

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

MUNICIPAL YEAR 2014-2015

**ENVIRONMENTAL SERVICES
SCRUTINY COMMITTEE**

26th January 2015

**REPORT OF GROUP DIRECTOR,
COMMUNITY AND CHILDREN'S
SERVICES**

Agenda Item No.5

**The Investigation of Domestic Noise
Nuisance in Rhondda Cynon Taf**

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1.0 PURPOSE OF THE REPORT

1.1 This report is provided to inform Members about the Council's protocol for investigating complaints of domestic noise nuisance.

2.0 RECOMMENDATIONS

2.1 It is recommended that Members

- Note the content of this report in respect of the noise nuisance investigation protocol.
- Scrutinise and comment on the information provided

3.0 BACKGROUND

3.1 Noise pollution can be a serious issue for many people living in Rhondda Cynon Taf. For the sufferer it can cause disruption, interference and irritation, as well as in some cases lead to the development of stress and loss of sleep. Maintaining the comfort and well-being of people in their own homes is an essential aspect of the work undertaken by the Pollution and Public Health Team. The Council has a statutory duty to investigate complaints of noise nuisance and take appropriate action to resolve noise problems when appropriate. The following table illustrates the various type and amount of complaints received by the Council over the last 4 years.

Type of Noise	2011	2012	2013	2014
Music/Party/TV/radio (domestic properties)	329	317	322	288
Entertainment at licensed premises (including customers)	72	87	65	60
People (shouting/talking)	101	80	102	97
Barking dogs	86	43	73	72
Alarm - House/Car/Fire	53	56	49	60
Birds/other animals	30	19	43	50
Industrial/Commercial	48	48	56	65
Public Address Systems	9	6	8	3
Vehicle (including repairs)	33	45	56	54
DIY	39	62	56	60
Church bells	0	1	3	2
Shooting	0	2	0	1
Other identified noise	59	26	19	35
Total	859	792	841	847

3.2 The Pollution and Public Health team has adopted a protocol to investigate complaints from residents in respect of domestic noise nuisance and assist Officers in providing a consistent approach when dealing with noise nuisance. Over time the protocol has been amended to improve working practices and reflect any changes in legislation or guidance in respect of noise.

4.0 **INVESTIGATING DOMESTIC NOISE NUISANCE PROTOCOL**

4.1 The protocol is used as a basis for the investigation of complaints concerning alleged noise nuisances arising from domestic dwellings. (A full copy of the Protocol is included in Appendix 1)

4.2 **Key procedural issues within the Protocol**

- The Corporate Contact Centre acts as the first point of response for callers to ensure that appropriate advice is offered during the initial contact. Requests for service are only referred for further investigation if they fall within the scope of the legislation. The call handlers use a new script to follow, to assist them in providing appropriate advice and logging the call correctly.

- An Officer will initially telephone the complainant to discuss the specific details of their complaint. After a discussion with the complainant, an acknowledgement letter is sent to the complainant, together with noise diary sheets, which are requested to be returned within 28 days. At the same time an advisory letter is to be sent to the person allegedly making the noise.

- On receipt of the completed diary sheet, an Officer will assess its contents to check the details of the noise nuisance. Due to a recent change to the protocol, a letter is now sent to the person responsible, advising that further noise nuisance complaints have been received and the matter will be investigated with possible use of noise monitoring equipment. This is done to ensure the person responsible is fully aware that the complaint is on going and they may be subject to monitoring.

- Arrangements are made to either install noise monitoring equipment in the complainant's property or for the case officer to visit to witness the noise. Where possible when a complainant indicates a noise nuisance is occurring, then every effort is made for an Officer to visit to witness. The use of the noise monitoring equipment is considered as being secondary to that of an Officer visiting a premises to witness the alleged noise nuisance. It is appreciated that due to the nature of noise nuisances caused by animal's and dog's in particular, the ability to gain sufficient evidence to initiate formal action can be extremely difficult as the noise is often intermittent and unpredictable. If the complaints continue the investigating Officer will attempt to identify any frequency/patterns to the occurrence of the noise nuisance, in order to make arrangements to visit and attempt to witness the alleged problem.

