



Procedure Document

COMMERCIAL NOISE NUISANCE

March 2026

- Document Control

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Revision Date	Revisor	Previous Version	Description of Revision
Mar 2012	[REDACTED]	None	None this is the first Procedure Note
January 2014	[REDACTED]	March 2014	Review due to partnership working
June 2016	[REDACTED]	June 2016	Review after 2 years of partnership
June 2017	[REDACTED]	June 2016	Addition of community protection notices
April 2022	[REDACTED]	June 2017	General update for current legislation and admin procedures
September 2024	[REDACTED]	April 2022	Update to clarify level of evidence required to serve notices
March 2026- Rev. 6	[REDACTED]	September 2024	Review after 2 years.
May 2025	[REDACTED]	NA	Added appendix A, B and C

Document Distribution

This document will be distributed to:

Name	Job Title	Email Address
[REDACTED]		

Env. Protection Team Members	[REDACTED]
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PROCEDURE

PURPOSE: The purpose of the commercial noise complaints procedure is to set out how complaints of commercial noise are dealt with by the Environmental Protection Team.

Although the vast majority of complaints will be dealt with in this way there may be incidents and occasions when alternative actions are necessary. This will be determined on a case specific basis by the team members dealing with the case.

SCOPE: This covers all commercial noise.

RESPONSIBILITY: - Overall responsibility for commercial noise complaints investigation rests with the Environmental Protection Team Leader.

CONTENT:

Receipt of complaint and initial procedures
Initial officer procedure
Action to be taken by the investigating officer
Standard Letter option
Instant investigation
Subjective nuisance assessment
Technical investigation
Statutory nuisance
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Swale SLM procedure

Receipt of Complaint and Initial Procedures

Initial contact is usually made either by telephone or a visit, but can also be via e-mail, online form via website or SMS text, so as to ascertain the detailed nature of the complaint. If 3 separate calls and/or complaint is a severe nuisance and/or request from either agency e.g. The Police or the Anti-Social Behaviour Team. Tunbridge Wells based officers may get complaints allocated to a designated officer who deals with issues that are currently in progress (usually in summer months and subject to sufficient officers being available to cover the duty). Admin officers should endeavour to get as much information as possible from complainants - such as email, mobile and land line numbers as well as a good description of the noise in question so that the officer has a good understanding of the nature of the complaint.

Register on Uniform under the following codes:

- NAMP - Amplified Music
- NCONS - Construction Noise
- NINDUS - Noise from Industrial Premises
- NRAIL - Railway Noise
- NSTRE - Vehicles/Fans/Mach and Equip in Street

The Team Administrator will assess the application and take the appropriate action depending on nature of the problem.

- If the problem is currently ongoing the Tunbridge Wells Team Administrator could consider allocating to an immediate response Officer. Other authorities will allocate in the normal method.
- If the problem appears to be a one-off incident, standard letters would be the appropriate approach.
- In Swale, complaints made directly through the uniform enterprise queue will go directly to the team leader for allocation or referral back to admin for appropriate action as above.
- If the problem is likely to keep recurring a Standard Letter to the Complainant followed by allocating the complaint to an officer for direct contact to the person running the commercial activity (visit or telephone conversation followed up with an email or letter) would be appropriate.

Initial Officer Procedure

The officer should initially establish the nature of the complaint and the nature of the commercial enterprise as some noise nuisances are best dealt with by other agencies inside or outside the council. Common examples would be,

- The Environment Agency
- Planning Enforcement,
- Licensing,
- Some statutory undertakers such as the Civil Aviation Authority.
- Other Local Authority departments or another Local Authority.

Environment Agency Issues

Certain commercial noise may be enforced by the Environment Agency particularly if the source is an A1 permitted process, or has a permit issued by the EA (i.e. Waste permits). In the event of problems, the Environment Agency log incidents of complaints and may investigate. It may be possible for them to amend the permit conditions when they review it to incorporate stricter noise conditions.

