



## South Northamptonshire and Cherwell District Council Noise Investigation Procedure

### 1. Introduction

1.1 We aim to deal with all noise problems fairly, impartially, consistently and in accordance with government laws and regulations. We have published our procedure so that you know what to expect from us, and also understand what is required of you if you decide to report a noise problem to us.

1.2 The Council recognises that the public has a right to expect a consistent approach to the investigation of noise complaints. The advice given here outlines the Council's standard procedure for dealing with noise investigations. The provisions of the Human Rights Act 1998 and the Regulation of Investigatory Powers Act 2000 have been considered in the development of these procedures.

1.3 Noise is often defined as 'unwanted sound'. What constitutes 'noise' is a very personal matter; one person's favourite music might well be another person's unwanted sound. We usually become involved in noise matters when a complaint is received. We then have a duty to investigate and have to decide if any action is possible.

1.4 We try to approach enforcement in a graduated way. Very often an informal approach is sufficient to resolve matters and no further action is necessary by the Council, but we have legal powers to take formal action if necessary. In most cases formal action can only be taken when we have established that the noise is a nuisance as stated in law. This is described as a "statutory nuisance". Appendix 1 lists the current noise legislation and provides a brief summary of how a statutory nuisance is established.

1.5 We have produced a brief checklist which can be found in appendix 2. The checklist refers back to this procedure and is a useful tool to help you decide quickly whether to complain and whether it is likely that we can help you with your complaint.

## **2. How do I complain about noise?**

2.1 A complaint or a request for advice can be made by all common forms of communication including:

- on our website;
- telephone;
- letter;
- email; and
- direct complaint at the council office or to an elected member.

(see Appendix 3 for contact details)

## **3. What information do I need to provide?**

3.1 You will be asked to give full details of the problem. In the first instance you will always be encouraged to approach the person making the noise, since some complaints can often be settled amicably between the parties without local authority involvement. An informal approach by you is not only courtesy, but also the first step in resolving any differences. We recognise that this is not always possible and if you feel unable to adopt this course of action no pressure to do so will be placed upon you. Further guidance on direct negotiation with a neighbour can be found in Appendix 8.

3.2 Details of the person making the complaint are always treated confidentially and therefore anonymous complaints will not be acted upon. We also need to establish who the noise is affecting and how it is affecting them and this is not possible with an anonymous complaint. However anonymous complaints will be recorded and may be used as intelligence in some circumstances.

3.3 Before we start an investigation we consider the following:

- the Council must be satisfied that the noise is affecting a specific person or persons;
- The rights of the person being complained about must also be protected ensuring that the complaint made is not malicious.
- Complaints via a third party will not be acted upon until the originator of the complaint has been contacted to confirm the details.

3.4 While efforts will be made to maintain the anonymity of the complaint, this is not fail-safe, i.e. noise makers can sometimes work out who has complained and a complainants name and address may have to be revealed if legal action is taken. If you have any concerns about this issue please feel free to telephone us where we can discuss this issue with you.

3.5 In order to deal with noise, we will at some point have to make contact with the person or persons who are making the noise, whether this is informally at the onset of a case or by taking formal action if a nuisance is shown to exist. Complainants should bear this in mind, and must understand that if for whatever reason they do not want us to contact the subject of the complaint; we will not be able to do anything in practice to help them.

3.6 In order to investigate the complaint it may be necessary to share information on noise complaints with the police, departments in the Council, and other authorities/agencies such as social landlords. By agreeing to our investigation we will also be confirming that you agree to us sharing information. This is in accordance with our agreements with them and other arrangements under the Data Protection Act.

3.7 If you live in a housing association owned property, please get in touch with your housing office in the first instance as they may be able to solve the problem or act on your behalf to request an investigation through their own complaint investigation policy and procedure.

## 4. Investigating a complaint

4.1 When we receive a complaint the initial details will be added onto our computer database. This will tell us whether there have been any similar complaints made for the same property in the past. Our records are kept for 7 years in line with our document retention policy. After this time the records are deleted.

4.2 Your complaint will be assigned to a named officer who has overall responsibility and who will be accountable for supervising and progressing the investigation of a complaint to resolution. The Council will have regard to the [Regulators Code](#) and the Council's Enforcement Policy.