- If the alleged nuisance is witnessed, either in person or by the use of the noise monitoring equipment, the Officer shall have regard to the following matters in determining if a noise nuisance is being caused:

- Nature of the noise i.e. is the type of noise one that can be dealt by nuisance legislation
- Frequency of the noise i.e. how regularly is it happening.
- Duration of the noise i.e. does it last for seconds, minutes, or hours.
- Audibility of the noise i.e. can it be easily heard in adjacent properties e.g. over the sound of their television.
- The location in the complainant's property from where the noise is audible
- Affect on other persons i.e. neighbours, and their property e.g. do furnishings vibrate.
- Societal acceptance of the noise e.g. Church Bells, Festive Season.

If an Officer is satisfied that the noise amounts to a statutory nuisance, consideration must be given to prevention of the noise occurring. This may be achieved by:

Deferred Action. If the Officer is satisfied that abatement of the noise may be secured within a period of up to 7 days, the officer may defer serving a Notice. Examples of cases requiring deferment include situations where the person responsible is due to vacate the property within 7 days, or where the noise source has been removed from the property indefinitely.

Abatement Notice served on the person/s responsible for the noise nuisance. Abatement Notices are accompanied by a letter that explains the obligations imposed on the recipient and legal significance of the notice. If steps are specified for achieving compliance they must be reasonable and they must be capable of being monitored to determine whether they are being complied with or not. The

notice will also specify a reasonable time period to achieve compliance. Non compliance with an abatement notice could result in prosecution (with fines of up to £5,000 for domestic premises and £20,000 for industrial/commercial premises) and/or works in default. There is also an option to obtain a warrant to seize noise making equipment eg. hi fi, speakers etc... and apply for a forfeiture order to keep the equipment.

5.0 PERFORMANCE INFORMATION

5.1 Since 2011 the Pollution and Public Health Team have:

- issued 1412 noise nuisance warning letters
- served 69 abatement notices for noise nuisance
- undertaken 14 seizures of hi fi, speakers etc... due to persistent noise nuisance from loud music
- achieved 12 successful prosecutions for breaches of abatement notices via the Magistrates Court

5.2 During 2014, 92% of loud music/tv noise related complaints received a response from an Officer within the 5 day target for responding to service requests.

6.0 CONCLUSION

6.1 The Public Health and Protection Department continues to receive high numbers of complaints in respect of noise nuisance from domestic sources. The current service changes will result in a reduction of available resources to investigate complaints of noise nuisance. The Department will need to target actions to make best use of available resources. As part of this process the investigation protocol will be reviewed regularly and adapted as necessary to ensure it is fit for purpose.

Appendix 1

**Protocol for the Investigation of
Domestic Noise Nuisance**

Public Health and Protection

January 2011 (revised November 2014)

Protocol for the Investigation of Domestic Noise Nuisance

Introduction

This protocol should be used as a basis for the investigation of complaints concerning alleged noise nuisances, as defined by Section 79 of the Environmental Protection Act 1990, arising from domestic dwellings. It is recognised that its application may not be appropriate in certain circumstances as determined by the investigating Officer. However in order to promote good practice and ensure consistency, this protocol establishes the procedure to be followed when investigating domestic noise nuisance complaints.

Making a Request for Service

All complaints relating to domestic noise must be logged onto the FLARE system. This is either done by the receiving officer, Duty Officer or by the call centre. Requests may be received by telephone, in writing, by email or in person.

As much information as possible will be recorded by the person receiving the request. As a minimum this must include the following:

- Name and address of complainant.
- Contact telephone number.
- Address of subject and if possible name.
- Nature of alleged noise for example, regular noisy party, loud television, musical instrument.

Not all noise and disturbance can be dealt with by Public Health and Protection under nuisance legislation. Examples of matters outside the Council's control are neighbours arguing, a one off noisy party or DIY of short duration. In addition, some complaints relating to noise disturbances can also be dealt with under the provisions of Anti Social Behaviour legislation. These matters should be referred to the Council's Anti Social Behaviour Team for investigating, e.g. noise from individual/s shouting, swearing, arguing etc. in the street. The person handling the initial request for service should inform the complainant of the limitations of the Council's role and give them appropriate information and advice if appropriate.