In the first instance pass the complainant to the Environment Agency. Liaison with the EA will be very tricky and should be undertaken in conjunction with the Team Leader for Environmental Protection. The Team Leader may authorise an investigation procedure that mirrors a real investigation by the Environment Agency. This information could then be presented to the EA to encourage them to take action or give the complaints due consideration. If the EP Team were to indicate that without the factory's A1 permit status (i.e. exempt from Local Authority enforcement) we would have served notice this would put considerable pressure on the EA to ensure the conditions on the permit are sufficient to deal with noise issues.

Planning Related Issues

If the issue overlaps with planning such as breaches of planning conditions (unauthorised use or an unauthorised extension to an existing use) then it would be useful to undertake joint investigations with planning enforcement to ascertain the best course of action. The complainant should be advised to log their concern directly with Planning Enforcement to enable an enforcement case to be opened for investigation. EP will have powers to deal with statutory nuisance but there could be complexities involved in any remediation measures needing planning permission. These sorts of cases should always be discussed with the EP Team Leader or SEHO/SSO to develop an action plan to deal with the situation.

Licensed Premises Issues

Where a licensed premises is the source of the complaint the EP Officer will in addition to carrying out a search of the Uniform system will check the Premises Licence using the Licensing Portal/Licensing files (SBC Officer may liaise directly with the Licensing officer). This gives operating times and conditions attached to the licence – it may be breaches of these that are giving rise to complaints.

If the issue is solely related breach of licence conditions, then Licensing may be the most appropriate enforcing authority. If it is giving rise to noise nuisance the EP Team still has a duty to investigate, and the issue can become a joint investigation. Given the nature of the activities associated with premises licences most of the infringements are likely to occur outside normal office hours. If this is the case then this will need to be investigated and the EP Team Leader or SEHO/SSO will determine the best course of action,

- Monitoring equipment – limited if enforcement action is needed as direct officer witness is the best form of evidence (supported by noise readings etc).
- Individual officer visit to gather evidence and data,
- Planned visits – when sufficient numbers of complaints relating to premises noise that occurs out of hours and need investigation it may be prudent to organise an out of hour's visits with two EP officers visiting a number of premises on a predetermined night.

It is possible for EP officers to witness breaches of conditions and be "witnesses" for the Licensing Section if they instigate legal proceedings. Notes should be recorded in the pace notebooks. In addition, as a Responsible Authority, EPT can call for a Review of the Premises Licence as this is often a suitable and effective route to resolve a noise problem.

Statutory Undertakers

Occasionally we will get complaints about properties controlled by other agencies such as the Environmental Protection Agency (EA). An example would be noise from an A1 Permitted premises where the EA have power to deal with noise and in fact the local authority is by way of the legislation unable to take action against noises associated with the permitted processes. Local authority can deal with other noises like barking dogs or alarms at these premises. We are restricted in dealing with normal train noise and aircraft overflights etc.

Commercial Noise from Outside Our Boundary

If the commercial noise affecting our residents occurs outside the Borough Boundary, we still have Statutory Powers and should investigate the matter to its conclusion. It will be necessary to liaise with the other Local Authority Officers out of courtesy as we retain full jurisdiction under the Environmental Protection Act 1990.

We do not have statutory powers to act for complainants outside our borough who complain about business premises inside our borough. This could include factories and perhaps concerts (though external complainants could call a review of a licence independently or through their council). Their council could serve notices on noise generated by a business inside our authority that affects residents in their borough.

Further Actions for the Investigating Officer

In most instances a commercial noise complaint will involve prompt direct contact with the source of the noise. The objective is to assess the nature of the noise, discuss it directly with those responsible and where appropriate instigate an investigation strategy or enforcement strategy.

Check the Uniform history to see if there are previous complaints about the premises relating to this or similar incidents. Check the details of previous complainants to see if it is the same person complaining or a new complainant.

