these proposals were put forward in several of the meetings.

7.1.3 The type of proposals included:

- Clarification of LA powers/duties under the legislation
- Supplementary guidance on various matters for the public and/or practitioners
- New clauses to be added to some of the principal statutes
- Changes to the way in which legislation is published
- A new court system

7.1.4 All of these proposals would entail not only cost but also require a long period to put into effect. Some would impinge on other aspects of the law and/or Government Departments.

7.1.5 This study has made contact with a large number of LAs but the relative usefulness for LAs as a whole of acting on any of the various proposals put forward cannot be judged from it. Before committing resources to any of these proposals their effectiveness, practicability, and cost implications need to be assessed.
ACKNOWLEDGEMENTS

The study could not have been completed without the support and co-operation of many EHPs, particularly the Secretaries/Convenors of the Groups and the author is grateful for their assistance. Thanks are also due to staff at the CIEH, EA, and Mediation UK who contributed to the study by their discussions and other input.

The author acknowledges the benefit of the commentary on legal points and extracts from cases in McCracken’s book ‘Statutory Nuisance’\(^{21}\).

\(^{21}\) Statutory Nuisance, McCracken R, et al, Butterworths, 2001
Appendix A

Comparison of Powers under Noise Act 1996 (as amended) and Antisocial Behaviour (Scotland) Act 2004
Comparison of powers available under the Noise Act 1996 and the Antisocial Behaviour (Scotland) Act 2004

Powers available to LAs in Scotland under the Antisocial Behaviour (Scotland) Act 2004 have been taken up by some LAs and are reported to be successfully used in Edinburgh.

In England, the Noise Act made broadly similar powers available in respect of noise at night from dwellings in 1996. Initially, the new powers were adoptive and LAs adopting the powers were obliged to take reasonable steps to investigate complaints out-of-hours. The Antisocial Behaviour Act 2003 provided that the powers were available without adoption (in England and Wales) and removed the obligation for LAs to take reasonable steps to investigate out-of-hours complaints. The following reasons for not using the Noise Act powers were given by responding LAs in the study 22.

### Concerns re the Noise Act

**Resourcing issues**
The powers are still expensive to operate since two people have to be available (for Health and Safety reasons) out-of-hours (even if only one is an EHP and the other addresses the security issue).

It is time consuming since:

1. Two interventions are required if taken beyond the Warning Notice (WN) stage. The FPN is served after a period has elapsed from the Service of the WN and the second intervention requires a measurement to be undertaken. Officers typically have other calls to make and might not have the time to allocate to this procedure.

2. One of the factors that adds to the time required is the need to placate/reassure etc the complainant who might be agitated/alarmed etc.

3. Music tracks (ie the noise source) are typically less than 5-minutes long.

**Technical issues**
The measurement must be carried out with closed windows – this might not represent the actual situation (eg during the Summer).

It was noted that by the time the guidance emerged, the SLM standard had changed. There was also the risk that the level/criterion set out would become accepted as the specific level for nuisance rather than it being a judgement based on the circumstances. The forthcoming study from Defra re noise criteria for Pubs & Clubs was awaited with interest on this point. Some LAs might revisit it when the link to Pubs & Clubs (and the control level/method from the current Defra research) comes into force.

**Practical issues**
Because the FPN expires at 7am the next day, repeat offenders would not be discouraged; nor would ‘pay-parties’ or even ordinary parties – a ‘collection’ among those attending could cover the cost of the FPN, for example.

---

22 For convenience, some of the material from page 25 and the table following it in the Main Report is repeated here.
Concerns re the Noise Act

Health and Safety Issues
EPA Notice does not require the complainant’s identity/premises to be revealed (though it might be required in any proceedings). However, for the Noise Act, measurements have to be conducted in the complainant’s house. This identifies the complainant. Some complainants do not wish to have a visit at night for this reason.
There can be a risk issue for the Officers in entering the complainant’s premises, which are likely to be close to the source of the noise.
There is a risk issue in carrying expensive sound equipment (worth about £2000) around some areas late at night/early in the morning.