Anonymous complaints about domestic noise **will not** be dealt with, unless the matter complained about is obvious such as an audible intruder alarm. This is because it is compulsory for an Officer to witness a noise nuisance and make an assessment of the impact of the noise on a persons enjoyment of their property, and this needs to be done from within a complainant's property.

The request for service will be logged to the appropriate team or officer in order that they be allocated to an officer for investigation.

Initial Response

The assigned investigating Officer will initially seek to telephone the complainant to discuss the specific details of their complaint. It should not be necessary to visit complainants at this stage to discuss the matter. However, there will be occasions where the complainant contacts the department directly at a time when the nuisance is occurring, for example when a house alarm is sounding. In these circumstances it would be appropriate to visit immediately to witness the existence of a noise nuisance.

If the complaint falls outside the remit of the legislation enforced by Public Health and Protection, the complainant must be informed. If appropriate, the Officer will advise who may be able to help, e.g. mediation service, Anti Social Behaviour Team, Citizens Advice / legal advisory body for matters that may require private action.

Any complaint received in respect of a tenant of RCT Homes or Cynon Taf Housing allegedly causing a noise nuisance must be referred in the first instance to the relevant Housing Officer to investigate (refer to 'Joint working protocol for RCT Homes'). The complainant should be advised of the procedure that has been adopted for dealing with requests for service concerning RCT Homes/ Cynon Taff Tenants.

After discussion with the complainant, if the service request is a matter for investigation, then the investigating EHO must advise the complainant of the protocol for dealing with noise.

A letter is to be sent to the complainant, together with noise diary sheet. This letter acknowledges receipt of a complaint and requests the complainant to contact the Pollution and Public Health Team should the noise nuisance recur. All complainants must be advised that if the noise continues following the receipt of their letter, then the noise diary sheets should be completed as accurately as possible, and returned to Public Health and Protection within 28 days.

A standard noise letter is to be sent to the person allegedly making the noise. If the person allegedly making the noise is a private tenant or Housing Association tenant, the standard noise letters are to be sent to the tenant and to the landlord to advise of the complaint.

The service request is to be closed after the standard letters have been sent and the CIEH noise actions updated by the responding officer. If during the next 28 days completed diary sheets are received the SEHO will allocate the SRU to an investigating Officer. The original SRU will be reopened and the CIEH noise action diary amended to show the return of the completed diary sheets. On occasions completed noise diary sheets may be received after the 28 day period but will still be assessed and a decision made as to whether it is appropriate to reopen the investigation.

Formal Investigation

If the complainant produces completed noise diary sheets indicating when the noise occurs and how it affects them, the investigating officer shall review the content of the diary sheets to determine the next stage of the investigation. The investigating Officer will send a letter to the person responsible, outlining that further noise nuisance complaints have been received and the matter will be investigated with possible use of noise monitoring equipment. In addition the Officer will contact the complainant acknowledging receipt of the diary sheet and outline the next course of action.

If the noise and frequency described on the diary sheets indicates a noise nuisance, of the type defined by the Environmental Protection Act 1990, then arrangements are to be made to either install noise monitoring equipment in the complainants property or for the case officer to visit to witness the noise. Where possible when a complainant indicates a noise nuisance is occurring, then every effort should be made for an Officer to visit to witness. The reliability of the noise monitoring equipment should be considered as being secondary to that of an Officer visiting a premises to witness the alleged noise nuisance.

Officers must note that the letters sent to person/s alleged to be responsible for a noise nuisance advising of the possible use of noise monitoring equipment should be regarded as time bound. Noise monitoring equipment should not be installed at the complainant's property more than 3 months after the sending of Noise letter to the person/s alleged to be responsible. If the noise is alleged to continue after this time and the noise monitoring equipment has not yet been utilised then an additional letter of warning must be sent.

If the alleged nuisance is witnessed by the investigating EHO, either in person or by the use of the noise monitoring equipment, the Officer shall have regard to the following matters in determining if a noise nuisance is being caused:

- Nature of the noise i.e. is the type of noise one that can be dealt by nuisance legislation
- Frequency of the noise i.e. how regularly is it happening.
- Duration of the noise i.e. does it last for seconds, minutes, or hours.
- Audibility of the noise i.e. can it be easily heard in adjacent properties e.g. over the sound of their television.
- The location in the complainant's property from where the noise is audible
- Affect on other persons i.e. neighbours, and their property e.g. do furnishing vibrate.
- Societal acceptance of the noise e.g. Church Bells, Festive Season.