If possible, discuss the situation with the complainant by phone to get full details of the problem that they are experiencing and the location of the source of the noise within the commercial premises. Ensure that effective contact details are obtained – email, phone, mobile number. Obtain a good description of the noise including:

- Time of occurrence
- How often it happens
- Nature of the noise
- How it affects them – disturbs use of garden, keeps them awake, can be heard when listening to TV etc.

If the complainant hasn't been sent Diary Sheets by EH Admin, ensure that they are sent by email or post to the complainants and explain the importance of completing them accurately.

The course of action to be taken will be determined by the officer dependent on the type of complaint and the seriousness of the complaint. In summary there are three potential courses of action:

- A telephone call followed up by a letter/email confirming the situation, or
- A visit followed up by a letter/email confirming the situation.
- Full investigation and Assessment

Telephone contact and follow-up letter option

The officer should contact the complainant to discuss the situation and obtain relevant details to assess the nature and extent of the complaint including times of disturbance, frequency of disturbance. They should also check that we have email and mobile numbers to facilitate future contact. The officer could look to sending additional Diary Sheets in PDF or Word format to the complainant for completion (Admin will probably have sent letter copies of diary sheet).

If the noise is very infrequent and a site visit is not the most appropriate course of action due to the absence of likelihood of catching it in progress, then the letter and diary sheets option would be appropriate. In these instances, the officer could contact the commercial site directly by phone to advise them of the complaint so they can "self-investigate" the incident as quickly as possible after the occurrence. The fact should be referred to in the follow-up letter or email if possible. The officer can send the standard noise letter/email to the complainant including the log sheets.

If diary sheets and/or audio/video recordings are returned and there is a reasonable belief that a nuisance could be occurring a more detailed investigation becomes necessary. A Community

Protection Warning notice should be served at this point if the officer is satisfied on the balance of probability that the complaint is justified. The element of doubt should be in favour of the person exposed to the potential nuisance as this is the most equitable approach. Investigation that establishes no nuisance poses very little unfairness on the alleged perpetrator but missing a nuisance could substantially affect the complainant.

Investigation should be by way of a visit to the site and to the complainant's property to assess the noise or by unattended recording as is deemed appropriate. Assessment of nuisance is considered later in this procedure note.

Site visit investigation

Serious or potentially serious nuisance should be investigated as soon as possible. If the noise source is ongoing this would also be a suitable opportunity for a visit to witness the problem first hand. The use of a quick response officer (not applicable to Swale) could also be considered but if allocated to an EP officer then an immediate site visit should be considered. It may be appropriate to organise a site visit in the next few days dependant on the circumstances.

The visit should include an approach to the complainant to assess the disturbance at their property. The officer should also visit the commercial site to discuss the matter with somebody in charge. This would give the officer an opportunity to assess the situation and show this to the person in charge at the commercial premises to demonstrate the point. Sometimes a meeting on site with the noise source operating is a good tactic in convincing those in charge to rectify the situation. Informing the person in charge about powers available to EP officers can also focus the mind of the individual towards resolving the problem quickly.

Subjective Assessment of Nuisance

The most appropriate assessment of nuisance is a subjective assessment where the Environmental Protection Officer assesses the impact of the noise and applies the principals of nuisance to establish if they consider the noise to be a nuisance. Note it is ultimately the courts that will determine whether there is in fact a nuisance.

If the noise does not appear to be a nuisance we cannot take any formal action. However, sometimes technical investigation can highlight issues that a responsible commercial venture may wish to address and therefore can have its uses.

Crime and Anti social Behaviour Act 2014

If the level of noise and disturbance does not quite constitute a statutory nuisance but does cause genuine problems it may still be possible to serve a community protection notice.

The test for service of a CPW and then CPN is that:

- The conduct of the individual or body is having a detrimental effect of a persistent or continuing nature, on the quality of life of those in the locality; and
- The conduct is unreasonable.

An example of where this could be used may be noise caused by persons leaving the premises at night and not being adequately controlled by the operator.

