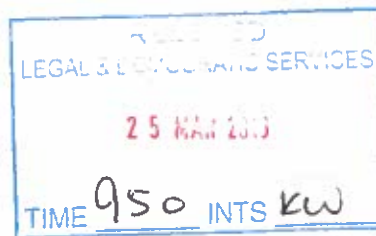


# **LETTERS FROM OBJECTORS**

Mr Stephen McGregor  
West Service Lodge  
Panmure Estate  
Carnoustie  
DD7 6LW  
16/03/2016



Head of Law and Administration  
Angus Council  
Angus House  
Orchardbank Business Park  
Forfar  
DD8 1AN

To Whom it May Concern,

**Re: Public Entertainment License – Jigsaw Events & Management Limited. Festival of House (FoH), Panmure Estate**

I am writing to submit my formal objection to the proposed music festival on the Panmure Estate, for a number of reasons.

Firstly, as a resident on the estate, I strongly feel at a disadvantage in the way the PEL process has been implemented. Information on the plans and reports relating to the site layout, noise-level testing, safety, security, public health/pollution, environment and ecology have not been available making the process unequitable. Residents are left to guess what the impacts are likely to be relating to this application and without sight of all the information this makes it unfair.

Festival of House (FoH) provided some 'consultation events' which were extremely limited in their content. The little information I did glean from these events seems to have been subject to continual change. The impacts of the proposed festival, will be significant and detrimental to all residents on the estate. They will be also complex, widespread and not immediately foreseeable. The fact that residents are desperately sharing information, relying on hearsay to formulate a picture of what losses of amenity we will suffer, is evidence that we have had insufficient information for this proposal. No formal details have been given to me about security or what mitigation measures will be implemented to protect my rights as a resident. With only two working days until the objection deadline, I feel that I am unable to properly represent myself.

It is my view, that an objection deadline should not have been imposed by the Council, until I as a resident of the Estate had been provided with detailed plans on the proposed festival including the mitigation measures they have in place around the issues of safety, security, public health/pollution, environment and ecology.

The FOH plans to have 15,000 visitors (of which 5,000 of these visitors are expected to camp), 300 staff personnel and somewhere in the region of 2,000 vehicular movements per day throughout the course of the festival. The proposed site is, of recognised national, natural and historical importance, and the amount of planned human and vehicular traffic is unprecedented for this beautifully unique site.

I find it incredibly disturbing (and naive) when the FOH organisers stated in their initial screening opinion request that the planned human/vehicular traffic amounts to 'no more than agricultural activity'.

I personally believe that the proposed human/vehicular will fundamentally change the estate permanently. Agricultural activity does not often bring with it an increased risk of accidents, vandalism, public order offences, traffic congestion and serious public safety issues and threats to numerous protected wildlife species. To state otherwise is dishonest.

As previously stated, the festival organisers have not made the most recent full ecological report available to view. Both the FOH organisers and Scottish National Heritage have confirmed that badgers, otters, bats, red squirrels, red kite, kingfisher and barn owls are just some of the protected species known to be present in the vicinity. Surveys to determine the exact location of their habitats however, can only have been conducted during the autumn/winter months since the earliest planning application was made in the middle of July 2015.

Without a comprehensive ecological survey conducted over the summer months to incorporate 'the key ecological processes or species activity periods' the seasonal variations in distribution, abundance and activity of wildlife on Panmure Estate cannot be known.

In addition there are numerous issues with regards to safety and public disorder that have yet to be adequately addressed.

All of the roads surrounding the proposed site are unlit, narrow and winding. None have footpaths for pedestrians.

The FoH organisers have stated that there is 'confidence that a Traffic Management Plan (TMP) would be successful in delivering mitigation measures' to cope with the massive increase of traffic in the area. The 'T' in the Park felt the same confidence in their TMP before their most recent, heavily criticised event in 2015 which resulted in thousands experiencing serious safety issues, including delays due to abandoned vehicles, and people wandering around in dangerous, narrow roads (similar to those around Panmure) in the rain, in darkness and in heavy vehicular traffic. The poor weather exacerbated the problems and adverse weather conditions cannot be predicted. Locals in the area surrounding TITP reported people urinating in inappropriate places en-route to the festival, due to lack of access to toilets and traffic delays.

In light of these details, residents on the site have strong concerns about accessing their property freely and easily throughout the duration of the festival. I have deep concerns over the lack of available access routes for emergency services. My 13 year old diabetic son has needed emergency medical treatment twice in the last 6 months and if there are issues with access, this could prevent him from getting treatment and ultimately dying.

I am also concerned around 'satellite' camping. Unofficial camp sites are a regular feature of festivals. I personally believe it is safe to assume that the woodland surrounding the festival site will be seen as an attractive alternative to the official FoH camping site.

There is also a festival tradition of 'fence-jumping'. The organisers of FoH gave assurances that their fences could not be breached but at Wireless Festival in Finsbury Park – 2016 -footage appears on 'Youtube' showing gatecrashers bringing down the festival's perimeter sheet fencing and crowd barriers, highlighting the dangers of complacency and the importance of regular, patrols around the perimeter. The woodland to the south of the site would provide perfect cover for those wishing to gain entry unseen. .

FoH have acknowledged the need to monitor the west end of the estate to address concerns about 'gatecrashers' and unofficial camping, however those that know the site well, and indeed those who have visited the site for themselves, believe that even with the very best of intentions, the area around the Panmure site is impossible to secure. It is huge and there is an infinite number of routes into the grounds. The extensive woodland surrounding the site on all sides is unfenced, and even private residential gardens also offer access to the estate. The large areas of forest to the north and south of the site seem to have escaped the organisers' attention altogether.

The density of cover in the form of woodland and foliage throughout much of Panmure Estate, drastically cuts down light levels, even in the day. Inwards of ten feet into the woodland, a person can disappear from view altogether. At night, the absence of any street lighting would make effective police and security surveillance totally unachievable.

The cultural heritage on the site is precious and Panmure Estate is home to a number of listed buildings and monuments. There are genuine concerns about the threat of vandalism to these and private property on the site. Camp fires and cigarettes in the woods surrounding the festival site present a serious, credible fire risk also. The large, dense forest floor will be tinder-box dry in summer and therefore a fire safety assessment for the festival ground and immediate surroundings only, would be dangerously insufficient.

The lack of lighting and the dense nature of the woodland could also contribute to an increase risk of sexual violence, something that is well documented and is becoming an increasing concern with festivals.

Other risks include disease and infection. There is a very realistic chance that festival attendees may contract Lyme disease as Panmure Estate in Angus, are renowned locally for being 'tick' hotspot.

Most local dog walkers know to dress appropriately to minimise risks of picking up ticks, and take pains to check themselves and their animals after walks on Panmure Estate and surrounds. During the summer months my dog, regularly picks up ticks after a walk on the proposed festival site, and in summer 2015, he needed a course of antibiotics after a tick bite caused serious eye inflammation.

Potentially fatal falls are another fear I have. Little if any mention has been made of the bridge spanning a steep-sided ravine that runs a few yards away from the perimeter of the site. It has been suggested by the festival organisers that the bridge would be utilised by festival staff, performers and by residents of the estate to access their homes throughout the duration of the festival, but the event is likely to draw festival-goers, gatecrashers and unofficial campers to the area also. The ravine, which is dangerous in itself, cuts through woodland and is at best guess, somewhere between 100-150ft deep. The bridge spanning it has sides only 4ft in height in some parts, and only 2ft in height in others. Areas at either end of the bridge are unsecured entirely. As such, the bridge presents a very real accident risk. How will FOH organisers secure the bridge, while still allowing access, in the low-light/dark? Will the steep-sided ravine also be secured?