If an officer is satisfied that the noise amounts to a statutory nuisance, consideration must be given to prevention of the noise occurring. This may be achieved by

- Deferred Action

- Service of a Noise Abatement Notice on the person/s responsible for the nuisance.

Deferred Action

The Clean Neighbourhoods and Environment Act 2005 makes provision for an officer, once satisfied that a noise nuisance exists, to use discretion before deciding to serve a Noise Abatement Notice. If the Officer is satisfied that abatement of the noise may be secured within a period of up to 7 days, the officer may defer serving a Notice. If an officer decides to defer action, a detailed record of the decision must be made on the case file and the Investigating Officer's line manager should be consulted. Deferred action will only be considered in exceptional circumstances. Examples of cases requiring deferment include situations where the person responsible is due to vacate the property within 7 days, or where the noise source has been removed from the property indefinitely.

In all cases where a deferred action is pursued, a letter must be sent to the persons responsible for the noise nuisance to inform them that the officer is satisfied that they are causing a nuisance and advising them that the officer has decided to defer action. The letter must also state that if they fail to address the noise within 7 days an abatement notice will be served.

If after 7 days the officer is satisfied that the nuisance has been abated, a letter confirming that the noise has been satisfactorily dealt with must be sent to the person responsible. The letter must also state that no further action will be taken in respect of the noise complained of in the original letter, unless there is a recurrence.

If however the officer is not satisfied that the noise has been abated or if the officer believes a nuisance may recur, a Noise Abatement Notice must be served.

Noise Abatement Notices

If an officer is of the opinion that a Noise Abatement Notice should be served to prevent the occurrence or recurrence of a noise nuisance, either after or instead of deferring action, this must be done without delay and within 5 working days. Noise Abatement Notices must be accompanied by a letter that explains the obligations imposed on the recipient and legal significance of the notice.

The Noise Abatement Notice served on the person/s responsible for causing a noise nuisance should require the prohibition or restriction of the recurrence of the nuisance. Following case law (Elvington Park Ltd and Elvington Events Ltd v York City Council) it is not necessary to specify steps by which compliance can be achieved especially if a number of options are available. If steps are specified for achieving compliance they must be reasonable and they must be capable of being monitored to determine whether they are being complied with or not.

In the case of a statutory noise nuisance caused by the playing of amplified music, the time period specified for achieving compliance should state 'within 1 hour' unless structural or costly works are required to abate the nuisance. In these instances the

notice shall not be suspended pending the outcome of any appeal and this content of the Abatement Notice shall reflect this.

Noise Abatement Notices should specify the location of the statutory noise nuisance as being the premises from where the noise is arising. It should not be necessary and is not appropriate to disclose the complainant/s identity on the Notice. The service date and time of the Noise Abatement Notice must be recorded by the Officer responsible for delivering the Notice in their PACE Notebook.

In the event of serving a Noise Abatement Notice the investigating Officer should make a referral to the ASB panel if appropriate.

A copy of the Noise Abatement Notice may be placed on the emergency out of hours list of cases to attend after the expiration date, if appropriate. A letter should be sent to the complainant to advise how to contact the emergency standby service in the event of the Noise Abatement Notice being breached.

Barking Dogs/Noisy Animals

Public Health and Protection and the Animal Control Service receive numerous complaints of barking dogs/noisy animals. Following receipt of a complaint, an Officer will send a letter (Barking dog/ Noisy Animal advisory letters) to the animal owner giving advice in respect of preventing disturbance and request abatement of the noise. If the animal owner allegedly making the noise is a private tenant or Housing Association tenant the standard noise letter should be sent to the landlord to advise of the allegations being made. A letter is also sent to the complainant along with noise diary sheets for completion and return within 28 days.

The service request is to be closed after the standard letters have been sent and the CIEH noise actions updated by the responding officer. If during the next 28 days completed diary sheets are received the SEHO will allocate the SRU to an investigating EHO. The original SRU will be reopened and the CIEH noise action diary amended to show the return of the completed diary sheets. On occasions completed noise diary sheets may be received after the 28 day period but will still be assessed and a decision made as to whether it is appropriate to reopen the investigation.