## 5. What we can not investigate

5.1 Certain complaints cannot be dealt with by the Environmental Health Department and will not be progressed, these include:

- Anonymous complaints; (see page 2)
- Complaints where access to the complainant's premises to witness noise and assess nuisance is necessary and is not allowed by the complainant;
- Ordinary use of residential properties – Case law states that noise from the ordinary use of residential premises cannot be considered a nuisance, we are therefore unable to investigate reasonable behaviour including but not exclusively; babies crying, children playing, occasional dog barking;
- If your complaint is in relation to anti-social behaviour such as shouting, arguments, swearing, verbal abuse, the Council has a dedicated Anti-Social Behaviour Team. For South Northamptonshire Council they may be contacted on 01327 302519; and in the Cherwell District Council area you can make a complaint to the Council's Anti Social Behaviour Team on 01295 221007;
- We cannot take into account any special sensitivities of a complainant such as ill health or a night worker trying to sleep during the day;

- Other agencies are responsible for the following types of noise:
  - Noise complaints from moving vehicles on the highway e.g. revving engines and car stereos – complaints of this nature can only be acted upon by the Police who should be contacted at the time of the incident;
  - Noise from aircraft in flight- complaints of this nature can only be dealt with by the Civil Aviation Authority. Please telephone the Civil Aviation Authority on 020 7453 6525; Noise from low flying or noisy military aircraft can be reported to the Ministry of Defence, Complaints and Enquiries, Unit Directorate of Air Staff Level 5, Zone H Main Building, Whitehall, London SW1A 2HB. Further information is obtainable at [www.gov.uk/low-flying-in-your-area](http://www.gov.uk/low-flying-in-your-area) or telephone 0845 6007580.

In the Cherwell District Council Area information about noise from gliding activity at the former RAF Bicester can be found at [www.windrushers.org.uk/noise\\_restrictions.htm](http://www.windrushers.org.uk/noise_restrictions.htm) or telephone 01869 252493. London Oxford Airport at Langford Lane Kidlington operates a noise amelioration policy. Details of the policy and how to complain can be found at [www.oxfordairport.co.uk/home/consultation\\_committee.htm](http://www.oxfordairport.co.uk/home/consultation_committee.htm) Or telephone 01865 290664

- Noise from engineering operations on the railway track. In such cases telephone Network Rail on 08457 11 41 41. Further information can be obtained at [www.networkrail.co.uk/aspx/1030.aspx?cd=1](http://www.networkrail.co.uk/aspx/1030.aspx?cd=1)
- Noise from rolling stock, station sites and car parks contact your local train operator:

In the Cherwell District Council the local train operator is Chiltern Railways: [www.chilternrailways.co.uk/help](http://www.chilternrailways.co.uk/help) or telephone 08456 005165

In South Northamptonshire Council the local train operator is London Midland: [www.londonmidland.com/contact-us/contact-us/](http://www.londonmidland.com/contact-us/contact-us/) or telephone 0844 8110133

## 6. The investigation

6.1 Once we receive a complaint we need to investigate the information that you have provided. This is to enable us to decide on the best a course of action which includes:

1. No action and the case closed
2. Informal action
3. Formal action such as serving an abatement notice
4. Prosecution

6.2 There are three stages to investigate your complaint which are interviewing the complainant, gathering the evidence; and assessing the evidence.

### 6.3 Interviewing the complainant

This is the first opportunity for you and the case officer to have a full exchange of information. It is essential for the case officer to obtain and record key information at the earliest stage; as this information will be used to decide the most appropriate strategy to adopt for gathering any additional evidence needed to properly assess your complaint. The case officer may deal with your complaint initially by having an informal discussion with the person causing the problem, or a more formal investigation may be carried out.

6.4 The following information is required for your complaint to be investigated:

- Your details; including your name, address and contact details; and
- Where the noise is coming from (exact details including house/flat name or number or site description); and
- Name of the occupier at the address, and/or person responsible for the noise (if known); and
- Nature and details of the problem and its history including how it affects you.

6.5 If you require assistance because of literacy, language, or other difficulties we will offer support to assist you to make your complaint. This includes translation support if necessary, to obtain adequate information.

6.6 The Council deals with thousands of different service requests every year. We have a set of service standards which is our commitment to responding and dealing with complaints.

6.7 We will aim to

- respond to your service request within 2 working days
- investigate your complaint within 8 weeks.

Although we will try to meet our service standards there maybe occasions when we will not be able to comply and may have to reprioritise your complaint because of other demands. Your case officer will advise you if this is necessary and will explain why.

6.8 The case officer will provide you with information on how the investigation will proceed, what you can expect from the service and what you will need to do to enable us to fully investigate your complaint. You will be informed of the name and contact details of the case officer as the case officer will be responsible for your complaint until completion.

6.9 Gathering and Assessing Evidence

Before we can decide on any action we will need to gather evidence to establish whether there is a problem which we can help you with. Usually this will consist of information and evidence necessary to decide what action we may or may not be able to take. This may include:

- information obtained through interviewing you;
- diary sheets completed by you (see Appendix 4 for further information on diary sheets);
- using recording equipment (see Appendix 5 for further information on recording equipment);
- planned monitoring visits;
- visits to respond to a noise incident from a daytime duty officer;

- visits made by an out of hours officer (see appendix 6 for further information on out of hours officer visits;
- a formal statement from you to accompany recordings and diary sheets;
- statements from officers who have visited you and/or perpetrator;
- statements from other persons or professional witnesses;
- transcripts of formal interviews under caution with the perpetrator (person causing the noise); and
- reports containing the outcome of any noise monitoring exercise;

6.10 The case officer will confirm a monitoring programme based on the information provided. The case officer will also inform the results of their analysis and the reasons for their decision about whether or not further action can be taken. The case officer may need to review the progress of the investigation after an initial period and implement alternative strategies to gather evidence.