Since the festival planning application was made, residents have given several prominent members of the community a tour of the estate with a view to highlighting the risks associated with the bridge, ravine and woodland. On seeing the level of danger present, all have expressed concerns and I therefore ask that each member of the licensing committee visit the estate in person to gain an understanding for themselves, before making a PEL decision. Maps and photographs do not give an adequate indication of the dangers.

When the subject of drugs has arisen in conversations about the proposed festival, the response has often been cautious or indignant. While drugs are illegal and FoH ostensibly operate a "no tolerance" policy, drugs still find their way into festivals. After a specially commissioned study, in



2015, the Home Office sent a letter to all festival organisers stating that they have concerns about the recent upsurge in the use of New Psychoactive Substances, (Legal Highs) alongside the more established drugs (MDMA, mephedrone and ketamine) which are more commonly found at festivals.

If the Home Office are able to deal frankly and openly with the issue of drugs at festivals, by acknowledging their presence and the dangers they present, I feel that all those involved in the planning of this festival ought to feel able to do the same.

The proposed event is a dance festival for 15,000 people. It is more than reasonable, based on past evidence, to assume that many attendees, with or without tickets, may well be under the influence of alcohol and/or drugs (cocaine, ketamine, ecstasy, amphetamines, marijuana). These substances all contribute to disorientation, poor decision making and decreased capacity for hazard awareness. For any festival-goer, this is a potentially lethal condition to be in, in a densely covered forest area without mobile phone coverage that is littered with seriously dangerous hazards, and strewn with obstacles for responding emergency services. Without the acknowledgement of the presence of drugs, I feel festival attendees will be put at risk as the full range of dangers present on the Panmure Estate cannot be fully understood.

Noise and nuisance is unavoidable. The festival will cause considerable disruption and misery to people living close to the proposed site, but children are especially vulnerable to injury from noise. The noise levels are expected to reach 100-102db at the site. The developers' own screening checklist clearly states this. This equates to the level of noise a jet take-off makes at 305m, and can cause chronic, permanent hearing damage to children if they are exposed to it for more than one minute, according to data held by the World Health Organisation. Children reside close to the festival site so it is vital that safety checks are completed and guidelines are adhered in order to ensure the levels of noise these children are exposed to are within safe limits.

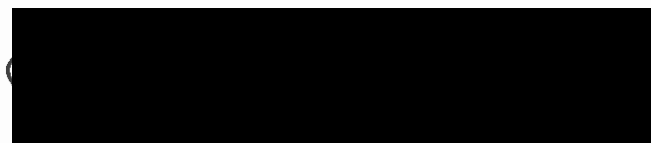
Finally, the FoH organisers have stated that the festival will bring economic benefits to the area and that they intend to use local businesses where possible. It would appear that the organisers' definition of 'local' differs from mine however, given that Stuart Wilson Hutton who was named as the applicant for the Alcohol Sales License is based in Stanley, Perthshire.

Few local businesses will benefit from this festival and arguably will not outweigh the cost to the Carnoustie and Panmure communities.

My final question is this. Given predictions about serious public order and safety issues raised prior to other festivals (i.e. 'T' in the Park) are repeatedly proved to be accurate, just how many warnings are required and how much loss of amenity and misery must residents suffer before Councils choose to uphold local residents' rights.

On the basis of the above points, I strongly urge you to refuse the PEL license for this proposed event.

Yours sincerely,

A large black rectangular box redacting the signature of Stephen McGregor.

Stephen McGregor

**OBJ2**



Astwood House,

Panmure,

Carnoustie,

DD7 6LW.

Tuesday 8<sup>th</sup> March 2016

Head of Law and Administration,

Angus Council,

Angus House,

Orchardbank Business Park,

Forfar.

DD8 1AN

Dear Sir,

**Jigsaw Events & Management Limited t/a Festival of House – application for a Public Entertainment License in respect of premises at Panmure Estate nr Pitliviie Farm..**

Our house is one of the nearest to the proposed event, being just across the road from the field that the main event will take place in. We would like to draw your attention to the serious concerns we have about the proposed Festival of House event from the 9<sup>th</sup> to 12<sup>th</sup> of June 2016.

**Jigsaw Events & Management.**

Jigsaw Events & Management Ltd is a relatively recently formed company which appears to have very little experience of organising any big events. DF Concerts, a company of many years' experience in organising T in the Park, found great difficulties in organising T in the Park when they moved from an open field site to a site similar to Panmure Estate.

We have found Jigsaw Events & Management Ltd to lack integrity in their dealings with us:-

At an initial meeting we were told that the noise during construction and dismantling would be no worse than normal tractor noise but we now find the plan is for work to take place on site from 8 am to 10 pm over a 28 day period.

At the same meeting we were told that the music would be from noon to 10 pm on two days but the license application requests a license to play music over three days and until 1 pm.

At a second meeting we were told that an independent sound engineer would come and discuss the potential noise levels on our property – we are still waiting for this to happen.

### **Noise**

There will be a significant change to the background noise in the area; not just for the actual event but for the two weeks before and after when the staging etc. are erected and dismantled. We are not aware of any measurements of existing background noise levels.

According to the Noise Council's standards for music events there can be significant problems with low frequency noise associated with the genre of music to be played during the Festival. Low frequency noise can be amplified as it travels through clay soils and so can cause problems and noise pollution even at reasonable distances from an event.

### **Access to the area.**

The B9128 was not designed to cope with such heavy traffic levels before, during and after the event. The proposed access to the main entertainment site is at the top of a blind brow. Surely it is unacceptable to create a serious traffic hazard which can last for up to 28 days?

We also have major concerns on how we will be able to leave and access our property for the four days of the event. Our land is rented out so the owner of the livestock also needs access to meet the needs of the livestock.

### **Security and Public Liability.**

It will be very difficult to secure the area as there are multiple access points to the Panmure Estate. It will also be very difficult to monitor the activities of those attending the area but not wishing to buy a ticket.

We are also worried about the security of, and public liability issues on eg wild camping, our own land and property which is just across the road from the main entertainment site. We normally have a bull and ram on the land.

### **Health and Wellbeing.**

Does Angus Council wish to allow an event to go ahead that must contravene its 'health and wellbeing' policy? The potential for illegal drug use, the consumption of both so called legal and illegal highs and excessive amounts of alcohol are well known to occur at events like the proposed music festival.

In an article by Michelle Ozog in the Music Business Journal of October 2011 she states that "because house music so heavily relies on all-night dancing and light shows that stimulate the senses MDMA (ecstasy) was the drug of choice for ravers". Unfortunately this partnership between MDMA and house music has proven lethal at times and is clearly dangerous.

After many years of promoting Angus as a safe and family friendly place to visit and spend time in does the Council wish the area to be associated with a house music festival well known for its use of illegal stimulants?

#### **Environment**

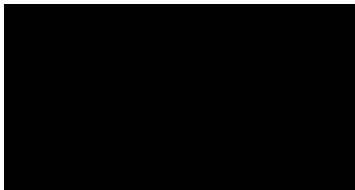
There will be an impact on the landscape of the Panmure Estate as a whole – the estate is unique in Angus and probably in all the east of Scotland, in so far as it has remained a largely undisturbed environment for historic reasons.

Panmure Estate boasts a rare environment and landscape – in terms of both the human and the natural environment. It holds ancient monuments, architectural features of historic value, flora, and fauna not found anywhere else in Angus and wider afield.

Panmure Estate is unique in Angus for badgers. They are rare in Angus and have only clung on in Panmure Estate as a result of its unique history and a protected environment on an estate-wide scale.

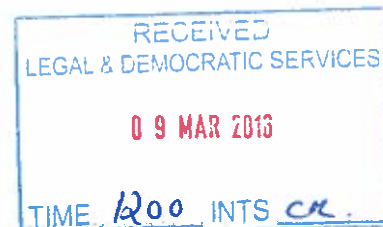
We trust that you will consider our objections to the proposed music event.