If the complainant produces completed noise diary sheets indicating when the noise occurs and how it affects them, the investigating Officer shall review the content of the diary sheets to determine the next stage of the investigation. The investigating Officer will send a letter to the person responsible, outlining that further noise nuisance complaints have been received and the matter will be investigated with possible use of noise monitoring equipment. In addition the Officer will send a letter to the complainant acknowledging receipt of the diary sheet and outlining the next course of action.

In most cases the use of noise monitoring equipment will not be appropriate for determining the existence of a noise nuisance from animal noise. The evidence of an Officer visiting to witness the nuisance will be required to justify the service of a Noise Abatement Notice on the person responsible. However, if the investigating Officer is satisfied beyond all reasonable doubt that recordings of animal noise could be made by a complainant on the noise monitoring equipment to validate the existence of a nuisance, then arrangements should be made for its installation at their property. For example, in an isolated row of terraced houses where only one of the residents has a dog or a cockerel on their property etc. When using the noise monitoring equipment to obtain evidence in respect of a nuisance from animal noise then the approval of the investigating Officer's line manager must be sought.

Where possible when a complainant indicates a noise nuisance caused by animal noise is occurring every effort should be made for an Officer to visit to witness. The reliability of the noise monitoring equipment in the rare occasions in which it is used should be considered as being secondary to that of an Officer visiting a premises to witness the alleged nuisance.

It is appreciated that due to the nature of noise nuisances caused by animal's and dog's in particular, the ability to gain sufficient evidence to initiate formal action i.e. the service of an Abatement Notice, can be extremely difficult as the noise is often intermittent, unpredictable and sometimes of limited duration. It can also vary in frequency and volume as the dog moves between areas / rooms in a property, and is typically a greater cause of annoyance late at night or during the early hours of the morning. To this end the investigating Officer should attempt to identify any frequency / patterns to the occurrence of the noise nuisance, in order to make arrangements to visit and attempt to witness the alleged problem. It may be necessary to make arrangements with the complainant to visit outside normal office hours.

A Noise Abatement Notice can be served by the investigating Officer in respect of noise from dog/s barking/noisy animal after having obtained 3 or more witness statements from individuals of separate households who are affected by the noise. However, the investigating Officer must be satisfied that the complainants are unrelated and should be able to demonstrate impartiality. It is important that the investigating Officer considers the reliability of the evidence given by each of the complainants. In circumstances where there is a history of disputes between the complainant and animal owner's or any other reason to question their reliability as a witness then their evidence should be disregarded.

Referrals from Social Landlords

Any complaint received in respect of a Social Landlord tenant allegedly causing a noise nuisance must be referred to the relevant Housing Office to investigate initially. In instances where the Housing Officer cannot resolve the matter, a request for service should be forwarded to the Pollution and Public Health Section. Referrals from Social Landlords must contain copies of all letters they have sent and any

completed diary sheets returned by the complainant (Refer to the Joint working protocol for RCT homes/ Cynon Taf).

If the complainant produces completed noise diary sheets indicating when the noise occurs and how it affects them, the investigating Officer shall review the content of the diary sheets to determine the next stage of the investigation. On occasions completed noise diary sheets may be received after the 28 day period but will still be assessed and a decision made as to whether it is appropriate to reopen the investigation. The investigating Officer will send a letter to the person responsible, outlining that further noise nuisance complaints have been received and the matter will be investigated with possible use of noise monitoring equipment. In addition the Officer will send a letter to the complainant acknowledging receipt of the diary sheet and outlining the next course of action.

If evidence is obtained to substantiate the alleged nuisance then a Noise Abatement Notice is to be served. A copy of the notice should be forwarded to the relevant Housing Office for use in connection with any proceedings that they may wish to initiate.

In instances of ASB investigations, Housing Officers may request the noise monitoring equipment for the purpose of obtaining evidence for use in connection with eviction proceedings etc. The Social Landlord must write to the person causing the nuisance to inform them that the noise monitoring equipment may be installed by Public Health and Protection. Should recordings of noise of that is associated with anti social behaviour be made by a complainant then the assisting Officer should not serve a Noise Abatement Notice on the person/s responsible. This information should be given to the relevant Housing Officer for use as part of the Social Landlord's own investigations.