A CPW and follow up CPN could be served on good log sheet evidence where it appears on the balance of probability that a genuine problem is being caused.

Technical assessment can be used to supplement the officer's assessment when applied against certain assessment criteria. Some of these are listed in **Appendix A**.

Technical Investigation

Technical investigation cannot replace the subjective assessment of nuisance, but it can support obvious nuisances. There may be situations where the technical evidence does not support the

subjective assessment of statutory nuisance. In general, the subjective assessment is the most appropriate, but this needs careful consideration to determine the best course of action.

The officer should use the appropriate noise and or video equipment. Either the unattended Noise/Video Monitoring Kit or the Sound Level Meter. Both should be set up following standard protocols to ensure accuracy of the equipment. Appropriate details should be logged on site and appropriate measurements taken as per the nature of the subsequent assessment method.

The results of the technical investigation should be downloaded using the proprietary software. The results should then be compiled into a report dependant on the assessment method used. Where appropriate frequency analysis can be used to assess tonal components of the noise.

Assistance with the nature of the technical investigations can be obtained via the EP Team Leader or the Senior EHO.

Statutory Nuisance

At this stage the investigating officer must decide whether the noise witnessed amounts to a statutory nuisance. Each case must be judged on its merits, taking into account all relevant factors and guidance available, including statute law, case law, local experience. British and International Standards, etc - these can be used to provide supporting evidence if appropriate. Generally, the more supporting evidence that has been obtained the better. If it is necessary, the circumstances and results can be discussed with EP Team Leader or other field officers to obtain consensus on the best available options.

If a statutory nuisance exists, is likely to occur or recur then a notice under Section 80 of the Environmental Protection Act 1990 must be served. The service of the notice can be delayed under a provision in the Clean Neighbourhood and Environment Act 2005, amending the EPA90, by allowing a delay of up to seven days. The wording of the notice will need to be carefully selected, and all notices should be reviewed by a peer and discussed with the Team Leader where possible. Service of a notice is a civil procedure and therefore the burden of proof is "balance of probabilities", but sufficient evidence should be available to win the case at this level. This may be the provision of incident logs and audio/video recordings provided by the complainant. If there is a level of doubt in this evidence officers should install the council's monitoring equipment or arrange site visits to gather more robust evidence.

When a notice is being considered it is necessary to discuss the case with the complainant as up to this point their confidentiality is assured. If we serve a notice the recipient can appeal the notice. We would then have to prove that the notice was justified on the "balance of probability", In most instances we would rely on their evidence (log sheets, witness statements and possibly evidence given in court). We need to stress that they experience the nuisance and are the primary evidence in describing and establishing that the effect of noise on them is sufficient to amount to a statutory nuisance. Officers generally give corroborating evidence and technical evidence to substantiate the complainants evidence. This is even more relevant for prosecutions, but the burden of proof has to be to the "beyond reasonable doubt" criminal standard. If the person is not willing to give evidence the officer will have to discuss the matter with the Team Administrator for guidance on how the case is to be progressed.

See also notes on CPN route above. If the noise is a statutory nuisance, then an abatement notice must be served. However, due to the greater flexibility of the ASB legislation the officer may first wish to consider this route.

If at this stage the identity of the person(s) responsible or details of the company on whom a notice is to be served is still not known, a Section 16 Requisition for Information Notice under provisions in the Local Government (Miscellaneous Provisions) Act 1974 should be served. Other sources of information should also be pursued, for example, housing associations, local agents, HM Land Registry, etc.

The case officer should have a view early in the investigation that if notice is likely to need to be served that they have sufficient information to ensure that notices are served on the most

appropriate individuals or corporate bodies. A Section 16 Notice could therefore be served early in the investigation even if there appears to be commitment to address the issue.

Enforcement for breach of notice

Breach of notice is a criminal offence and therefore subject to the burden of proof of “beyond reasonable doubt”. For commercial premises there is the defence of best practical means.