## **7. Case decision**

7.1 Once the case officer has gathered the evidence a decision on your complaint will be made. This will be either:

### **7.2 No further action**

If we are unable to gather evidence and there remains insufficient evidence for the Environmental Protection Team to act formally no further action will be taken and, the case officer will close the case. We will write to you confirming what we have done and, the reasons why the matter is not actionable formally by the Council. We will outline any informal action taken and provide you with advice on how you may pursue the matter as a private action under Section 82 of the Environmental Protection Act 1990 (guidance provided in Appendix 7).

7.3 The Council will not involve itself in private action between parties and cannot act for either side.

### **7.4 Formal Action**

Once the investigation has been completed, if satisfied of the existence of a statutory nuisance (see Appendix 1 regarding further information on statutory nuisance) or that a statutory nuisance is likely to occur or recur, the Council has a duty to serve an abatement notice on the person responsible for causing the nuisance.

7.5 The exact requirements of a notice will vary depending on the circumstances, but in general terms may include:

- what the nuisance is; and
- a schedule of works that need to be carried out or a sufficiently detailed description of the nuisance so that the recipient could reasonably be expected to decide for themselves what they should do to comply; and
- a timescale for compliance; and
- whether the notice will be suspended on appeal; and
- how to appeal.

7.6 If we are serving an Abatement Notice on a business we will allow a period of time for the business to discuss alternative means of compliance with us.

7.7 You will be advised of the outcome of any action in writing, and what to do if the problem still persists.

7.8 A reasonable time will be given to comply with the terms of the notice. Failure to comply with a Noise Abatement Notice(s) is a criminal offence.

#### 7.9 Further Complaint & Prosecution

Once we have served the abatement notice and there is reason to believe that it has not been complied with the Council will undertake further monitoring and investigations and will then make a decision on how to proceed. If a Notice is not complied with, there are a number of enforcement options which include:

- Prosecution; and/or

- Works in default (this includes the seizure of all noise making equipment, such as televisions, radios, computers and media devices); and/or
- Injunction in the High Court; or
- No enforcement action.

7.10 If we decide that prosecution is the most appropriate course of action, or the subject of the complaint decides to appeal against a notice, you may be asked to provide formal witness statements and may even be required to appear in court. We would also give statements where requested to other agencies such as social housing associations where they may wish to take action to seek possession of a property on the grounds that the nuisance is a breach of a tenancy agreement.

7.11 We would consult you before taking this course of action and would respect your decision if you feel that you cannot contribute in this way. This may mean however that we will be unable to pursue the case.

7.12 It should be noted that court proceedings can introduce delays which can be significant, for example up to and beyond 12 months depending on the complexity of the case.

7.13 The noise will be monitored and if a statutory nuisance still exists this may result in the person who received the Abatement Notice being prosecuted in the Magistrates Court. If convicted, a fine of up to £20,000 in the case of a company, or up to £5,000 in the case of a private individual, can be imposed. Offenders can be fined up to 10% of the maximum fine per day for any further offences.

7.14 In some circumstances, it may be decided that further action is not justified or practical even if a nuisance is shown to continue. Prosecution and any legal proceedings are very serious options and we carefully consider taking such action having due regard to the Council's own and national guidance on enforcement and prosecution. If there is a principle in law it does not follow that all offences will result in prosecution.

7.15 If we decide not to pursue a case we will fully explain our reasons in writing to you.

7.16 At any stage you also will have the option to take your own action. We will give you information about section 82 of the Environmental Protection Act 1990. This enables any "aggrieved" person to take action through the Magistrates Court in respect of noise nuisance (see Appendix 7).

## **8. Closure of case**

8.1 On closure of a complaint a customer satisfaction survey may be sent to you. This is your opportunity to comment on the quality of the service provided and provides us with valuable feedback to establish what we are doing well at and what we need to improve on.

## **9. Complaints About Our Service**

9.1 We deal with many hundreds of complaints about nuisances each year and very occasionally, even with the best will, things can go wrong and customers may feel we may not have kept them adequately informed or that we have made a mistake. In such cases the Council has procedures for investigating formal complaints about the service.

9.2 If you wish to complain about the service that you have received please contact your case officer in the first instance. Further details about the Council's complaint procedures can be found on our website.

## **10. Persistent complainants**

10.1 In a minority of cases people pursue their complaints in a way that is unreasonable and may also be considered as harassment of the person they are complaining about. They may behave unacceptably, or be unreasonably persistent in their contacts and submission of information. This can impede the investigation of their complaint (or complaints by others) and can have significant resource issues for

the Council. These actions can occur either while their complaint is being investigated, or once the Council has concluded the complaint investigation.