Audible Intruder Alarms

Requests for service regarding audible intruder alarms sounding at vacant properties should be dealt with as a priority, whether the calls are received during normal office hours or not (See Section on Out of Hours Calls and Emergency Response).

An investigating Officer should visit the premises to determine the audibility of the noise and whether it amounts to a statutory nuisance. A Noise Abatement Notice should be served on the 'Owner/ Occupier' to require the abatement of the noise. A time period must be specified in the notice for compliance and this should be a minimum of 2 hours (i.e. the time it would take for an alarm specialist to be contacted and attend site and for access to be obtained, if necessary, by warrant). This legal document and time period are applicable at all times, even emergency stand-by. This legal document should be affixed to the premises in a conspicuous position and if possible a copy also posted through the letterbox.

The investigating Officer must make reasonable and comprehensive enquiries to determine the ownership/ occupancy of the property and whether they or any

persons hold the key to the property and are able to deactivate the alarm. This should be done by speaking to neighbours, any relatives that are identified, the local police station and any other relevant persons. If a key holder is identified, they should be requested to attend and take steps to abate the nuisance. If this is not possible within a reasonable time, or a key holder cannot be located, the investigating Officer should seek to undertake works in default. An alarm contractor/ electrician should be contacted via Corporate Estates to attend site.

If the alarm can be disabled by undertaking works to the sounder box located on the outside of the property, it will not be necessary to obtain a warrant for entry. A letter confirming the action that has been taken should be posted through the letterbox

If access to the property is required to disable the alarm, an application must be made to the local magistrate for a warrant. A locksmith must then be contacted to gain access to the property and thereafter to secure the premises. A copy of the warrant must be left at the premises for the owner/ occupier.

The identity of the owner/ occupier must be established as soon as practicable after undertaking works to an alarm system and they must be contacted at the earliest opportunity, normally the next working day, to advise of the action taken by the Council. If the original works were done by a Stand-by EHO, the matter must be referred to the Pollution and Public Health Team before 9.30 am on the next working day in order that they may make the contact with the owner.

NB: where any works in default are undertaken, the investigating officer must follow the 'Protocol for Undertaking Works in Default'.

Out of Hours Calls and Emergency Response

The system to be followed recognises that the Authority is not currently able to maintain a 24-hour response for alleged noise complaints and recognises that an initial complaint can only be received and logged on the emergency call system for investigation during the working day. Nonetheless, once the existence and / or likely recurrence of a noise nuisance has been established and a Noise Abatement Notice served, then the emergency standby EHO will respond to complaints to determine a breach of the conditions specified by the Notice during out of office hours. However, where an Abatement Notice has been served it is at the investigating Officer's discretion whether it is appropriate to place the complaint details onto the emergency out of hours list of cases to attend. For example, in certain circumstances the investigating Officer may be of the opinion that there is an undue risk to the emergency standby officer's personal safety when attending to the complaint during out of office hours. Details of a noise nuisance complaint can only be placed onto the emergency out of hours list of cases to attend subject to the signed approval of the Housing Enforcement Manager or member of the Senior Management Team.

Requests from the public regarding emergency matters such as audible intruder alarms can be dealt with by the emergency stand-by officer and should be investigated as per the procedure set out in this document.

Requests that cannot be resolved

Experience has shown that some complainants continue to complain to the Council even though the matter has been fully investigated and no statutory noise nuisance established.

This continued need to further investigate is both time consuming and unproductive for the complainant and the Council.

Accordingly, Officers may use their discretion, in consultation with their line manager, to withdraw from undertaking further investigations where it is considered that to do so will not be beneficial or appropriate. This decision may be reached after the noise monitoring equipment has been installed at the complainants property on no more than three occasions and noise relating to a nuisance or that may be contributing to the alleged nuisance has been recorded. Repeated, unsuccessful visits to the property may lead an officer to the conclusion that the case should be closed.

