Briefing for the Public Petitions Committee

Petition Number: PE1613
Main Petitioner: Craig Thomson
Subject: Taking account of sound sensitivity in regulating antisocial behaviour and environmental health

Calls on the Parliament to urge the Scottish Government to provide for the needs of people who experience sound sensitivity due to disability or medical conditions to be taken into account in legislation and guidance on noise and antisocial behaviour.

Background

Sound sensitivity

According to NHS Choices, sound sensitivity, or hyperacusis, is an intolerance to everyday sounds that causes significant distress and affects a person’s day-to-day activities.

The condition can vary quite a lot. For example, some people find loud noises extremely uncomfortable, some find certain noises particularly annoying, some develop a fear of certain noises, while others experience pain when hearing ordinary sounds.

The petitioner’s issues

The petitioner is sound sensitive, causing him discomfort and distress in everyday life. He would like to see the law in relation to noise nuisance changed to take account of sound sensitivity. He would also like various adjustments to housing policy to support people with this type of disability.

How the law deals with excessive noise

The law regulates (to a degree) how the actions of neighbours impact on each other. There are three main strands of law in this area.
1. Statutory nuisance

The Environmental Protection Act 1990 deals with the issue of “statutory nuisances”. “Noise emitted from premises that is prejudicial to health or a nuisance” (section 79 of the 1990 Act) is one form of statutory nuisance.

The legislation creates a duty on local authorities to inspect their area for statutory nuisances and to investigate complaints from the public on the issue. Individuals can also take court action to control a statutory nuisance in certain circumstances.

Decisions in previous court cases suggest that the test as to whether something is prejudicial to health is objective. This means that it considers what would affect people generally, not what would affect someone with a specific condition.

Nuisance is defined in the same way as common law nuisance, described below.

2. Common law nuisance

The common law is the traditional law as developed by judges’ decisions in individual cases. Under common law principles, an occupier has the right to free use of their property, but only to the extent that such use does not disturb their neighbours’ comfortable enjoyment of their land. It is generally considered that a common law nuisance must be the result of a deliberate, reckless or negligent act on behalf of the problem occupier.

There has been a previous court case involving someone who was sensitive to noise. The courts held that a nuisance does not exist where someone with normal hearing would not be affected.

3. Antisocial Behaviour etc. (Scotland) Act 2004

Part 5 of the 2004 Act allows local authorities to put in place a noise control resolution for all or parts of their area. This puts in place specific limits on noise levels, depending on the time of day. Local authorities are required to investigate complaints under the scheme.

The noise limits are set in legislation. They make no allowances for someone who is particularly sensitive to noise. However, the limits are fairly low.

• Commentary

As described above, none of the common methods of dealing with excessive noise take account of the needs of those who are particularly sensitive to sound. However, there are reasons for this in policy terms.

Controlling what someone can do in their own property can be seen as intrusive. Arguably, basing those controls on what most people would consider a nuisance strikes a fairer balance than intervening at a lower threshold.
In addition, taking account of individual sensitivities creates a variable standard which is difficult to understand and enforce.

*How the law deals with disability*

- Sound insulation

It is possible for owners to install sound installation if they want. Assistance may be available to help with the costs of this.

Social landlord can also make adaptations to houses to meet the needs of disabled tenants. The adaptations must be assessed as essential. Social landlords have limited budgets for adaptations, so there may be a wait.

It may also be possible for someone renting from a housing association to organise (and pay for) the work themselves. Financial assistance may be available.

- Housing allocation

It is possible for social landlords to depart from their usual allocations policy in certain circumstances. This is called "sensitive letting". It is described in more detail in [Scottish Government guidance](#) (see section 5.7).

This could be used to, for example, prevent someone being let accommodation beside a person they have previously harassed. However, the fact that someone has a criminal record would not usually be sufficient justification.

- Housing priority

Social landlords can give people priority in terms of housing allocation on the basis that they are living in unsatisfactory housing conditions. Scottish Government guidance (as above – see section 5.2) states that this can be used to give priority to people with disabilities where re-housing would benefit their condition. It is up to social landlords to develop their own policies in this area.

Priority is also given to people who are homeless. This includes those who have a home which it is not reasonable for them to occupy.

*Scottish Government Action*

The Scottish Government provides information about [Noise and Nuisance](#) on its website. This covers various guides for professionals, including:

- [Antisocial Behaviour etc. (Scotland) Act 2004: Guidance on Noise Nuisance](#) (2004); and


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It is currently evaluating the noise provisions in the Antisocial Behaviour etc. (Scotland) Act 2004.

The Scottish Government also produces information on housing adaptations and, as noted above, guidance on housing allocation.

There have been various legislative initiatives to improve the law in these areas over the course of the Scottish Parliament.

The planning system also has a role in limiting the adverse effects of noise. Planning Advice Note 1/2011 provides more information.

Scottish Parliament Action

There has been no recent Scottish Parliament action in this area.

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