Yours sincerely,

A large black rectangular box redacting the signature of Alan Cairns.

Alan Cairns,

OBJ3



Astwood House,

Panmure,

Carnoustie,

DD7 6LW.

Tuesday 8<sup>th</sup> March 2016

Head of Law and Administration,

Angus Council,

Angus House,

Orchardbank Business Park,

Forfar.

DD8 1AN

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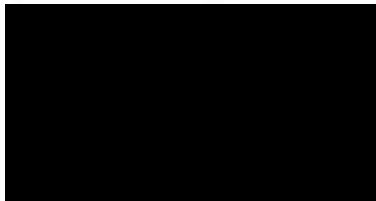
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Panmure Estate is unique in Angus for badgers. They are rare in Angus and have only clung on in Panmure Estate as a result of its unique history and a protected environment on an estate-wide scale.

We trust that you will consider our objections to the proposed music event.

Yours sincerely,

A large black rectangular box redacting the signature of Pamela F Cairns.

Pamela F Cairns,

Aldbar

East Hill Road

Kirriemuir

DD8 4PQ

Angus Council

Orchardbank Business Park

Orchardbank

Forfar

OBJECTION TO MUSIC FESTIVAL

Dear sirs,

Please note my objections to the above on the following grounds

1. That the remnant badger population at Panmure Estate (one family, estimated 2-4 individuals) will become extinct locally as a result of the incremental (year-on-year) negative impacts of:

- excessive stress from noise / vibration on an industrial scale
- in excess of 15,000 people being on their doorstep who are free legally to 'take a walk in the woods' day and night
- the setts' location becoming exposed and put at risk by baiters.

2. That the company Jigsaw Events and Management failed to initiate targeted ecological surveys in time for an event in June 2016 and have produced plans that are unreliable as a result.

3. That with the will to do so this event could be re-located to a site with fewer constraints, where safety and security issues for people as well as wildlife could be more effectively managed.

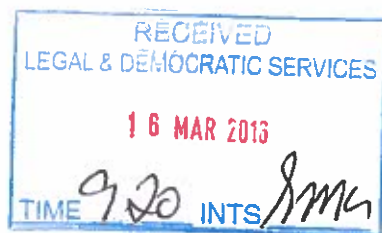
4. The road system around the proposed site can not cope with the volume of traffic

Yours sincerely

A large black rectangular box redacting the signature of Ronald Gray.

Ronald Gray





**Monikie and Newbigging Community Council**

13 Affleck Gardens  
Monikie  
Broughty Ferry  
DUNDEE  
DD5 3QQ  
14<sup>th</sup> March 2016

Sheona C. Hunter  
Head of Legal and Democratic Services  
Angus Council  
Angus House  
Orchardbank Business Park  
Orchardbank  
Forfar  
Angus  
DD8 1AX

**Festival of House Event**

Dear Mrs. Hunter

I would be very grateful if you would arrange distribution of this letter to Mr. Stiff, Chief Executive, Mr. Gaul, Leader of the Council, and also to the members of the Licensing Board.

On behalf of Monikie and Newbigging Community Council I convey to you the concerns raised by members of the public and of the Community Council with regard to the proposed Festival of House event which is to be held on the Panmure Estate. I should point out that a significant part of the following letter was sent to the Chief Executive of Angus Council, Mr. Stiff, but as the concerns are still pertinent, it is appropriate that they are also passed to your committee for deliberation.

**Health and Safety.** The event is likely to attract some people who will consume excess alcohol or drugs. Should they decide to wander about the Panmure Estate, particularly in the dark, they will put themselves at risk of injury or worse. There are several sites on the Estate where there are hazards such as a high footbridge and "ha-has" which are water filled. In addition there is very high road bridge with broad parapets over a ravine which would be very inviting to walk along particularly if intoxicated. It should also be noted that mobile telephone signals are extremely poor on the Estate should emergency attention be required.

**Security.** Although the arena will be fenced, and security staff will be on site, the perimeter of the Estate is porous, and the event is likely to attract younger people from surrounding communities to hear the music without appropriate ticketing and safety monitoring.

**Road Traffic.** Thoroughfares surrounding the site are rural roads which may be unable to cope with the anticipated 5000 vehicles arriving and leaving the site on a daily basis. It

should be noted that the roads on the Estate are private roads and consequently are apparently not the responsibility of police resources. Inconsiderate behaviour by some drivers will cause gridlock.

**Ground Conditions.** Following the particularly wet winter, the high water table is likely to cause chaos.

**Residents.** Members of the public who reside on the Estate fear for the security of their homes and also the negative impact possible regarding insurance cover in the future. The noise disturbance to these families will be intolerable.

**Timescale.** Residents consider the 28 days being quoted for site preparation and clearing to be extremely optimistic. (Apparently this timescale removes the need for planning permission to be sought.)

It was brought to my attention that Bell Ingram, agent for Jigsaw Events and Management, the organisers of the Festival of House, carried out a postal awareness mailing to residents in the postcode areas of DD6 and DD7. Monikie and Newbigging having the postcode DD5 were not included despite being geographically nearer to the Panmure Estate. This obviously means that many residents will not be aware of the proposed event and will consequently not be given the opportunity to voice their opinions. This raises serious doubts as to the integrity of the consultation process.

A suggestion raised at our meeting by a member of the public was that had the Festival been held on the disused Hatton aerodrome, which is also owned by the landowner of the proposed site, most, if not all, concerns regarding the location of the event would be removed.

It is very concerning that the organisers have established a web site to promote the event, are displaying billboard posters advertising it, listed the acts to be performing, are selling entrance tickets to the public, and communicating with the local press that the event is receiving favourable assessments from members of the public. This is happening before the Licensing Board has considered whether or not the Festival should go ahead! It implies either that they believe that a positive decision is a foregone conclusion or they are treating the Licensing Board with disdain.

Monikie and Newbigging Community Council believe that any decision should take into account the fears, concerns and wishes of the many local residents (and electorate) over the desire of the organisers whose interest is obviously based upon financial gain.

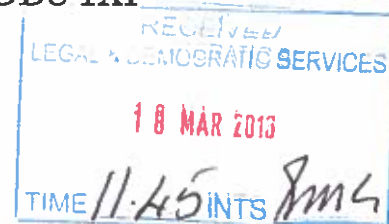
We ask that the application be refused.

Yours faithfully

  
James Marshall (secretary)

Broadlands, Loanhead, By FORFAR, Angus, DD8 1XF

Head of Law & Administration,  
Angus House,  
Angus Council,  
Orchardbank Business Park,  
FORFAR,  
DD8 1AN



18<sup>th</sup> March 2016

Dear Sirs,

Re: Proposed Festival of House at Panbride Estate June 2016

I respectfully request you note my very serious concerns about the siting of The Festival of House on the Panbride Estate, Angus in June 2016.

I have absolutely no objection to such a music festival taking place but my worries are as follows:-

Firstly the estate appears to be full of natural hazards which could precipitate accidents to the festival goers, especially after dark. In the evening and on into the June night, crowds of revellers might well not recognise the danger of that steep gorge nor the water course and the extreme difficulty there could be in rescuing anyone who had taken a serious tumble.

Access to the estate appears to have been thought through very carefully, however in such a location, determined non-paying visitors outside could well be adventurous enough to try to gain entry by illegal means and be completely unaware of the dangers of trespassing on unfamiliar territory.

Then the fact that Panbride is home to a wide variety of wildlife, including species protected by both UK and EU laws is of concern. For the area to suddenly become a place of incredible noise, inappropriate lighting, vehicular traffic and people causing disturbance throughout the estate and for up to twenty-eight days in an area usually enjoying peace and tranquillity would be intolerable for many creatures.