The complainant will be advised in writing that the Council will take no further action in respect of the alleged noise unless there has been a material change in circumstances. Advice will be given on private action, in the form of a noise advice booklet/ information sheet.

Protocol for Enforcement Action

If following the service of a Noise Abatement Notice a breach of the specified conditions is witnessed, then the Officer must determine whether further enforcement action should be taken.

When determining a breach of a Noise Abatement Notice the witnessing Officer must obtain sufficient evidence to justify their reasoning for arriving at their decision. As much information as possible should be recorded in their PACE notebook, which should include the following;

- Time and Date
- Type of noise
- The location in the complainant's property from where the noise is audible
- The level of audibility (i.e. whether audible above the television etc.)
- The duration of the noise
- The effect of the noise on the complainant's property (e.g. causing furnishings to vibrate etc.)
- The Officer should attempt to identify lyrics in the case of amplified music

The above list is not exhaustive and the Officer witnessing the nuisance should make reference to other factors /issues taken into consideration when making their assessment of the noise.

The Officer witnessing the breach of the Noise Abatement Notice must inform the investigating Officer as soon as possible following the incident (i.e. the next working day if witnessed by the emergency standby EHO).

The Original Investigating Officer will determine the next appropriate action to be taken following a breach. This decision will be taken with regard to the principles of good enforcement, contained within the Corporate Enforcement Policy.

The Enforcement Options for breach of an Abatement Notice are:

1. Written warning to the person subject to the Noise Abatement Notice.
2. Prosecution for breach of Section 80 of the Environmental Protection Act 1990, and/or;
3. Seizure of noise equipment.

1. Written Warning

This option may be appropriate for a first offence, where officers are satisfied that the offender had reasonable excuse or mitigating circumstances that led to the breach. For example, in the case of barking dogs, where it is established that the dogs had been unreasonably provoked.

This option shall not be considered where the impact of the noise nuisance is serious, for example a number of affected persons or where there are aggravating factors such as anti social behaviour that has led to the involvement of the police.

Any written warning issued must state clearly that a breach of the Noise Abatement Notice has occurred and that further breaches will result in formal proceedings being taken, which includes the seizure of all related noise making equipment

2. Prosecution (refer to enforcement policy)

3. Seizure of Noise Equipment

This option may be considered in cases where excess noise is caused by the playing of amplified music or musical instruments, and in circumstances where a breach of a Noise Abatement Notice has been witnessed and it is obvious that the nuisance will continue without taking action to deprive the person responsible of the noise making equipment. It is not appropriate for noise from animals.

An application for a warrant must be made to the Magistrates Court by the investigating Officer. Initial contact should be made with the relevant Magistrates Court to determine the most convenient time to make an application for a warrant to seize the offending noise making equipment. It may be necessary for the Officer that witnessed the breach to provide a statement of witness / facts to the investigating Officer, if it is likely that they will be unavailable to attend Court to provide their evidence.

When attending the Magistrates Court to obtain a warrant the investigating Officer must ensure that they are appropriately prepared and should take the following information:

1. Identification in the form of Council Warrant and Identity Cards
2. Letter of authorisation to apply for warrant from the Pollution and Public Health Manager / Member of Senior Management Team.
3. Three copies of the warrant of entry. (A copy for the Magistrate to retain, a copy to be left at the property to which the warrant relates and a copy for the premises file.)
4. Two copies of the Warrant Application / Information. (A copy for the Magistrate to retain and a copy for the premises file.)
5. Section 9 statement of witness provided by the Officer witnessing the breach of the Noise Abatement Notice.
6. The premises file. (The investigating Officer must ensure that a copy of the Noise Abatement Notice is held on the file and that all actions recorded are accurate and up to date, should the Magistrate require details of the complaint history.)

On arrival at the Magistrates Court the investigating Officer should make themselves known to the Clerk of the Court and provide them with the required paperwork, i.e. Warrant Application / Information and the Warrant. The Clerk will check the paperwork and then admit the investigating Officer to the Magistrate where the Officer will make his/her application. It is necessary for the Officer to request to make his/her application in a closed Court to maintain confidentiality and prevent disclosure of sensitive information to members of the public.

If the Magistrate grants the Warrant then the Officer should ensure that the warrant has been signed and dated by the Justice of the Peace in the allotted space. Ideally all copies of the Warrant should also be signed and dated.