10.2 The Council has developed a proportionate approach when responding to unreasonable complaint behaviour and this is set out in the Protocol for the management of prolific and/or unreasonably persistent complainants:

[South Northamptonshire Council Persistent Complainants Policy](#)

[Cherwell District Council Persistent Complaints Policy](#)

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## APPENDIX 1

### Current noise legislation

Like many environmental controls, those concerned with noise have grown over the years in a piece-meal way which is difficult for the layman to access. To help address that problem, below is a brief summary of the principal current controls applying in England and Wales.

**The Environmental Protection Act 1990** provides the principal controls over so-called “statutory nuisances”, including noise nuisances, whether arising from industrial, leisure or domestic activities. By virtue of the **Noise and Statutory Nuisance Act 1993**, it also applies to nuisances arising from vehicles (eg. from car alarms but not traffic noise), machinery and other equipment such as loudspeakers, in the street. Under the 1990 Act, local authorities have a duty to inspect their areas from time-to-time to detect nuisances and, when satisfied that one exists or is likely to occur or recur, to serve an Abatement Notice on the person responsible. The failure to comply with an Abatement Notice is a criminal offence. Local authorities have a power of entry to private premises, power to seize noise-making equipment and powers to carry out works in default of Notices. Businesses have the defence of causing a statutory nuisance of “best practicable means”,

The legal definition of what constitutes a **statutory nuisance** is complex and based on many years of case law. We need to consider the following key factors when investigating a noise nuisance:

- There must be a material interference with the enjoyment and use of the complainant’s property. The noise must therefore be considerable.
- The noise must substantially affect the enjoyment of comfortable living, such as loss of sleep, interfering with conversation or watching television. However there would have to be consideration of the time and frequency the noise occurs, the intensity of the noise, its character and its duration.

- Temporary or occasional incidents causing little actual or potential harm, would not be considered to be a nuisance, for example 'one-off' parties. The problem must normally be continuous or frequent.
- Trivial, harassing or repetitious (vexatious) complaints will not be taken into account.
- Any assessment of whether a particular problem amounts to a statutory nuisance has to be made from the perspective of an 'ordinary reasonable person'. This means that the council must exclude any personal circumstances or sensitivities of the complainant from our considerations when assessing nuisance.
- Factors such as unusual shift patterns, medical conditions or other sensitivities of the complainant cannot be taken into account when we decide whether a particular problem is causing a statutory nuisance.

It is a person's basic right to use and enjoy their property. However, there is no right to tranquillity or silence.

**The Control of Pollution Act 1974** contains powers for local authorities to deal with noise and vibration from construction and demolition sites. It also contains powers concerning the use of loudspeakers in the street (which have been used successfully in connection with loud car stereos), together with powers for the Secretary of State to approve Codes of Practice for the minimisation of noise. Codes currently exist for audible intruder alarms, ice cream chimes, model aircraft and construction noise and these may be used in evidence in legal proceedings.

Such codes, although having statutory recognition, do not have the force of law, and infringements do not constitute an offence in themselves. However non compliance will usually be taken into account in any proceedings for a nuisance.

**The Licensing Act 2003** provides a comprehensive framework for the licensing by local authorities of a variety of premises and events. Licenses may be subject to conditions, including noise control.

**The Anti-social Behaviour Act 2003** strengthens the Housing Act 1996 to facilitate the regaining of possession from tenants of social landlords responsible for anti-social behaviour. It also introduces a power of local authorities, acting through their Chief Executive or Environmental Health Officer, summarily to close licensed premises which cause a public nuisance by reason of noise.

**The Clean Neighbourhoods and Environment Act 2005** provides new powers to deal with noise from intruder alarms and extends the powers for dealing with night-time noise in the Noise Act 1996. It also contains a discretionary provision allowing local authorities to defer the serving of an abatement notice for up to seven days once satisfied that a statutory nuisance relating to noise from premises exists, provided that other steps are taken (such as mediation or use of the Noise Act 1996) to abate the nuisance. If the nuisance continues after seven days, an abatement notice must be served.

## APPENDIX 2

### QUICK CHECKLIST – CAN WE HELP YOU?

The following checklist has been provided for you to quickly decide whether to complain and whether the local authority can help you.

If you can answer yes to the following there is a good chance that we will be able to help you.

If you cannot answer yes we may not be able to help you. The relevant page in the procedure is referenced against each question to assist you.

If you are unsure about any of the questions you can still contact an officer to discuss your concerns.

