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# GUIDANCE NOTE C17

## SOLVING NOISE PROBLEMS

Revised – January 2020

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### ARMA Standards

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The Standards have been written to apply to residential long leasehold properties (a lease of a term in excess of 21 years when originally granted) in England and Wales where a service charge, which varies according to expenditure, is payable.

They represent the core of good practice for managing agents. We believe they are achievable by any well-run company. The applicable (if any) Standards related to this Guidance Note are stated below.

**Standards in RED:** An obligation to adhere to the Standard

**Standards in GREEN:** An obligation to adhere to the Standard unless there is a justifiable reason not to comply that the Managing Agent must be able to demonstrate

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#### 3.4 Breach of Covenant, Enforcement & Forfeiture Proceedings

Prior to and when dealing with any breach of covenant, enforcement or forfeiture proceedings the Managing Agent:

- a) Should take reasonable steps to monitor and record non-compliance with Lease covenants on an on-going basis;
- b) Should take reasonable steps to check the reliability of the relevant facts when dealing with reports of non-compliance with Lease covenants from third parties;
- c) Should bring any material breach of covenant to the Client's attention without delay, and seek Client Instructions as to any enforcement action required together with confirmation that the Client will be responsible for the costs unless these are recovered from the Leaseholder(s);
- d) Must have procedures in place, as agreed with their Client, to remedy any breaches of covenant in a timely manner;
- e) Must be aware of the doctrine of waiver and ensure that they do not compromise their Client's position to take forfeiture action.

#### 6.2 Statutory Compliance

The Managing Agent Must have regard to and comply with:

- i) all other relevant legislation.

#### 7.1 Disputes

Managing Agents Should also have clear written policies and procedures for handling disputes between occupiers, complaints of nuisance from neighbours or contractors.

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## Overview

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- **Many complaints from residents of blocks of flats arise from noise.**
- **DIY or building activity, late night music, laminated floors and barking dogs are the main causes.**
- **Most leases contain clauses restricting music and/or nuisance but in practice the clauses are difficult to enforce.**
- **The Government advises residents to resolve noise problems by using a stepped approach. Managers should be aware of this approach and offer advice and support to residents who need to use it.**

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### Lease, Noise And Forfeiture

Most leases will contain covenants which say leaseholders shall not cause nuisance and annoyance to neighbours. There may be more specific restrictions such as no loud music between say 11pm and 7.30am or that floors should be carpeted.

These clauses are difficult to enforce in practice for several reasons. The meaning of the covenant should be clear before considering enforcement. Any benefit of the doubt over the meaning will always be given to the leaseholder. The lease may not contain a clause that requires the landlord to enforce the covenants; if it does not there is no obligation on the landlord to take any action. Even if the lease does contain a clause requiring the landlord to enforce the covenants against other leaseholders, (a mutual enforceability covenant) there is usually a catch; the catch is that the complaining leaseholder will have to pay the landlord's costs of enforcing the covenant.

### Complaints Handling

Be wary that when dealing with disputes that they may well escalate into complaints if not handled properly. So refer to your internal procedures and remember that customer service and care are your priorities. The complainant may well want you to deal with the issue, so you need to fully explain the constraints that you will be working under and the action you are permitted to take.

The reality is that the root of most conflict is borne out of poor communication or the inability to control emotions. Therefore make sure you take the emotion out of the situation with your response and stick to the facts.

### Practical Steps That A Managing Agent Could Take

- Ask the leaseholder to keep a detailed diary record of nuisance;
- Check that this is a genuine complaint about noise. You may wish to double check with other neighbours;
- A warning letter to the leaseholder causing the nuisance may work; and
- The managing agent could seek the client's consent to apply to the tribunal for a breach of lease as a possible preliminary to and with the threat of forfeiture. Before doing this explain to the complainant leaseholder that if the case goes ahead then he/she will have to provide a witness statement, appear in person and be cross-examined and, depending upon the wording of the lease, possibly pay some of the costs of any action.

So how does the landlord enforce a covenant against say noise or one to install carpets not laminated floors? Injunctions are costly but can be applied for with or without forfeiture. Also the aggrieved leaseholder can apply for an injunction and may well be more successful than the landlord if he/she does.

Forfeiture is not an easy route for landlords and can be extremely costly; neither will it produce quick results. However the threat of forfeiture may well produce a response to say the lack of carpets in a flat where the covenants require them and use of forfeiture may be the most effective way to prevent the use of laminated floors spreading in a block.

### The Stepped Approach For Leaseholders To Solving Noise Problems

Sometimes the more practical route for a managing agent faced with distressed leaseholders complaining about noise from neighbours is to offer advice on how they can take better and cheaper action themselves as follows:

1. Start building a relationship with your neighbour;
2. Have a quiet word about the problem;
3. Have a stronger word: explain the impact on your family;
4. Contact your local authority;
5. Contact abatement societies (details under 'Further Information');
6. Employ mediation services; and
7. Take legal action.

The managing agent can assist by offering advice on this stepped approach:

- A Government leaflet is available which you can use called 'Bothered by Noise: No Need to Suffer.' Download from – <https://www.gov.uk/how-to-resolve-neighbour-disputes>; and
- There are helplines to give advice to leaseholders and websites you can refer complainants to for advice – details under 'Further Information.'

A managing agent could also assist by writing or speaking to a leaseholder at stages 2 or 3 to remind them about what the lease says about noise or nuisance.

### Mediation

Mediation is an option for noise disputes because it aims to negotiate an agreement. It can often keep neighbours on good terms even though there are differences; a legal approach may result in the complete breakdown of relations.

Most areas have some kind of mediation service but may well come at a cost. To find the nearest one ask your local branch of the Citizens Advice Bureau.

### What Can Local Authorities Do?

Local authorities, usually through the Environmental Health Department, have a statutory duty to investigate complaints of nuisance. Under S.80 of the Environmental Protection Act 1990 an environmental health officer is required to take all reasonable steps to assess whether that noise constitutes a "statutory nuisance." There is no set level at which noise becomes a statutory nuisance.

### Late Night Music And Parties

Some local authorities now have emergency response teams to deal with urgent noise problems. They can issue warnings, seize equipment and issue fixed penalty notices of £100 (Noise Act 1996).

### Barking Dogs

Incessant barking may be classed as a statutory nuisance and so can be reported to the local authority.

### Burglar And Car Claims

Local authorities have the power to gain entry to premises to stop noise. It can be used to stop misfiring burglar and car alarms and seize hi-fi equipment. The Noise and Statutory Nuisance Act 1993 gives local authorities' power to disconnect burglar and car alarms.

### Abatement Orders

If satisfied a nuisance exists, local authorities will often recommend mediation or issue warning letters. But ultimately if the noise carries on the local authority should issue an Abatement Order, a breach of which can lead to court action. The

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willingness of local authorities to take action will differ according to the resources available. Residents can complain to their councillors if they feel their problems are not being taken seriously.

### Leaseholders Taking Legal Action

Leaseholders can take legal action themselves over noise by complaining to a Magistrate's Court under S.82 of the Environmental Protection Act 1990. Residents should seek advice before taking such action. Legal aid is not available in such cases.

### Further Information

- Noisedirect helpline 08453 313 230 and [www.noisedirect.co.uk](http://www.noisedirect.co.uk)
- Noise Abatement Society helpline 01273 823 850 and: [noiseabatementociety.com](http://noiseabatementociety.com) or: [info@noise-abatement.org](mailto:info@noise-abatement.org)



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