

# Proceedings of the Institute of Acoustics

## THE SCOTTISH PERSPECTIVE: THE NEED FOR OBJECTIVITY IN NUISANCE ASSESSMENT

RICHARD BURNETT

ENVIRONMENTAL HEALTH DEPARTMENT, CITY OF GLASGOW DISTRICT COUNCIL

### 1. INTRODUCTION

Historically and presently numerous differences can be highlighted in many facets of life in Scotland to that south of the Border. In the field of noise control within Environmental Health, the "Scottish experience" can sometimes be overlooked.

In this paper I will attempt to redress this by examining the prevailing situation in Scotland with reference to England/Wales in addition to reviewing a Court of Session judgement with its resulting implications.

### 2. THE SCOTTISH PERSPECTIVE

Latest statistics (1) covering the 1980's into the 90's show that Environmental Health Officers in England and Wales receive more noise complaints per million people than their colleagues north of the Border. Figure 1 covers noise complaints from all sources and Figure 2 covers noise from domestic premises which is the largest of "source" categories.

In both situations with each of the countries the upward trend and pattern appear to be fairly similar. One would expect the figure for England and Wales to be higher than Scotland given the more rural nature to Scotland. However, the actual difference in numbers may be surprising. In relation to complaints from all sources the latest figures show the number of complaints (per million people) received in England and Wales to be 3 times greater than in Scotland (Fig. 1). More strikingly, in complaints about noise from domestic premises, the number per million people received in England and Wales is some 7½ times greater than in Scotland, (Fig. 2).

Why should this be? Are the Scottish people that more tolerant, laid back and less likely to complain. Perhaps part of the answer may be found in two factors:-

- i) Sound Insulation Testing Programme
- ii) Legislation

## Proceedings of the Institute of Acoustics

The early eighties saw Local Authorities in Scotland, particularly Glasgow and Edinburgh embark on a programme of sound insulation testing to ensure that relevant developments including sub-division of existing domestic properties and rehabilitation of remedial properties met the appropriate standards contained within the Building Acts/Regulations. In the initial stages of the testing programme in Glasgow the failure rate was approximately 60% overall. The failure rate at the end of the decade was reduced to approximately 20% for floors and 7% for walls. The reason for the vast majority of failures at that time being "poor workmanship".

The list of legislative controls available to Environmental Health Officers in Scotland are listed in Appendix 1. The important one in relation to this subject matter is that covering annoyance as there is no equivalent in England and Wales.

Section 49(2) of the Civic Government (Scotland) Act 1982(2) allows a District Court to make an order if satisfied that any creature is giving "reasonable cause for annoyance" to any person residing in the vicinity. This permits a complainant to go directly to court, not necessarily with legal representation, and as such is an alternative to an Environmental Health Officers intervention which could be time consuming etc, eg. an appeal against a Statutory Notice. Another arguable advantage may relate to the ease in proving "reasonable cause for annoyance" against "nuisance". Clearly these powers may have proven a preferred route in the well publicised cases involving the Cockerel and more recently the "Budgerigars".

However, the biggest contributor in explaining the difference lie in the provisions of Section 54 of the Civic Government Scotland Act 1982 (2). It makes it an offence for any person to

- a) Sound or play any musical instrument
- b) Sing or perform
- c) Operate any radio or television receiver, record player, tape recorder or other sound producing device so as to give any other person reasonable cause for annoyance and fails to desist on being required to do so by a constable in uniform.

In addition to a report being submitted to the Procurator Fiscal, the offending person is also likely to have the instrument/device removed by the Police as material to be produced in court as evidence. This section thus has a "preventative" measure in relation to recurrence, built in.

The advantage of this provision to a complainant are clearly obvious. However, the success of this section depend largely on the Police's ability to react to complaints quickly. Pressure on all public service including the Police is greater today than at any other time. In a recent address to the National Society for Clean Air and Environmental Protection, Supt.(3) Stuart Pearson says that "police service is nearly reaching saturation point of service delivery with the present resource levels".

## Proceedings of the Institute of Acoustics

In Glasgow, any complainers who have complained about noise that may be covered by this section have been advised of its provisions and most have decided to make use of it. However, over the last year it is noticeable that more are returning to the Department disillusioned with the Police and their inability to successfully implement the terms of that section. This may be reflected in a comparison in the number of complaints from domestic sources received by my Department over the period 1993/94 to the period 1992/93. The increase is some 91%, almost double.