Investigations should begin again after the service of the notice as fresh evidence is required to secure a conviction as we will need to prove that a breach occurred. This would include evidence by way of a witness statement from the complainant(s) and evidence of a subjective and objective nature collected by the EP officer. The complainant should already be aware that they may have to give evidence directly in court if necessary.

If sufficient evidence is gathered legal proceedings can be instigated. The Prosecution Pack should be completed by the investigating officer located on the shared drive. The prosecution file be reviewed and signed off by the Team Leader and Senior Management before being passed to legal.

It is possible to undertake works in default, but this must be discussed with the Team Leader who will determine the most appropriate course of action. Work in default could result in extensive costs incurred by the Council should the courts find against this type of action. In most instances prosecution will be the most viable option.

Community Protection Notices (CPNs) follow a slightly different procedure. If a CPN is breached, a Fixed Penalty Notice (FPN) of £100 may be issued. If the FPN is unpaid, or the issue recurs, further investigation and/or evidence would be required to justify further formal action, for example increased fines or legal prosecution.

Appendix A

Relevant Legislation

Control of Pollution Act 1974
The Environmental Protection Act 1990 Section 79.
The Noise and Statutory Nuisance Act 1993
The Noise Act 1996
The Clean Neighbourhood and Environment Act 2003
The Licensing Act 2003
Crime and Anti Social Behaviour Act 2014

Standards that officers might consider applying to investigations of commercial noise

The list is not intended to be an exhaustive list but provides a quick over-view of types of assessment that could be considered.

BS 5228 – 1:2009+A1(2014) Control of Noise and vibration control on construction and open sites Part 1 Noise

BS 5228 – 2:2009+A1(2014)1997 Control of Noise and vibration control on construction and open sites Part 2 Vibration

BS 4242:2014 + A1:2019 Methods for rating and assessing industrial and commercial sound. Rating of Industrial Noise. Associated Spreadsheet for calculating and assessing by JM1

BS 8233:2014 Guidance on sound insulation and noise reduction for buildings. See the NR calculation Spreadsheet by JM1.

ISO 1996 – 1:2016 Acoustics Description and measurement of environmental noise Pt 1 Basic quantities and assessment procedures.

ISO 1996 – 2:2017 Description and measurement of environmental Noise Pt 2 Determination of sound pressure levels.

ISO 1996-3:1987 Acoustics — Description and measurement of environmental noise Part 3: Application to noise limits (Withdrawn, not yet replaced).

ISO 9613-2:2024 Acoustics — Attenuation of sound during propagation outdoors Part 2: Engineering method for the prediction of sound pressure levels outdoors

BS 6472-1 2008 Evaluation of Human Exposure to vibration in buildings Pt1 Vibration sources other than blasting

Other documents to have regard to

CIEH Guide on Clay Target Shooting (2003). See the associated spreadsheet for calculating and assessing by JM1

CIEH Guide on Control of Noise at Pop Concerts (ex-Noise Council) (1995) (due to be updated)

Defra/Salford NANR45 Proposed criteria for the assessment of low frequency noise (2011). Also see the associated Spreadsheet for calculating and assessing by JM1

CIBSIE Guide B- B1 Heating (2016), B2 Ventilation and ductwork (2016), B3 air-conditioning and refrigeration (2016).

World Health Organization Environmental Noise Guidelines for the European Region (2018)

World Health Organization Guidelines for Community Noise (1999)

World Health Organization Night-time noise guidelines for Europe (2009)

DEFRA Guidance Environmental Permitting Guidance Statutory Nuisance s79 (10) Environmental Protection Act 1990 (2010)

Institute of Acoustics Good Practice Guide on the Control of Noise from Pubs and Clubs (March 2003)

Institute of Acoustics Good Practice Guide on the Control of Noise from Places of Entertainment. (Not yet published but should be run through CIEH and perhaps have something by 2022/23. NOTE: Apparently still awaiting publish 2026)

Licensing Act 2003

COMMERCIAL NUISANCE PROCESS FLOW

