

# Proceedings of the Institute of Acoustics

## ONLY POINT SIX OF A SECOND ?

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### 1. INTRODUCTION

The new night time noise offence has not been well received by those involved in noise law enforcement and yet the public, local councillors and Members of Parliament all seem to welcome it. Some even see it as an end to night time domestic noise problems. Cost and difficulties of enforcement, lack of need, the fixed penalty and the criterion for the offence itself are some of the reasons, or excuses, suggested for not adopting the new provisions.

However it would appear that the 'professionals' are at odds with public opinion and sometimes with their local councillors. It is an unhealthy situation where legislation has been welcomed by almost everyone and where the majority of the 'professionals' appear not to welcome the new offence. Many of their reactions seem to be overtly critical and certainly not in the spirit of 'how can this new legislation be made to work for the benefit of the community?'

This short paper is intended to be thought provoking rather than educational since the 1996 Noise Act provisions have been well circulated, the Noise Bill subject to extensive consultation and hence should be familiar to most noise law enforcers.

### 2. COST AND RESOURCES

In the region of £1 million has been allocated in the next financial year, equivalent to about £4 000 for an average sized local authority. This allocation rises to around £3 million in the third year although the precise amount will depend upon the rate of adoption and the extent of service already provided.

The estimated costs of providing a night time noise service are very varied and figures between £20 000 to £75 000 have been suggested, depending upon the nature of the response and the size of the authority. Undoubtedly the costs will be very high if a team, or more than one team, of two officers is on duty between 23:00 and 07:00 seven days a week. In some authorities providing qualified, or suitably trained staff may be difficult without intrusion and adverse effects upon the day time service and hence more members of staff may be required. In addition to this the nature of the work is difficult and may be limited in its appeal and suitable staff difficult to recruit.

To date little advice has been offered on the level of service other than a local authority must take reasonable steps to investigate a complaint. It is difficult to understand why this phrase causes so much concern since it has been with us since the 1990 Environmental Protection Act, if not before ?

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Many have assumed that the service required is a team on duty during all of the night hours seven days a week. In a few authorities this may be essential, in others desirable but for most it would not be necessary.

The other extreme would be two officers on call at home who would respond as quickly as possible. However between these two extremes there is an almost infinite number of variations. For example officers could only be on duty for the weekend nights from 23:00 until, say, 03:00 and respond from home the rest of the time. Furthermore during their time on duty proactive work could be undertaken. Perhaps the level of complaint and public response could be brought into the 'reasonable steps' argument.

Consequently to provide a combination of on duty and call out could bring the costs down dramatically and in many cases satisfy the 'reasonable steps' duty.

### 3. DIFFICULTIES OF ENFORCEMENT

The enforcement of this offence introduces a novel approach as far as most noise enforcers are concerned and not surprisingly many people foresee difficulties in enforcement. However until we try to enforce the Act these difficulties are little more than speculation. It is surprising how these difficulties reduce if a positive 'can do, must do' approach to the problem is taken but some could still remain. Once the Act is adopted and enforced, mutual aid will undoubtedly take place between enforcing authorities and a reasoned judgement made as to whether the difficulties are real or imagined. If the difficulties are real and insurmountable then the professionals in a stronger position to make recommendations for the law, or procedures to be amended to provide workable legislation for the benefit of the community. Other comments have been that the party will be over by the time the enforcers arrive and there may be too many to deal with on some nights. Again these problems can only be quantified with experience. Lack of training has been cited as a difficulty but the measurement procedure is not too difficult and any EHO or Technician worth their salt should be able to carry out the measurements after a few hours training and practical experience.

### 4. LACK OF NEED

A common argument is that there is no need to adopt the provisions because very few night time noise complaints are received. However many complaints received during the day could relate to night time problems and hence the true figure of night complaints could be much higher. Some local authorities still do not offer a guaranteed out of hours response for noise complaints, which may then be made to the local police and hence the need for a response service could be hidden. Consequently without a carefully designed customer survey, or possibly a very detailed examination of complaints received, the conclusion that there is a lack of need may be unsound.

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Anecdotally it would appear that when a full out of hours complaint response service is provided the noise demands on that service rise by around three times. This has occurred in some London Boroughs and some district councils. However there is also anecdotal evidence to suggest that the number of complaints to the night time noise service reduces in time and also the day time noise complaints reduce. This is particularly pertinent since there is still an unexplained climate of increasing noise complaints. Any action that could result in a reduction in noise complaints or problems is worthy of serious consideration.

### 5. THE FIXED PENALTY

The fixed penalty income must go to the Secretary of State so that justice is seen to be done and that the local authority is not just using the fixed penalty to make a contribution to the noise service. Although £100 may not be very high the local authority, or the case officer has the upper hand inasmuch that it can choose whether or not to use the fixed penalty option.

### 6. THE CRITERION

Many experienced noise enforcers are concerned about the prescribed level but again this is not really a valid reason for non adoption. It is not clear if this concern relates to the new approach of using a specified level or the level itself. The assessment criterion has been the subject of one field test, amended and subject to a second field test and seems to have worked reasonably well. Concern has been expressed that the use of the prescribed level could water down the nuisance provisions and be used to confuse magistrates. It remains to be seen if these concerns are real or imagined. However as time goes on and far greater experience gained in practice than on the two trials if the criterion is wrong, or has a detrimental effect on the nuisance procedures then experience will be gained that could be used in pressing for the amendment of the legislation in some way. It should be remembered that the level is prescribed by the Secretary of State so it can be changed without the need to amend the primary legislation or even by using the parliamentary process.

### 7. RECOMMENDATION

Think again if you have hastily decided to recommend non adoption.

### 8. CONCLUSION

The night noise offence and its enforcement procedures may be far from perfect but it is essential that a spirited attempt is made to adopt and enforce the Act not least of all because many noise law enforcers appear to be out of step with local politicians and residents. If it is disregarded in haste then environmental health professionals could repent at leisure as a grip is lost on effective noise law enforcement.

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