Interestingly Supt. Pearson (3) stated that "Rather than impose more powers on the Police, would it not be better to give the professionals additional powers and additional resources to strengthen their infrastructure" and whilst noise pollution may be encapsulated with a Home Office "Quality of Life Initiative, I feel again that noise, per se will not feature too highly as a national policing objective".

The reproduction of these powers south of the Border may not have the impact desired. However, given that some Local Authorities have taken steps to seize noise producing equipment to assist them in their duties under the Environmental Protection Act 1990, there may not be any need for such to take place.

### 3. THE NEED FOR OBJECTIVITY IN NUISANCE ASSESSMENT

This question has been brought to the fore following a decision reached in the Court of Session in the Case of Greenline Carrers (Tayside) Ltd, v City of Dundee District Council(4).

A notice was served by the Local Authority under Section 58 of the Control of Pollution Act 1974 asserting that a nuisance namely noise, existed at specified premises, requiring its discontinuance and ordering to that end that the movement loading and unloading of lorries should cease during certain hours. An appeal was taken to the Sheriff who, after proof, upheld the notice subject to the deletion of reference to the movement of lorries and be issued an interlocutor and accompanying note. The pursuers appealed. Although the defenders did not accept the narrative of the evidence contained in the grounds of appeal, they did not answer since they had found that the Rules of Court made no provision for answers to be lodged in such a case. The Sheriff having retired, the defenders proposed that the court should order production of the Sheriff's Notes of Evidence in order to ascertain the evidence led at the proof.

It was held

- (1) That the merits of the appeal fell to be determined by reference to the Sheriff's interlocutor and note, not by ordering production of the Sheriff's notes.
- (2) That an objective standard should be applied to the issuing of a Notice under Section 58 of the 1974 Act and it was vital that the Local Authority in issuing a notice and the Sheriff in determining an appeal should apply such a standard and that the Sheriff should openly and soundly direct himself.

## Proceedings of the Institute of Acoustics

(3) That in a case such as the present the Sheriff had to disclose what evidence he had accepted and why, explain what primary facts he had determined upon the basis of that evidence and explain and justify the references of fact made from the primary facts and then demonstrate that in layout of a proper understanding of what the law required he had found whether the primary and inferred facts did or did not establish a nuisance in fact and in law which the Sheriff failed to do here.

(4) That where the form of the Sheriff's decision was not prescribed by statute he should in order to comply with the rules of natural justice not only issue an interlocutor stating his decision in precise legal terms, but should give adequate reasons and not merely state whether or not he found the case established.

(5) That no proper basis for the Sheriff's decision having been shown, his interlocutor could not stand and appeal allowed and interlocutor and notice recalled.

This led to the convention of Scottish Local Authorities considering the matter and thereafter issuing a letter to the Chief Executive of District & Islands Councils stating "that the Committee's legal adviser had confirmed that the case binds all Local Authorities who will require to apply an objective standard when deciding to issue a Notice under Section 58 of the Control of Pollution Act 1974.

Furthermore the letter stated "The Court had not defined what was meant by such a standard but it is assumed that noise meter readings will be the only acceptable method".

The terms of the judgement and the consequent letter from C.O.S.L.A. are clear and unambiguous. They do not contain advice or recommendations but comprise of a direction. To challenge this or the manner in which such was arrived at, as flawed, an authority may have to be prepared to take its arguments to the highest authority.

It is clear that there is a positive move away from subjectivity to objectivity and as such the implication for Local Authorities are likely to include:-

1. Each Authority will require to determine such objective standards to cover all nuisance circumstances. The dictionary definition of standard being "an accepted or approved example against which others are judged or measured".

At present, I know of no entirely objective standards which specifically determine a Statutory Nuisance. There are criteria designed to correlate to peoples response but they all stop short of using the term "Nuisance". Even the most widely used and abused, BS 4142:1990 (5) contains the following statement in its foreword:-

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

## Proceedings of the Institute of Acoustics

Arriving at a meaningful standard may in some cases be fairly straightforward, other cases may prove extremely difficult, eg a tenement building on a busy main road which contains a pub / disco on the ground floor with the houses on the upper floors being subjected to the bass beat from music.

2. Each Local Authority will be required to ensure they have sufficient resources available to enable the appropriate survey work undertaken and the correct action initiated thereafter. These resources will include the provision of suitable instrumentation to collect the appropriate measurements and staff with adequate technical knowledge to complete the correct data and thereafter interpret it in the correct manner and explain such interpretation, if required. Some Authorities may have to employ these services outwith their own organisations.