In order to better understand the reasons for the success of the powers in Scotland and determine whether any improvements can be made to the current powers, practice, or concerns in England the Scottish and English situation have been compared under three headings:

1 Legislative differences (ie between the provisions in the Acts etc)
2 Previous Practice (ie before the availability of the powers)
3 Practical aspects (of current system)

1 Legislative differences

The principal provisions of the two sets of provisions are set out in the table at the end of this Appendix, from which the following differences can be seen. In Scotland:

i The powers are adoptive and, if adopted, investigation of complaints relating to them is a duty
ii There is provision for periods other than night-time
iii The complainant need not be present within a dwelling
iv a place other than a dwelling may be prescribed by Scottish Ministers as a receptor of the noise (this affects the scope of other aspects of the procedures eg location of measurements)
v The LA officer is not constrained to assess inside or outside the complainant’s dwelling, but can decide from what place to assess the noise
vi The scope of locations subject to control as regards noise emission appears to be wider, and there is provision for it to be extended by order
vii Measurements can be carried out within rooms other than those used for living purposes
viii the permitted level for the night-time is referenced to an underlying level of 31/21dB not 35/25dB
ix Measurements of the permitted level are rounded down to the next integer instead of up
x Fixed penalty notices can be served by a constable (as well as by an authorised LA officer)
2 Previous Practice

Before the passing of the Antisocial Behaviour (Scotland) Act 2004, domestic noise was dealt with by the police under powers in the Civic Government (Scotland) Act 1982. (Note that S79 – 82 of the Environmental Protection Act 1990, which include powers for a LA to deal with noise, do not apply to Scotland.)

3 Practical Aspects of Current System

In Edinburgh City Council, all complaints are made to the police, as under the previous arrangements. The police pass the complaints to the LA when the time of day and day of the week fall within noise control periods, and LA officers are on duty. If not, they investigate the complaint themselves.

The police can also review their files in relation to any premises about which complaints are received to consider eg whether there are specific safety concerns, which suggest that the police should attend. (There is a reciprocal arrangement whereby LA data from eg their Antisocial Behaviour Unit is shared with the police to highlight relevant addresses, including a nightly list of imminent ASBOs.)

The Scottish Executive has provided funding of approximately £350,000 pa for the first 3 years of the scheme. The population covered by the City of Edinburgh’s scheme is about 5000,000. In the first 11 months about 10,000 complaints were received, leading to about 300 FPNs, which generated £30,000. (Clearly, the scheme is not self-funding.)

4 Conclusions

Some aspects of the legislative powers available to LAs are less restrictive/more flexible in Scotland (eg items iii to vii, above). The permitted level (for the night-time period) is 5 dB lower than in England (though measured values are rounded down rather than up as they are in England). It is not known whether these legislative differences contribute to the success of the scheme in the City of Edinburgh.

However, two practical aspects of the scheme are noteworthy; the role of the police, and funding to the LA.

There is strong liaison with the police in some LAs. They are jointly responsible with the LA and this means a sharing of a responsibility they previously carried alone. The police are aware of each complaint from the outset and can advise on/anticipate the need for police presence at that stage.

The English legislation makes provision for an increase in LA funding for any increase in LA costs as a result of implementing the Noise Act. However, since LAs already had a responsibility (under the Environmental Protection Act 1990) to investigate complaints
about night-time noise, English LAs might not have been able to demonstrate a significant increase in expenditure, and any funds might be hard to identify with the provision of services under the Noise Act.

It seems that in Scotland, there has been significant extra funding, clearly identifiable with the LAs’ new responsibilities.
8 DISCUSSION OF ENVIRONMENT AGENCY ISSUES

8.1.1 There appear to be misunderstandings on the part of LAs about the way in which the EA is structured and operates when granting permits. On the other hand the EA does not appear to give noise complaints a high priority in relation to other aspects of its work. For example, although the latest issue of Spotlight includes mention of a co-operative noise venture as one of the case histories, there is no mention of noise complaints (or indeed any other complaints) in the report.

8.1.2 There is no specific link for ‘noise’ on the EA website; perhaps because noise is a cross-sector pollutant.

8.1.3 Searching for ‘noise’ on the site brings up a useful list of links (eg Defra, H3 guidance) the last of which is to a further page with an email address to contact the EA to determine if they are responsible for a particular site. The EA page describing their Incident Hotline does not list noise as one of the topics to report and asks that pollution incidents are not reported by email.

8.1.4 Searching for ‘noise complaint’ on the EA website results in three links. One is to an associated site where Statutory Nuisance and the role of the LA are explained, the second is to the CIEH website, and the third to an account of an EA prosecution for breach of condition involving noise.

8.1.5 The EA Pollution Incident Categories include ‘impact on the amenity value’ (of Land), and ‘impact on property’. Presumably, one of these is used to record noise complaints. However, it is not known how the seriousness of an incident is judged. The prosecution mentioned above, which resulted in a substantial fine, took place after the EA had sent at least 4 warning letters to the firm (which were ignored) and two of the offences occurred after the Chairman was interviewed. The original confirmation of the offence was observed by an EA officer at 8:50 one evening.

8.1.6 This case shows that, contrary to the LA’s perception (and the EA’s general expectation), an EA officer might visit a site out-of-hours in response to a noise complaint. However, the regulatory regime under which the EA operates does not impose the same duties on them that would have applied had an LA officer observed the incident (which was not a one-off).