<b>Are you happy to provide your full details ?</b>	If NO please refer to page 2 (3.2)
<b>Can you provide full details about the noise nuisance that you are experiencing?</b>	If NO please refer to page 2 and 6.
<b>Can you confirm that your complaint is NOT about: Noise from aircraft / railway / moving vehicles i.e. car stereos or revving engines?</b>	If NO please refer to page 5 for organisations that can help you with these types of complaints.
<b>Are you happy for us to contact the person you are complaining about?</b>	If NO please refer to page 3.
<b>Do you understand that despite our best efforts those complained about can sometimes work out who has complained?</b>	If NO please refer to page 3.
<b>Do you understand that sometimes we will not be able to take action?</b>	If NO please refer to page 9, 10 and 11.
<b>On rare occasions we need to take legal action to deal with a complaint. Are you prepared to give evidence in court if necessary?</b>	If NO please refer to page 9 and 10

## APPENDIX 3

### Council contact details

	<b>Cherwell District Council</b>	<b>South Northamptonshire Council</b>
<b>Website</b>	<a href="http://www.cherwell.gov.uk">www.cherwell.gov.uk</a>	<a href="http://www.southnorthants.gov.uk">www.southnorthants.gov.uk</a>
<b>Contact us web page</b>	<a href="#">Contact us web page</a> (click on above link)	<a href="#">Contact us web page</a> (click on above link)
<b>Email</b>	<a href="mailto:customer.service@cherwell-dc.gov.uk">customer.service@cherwell-dc.gov.uk</a>	<a href="mailto:customerservice@southnorthants.gov.uk">customerservice@southnorthants.gov.uk</a>
<b>Telephone</b>	01295 227001	01327 322322
<b>Main address</b>	Bodicote House. Bodicote, Banbury, Oxfordshire, OX15 4AA	Springfields, Towcester Northamptonshire NN12 6AE

## **APPENDIX 4**

### **Diary Sheets**

If diary sheets are sent out we ask that they are completed and returned within a 21 day period. There are occasions when this period may be shortened or lengthened.

Complainants are advised that the more information they provide on the diary sheet the more useful they are likely to be. You will need to record dates, times, duration, type of noise and how it affects the use of your property. Please appreciate that the diary sheets may be used as evidence in the Magistrates Court if the investigation leads to prosecution and you should therefore be mindful of what is written as offensive material or inappropriate comments could jeopardise the case.

Diary sheets can indicate the severity and frequency of the noise and can help determine the best method of trying to witness the nuisance or that it is unlikely that the council will be able to establish statutory nuisance.

If the complainant does not return the diary sheet completed by the date on the diary sheet and in the absence of further complaints the case will be closed. This is clearly worded within the letter accompanying the diary sheet and as such there is no further follow up from the case officer.

There will always be occasions where, for good reasons, a complainant cannot keep a log of the noise. If this is the case, we can make arrangements for an officer to discuss the matter with the complainant to find the best way to get the information we need to decide on whether a further investigation is warranted.

#### **Assessment of diary sheets**

When a diary sheet is returned, the case officer will assess the contents and use their professional judgement and experience to decide whether further investigation is warranted.

The key considerations are;

- location
- time
- duration
- frequency
- importance and value to the community of an activity
- the difficulty in avoiding the external effects of an activity

On some occasions complainants return log sheets that include information on an address or addresses other than that originally complained of. The information will be noted but we would not normally act on this unless we have an ongoing investigation with the said property/s. In this situation, the complainant will be advised to log a new complaint and the complaints procedure for that property is likely to start from the beginning.

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

## Nuisance Diary Sheets

Criminal Justices Act 1967 s9 Magistrates Court Act s102 Magistrates Court Rules 1981 s70

Name:

Premises where the nuisance is originating:

Address:

This statement (consisting of \_\_\_\_ pages each signed by me) is true to the best of my knowledge and belief and I make it knowing that, if it is rendered in evidence, I shall be liable to prosecution if I have wilfully stated in it anything which I know to be false or do not believe to be true.

Dated the \_\_\_\_\_ day of \_\_\_\_\_

Signature:

Name of person recording details	Date	Time Start	Time Finish	Room affected	Nature of nuisance eg: music, DIY etc	Describe how you were disturbed

Please complete until

and return within three days

Case Reference:

Signature:

## **APPENDIX 5**

### **Recording equipment**

Most investigations for domestic noise will be made using digital recording equipment installed inside the complainant's property. The equipment constantly records the noise level expressed in terms of decibels (dB) which can be shown on a graph. It will also be used to obtain samples of any noise that can be played back as an audio file. Usually it will be set so that the complainant triggers audio recording as and when they think that noise is at an unacceptable level for them. In some circumstances, automatic triggers or constant audio recording may be employed but this would chiefly be where the complainant has some disability or infirmity that limits their ability to activate recordings themselves.

The use of such equipment and techniques is not considered surveillance because the noise has been inflicted by the perpetrator who has probably forfeited any claim to privacy. Our equipment is not used or designed to capture sounds not discernible by the unaided human ear and will not be used for monitoring exercises where there is a danger this could result. Careful consideration will be given to protection individuals from collateral intrusion before sound recording equipment is deployed.