In any event, most Local Authorities are likely to expend considerable effort to informally resolve noise issues before embarking on the problematical journey of the service of a Statutory Notice.

# Proceedings of the Institute of Acoustics

## APPENDIX 1

### LEGISLATIVE CONTROLS

- NUISANCE - (i) Common law precepts of nuisance  
(ii) Part III of Control of Pollution Act 1974  
(iii) Noise and Statutory Nuisance Act 1993
- ANNOYANCE - Civic Government (Scotland) Act 1982 (i) Section 49  
(ii) Section 54
- LICENSING - Licensing (Scotland) Act 1976 (i) Bye-laws  
Civic Government (Scotland) Act 1982  
(ii) Public Entertainment  
(iii) Market Operators  
(iv) Street Traders  
(v) Late Hours Catering  
(vi) Second Hand Dealers
- Theatres Act 1968  
Cinemas Act 1985  
Lottery & Amusement Act 1976
- PLANNING - Town & Country Planning (Scotland) Acts (Various)  
Environmental Assessment (Scotland) Regulations 1988  
Town & County Planning (Use Classes) (Scotland) Order 1989
- BUILDING STANDARDS - Building (Scotland) Acts 1959 & 1970  
Building (Scotland) Regulations 1990 Part H
- HEALTH & SAFETY - Health & Safety At Work Etc Act 1974  
Noise at Work Regulations 1989
- E.E.C. Directives - Various eg. Construction Plant, Motor Vehicles etc

# Proceedings of the Institute of Acoustics

## ACKNOWLEDGMENT

The author is grateful for the support given by Mr B Kelly, Mr C MacDonald, Mr T McDonald, Mrs J MacRoberts and Mrs Jean Duguid of the Environmental Health Department, City of Glasgow District Council in the compilation of this paper.

## REFERENCES

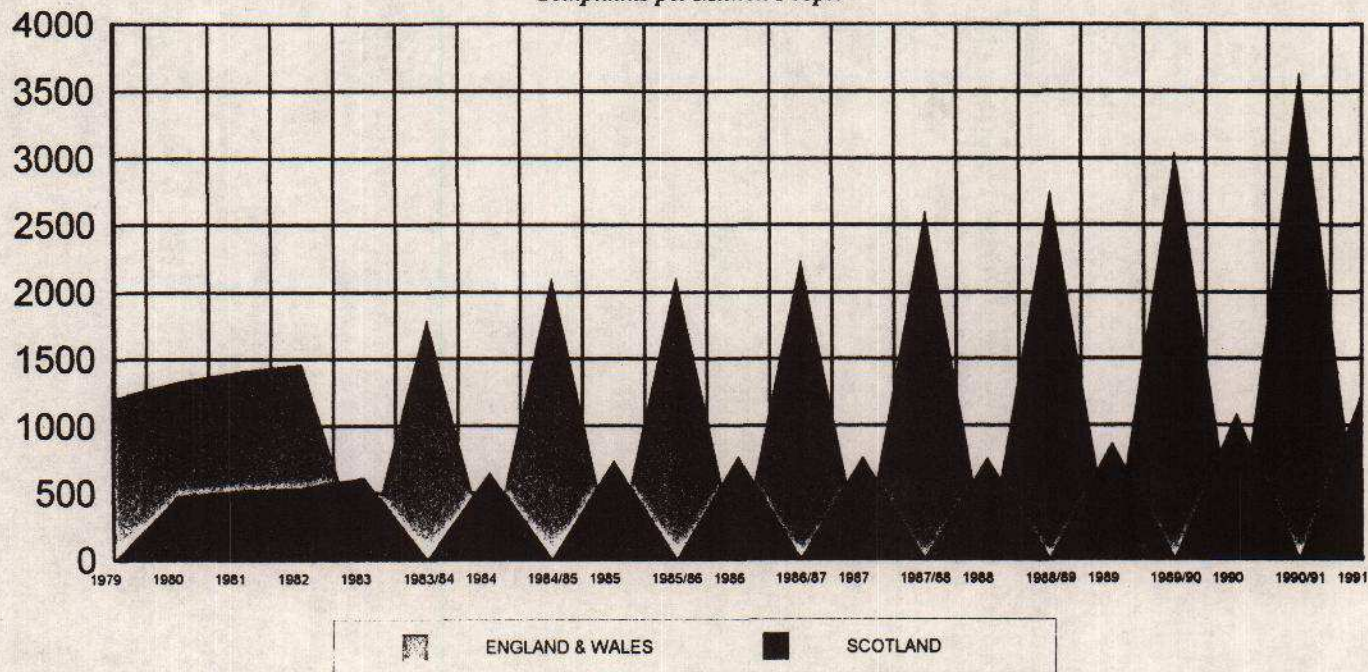
- (1) Department of the Environment "Digest of Environmental Protection and Water Statistics" HMSO 1992.
- (2) Civic Government Scotland Act 1982.
- (3) The Role of the Police, Supt. S Pearson N.S.C.A. Birmingham 16 February 1994.
- (4) The Scots Law Times: Issue 31 10-91.
- (5) BS 4142 1990: Method for Rating industrial noise affecting mixed residential and industrial areas.



