

Kerry County Council Protocol for Dealing with Noise Complaints

1. Introduction.

Kerry County Council has recently developed a response protocol in relation to noise complaints that may be received by the Council. The protocol has been developed in accordance with the recommendations as set out in the Network for Ireland's Environmental Compliance & Enforcement (NIECE) publication : "National Protocol for Dealing with Noise Complaints for Local Authorities" (NIECE, 2016).

The purpose of the protocol is to provide the following :

- Clear information on the types of noise complaints that Kerry County Council will deal with and those that it will not deal with;
- An explanation as to why Kerry County Council does not deal with certain types of noise-complaints;
- Information on the procedures involved in making a noise-complaint to Kerry County Council, along with details of the information and level of cooperation that a complainant must provide to the Council;
- Information on the other avenues/agencies available to pursue a noise complaint issue.

Please note that reference should be made to the NIECE publication "National Protocol for Dealing with Noise Complaints for Local Authorities" for specific information on noise issues and the relevant procedures applicable to noise complaints.

2. Relevant Legislation & Terms.

"Noise" is generally defined as "unwanted sound" or "sound that is loud, unpleasant or unexpected" and that causes disturbance, impairment or damage to health.

Noise can generally be regarded as a "nuisance" if it is so loud, so repeated, of such pitch or of such duration that it causes annoyance to people.

Noise nuisance can generally be categorised as being either a "private" nuisance or a "public" nuisance. By way of explanation, in the context of a noise complaint, "private nuisance" would apply where the noise in question is considered to be interfering with an individual's enjoyment and use of their property, while "public nuisance" would apply where there is a threat to the health and/or comfort of the public/community as a whole.

There are a number of potential legal options available to pursue a noise complaint. The specific legal avenue which may potentially be pursued to resolve a noise issue is largely dependant on the source of the noise in question. However, the legislation which is of most direct relevance to many noise complaints is the Environmental Protection Agency Act, 1992 and, in particular, Sections 107 and 108 of same.

3. Types of noise complaints that Kerry County Council will deal with and those that it will not deal with.

Anonymous Complaints –

Kerry County Council will not investigate or pursue noise-nuisance complaints which are received anonymously, due to the inherent difficulty in identifying and assessing impact in such circumstances.

Complaints Relating to Public Noise Nuisance –

Kerry County Council will investigate and, where warranted and feasible, will pursue action up to and including enforcement action in relation to all such complaints.

Complaints Relating to Private Noise Nuisance –

There are two main categories of private noise nuisance complaints :

- Private noise nuisance arising from a commercial source (eg. noise from a commercial or industrial premises, music from a bar etc.) – Kerry County Council will investigate and, where warranted and feasible, will pursue action up to and including enforcement action in relation to all such complaints;
- Private noise nuisance arising from a domestic source (eg. house parties, loud music etc.) – Kerry County Council will generally seek to act as mediator in such cases. However, the Council will not pursue enforcement action in relation to such complaints, except in exceptional circumstances. Examples of such circumstances would include where the affected party is a particularly vulnerable member of the community (eg. elderly, infirm, suffering from chronic ill-health). It is also recommended that any decision to deviate from this approach should be approved at senior management level (Section Head or higher).

The response protocol in relation to private noise nuisance complaints arising from domestic sources is based on the following –

1. The current relevant noise nuisance legislation (section 108 of the EPA Act 1992) makes provision for any person affected by noise nuisance to make a complaint to the District Court and to seek remedy of the issue (Note : the taking of a case by a private individual under these provisions does not require legal representation).
2. Kerry County Council does not currently have the in-house expertise, resources and monitoring equipment needed for carrying out detailed noise investigations and assessments. In these circumstances, the detailed investigation of private noise nuisance issues, along with the instigation of any subsequent enforcement action, generally requires the contracting-in of specialist technical expertise.
3. Any court action arising from enforcement action taken by Kerry County Council would generally require the giving of testimony by the affected party and this would most likely form a key element in the court's deliberations on any such issue. In such circumstances, the Council would, in effect, be acting as the case-manager of the court action, rather than being the principle party to the action.