The equipment will be used only to record noise that would ordinarily be heard in the complainant's property. It will not be purposely used to obtain personal and/or private information on the persons who are subject of the complaint such as the content of conversations. However, if those persons are talking or making other noise loud enough for the average person to hear in another property, then the equipment will pick that up. We would not disseminate any information obtained in this way unless we have lawful authority to do so.

Officers will routinely take steps to avoid drawing attention to what they are doing so that it does not affect the chances of capturing a demonstrative sample of the noise being complained of. They will make special arrangements where necessary if the complainant has particular concerns about this.

Officers may have to return to check equipment and download data during a monitoring period. They will advise and make appropriate arrangements if this is necessary.

In most cases, we would install monitoring equipment on a maximum of two separate periods. Each period would usually be between one and two weeks and include at least one weekend. In our experience, if we cannot obtain any evidence of significant noise over two monitoring periods, then it is highly unlikely that a nuisance as defined by the law will exist.

It is important to note that equipment is normally located inside a dwelling in a habitable room that is being affected such as a main bedroom or living room. Access to a power connection will be required for the continual duration of the equipment's installation until collected by the case officer.

The complainant's co-operation will be required to trigger the recording equipment as and when the noise nuisance is occurring. This will involve pressing a button when the noise nuisance occurs. Officers will issue advice and guidance when the equipment is installed. It is also important that any advice or instruction given by the Officer is adhered to so that any evidence collected is not jeopardised or corrupted.

Please be aware that if the evidence is used by the Council in any formal action then we would require a witness statement from the person operating the equipment to authenticate the evidence.

There is usually a waiting list for the allocation of recording equipment, and officers will prioritise within the resources available, based on the evidence already collected. Officers will install noise recording equipment at the noise sensitive property as quickly as possible.

Officers will need to undertake the task of analysing the results of noise recordings after the equipment has been removed from the premises. This could take the form of simply listening to the recording and noting the recorded levels, types of noise and so on, or may involve a more detailed computer analysis.

The time involved in this stage of the investigation can vary, depending on the complexity of the complaint. It is necessary on occasions to analyse a significant amount of data, both audio and statistical, especially in the more complex cases.

Once this has been completed, the investigating officer will report to the Environmental Protection Team Leader and they will decide whether there is sufficient evidence to satisfy them that a nuisance exists or is likely to exist having regard to the criteria set out above, or whether a breach of a notice has occurred.

During the course of our investigation if we pick up any information that may be important to another authority then we have a duty to pass this information on.

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## APPENDIX 6

### South Northamptonshire Council out of hours officer service

The Environmental Protection Team recognises that many of the complaints it receives concerning nuisances are at times outside normal office hours. It further recognises that in many cases such incidents occur irregularly and thus make it difficult to plan monitoring visits. In order to witness such occurrences the Council offers an out of hours call out service.

The Environmental Protection Team operates an out of hours service between the following hours:

- From 16.45 hours on Fridays until 08.45 hours on the next working day.
- From 17.15 hours on Mondays to Thursdays until 08.45 hours the next following day.
- Public and Bank Holidays, and Statutory days determined by the Council from 08.45 hours to 08.45 hours the next working day.

#### Type of complaints dealt with

The out of hours service can be used by anyone affected by a nuisance where:

- 1. The complaint is of an on-going nature and informal approaches made on your behalf by the Environmental Protection Team have failed to resolve the matter**

Your complaint details will be added to an active complaint list and you will be provided with the Council's out of hours telephone number. When contacting the out of hours service please have your contact details ready including your telephone number and your reference number. Once you have telephoned the service you will be contacted by the duty officer who will then discuss the complaint with you and advise you on whether a visit will be made or not.

The duty officer will only visit you in connection with this specific complaint. If you have an additional complaint that is not on the active complaint list please see point 2 below.

Your complaint details will be removed from the active complaint list once your complaint has been closed.

**2. The nuisance occurs on a frequent but irregular basis, predominantly outside office hours.**

If you are contacting the Council for the first time regarding your complaint, or if you have an ongoing complaint in the informal stage of an investigation, then your call will be logged and passed to an officer the next working day for action.

If two or more complaints are received about the same source then the duty officer will be contacted. The duty officer will then contact you to discuss the complaint with you and advise you on whether a visit will be made or not

**How the service operates**

Upon determining that a visit is required the duty officer will advise you of the estimated time of arrival. Should the disturbance cease prior to the arrival of the duty officer you should contact the out of hours service advising them of this. When the duty officer arrives, an assessment will be made of the situation and notes will be taken regarding the incident. The duty officer may also ask that you provide a signed witness statement.

The duty officer will not necessarily take any enforcement action at the time of the visit. The duty officer may decide that the best course of action is to report the incident to the Environmental Protection Team the next working day. If so, the

Environmental Protection Team will determine the appropriate course of action and you will be contacted and advised of the decision.