# ENVIRONMENTAL HEALTH DEPARTMENT

## NOISE COMPLAINTS MADE TO ENVIRONMENTAL HEALTH OFFICERS FROM ALL SOURCES

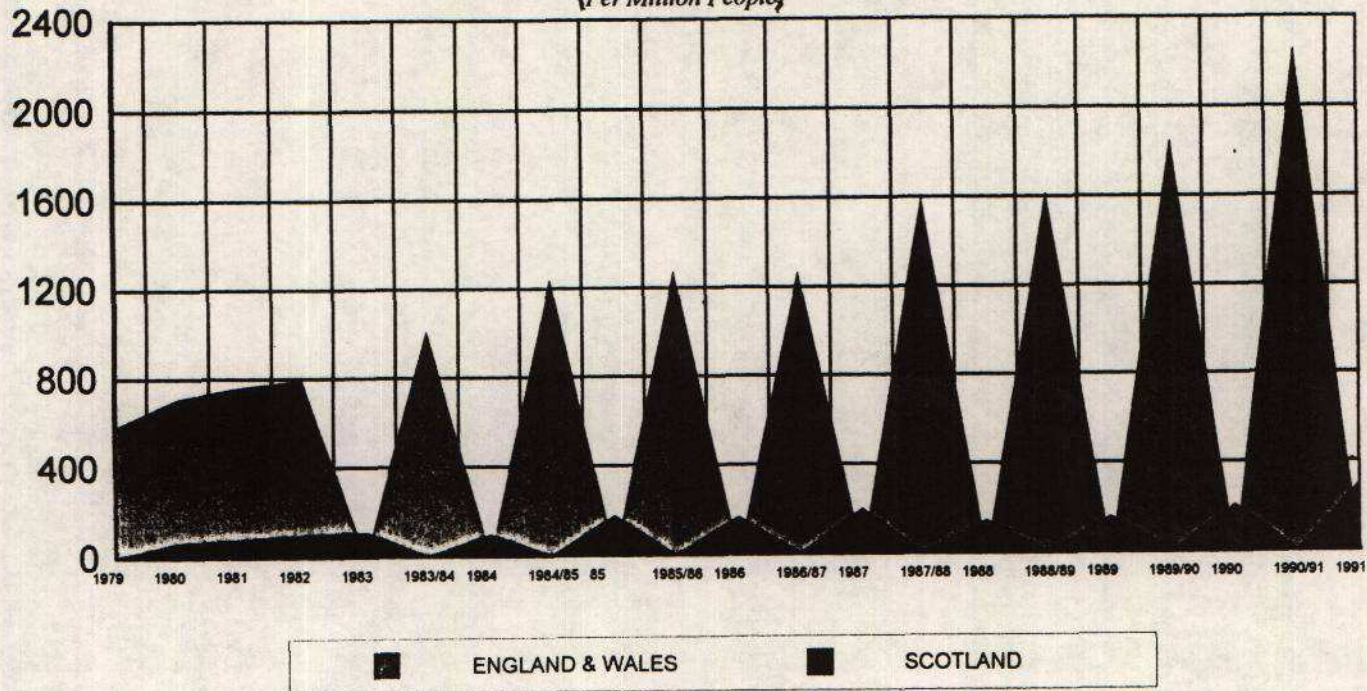
*Complaints per Million People*





# ENVIRONMENTAL HEALTH DEPARTMENT COMPLAINTS ABOUT NOISE FROM DOMESTIC PREMISES RECEIVED BY ENVIRONMENTAL HEALTH OFFICERS

*(Per Million People)*



1

ISBN 1 873082 61 4