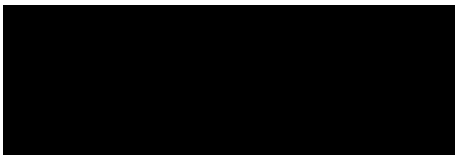
It is already known that there are bats present on the estate and it could well be that nursery roosts would already be in use just when the noise and visual disturbance on such a vast scale would make life exceedingly difficult for them to forage. As they have only one offspring a year, any harm to this generation would impact exceedingly badly upon future vital bat populations.

In addition there is known to be just one small badger family present on the estate and although it has been stated that the area where they could be foraging would be fenced off, still the disturbance to them could cause fundamental harm not only the present generation but to any newly born cubs.

Surely it is the responsibility of us all to protect our fellows as well as wildlife. I urge you to refuse consent for this Festival which the promoters advertised as an event "in the woods", even using an image of a group walking into thick, mature woodland. Their Facebook page in November 2015 states quite openly that "we are taking over the Panmure Estate for June 2016", for which they were happily selling tickets although no planning permission had been granted. These tickets continue to be on sale until 31<sup>st</sup> March – but still no permission has been given.

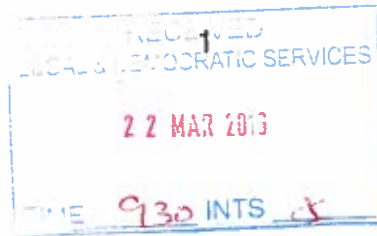
In view of the fact that Panbride is home to such a wide variety of protected wildlife and could also be viewed as a hazardous place for unwary festival goers, I feel the promoters should not, in this instance, be granted a licence and I again request that you refuse the application.

Yours faithfully,

A large black rectangular box redacting the signature of Patricia M Powell.

Patricia M Powell (Mrs)

Head of Law and Admin  
Angus Council  
Angus House  
Orchardbank  
Forfar  
DD8 1AN



Dr Alasdair Murray  
Rockville  
East Haven  
Carnoustie  
Angus  
DD7 6LQ

20 March 2016

Dear Sir / Madam

**Objections to the application for a Public Entertainment Licence on behalf of Jigsaw Management / Festival of House 26th February 2016**

We would be grateful if you would consider my objections to a Public Entertainment Licence being granted to Jigsaw Events and Management Ltd for the Festival of House music festival which is proposed to be held at Panmure Estate, Carnoustie, between 10 - 12th June 2016.

**The Civic Government (Scotland) Act 1982 states that a licensing Authority shall refuse an application to grant a licence if in their opinion;**

- a) ii) the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for it's management is; not a fit and proper person to be the holder of the licence
- c (i) the location, character or condition of the premises (site) or the character or condition of the vehicle or vessel.
- c (iv) the possibility of undue public nuisance
- c (v) public order or public safety

**a (ii) the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for it's management is; not a fit and proper person to be the holder of the licence.**

- Jigsaw Events is a fledgling company having been constituted only in December 2014. Consequently, the directors have yet to submit any returns to HMRC and are not required to do so until September 2016 as the initial accounting period was extended from 31st December 2015 to 30th April 2016. Given the scale of the proposed event and the absence of any proven track record, it is difficult to have any confidence in their ability to deliver a festival that protects both the historic and natural environment at the site whilst also ensuring the security and safety of residents and also of those who wish to attend the event whether through official or unofficial means.

**c (i) the location, character or condition of the premises (i.e. site)**

- The site proposed is of both national and international importance and contains a number of historic scheduled monuments both within the designated site and within the wider environs of the event. The organisers have declined to share the content of their environmental management plan and, on the basis of their responses to objectors throughout the consultation process, I have no confidence that they will adequately mitigate against the risk of damage to the scheduled monuments. Historic Environment Scotland do not have a remit for the B Listed scheduled monuments in Panmure, which are the responsibility of the Local Authority. Damage to these monuments will be irreplaceable. Angus Council must ensure that the monuments are fully protected and, should any damage arise, that a sufficiently large bond has been lodged to cover the cost of any repairs, thereby ensuring that there is no additional cost to local taxpayers.

- The Panmure Estate, although largely turned over to commercial farming, is also host to both fragile and protected wildlife species (e.g badgers, bats and red squirrels). The contribution of high volume, electronic sound and low frequency vibration will disrupt these fragile communities as it is planned to have four opposing music sources with both sound and vibration travelling well beyond the event perimeter.
- Although the festival is planned to run over two days, there is a full additional day of sound checks, a period of one week of preparatory works and several weeks of decommissioning. During this time, heavy vehicles and large numbers of people will be disturbing the natural rural environment thereby prolonging the potential disturbance to wildlife well beyond the two day event itself. Moreover, the organisers aim to attract 30,000 people to the event. Given the porous nature of the locus with multiple formal and informal access points, the area subject to noise, vibration and human disturbance will extend well beyond the artificial boundary of the formal event site.
- Although the event organisers maintain that security fencing will help to contain those attending the festival within specific boundaries they are simultaneously promoting the event as 'in the woods', thereby creating the expectation amongst festival goers that occupation of the woods is permissible. Consequently, this will expose wildlife within this restricted habitat to potential ingress of large numbers of people from the official non-wooded site or access by those without tickets who have entered from the numerous formal and informal access points to the estate.

#### **c (iv) the possibility of undue public nuisance**

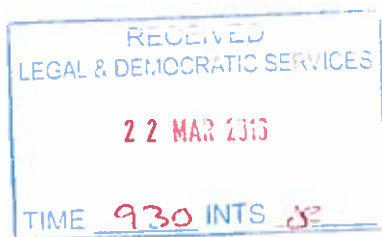
- During the consultation process, the event organisers correctly stated that the music element of the festival concluded at 11pm on both days. However, it transpires that the alcohol licence requested is to extend to 1am. Although the numbers of people living within the estate may be small, it seems inconceivable that the extended licence requested will not be accompanied by concurrent music, crowd noise, road traffic noise and possible public disorder thereby generating an extended period of public nuisance for residents of the estate and also the larger settlement of Muirdrum.

#### **c (v) public order or public safety**

- Although the organisers have been made aware of several other potential sites where the festival might have been less problematic, they have insisted that a wooded environment is an important element of this festival. Ian Cram from Bell Ingram has said that the particular customer base would not attend if the festival was to be held in a more open environment. Given that a less secluded site would be easier to police and / or marshal, this raises questions as to what type of activities might be transacted within the wooded area and how these might impact on public safety. In addition to a number of unstable buildings and monuments, the site is bounded by fields with deep perimeter ditches (haw-haws), dangers arising from the residue of tree felling activities and a particularly deep gorge at the Montague bridge. The potential risks arising from a combination of man made hazards is compounded by at best, patchy telecommunications through which to summon emergency services should these be required.
- The organisers have suggested that a suspension of the 'right to roam' will help to reduce the numbers of people hoping to either gain access to the official site or to be at sufficient proximity to listen to the music. They accept that such a prohibition would only apply to the formal roads and tracks within the estate. However, there are many alternative entrance routes which not be covered by such a prohibition. Given that many of these are seeking to access the event at a distance are likely to be 18 years of age and hence not eligible to hold a ticket this policy may well place young people at risk of injury.

Yours Faithfully  
Dr Alasdair Murray





11 TerraOBJ8 Rd

Carnoustie

Angus

DD 7 7AD.

14.3.16

- To Whom it may Concern - (Angus Council.)
- Re - Application for 'Public Entertainment Licence' by Jigsaw Media and Management.

I wish to strongly lodge my objection to the proposed 'Music Festival' which may take place at Panbride Estate, Carnoustie in June 2016.