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## **APPENDIX 6**

### **Cherwell District Council Out of hours officer service**

The Anti Social Behaviour Team provide a limited out of hours service to facilitate the investigation of complaints and the collection of evidence of alleged breaches of formal notices at times of day when the Council Offices are closed.

#### **Hours of operation**

The service operates on three days a week, Thursdays, Fridays and Saturdays between the hours of 18:00 and 03:00.

#### **Rules of engagement**

The standby officer will respond to complaints from customers who have been previously advised that they have access to the Council's out of hours service. At the officers discretion the service will also respond to complaints of significant nuisance that have originated from Thames Valley Police. Typically these cases will involve multiple complaints to both organisations and would result in serious disorder or public nuisance if not addressed at the time.

Calls from members of the public or the police are received by the Council's out of hours call taking service. They in turn check that the case is one that requires a response and will then contact the duty standby officer. On receiving the case details the duty standby officer may either contact the caller for more information or attend directly depending on the nature of the case, the purpose of responding to the call and a dynamic risk assessment.

Unless pre planning has taken place the officers role in attending is strictly to secure evidence that demonstrates the existence of a statutory nuisance or other offence or to witness an alleged breach of a previously serviced formal notice.

## **Customer contact**

Customers who have been given access to the out of hours service will be advised of their status and the correct telephone number to call by their case officer. Where the case relates to the investigation of an alleged noise nuisance the complaint will normally remain 'open' to the standby service for 8 weeks.

The customer will be advised by the case officer when the standby service is no longer available to them.

If the case involves a previously served formal notice it will remain 'open' to the standby service for 12 months from the date of service of the notice.

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## APPENDIX 7

TAKING ACTION IN THE MAGISTRATES COURT YOURSELF	
<p>If noise from a neighbour is materially interfering with your use of your property, you have been unsuccessful in resolving the problem informally and, for whatever reason, the Council has been unable to help or you do not want to involve them, you may be able to take action in the Magistrates Court yourself under section 82 of the Environmental Protection Act 1990. Here is how:</p>	
<b>Getting started</b>	<p>You must advise the noise maker in writing of your intention to go to Court, giving at least three days notice – the Court will ask if you have done this.</p> <p>Magistrates' Court deal with these actions and can be contacted directly.</p> <p>Go in person to the Court before 10:00 Monday to Friday. Ask the uniformed attendant for the Clerks Office where you should ask for the Court Officer dealing with that days 'applications'</p> <p>You should take legal advice as to the strength of your case first as, should you lose the case, you may have to meet the Defence legal costs.</p>
<b>Court Details</b>	<p>For South Northamptonshire Council the Magistrates Court address is: Regents Pavilion, Summerhouse Road, Moulton Park, Northampton NN3 6BJ. Telephone number: 01604 497000</p> <p>For Cherwell District Council the Magistrates Court address is: Banbury Magistrates Court The Court House, Warwick Road Banbury Oxfordshire OX16 2AW Telephone number 01865 448020</p>
<b>Making an application</b>	<p>A small fee is payable in order to pursue the matter. You will need to prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Have your diaries copied to give to the Clerk.</p> <p>When, later, it comes to actually applying for a summons, the Magistrate will ask you questions. Even after starting these</p>

	<p>proceedings, you should continue to keep a diary of the disturbances and keep copies of all correspondence you write or receive in date order and make notes of any conversations.</p>
<b>What next</b>	<p>The Court serves the summons by recorded delivery or by personal service and will advise you of a date to return to court, usually about six weeks later. You must return to court on this day. Check the lists of cases posted up inside or ask for help to find which Court room you should attend.</p> <p>If the accused admits causing the nuisance, the Court will hear the case on that day. You will normally be asked to make a statement in support of your claim.</p> <p>If the accused fails to attend and makes no plea by post, the case will usually be adjourned.</p> <p>If the Court is satisfied that the accused was served with the summons, it may, in some cases (although these are generally rare), decide to hear the case in their absence.</p> <p>If the accused attends but denies causing the nuisance, the Court may hear the case or adjourn to another date, depending on the time available.</p>
<b>When you return to court</b>	<p>You do not need to be represented in Court by a lawyer. If you are however, you will have to pay as Legal Aid is not available for these actions.</p> <p>Prepare your evidence to show how you and your household are affected, how frequently, for how long and at what times. Bring any witnesses with you and have your diaries copied to give to the Court. The Magistrate will ask you questions, so may the accused, and you will have the opportunity of asking him/her questions on their evidence.</p>
<b>Likely outcomes</b>	<p>If the Court is satisfied that you have proved beyond all reasonable doubt that a nuisance exists or is likely to recur, they will make an Abatement Order requiring the accused to cease the noise and/or prohibit its recurrence. The Court may also impose a fine of up to £5,000, although smaller sums are more</p>