On returning to the Office it will be necessary to contact various personnel to assist in executing the Warrant. This will involve a minimum of three officers and a council vehicle and driver to remove items. For reasons of health and safety as many officers as possible should be required to assist in executing the seizure in order to ensure that it is carried out as efficiently and effectively as possible. However, it is important to ensure that there are not too many people in the property. The Police must be notified to request their attendance at the property to which the Warrant relates. Arrangements must then be made for a locksmith to attend, as it may be the case that the occupiers are absent or entry is refused at the time. Under no circumstances should a Warrant be executed without Police presence, even in the event where the occupiers are absent. The Police must be in attendance until the requirements of the Warrant have been completely satisfied. It may also be necessary to make arrangements for the Council's Animal Warden to attend the seizure if there are dogs kept at the property.

On arrival at the property, the Lead Officer should introduce themselves to any occupier of the premises and explain the purpose of the visit and the powers available to the Officers. A copy of the warrant and a letter explaining what will

happen to any items taken from the premises must be given to the occupiers or otherwise left at the property. If the premise is vacant, reasonable force may be used to enter and a copy of the warrant and accompanying letter should be left at the property. If forced entry is made, the premises must be left secure when the officers leave.

When executing the Warrant the Lead Officer will decide whether photographs of the noise equipment being seized should be taken at the scene or when it is being unloaded into the storage facilities in the Office. This decision should be made largely on grounds of health and safety. For example, if the offender has a history of violence or is deemed to be unstable then photographing the equipment may be time consuming and could increase the time at which officer's personal safety is at risk. Therefore, in these circumstances photographs should be taken when unloading the noise equipment at the Office.

The Lead Officer must oversee the seizure and should be available to answer any questions that the offender may have and to provide directions / instructions to the personnel present. The Lead Officer must appoint an officer to keep an accurate record of all noise equipment being seized in a duplicate receipt book. This should include details such as the make, model and colour of the equipment and its condition (it is important to be as descriptive as possible). All cassettes, compact discs (CDs) or digital versatile discs (DVDs) seized must be counted and itemised where possible. Copied cassettes, CDs and DVDs may be counted and placed in bundles, as there is no need to itemise them. The recording officer must sign and date the receipt book and initial any amendments made. The items seized must be read back to the offender who will be required to sign the receipt to confirm that the record made is true and accurate. However, in the event where the offender refuses to sign the receipt book then the Lead Officer must counter sign and indicate that the offender has refused to sign.

(NB. To ensure safekeeping of small items seized, i.e. cassettes, CDs and DVDs, these should be bagged and tagged using the approved security seals.)

Returning Noise Equipment Seized

The Council may only retain the noise equipment for a period of no more than 28 days from the date when the equipment was seized, unless prosecutions proceedings have been initiated within this time. If a prosecution is not brought for a Statutory Noise Nuisance offence within this time period then all of the noise equipment seized must be returned to its owner.

Where a prosecution is brought for the noise offence which resulted in the seizure of the noise making equipment, the investigating Officer should advise the Council's legal department that an application should be made to the Courts for a Forfeiture Order to be made. The Courts can make a Forfeiture Order whether or not the offender has been dealt with by way of a fine in respect of the offence (this should be made explicit to the Legal department). When recommending a Forfeiture Order is made by the Courts, consideration will be given to the value of the equipment and the

likely financial and other effects that it may have on the offender. In the event where a substantial quantity of noise equipment has been seized from a property, it may be advisable to recommend that a Forfeiture Order limited to a number of items, which have the greatest capability for causing a noise nuisance.

(NB. A Forfeiture order operates to deprive the offender of any rights in the equipment to which it relates.)

Where the Courts have made a Forfeiture Order, the equipment to which it relates must be retained in a secure storage area for a minimum of six months from the date the Order was made. During this time a claimant (other than the person in whose case the Forfeiture Order was made) can make an application to the Magistrates Court for the return of the noise equipment if he / she can prove they are the rightful owner/s. This provision will generally be used by Hire Purchase, Pay As You View companies etc.

If no application has been made by a claimant within a period of six months from when the Forfeiture Order was made, the department may dispose of the equipment.