---

8.1.7 If an investigating LA were satisfied that there was a statutory nuisance, there would be a duty to serve a S80 notice. They might have to prove that there was a statutory nuisance in court if the firm appealed. Depending on the terms of the notice, prosecution for a breach might entail proving a statutory nuisance or merely breach of e.g. a condition restricting hours of operation.

8.1.8 The EA’s centralised permitting approach gives it a strategic perspective and should ensure consistency in specifying conditions. However, the regime under which it operates might be less well attuned to dealing with local noise complaints. Most noise complaints will be dealt with by the LA from which residents will expect prompt action (particularly for night-time noise) and feedback on the progress of an investigation. If they are dissatisfied they can complain to their local councillor, their MP, or the LGO.

8.1.9 The EA has highlighted the fact that some noise sources on an EA permitted site might be subject to LA control under the EPA (if they were outside the installation boundary). It is not known whether this is widely known by LAs.

8.1.10 A practical issue to be faced is for a LA to determine the location of the installation boundary for a site and whether the noise source complained of lies within it. This is not likely to be straightforward, particularly if the LA is responding to a complaint at night.

8.1.11 For the part of an EA regulated site that lies within the installation boundary, a LA cannot serve a notice under S80 of the EPA without the consent of the Secretary of State. However, there is no such restriction on private action under S82 of the EPA.

8.1.12 LAs generally consider that S82 actions are rare. Individuals would expect the LA to deal with the noise problem, and might be apprehensive about court procedure or concerned about a costs order against them if the other party were legally represented and successfully defended the ‘action’ in the Magistrates’ Court.

8.1.13 Nevertheless, there does not appear to be a restriction on the LA carrying out an investigation of the noise complaint – indeed, they have a duty to do so. The EA receives some notifications of noise problems from a LA that has responded to a complaint and might even call the EA Incident Line while on site or provide evidence for the EA to use in evaluating the problem.

8.1.14 If a complainant took S82 action the operator might well claim that he was operating within the terms of his permit which effectively amounts to bpm. This would be difficult for a lay complainant to rebut. However, if the LA has investigated and has evidence, the complainant might be able to issue a witness summons for the relevant officer to appear and take advantage of the LA’s evidence and opinion in their own action. This approach has not been tested, however.
Appendix C

Consultation with Mediation UK
1 Coverage of mediation services
Some LAs have none. Mediation UK website says it provides support to services covering 60% nationally. Any data on overall coverage ie including other services? (NB The project covers England and Wales though consultation only took place within England.)

There are 132 community mediation services in the UK. 108 of them are voluntary organisations and 22 are statutory or for-profit. The situation does vary across the country although a full mapping exercise has yet to be done. Crucially, areas such as Wales have more independent practitioners as the geography/population in some regions does not always allow for a sustainable service. There are some community mediation services that are not members, but very few. There are, however, more independent practitioners that are not members who engage in a wider variety of mediation activities, but these are not likely to be very often engaged in noise issues as there is generally no source of income in this work.

2 Timescale for mediation (assuming domestic noise sources).
The Clean Neighbourhoods and Environment Act 2005 gave LAs a limited discretion of up to 1 week after they confirm a statutory noise nuisance before serving an abatement notice under the EPA (as is their duty). Some LAs consider that the time for referral to be taken up is several weeks, to which must be added the time for the mediation process itself. Are there data on these 2 aspects of time?

Mediation can be undertaken at any time. Even after, for example in victim-offender mediation, an offender has been sentenced. Generally the sooner the better, perhaps even before being reported to the LA. Mediations are usually very quick to set up, and the time frame is often reliant on the parties themselves. There can be an element of ‘encouragement’ for a reluctant party, to consider mediation if he or she knows there is a possibility of further action being taken in the near future. What mediation can also help with, in the aftermath of action being taken by the LA, is a prevention of the situation reoccurring (whether the noise or the complaint or both), by giving greater understanding to the parties of each other.

3 Embarking on the Mediation Process
A few LAs have a close link with a service and might refer cases themselves. Are there data on the way in which referrals are made?

There is a break down of referrers and presenting issues. What we do not have is a break down of referrers for each issue.
The total number of referrals in 2004 was 22444

<table>
<thead>
<tr>
<th>Referral sources</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Self referrals</td>
<td>33</td>
</tr>
<tr>
<td>Housing dept</td>
<td>29</td>
</tr>
<tr>
<td>Housing Assoc</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>10</td>
</tr>
<tr>
<td>Police</td>
<td>8</td>
</tr>
<tr>
<td>Env Health</td>
<td>4</td>
</tr>
<tr>
<td>Advice centres</td>
<td>4</td>
</tr>
<tr>
<td>Legal centres(less than 1)</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Presenting issues</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Noise</td>
<td>38</td>
</tr>
<tr>
<td>Abusive/ anti social</td>
<td>21</td>
</tr>
<tr>
<td>Children's behaviour</td>
<td>14</td>
</tr>
<tr>
<td>Boundary/property</td>
<td>13</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
</tr>
<tr>
<td>Racial harassment</td>
<td>2</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

4 **Point in dispute that referral is made.**

Some LAs suggest mediation as part of their first response to a complaint; others use it only after they have investigated and found that there is no statutory nuisance (and hence they have no powers to act). Do you have information on the split between these 2 approaches and whether it affects the outcome of the mediation?