	<p>usual.</p> <p>You may, in addition, ask for reasonable costs e.g. for lost earnings, to be paid for bringing your case to Court. Any claim must be made at the hearing and any award is at the discretion of the Magistrate. A copy of the Abatement Order served on the accused will be given to you for your information.</p>
<b>Paying the costs</b>	<p>If you are unsuccessful, you may be ordered to pay the defendant's costs. The costs awarded may include any reasonable costs in defending the case, including legal costs</p>
<b>If you are successful but the problem continues</b>	<p>Return to the same Court (before 10:00) as soon as possible and apply for a "summons for failure to comply with the court order". There is no need to notify your intention to the person causing the noise.</p> <p>You will be able to start a prosecution for breach of the Abatement Order from which further financial penalties are likely to be imposed if the accused is found guilty.</p>
<b>Further assistance</b>	<p>If you require assistance on court proceedings, the Clerk of the Court may advise you in person on a weekday afternoon, usually after the courts have finished proceedings.</p> <p>Alternatively, it may be possible to take civil proceedings, i.e. in the County Court, for a 'private nuisance'. Again, take legal advice first.</p>

## APPENDIX 8

DIRECT NEGOTIATION WITH A NEIGHBOUR	
<b>Be prepared</b>	<ul style="list-style-type: none"> <li>• There are several ways to make it more likely that you and whoever you are in dispute with can sort things out – and some that will definitely make matters worse.</li> <li>• This section sets out some ‘do’s and don’ts’ that you may find it helpful to read through and think about before speaking or writing to the other person.</li> </ul>
<b>Think about what you want to say</b>	<ul style="list-style-type: none"> <li>• Be clear in your mind about:               <ul style="list-style-type: none"> <li>what the problem is;</li> <li>how it affects you;</li> <li>what you want.</li> </ul> </li> <li>• Talk to someone who is not involved, who can help to work these out. You may wish to consult a local Law Centre, Citizens Advice Bureau or a solicitor; and decide whether it would be better to talk face to face or to write a letter.</li> <li>• If you decide to talk face-to-face, you may find it helpful to write down what you want to say to help you order your thoughts and make sure you cover all the points you want to make.</li> </ul>
<b>If your dispute is with a neighbour</b>	<ul style="list-style-type: none"> <li>• Talk to them face-to-face. This is much better than pushing notes through the door or banging on the wall;</li> <li>• Try to choose a good time to make the first approach, when neither you nor your neighbour are busy; and</li> <li>• Arrange a suitable time and place, free as far as possible from distractions, so that you can talk about the problem properly.</li> </ul>
<b>Speaking face to face</b>	<ul style="list-style-type: none"> <li>• Be calm and friendly. Say you are glad you have got together to sort things out;</li> <li>• Tell your neighbour what the problem is, how you feel and how it affects you. Express how you feel but without blaming your neighbour. This will help you get your message across.</li> </ul>

	<p>For example, <i>“When I hear your TV after 11.30 p.m. I can’t get to sleep and I get angry”</i> is much better than <i>“You’re very inconsiderate with your loud TV, keeping me awake all night”</i>; and</p> <ul style="list-style-type: none"> <li>• Listen to what your neighbour has to say in return: they have a point of view, even if you don’t agree with it. By listening as well as talking, you help to build a good atmosphere. Problems are often solved when people feel they have been listened to.</li> </ul>
<p><b>Trying to solve the problem</b></p>	<ul style="list-style-type: none"> <li>• Look for common ground. Even agreeing to differ is a start;</li> <li>• Make sure that you bring all the issues into the open. Work on the easier issues first;</li> <li>• Separate the problem from the person. Approach this as if you and your neighbour are getting together to solve a common problem. Two heads are better than one: be open to your neighbour’s suggestion;</li> <li>• Try to find a co-operative solution in which both you and your neighbour participate;</li> <li>• Look at all the options before picking the best one for you both; and</li> <li>• If you are unable to talk things through amicably with your neighbour, you may wish to try a community mediation service.</li> </ul>
<p><b>When you reach agreement</b></p>	<ul style="list-style-type: none"> <li>• Make sure you know who has agreed to do what, and by when. It may be a good idea to write this down, and both sign it and keep a copy.</li> <li>• Agree a date to check how your agreement is working out</li> <li>• Agree how you will let each other know about any future problems.</li> </ul>
<p><b>Don’t</b></p>	<ul style="list-style-type: none"> <li>• Interrupt, shout or verbally abuse</li> <li>• Assume others have the same values as you do</li> <li>• Assume people are doing things just to annoy you</li> <li>• Imagine your neighbours know what is really bothering you if</li> </ul>

	<p>you have never told them</p> <ul style="list-style-type: none"><li>• Retaliate: it will make things worse and put you in the wrong</li><li>• Argue about exactly who did what – concentrate on what you want to happen in the future</li><li>• Bring up things which have nothing to do with the present problem</li><li>• Agree to solutions you think are unfair, just for a quiet life.</li></ul>
<p>These tips assume there is no threatening behaviour or danger of physical violence. If there is, you should go to the police.</p>	

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