The historic monuments to be found here are irreplaceable and form a huge part of our local heritage. They are obviously at risk from damage if 15000 people descend on this area - not to mention the infrastructure and need for heavy vehicles to set up and remove staging etc, before and after the event. Tying this in with risk to varied and rich wildlife to be found here, I feel this is a huge conservation issue.

I attended the meeting that was set up by the organisers, and none of (Carnoustie Hotel.)



my fears were put to rest. There were no guarantees that zero damage could happen to either the monuments or wildlife. One girl who was part of the team told me - "They didn't want to kill the badgers either, and as they know the location of the bats - they'd switch off the big lights after dark." I was dumfounded. - Badgers and bats I believe are both protected species, and I find it very hard to imagine they won't be affected when it is proposed to disturb their normally peaceful environment.

Badgers are highly sociable animals and live in a network of underground tunnels, where their breeding takes place. They and their setts are protected by law, and part of the Act states... "Interfering with a badger sett includes obstructing access to a sett, or disturbing a badger while it is in its sett."

Bats are also I believe protected  
(Conservation and natural habitat

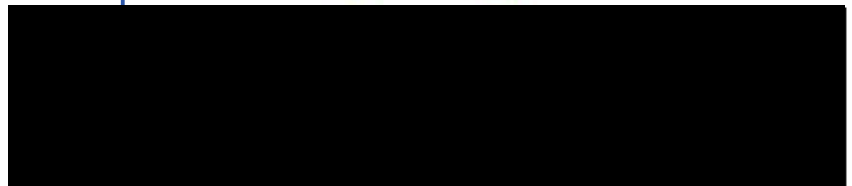


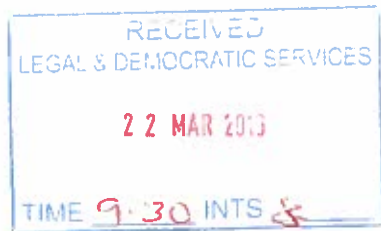
Regulation states. - (Under heading - To disturb a wild bat in a roost.

"To disturb such a wild bat in a manner that is, or in circumstances that are likely to effect the local distribution or abundance of that species" etc.

In my opinion, this is a highly insensitive and inappropriate location for this proposed event.

Yours faithfully

A solid black rectangular box used to redact the signature of the sender.



Hillhead Farmhouse  
 North Mains of Kinnettles  
 Forfar  
 Angus  
 DD8 1XF

Head of Law and Administration  
 Angus Council  
 Orchardbank Business Park  
 Forfar, DD8 1AN

Dear Sir

Re. Jigsaw Media Event, Panmure Estate Angus, June 2016

As an Angus citizen and Council tax payer, I wish to object most strongly to the above proposed event, and oppose the granting of a Public Entertainment Licence.

My reasons are;

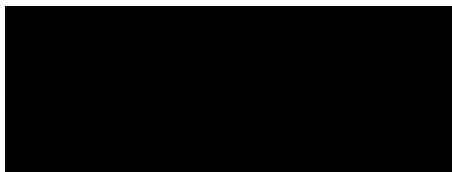
- The event has not been requested by the vast majority of the local community, is unnecessary, and could well be mounted in another more suitable place.
- I gather from contact with local residents on the estate, with some Angus Council Officers, and with some familiar with the T in the Park Festival in Perthshire, that it is freely admitted that the event will be extremely noisy, have traffic problems, and that attendees will be freely use alcohol, illegal drugs, and legal 'highs', which for me make any such event unacceptable.
- I don't accept from my own past experience of organising true community events, both small and large, that there will be ANY beneficial economic impact to the Angus area. All/most services will be 'imported', and so there is not an overriding economic reason for the event.
- The venue, I gather, has been deliberately chosen for its pleasant wooded location and ambience. Mounting such an event in this case is a total joke, and to be deplored. There is a former airfield, totally flat in character, and only 3-4 miles away from Panmure that would far more meet the test of such an event, has very good access from the A 92, and is in the ownership of the same person owning the Panmure land.
- I think that evidence of the harm to wildlife at Panmure has been well proven, and in the case of this application, commencing any monitoring work only in December 2015 is totally unacceptable. Councillors need to be reminded that there can be corporate liability in the case of harm to protected species, and

they cannot avoid this, if harm occurs, and they took a decision that the event was suitable for the location.

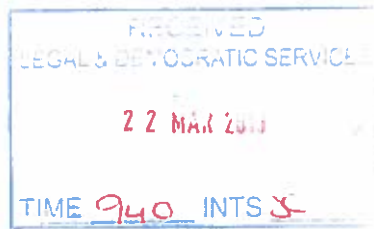
- I have immense sympathy for the current residents at Panmure having to go through what they have had to put up with in the last few months – and now being told that they have to endure a long weekend of either being corralled in their own houses, or suffering limited access back to their houses. In addition, local people will not be able to access the estate as usual. The restriction of access could well have been worked out earlier, with consultation with local residents. I note that suspected drug dealers have already been cruising the estate area (I'm told to identify in advance 'stash' areas for drugs by those in the know)
- The event is said to be a 'temporary' situation, but in fact, one year of this will lead to the site being permanently contaminated, due to the cumulative effect over years if the event does come back. This is in stark contrast to how Planning law affects ordinary citizens. When I bought agricultural land off my local landowner to build a wildlife garden, wood and pond, I was subjected to very stringent conditions, and signed, and paid for a legal document to the effect that I and my wife would never apply to build anything on the site. This just points up how ludicrous current law is, for which I don't blame Angus Council, but it does illustrate how serious the Panmure situation is.
- I am seriously concerned about the area around the festival site itself (although to date, the actual site and detailed locations appears to be secret for commercial reasons) as it appears to be a 'grey area' for policing – whether to prevent property crime, harm to wildlife, or excessive noise, drunkenness or 'partying' (as is advertised by Jigsaw), or for danger by fire.
- I do not believe there are sufficient Police resources to cope with this, and Police and Fire Service would be entering an unlit, wooded area, with steep gorges, of danger to themselves, which I do not agree is either necessary or justified.

For all the above reasons, I hope that Angus Council Licensing Committee refuse an application to run this event at Panmure

Yours sincerely

A large black rectangular box redacting the signature of Edmund Palmer.

Edmund Palmer



**OBJ10**

Hillhead Farmhouse  
North Mains of Kinnettles  
by Forfar, Angus DD8 1XF  
21st March 2016

Head of Law & Administration  
Angus Council  
Orchardbank Business Park  
Forfar DD8 1AN

Dear Sir / Madam,

**Objection and Representation on application by Jigsaw Media for a PEL for a proposed electronic music event on 9<sup>th</sup> to 12<sup>th</sup> June 2016 in a section of the previous Panmure estate grounds.**

We request the opportunity for one of us to address the CLC Committee to represent our case. This letter is written and signed by Dr Ellie Stirling (secretary and trustee of Scottish Badgers, Scotland's charity promoting education, understanding and research on the welfare of badgers and their habitats; member Tayside Branch of Scottish Badgers; clinical psychologist Northumberland, Newcastle upon Tyne and Tayside 1982-2009; author "Positive Psychological Approaches . . ." Wiley 2010; TNR volunteer Scottish Wildcat Action Plan) and Eddie Palmer (chair and founding trustee of Scottish Badgers; chair Tayside Branch of Scottish Badgers; management consultant voluntary sector and large organisations development 1992-2011; President SCA; author five River guide books UK).

### **Wildlife Introduction**

The previous Panmure estate is an oasis of undisturbed natural woodland heritage surrounded by a vast swathe of commercial farming on the coastal plain of Angus. It is home for a range of protected and important species, including badger, otter, red squirrel, bat and Scottish crossbill; osprey, white-tailed eagle, kingfisher and barn owl have also been sighted in the area. Being a remnant woodland the habitat lacks absorption capacity for human activity, and the resilience of species is constrained by its finite resources.