We do not have evidence of this, however, anecdotally, there is evidence that more and more people are becoming reluctant to straight away contact the LA if they are home owners as they would then have to report this if/when they sell their property. Strictly speaking any problem with a neighbour should be revealed but its much easier to reveal a problem that was solved without going to the LA than one that did go to the LA. There have also been plenty of rather serious examples in the media that would encourage people to try and deal with neighbour issues with a less strident approach. It would be advantageous for an LA to recommend/refer to mediation in the first instance because they can deal with noise issues that are a statutory nuisance as well as those that aren’t.

There could be a an example of good practice with the LA’s responses to High Hedge complaints – government guidance and the literature to potential complainants recommends mediation, or at least finding out about it.
5 Only for non-statutory nuisance cases?

Is mediation used only in non-statutory nuisance cases or has it been used when there is a statutory nuisance?

In almost all areas of disputes, mediation can be used. There are only a couple of circumstances, eg threat of violence, danger to children or vulnerable adults where mediation is inappropriate and needs to be dealt with by other agencies. Both parties must also be in a position to make agreements and remember and keep them. So in some circumstances, where alcohol or drugs are involved, or a person might have a mental health issue, they may not be in a position to make agreements.

6 Noise cases

What proportion of cases involve noise as the main or sole element?

38% - it is the most common issue dealt with by community mediators

7 People noise or Equipment noise

Is there a breakdown between cases involving music/DIY as opposed to shouting/swearing etc?

We make no such breakdown, but if noise is due to children’s behaviour it is separately categorised, also shouting and swearing is more likely to come under anti-social behaviour. Noise as a presenting issue is more likely to be music, DIY, telly, washing machine, hovering, noise of plumbing, laminated flooring etc.

8 Target of noise

Do you know the split between noise directed at the complainant and that occurring within the noise producing household?

No, we have not got figures for this. Most would appear to be lifestyle orientated, at least to begin with. When things escalate there might be more element of deliberate noise making.

9 Types of noise source

Are there any examples of mediation being used where the noise source was from a commercial or industrial site (ie not domestic or neighbour noise)?
Yes, plenty of complaints come from people who live near garages, night clubs and pubs etc, but also from airports, building sites, road users. More frequently, larger scale noise, or noise from infrastructure providers tends to be addressed by other agencies, but some community mediation services have been involved in noise issues beyond the neighbour scale.

10 Effectiveness

How many mediation processes are regarded as successful? What are the criteria for success?

There are several models of mediation, with some having more emphasis on improving communication and understanding between parties. And others are more agreement orientated. Most services would be looking for some agreement to be made, but the nature of the agreement, and its contents is up to the parties themselves. There is an element of increased understanding of each other changes perceptions and raises levels of tolerance. But in terms of our annual statistics, a full or partial agreement is seen as a win/win situation for both parties. Services do tend follow up after a while to check how they are going. Also they only write the agreement if they are convinced both parties are genuinely going to try to keep it.

Most services will use a combination of shuttle and face to face mediation. Our definitions of these are:

Face-to-Face: Face-to-face mediation is the process used when parties are able and willing to sit together at a joint meeting. While face-to-face mediation may include separate meetings early on in the process, particularly for information gathering purposes, the main focus of the mediation process is the joint meeting.

Shuttle: Shuttle mediation is the process used when parties have declined to sit together at a joint meeting, or when the mediator does not wish to bring the parties together because of safety or other concerns. In this type of mediation, the mediator shuttles back and forth between the parties to try to broker agreement, or to pass on information or concern. Shuttle mediation may take place over the course of a few hours, or a few weeks, and may involve the mediator shuttling between separate rooms in one venue, make a series of visits to each party. Whatever format is used, there is no contact between the parties and no joint meeting takes place.

So the criteria do vary from service to service, as they use and adapt different models. But for 2004-5 the stats were Face to Face 70% and shuttle 72%. It has to be said that this was quite an unusual year, the rates were down from previous years and normally face to face is more successful than shuttle. We believe that this is because we are getting more referrals from agencies such as the police who are not always as familiar with mediation as housing associations might be for example.