Notwithstanding the above, there will always be situations where Kerry County Council will not or cannot become involved in noise complaint investigations or where alternative, more suitable avenues may be available. Examples would include where noise is arising from anti-social behaviour, where the noise nuisance is related to dogs barking, where the noise source is at a premises which is licenced by an outside agency such as the EPA etc. Information on this issue and on the alternative avenues available to pursue noise complaints in these situations is set out in Part 1 of the NIECE publication “National Protocol for Dealing with Noise Complaints for Local Authorities”, a copy of which is available on the Kerry County Council website. In addition, there is very clear information on dealing with noise nuisance in the Free Legal Advice Centres (FLAC) document “Neighbour Disputes”, which is available directly from FLAC or via their website at www.flac.ie

4. Making a Complaint about Noise Nuisance to Kerry County Council.

It is always recommended that those affected by noise nuisance should, in the first instance, raise the matter directly with the person or body responsible for creating the noise. However, it is accepted that this may not always be possible and, in those circumstances, affected parties may wish to make a complaint

Complaints about noise nuisance should be made directly to Kerry County Council’s Environment Department based in Maine Street, Tralee. Complaints may be submitted by telephone [066-7162000], e-mail [environ@kerrycoco.ie], letter [C/O Environment Department, Kerry County Council, Maine Street, Tralee] or directly in-person. Where feasible, the standard Kerry County Council Environmental Complaint Form (copy attached) should be used to report incidents of noise nuisance and the maximum amount of detail possible should be provided. All complaints received will be entered onto Kerry County Council’s complaints management system and will be processed and assessed in accordance with standard procedures and with this protocol. However, as outlined earlier in this protocol, anonymous complaints will not be investigated or pursued by Kerry County Council.

The Environment Department will act as the principle point of contact and communication for the majority of noise complaints submitted to Kerry County Council, including those which relate to issues dealt with by other departments within the Council (eg. Planning Enforcement-Related noise issues etc.). However, it should be noted that noise issues arising from local authority rental properties are dealt with by the Housing Department under the terms of the relevant tenancy agreement and would not, therefore, be dealt with by Kerry County Council’s Environment Department.

5. Investigation of Noise Complaints by Kerry County Council.

Priority will be given to the investigation of those complaints which meet the following criteria :

Potential Noise Receptors	Potential impacts
<p><u>Highest priority</u></p> <ol style="list-style-type: none"> 1. Medical Treatment /Care centres (e.g., hospitals, crèches etc.) 2. Vulnerable persons in the community (chronic illness/disability, elderly) 3. Schools/colleges 	<p><u>Highest priority</u></p> <ol style="list-style-type: none"> 1. Night time noise/loss of sleep effects 2. Large numbers affected persons /community wide affect

All other complaints will be dealt with in order of receipt.

As part of any investigation, the Council may request a person submitting a noise complaint to complete a noise-log in relation to the issue and/or to provide other specific information about the issue and its effects. In addition, it should be noted that, in the event of enforcement action being pursued by the Council, it is likely that the complainant(s) will be required to provide a formal witness statement outlining the impacts of the noise nuisance on their quality of life etc. Failure to provide a completed noise-log and/or a formal witness statement could influence the Council's decision in relation to the taking of enforcement proceedings.

Kerry County Council does not directly carry out noise monitoring as part of our investigation procedures. If noise monitoring is deemed necessary, then the Council will engage the services of a suitably qualified technical specialist to undertake any such monitoring.

In circumstances where noise nuisance is confirmed by way of an investigation, the Council will initially seek to resolve the issue through informal means. If this approach is unsuccessful, then formal enforcement procedures will be pursued where necessary and where legally feasibly.

6. Closure of Noise Complaints

Following investigation and assessment by Kerry County Council, complaints relating to noise nuisance will be closed on the following basis :

- The complaint is withdrawn;
- Investigation of the complaint is not practical;
- Noise-log sheets have been issued but have not been completed and returned within four weeks;

- The investigation has concluded that there is no evidence of noise-nuisance;
- The investigation has concluded that the issue will not recur;
- The investigation has concluded that the issue is outside the remit of Kerry County Council;
- The noise issue has been resolved by informal means;
- Formal enforcement action has been taken and the noise issue has been resolved;
- The activity which is the source of the noise is being carried out in accordance with a relevant condition of planning permission;
- The person or body responsible for the noise issue can demonstrate that the good defences outlined in section 107 and 108 of the EPA Act 1992 have been met*.

**Environment Department,
Kerry County Council.
January, 2017.**

**It shall be a good defence, in the case of proceedings under subsection (1) or in a prosecution for a contravention of this section, in the case of noise caused in the course of a trade or business, for the accused to prove that—*

(a) he took all reasonable care to prevent or limit the noise to which the complaint relates by providing, maintaining, using, operating and supervising facilities, or by employing practices or methods of operation, that, having regard to all the circumstances, were suitable for the purposes of such prevention or limitation, or

(b) the noise is in accordance with—

(i) the terms of a licence under this Act, or

(ii) regulations under section 106.