Panmure supports a single small badger family, a few individuals, based on our observations over the years. Their situation is fragile and they could easily be wiped out as a result of year-on-year negative impacts and pressures.

### **Description of the proposed event**

There would be 15,000 people plus 300 staff on site per day, 6,500 tents, plus 2,000 vehicular movements per day. It would produce high volume amplified noise and vibration on an industrial scale, for protracted periods each day over 4 days. There would be at least 28 days per year when the site would be occupied by heavy construction equipment, portable buildings, and vehicles moving toilet effluent, abandoned tents and general waste.

Research shows that problems at similar events include security breaches, fire, water pollution from urine, traffic chaos, incidents of aggressive behaviour, breaches of personal safety, and widespread failures to implement environment and wildlife protection plans despite promises and prompting (Review of TITP Perth & Kinross Council Dec 2015). See Appendix for examples.

## Grounds for lodging an objection to such an event being sited at Panmure

1. The event would bring extreme levels of noise and vibration on an industrial scale comparable to nothing else including forestry or agricultural operations. It is known that low frequency sound transmitted through the ground trebles badgers' stress levels. Further effects on wildlife are largely un-tested and unknown.

The company describe the noise level at the main stage as at 100-102db, but there would be 4 sources (stages) of significant noise levels operating simultaneously. These would emit noise / vibration for up to 14 hours per day over 2 days (plus additional hours on the Thursday of arrival). The company did not mention the total generated dbs level in their answer in section 1 (e) (4) of the Screening Checklist - 15/00676/EIASCR.

The NIHL (Noise Induced Hearing Loss) advisory says that regular exposure at or above 110dbs for over a minute risks permanent damage to human hearing. Many animal species are sensitive to sound ranges above and below the human range and we must conclude they would be similarly affected by high volumes of noise but in addition are vulnerable to high volumes of low and high frequencies which we humans do not hear. Some species rely on sound to navigate safely (bats), to locate sources of food (owls). Scientists have discovered within recent years that badgers show evidence of trebled levels of cortisol (the stress hormone) living within 1km of a source of low frequency sound.

In the 'fight-or-flight' response to stress badgers are 'hard-wired' to their territory and so tend to stay put, and thereby become exposed over prolonged periods to sources of stress (this characteristic makes them vulnerable to badger baiters with dogs). Other animals tend to 'fly' (literally) and can escape or avoid the source of stress either temporarily or permanently. The company describe this event as four days once a year; however, that does not mean the stressors are transient. The heavy duty machinery, noise and human scent would be on the site for 28 days per year. Additionally the contamination from faecal and urinary pollution, and other human waste, would remain in the ground year round, with potential impacts like significant reduction in the worm mass from year on year. This ground is the badgers' feeding area that they rely on.

Repeated footfall compaction of the ground reduces aeration and worms survive only in aerated soil close to the surface. The proposed change of use of this prime agricultural land would permanently change the soil structure and quality. Prime agricultural land being dedicated permanently (or for a number of years) to grazing sheep and dancing is not by anyone's standards recognised as an optimal use of prime land. Sheep can be grazed elsewhere on land that is unsuitable for anything else. Dancing and electronic parties can

be mounted elsewhere - where they would not be depleting the high quality land bank for crops growth.

The pictures attached as Appendix 1 are evidence of the contamination left behind in the wake of similar events previously. As with this event, the organisers did not intend for such negative after effects and possibly did not imagine they could even be possible. However, we know better now; we have previous experience to learn from and we must face these facts. Otherwise it will not only be the badgers which suffer, but the whole of Angus could look foolish - irreversible damage could be inflicted on Angus' reputation as an undiscovered jewel in Scotland's Historic and Natural Heritage.

SEPA deem the watercourses in the area as already being in need of improvement from pollution. Green algae growth and other problems have been a recurring symptom. It is highly likely, based on previous events' experience, that gallons of human urine would most probably end up in the ground which drains to these water courses. Glastonbury land-owners are currently being proceeded against for pollution from urine of local water. Appeals to attenders of Glastonbury were made to exert voluntary choice to use the toilet facilities provided, but clearly there are ongoing reasons people will always prefer to avoid their use. This adds to the contamination of water drunk by animals; amphibians and fish would be more seriously impacted. Water extraction from the local watercourses for irrigation of crops is most likely to be needed over the summer months i.e. whilst the urine continues to drain from the land into the burns. Faecal contamination of the ground has also been found to be a significant problem at previous mass attendance events. Crops for human consumption are grown in the surrounding commercially important fields, and could be lost if deemed unfit. Angus has a high reputation to consider relation to potato growing in particular; should one part of Angus experience just one contamination incident, other farms across Angus could easily suffer loss of reputation in the aftermath even though they are not contaminated.

Exposure to the sources of noise / vibration transmitted through the ground / human scent / human activities and pollution year-on-year could easily result in extinction of badgers locally given their already tenuous hold on the landscape - this is a small remnant family of badgers, possibly 2 - 4 based on current trail camera evidence and our observations over the years. They have nowhere else to go, either to shelter or feed. Badger needs to forage over a large area in order to find enough worms, beetles, grubs and so on to survive.

Badgers commonly travel outwards 1-2 kms each night from their underground castle homes, just to get enough food. In summer the hours of darkness are shorter and the ground drier and they commonly suffer in times of dry weather to survive. One third of cubs die - starvation at times of difficult conditions for feeding is a common cause. We see no need to add to this risk. If only 2 cubs are born this year, the chances of both surviving are slim. If only one survives, the next generation could either not happen at all or the gene-pool could narrow dangerously, thereby threatening the survival of the local family of badgers permanently. The wider area supports the current small population -but added pressures could tip the balance. They are surrounded

by vast swathes of commercially farmed fields - a worm-free zone surrounds them.

The company say they have been told that previous music events have been held near badgers e.g. at Falls of Clyde in the 1990's. However, unlike Panmure the badger families in the Clyde Valley are not an isolated remnant population. On the contrary, there are multiple families of badgers along the Clyde valley - giving resilience in the species' capacity to survive pressures. If one family fails their sett would become occupied by neighbouring badgers.

Only systematic monitoring of individual animals over an extended period would reveal the real nature of negative impacts, and this was not carried out.

The company have argued that their noise / disturbance levels would not be any different from that associated with the usual agricultural activities in the area such as a tractor passing by. This is patently wrong.

A tractor or tree-harvester at 30 m from a badger sett produces vibration, but not on the same scale as amplified electronic music at 102dbs from one source and four sources operating simultaneously.

A tree harvester operates for a matter of *minutes* to cut and strip a tree in any one spot - then moves on *and won't return for another 40 years!* A tractor passes by in seconds.

The industrial scale of noise and ground vibration associated with the proposed event is unprecedented, not comparable and its physiological impacts on wildlife are largely unknown, although we know enough to suspect they could be discovered to be very damaging.

SNH offered an initial view prior to the targeted ecological reports and plans being made available for individuals or specialist organisations to read and consider. They also offered it without first seeking information from the Tayside Branch of Scottish Badgers or discussing it with us.

We have surveyed and monitored badger life on that site and in the wider area for several years and can provide much relevant in-depth information.

We appreciate that SNH is staffed by experienced able people but that they are overly burdened with work, and can't afford the time to come out to every contentious site. In this instance I hope and expect that they will re-consider in the light of the full facts.

We have offered to provide SNH with the fuller picture they asked for regarding the badgers' territories based on our surveys and monitoring over several years. We have offered a site visit. And we can provide details about the evidence showing that low frequencies transmitted through the ground treble stress levels in badger within 1 km of source.

With that fuller information, and having the whole story about the fragility of the species' existence locally, we believe that SNH would agree that there are no simple or single safeguarding measures that could be offered ...

... .. and that they would revert to their core advice (which is made abundantly clear on their website) that the responsibility in law remains 100% on the shoulders of the proposers of an action.

*If there is any doubt then "you should avoid any activities that could interfere with the sett".*

Note that "activities" does not just refer to actions you may take in the immediate vicinity of the sett, such as hammering a fencepost through it by mistake, but includes unplanned events remote in time, such as a ticket-holder falling down into the sett and damaging themselves and the sett, or a cub dying as a result of ingesting something dropped on the ground as a result of the company's activity of putting on a music/ dance event.

The company cannot say either now, or at a later date when something has gone wrong, "SNH agreed with our using a 30 metre buffer, or a 300 metre buffer". It is not SNH's responsibility.

The law clearly makes it the company's responsibility, not to proceed with their intended plan if there is any doubt that it might result in harm to a badger, or damage or disturbance to a badger sett (no matter if the damage is unintentional or carried out by another person). The law safeguarding bats and roosts is exactly the same, such that the burden is placed clearly on the person NOT to proceed with their intended action where there is any doubt.

For example, if an animal ingested a substance that had been left on the ground even accidentally, whether a diesel spill, a headache pill, or another drug, the charge for that harm or death would be laid to the company and/or landowner. The charge could be under protected species legislation, or for unprotected species under animal welfare legislation if suffering resulted.

Other examples of accidents waiting to happen include a sett, holt, roost or drey being disturbed by light, noise or equipment (the wrong positioning of lighting poles at TITP 2015 disturbed bat roosts in spite of detailed and full environment management plans).

Given the previous history of similar events it seems highly likely party-makers and / or campers would gain access to the woods. Here are more accidents waiting to happen - damage to setts and to themselves by tripping or falling, disturbing animals which need to forage and cannot afford to starve for several consecutive nights. The young would be more seriously impacted by losing foraging time. The loss of foraging time would extend well beyond the event itself, as experience of other events has shown. For a minimum of a month there are intense human activities on site which leaves behind human scent and other detritus to contaminate feeding trails and deter nervous cubs. For the remainder of the year the invisible human contamination remains - scent, pollution from urine and faeces, compacted soil in the event fields with associated loss of earthworm mass.



P&K Council's review of TITP 2015 revealed increased problems experienced there in protecting wildlife on the new site. The review identified that the impacts on wildlife of the extreme amplified sound are largely unknown and untested. They imposed a requirement on the company to monitor woods and land use by badgers over a six month period.

Further research is really needed to identify and measure the negative impacts of high volume sources of noise and vibration on ground-dwelling and other wild animals - no licences could be issued with any confidence in the meantime - until the proper research is done, the only honourable approach we can adopt is the precautionary approach.

From available evidence this condition needs to be :

... where we have an event producing high levels of noise and vibration it will be sited a *minimum distance of 1 km* from a site that is depended on for shelter and food source by wildlife.

In this case a wide range of important and protected species depend exclusively on Panmure for life support.

If a source of high volume noise or vibration were associated with some activity of essential national or life-saving importance, such as the construction of a hospital or maintaining an essential railway line, then that would obviously be considered and dealt with in a different way.

We are good in this country at dealing with 'exceptions' where human priorities must come first; we have intelligent, clever and skilled people able to apply themselves to finding the solutions in those instances.

But this is not such an instance. It is a 'luxury' item by any society's standards, and to the extent it offers potentially culturally enriching benefits to its partakers these can be re-provided on a more suitable site without anyone having to apply rocket science.

2. Ticket-holders have been sold tickets via advertising that repeatedly promises an event that cannot be delivered. Adverts for ticket sales repeatedly promote a party "In the woods". An advert dating from December 2015 boasts "Taking over the stunning Panmure Estate in Angus this summer is Festival of House". See appendix. This is not what would be available to customers, who would be contained within fields by high fencing and stewards intended to stop them accessing the woods. The risk is that disappointment would escalate to anger, then become inflamed by possibly well-developed senses of entitlement. The result could be a potentially incendiary situation.

Follow us to the party!!!

Pre-Register whilst you can, for first access to tickets  
[www.festivalofhouse.co.uk](http://www.festivalofhouse.co.uk)

#FOH2016 @FESTIVALOFHOUSE @RHUMBACL



Example advert 1: Since before tickets went on sale and up to now, the ticket sales website and the company have advertised the event uniquely as "a party in the Woods". This advert says "Follow us to the party" and depicts a group of party-goers heading deep into mature woods, with a repeat incitement at the foot of the picture to "FOLLOW US". However, the reality is that ticket-holders would be confined in farm fields, with unattractive high fences barring their access to the very woods they have been promised. The company have made much of providing high fencing and private stewards for "safety" purposes. However they are more likely to further fuel a potentially potent mix of disappointment, anger and

frustration on the part of the party-goers. Suspension of the right to roam could make matters worse by further inflaming an already heated and emotionally charged atmosphere. Private security personnel having conversations to "persuade" people (they have no powers to do more) to return to the field side of the fence could be the last straw for some people. Nowadays more people have a clear sense of entitlement when their expectations have been set up and then let down - any or all of 15,000 at any one time could act on that sense.

The 15,000 ticket-holders have as many as 5 days during which any number could feel the need to assert their sense of entitlement to take a walk in the woods to party.



**Festival of House**

9 November 2015 · 🌳

Music Lovers and Party People.... Everywhere,

Now, close your eyes tightly for one minute.... and picture in your mind the greatest party ever thrown, where the music was delivered by some of the most exhilarating artists and DJ's in the world, where the atmosphere and excitement surpassed any party you have ever been to, where the location and landscape were as beautiful and unique as the people who were attending.... now open your eyes.... You are standing before Festival of House 2016!!

What Festival of House is about to offer you surpasses anything that has ever taken place in the East of Scotland. Festival of House have been working closely with The Rhumba Club and together, for well over a year, we have been developing a most exciting and challenging event. Together, we have been working closely with some of the most inspirational, enthusiastic and talented individuals.... with one common goal.... to take Festival of House into your lives.... and Into The Woods.

people who were attending ... take festival of House into your lives and Into The Woods" (their capitals not mine).

Think of private security guards with no powers other than persuasion trying to divert a potential tide of people intent on their entitlement - a party in the woods. Think what can happen when private security guards need to call Police Scotland for urgent assistance yet there is patchy or no mobile phone signal in the area. Ask how Police Scotland are expected to deal with numbers on this scale, over a wild wooded area, on one side of which is a gorge and which is completely unlit even on the roadways, without putting officers at risk of harm and injury themselves. Ask how Fire Crews are expected to deal with a fire in the forest when the only hard standing is a narrow strip of tarmac road, possibly not wide enough for a Fire Engine wheel base, and where the fire could be up to 1 km from the nearest strip of road inside Spiral Wood or Clearie Wood.

The company have not made mention of the risks should any untoward event take place in the Clearie Woods to the north of the proposed event site. Pillar and Clearie Woods are listed on the Ancient Woodland Inventory. The company admitted (s 2(c) 4 on the Screening Checklist - 15/00676/EIASCRC) : "Direct impacts on some of these woodland areas could occur through the activities associated with a music festival - access, vehicular movements around trees, and placement of temporary installations."

Whilst mention is made of the intent to secure more of the ubiquitous fencing in place - one wonders whether there would be an Environmental Clerk Of Works on site throughout the entire month to direct and over-see the hammering and digging which would be going on as fencing and heavy plant would be installed across a wide part of the site and even in the woodlands.

For example, the work of installing fencing could easily kill or disturb hedgehogs, frogs, bats, bees, other insects and wild plants and flowers, as well as intrude on the feeding patterns of a host of animals and birds. This

## Example advert

2: This advert invites people to picture themselves at "the greatest party ever thrown ... where the excitement surpassed any party you have ever been to ... where the location and landscape were as beautiful and unique as the

depletes the woodland of necessary foraging, and could negatively impact on the essential pollinators like bees - needed by the neighbouring farmers, as well as by the woodland ecosystem.

Fencing operatives are not trained in wild plant or wildlife identification. It is not their responsibility. Again it is the company that is responsible - we would draw attention to the fact that the ecological professional body has in recent years developed the role of the Environmental Clerk of Works, to oversee installations and human activities throughout their delivery in order to increase the safeguarding of the environment. Failures to deliver the detailed Environmental Management Plans and to correct mistakes once spotted, were specific problems at TITP15.

Security stewards likewise are not trained in ecological matters. In fact one of the company's personnel who was 'manning' their security banner at their open day on the 3<sup>rd</sup> of February 16 said to me when I asked about stewarding in relation to safe-guarding the animals in the woods "Environment's not my thing".

This event is advertised as being "In the Woods" and so one might expect that extra consideration would have been given from the very beginning, a year or more ago, to how to safeguard those very woods which are said to have attracted the proposal in the first place. Instead the environmental community are receiving no completed species or environmental reports until after the period for lodging our submissions and even then have no guarantee of being able to read them at all. Even if allowed to have sight of them, the timescale would be too short to allow adequate reading, processing, wider discussion, and the development of intelligent responses and thoughtful contributions to problem-solving.

We agree that the timescale recommended by Brindley Associates (see 3 below) is more likely to deliver a well-grounded, well-reasoned, and evidence-based environmental plan for the company to deliver an event. At this point in time there has been no opportunity for that development of reasoning, no development or testing of plans on the ground, no opportunity for environmental organisations to get to grips with the amount of information that needs to be understood both about the technical nature of this kind of kind of noise level and about the science of its impacts in the countryside and on wildlife, and thereby no opportunity to consult fully and properly.

We have provided time and detailed input on this occasion because we have monitored badger in the area over the years and have prioritised our time to attend to this proposal. However that has been made difficult because open consultation has not taken place from the very beginning, timescales are insufficient to be able to take forward those wider discussions, and only scraps of information come to us by accident e.g. the proposed Application for temporary suspension of the right to roam was not made known to us even though we are obviously a key environmental organisation known to the company to have local specialist knowledge and interest in what happens to the site.

Should the company want to pursue an Application for a PEL for this site we urge that it could be considered only with the condition of a new and adequate timescale for consultation and engagement, namely at least 12 months from now. See 3 below for support for this proposal.

Example advert 3: This advert on 28 January 2016 promises

"The very first festival of house ....In the woods!!" (their exclamation marks not mine).

This could encourage unpredictable numbers of people to enter the woods as part of the TOMORROW we launch the very first FESTIVAL OF HOUSE.....In the woods!! party experience Stay tuned, and get excited as you WILL NOT want to miss this. they were promised FOH 2016 x and not



given. It could be

thousands, or it could be a few hundred or even just a hundred - it would take only a few to place at risk the sensitive ecosystem and the wildlife. The ground will be dry and covered in flammable brush. It only needs one person to light a BBQ or camp fire and for that to get out of control, and immeasurable disastrous consequences could ensue for the creatures that live in the woods and cannot escape. By the same token, it's not just the wildlife and the environment that would suffer catastrophically. Fire or accidents of this kind could be life-threatening for local residents, for the ticket-holders themselves, for non-ticket-holders who would be attracted by the event and try to approach though the woods, and for Police Officers and Fire Service personnel having to deal with such eventualities.

3. The necessary targeted ecological surveys as identified by the Ecological Consultants Brindley Associates (29<sup>th</sup> June 2015) have not been completed fully to the specified timescale and accordingly the current species management plans cannot be regarded as reliable.

A period of 12-18 months was specified by Brindley Associates as necessary to collecting "full knowledge of all ecological constraints" in advance of any first activity on the ground. This makes common sense - it takes account of seasonality in the behaviour of different species. For example, bats hibernate, badgers are dormant and some birds are absent in winter.

We have no issue with conducting field surveys over winter - in fact it is standard to survey for non-dynamic badger field signs when the vegetation is low and visibility is assisted. However, different seasonal surveys are also necessary to reveal dynamic field signs e.g. foraging and territorial field signs which enable the extent of land used for nutrition, socialisation of cubs and breeding to be mapped reliably.

IF these had been initiated immediately after the Brindley Associates report, the earliest completion date would be the 1<sup>st</sup> of July 2016 (or the 1<sup>st</sup> of January 2017). From the evidence we have seen the company first commissioned targeted ecological surveys for badger in early November 2015. We have been denied sight of the company's targeted ecological survey schedules and results but understand they will not be delivered to Angus Council until the end of March 2016.

Had the company complied with Brindley Associates' directions they would have informed Angus Council that the necessary ongoing ecological survey work would take until the 1<sup>st</sup> of December 2016 at the earliest.

Had they chosen to take a precautionary approach they would have informed Angus Council that they would continue to commission ecological work for the 18 months period. This would be ongoing until the 1<sup>st</sup> of June 2017.

Whilst we have no issues with the ecological work as undertaken by the consultants commissioned, we have to raise concerns about the *company's decision* which apparently overlooked or disregarded the necessary period set out by Brindley Associates for the collection of ecological data as a basis for developing reliable ecological management plans.

4. The remnant badger population at Panmure (one family, estimated 2-4 individuals) would be highly likely to become extinct locally as a result of the incremental (year-on-year) negative impacts:
  - stress from electronic noise and vibration / human scent / human noise and activity on an industrial scale such that none of the usual mitigation measures could safeguard the family of badgers
  - cubs and other young animals face the risk of failing to acquire key survival skills during this crucial developmental period and of failing to adequately feed
  - in excess of 15,000 people on their doorstep unknown numbers of whom who likely to take a walk in the woods to party day or night
  - the sett location could become exposed and put more at risk by baiters. We know that badger baiters from anywhere in Scotland and Northern England can easily find the locations of setts through hunting, dog-fighting and baiting networks. However, we argue it is neither acceptable nor necessary to add to this risk by bringing 15,000 pairs of eyes and feet on to their doorstep under conditions where 'taking a walk in the woods' is likely to be undertaken by unknown numbers of people at any times of the day or night.



5. In Conclusion. We urge that Angus Council including the Civic Licensing Committee consider the following

There is no necessity to site the proposed event at Panmure.

Other options could be implemented swiftly and without the need for rocket science if the company cooperate.

Tickets have been advertised as buying access to a party in the woods at Panmure. Because people will actually be contained outside the woods inside fields, there is a significant potential for frustration and an incendiary situation. At any time of the day or night for four days ticket-holders could assert their sense of entitlement to party in the woods. Private security attempting to persuade people out of the woods could easily have the unwanted effect of inflaming matters. The consequences for the wildlife, the ancient woodland and human life would be immeasurable were fire or other accident to occur in the woods.

History cannot be re-written to correct this now for Panmure. Security and safeguarding of the wildlife and the human environment could now be un-deliverable at Panmure.

There is a win-win option however. The event could take place on a more suitable site, where customers can enjoy their event in safety, and wildlife and the sensitive historic environment can be left unharmed for future generations to enjoy.

We urge that an Application for a PEL only be granted with the condition attached that it relates to a site at a minimum distance of 1km from the perimeter boundary of the previous Panmure Estate, and a similar distance away from other wildlife sensitive areas.

We support the positive work led by charity East Haven Together, to achieve conservation status for the sensitive historic site and natural heritage of Panmure, and urge that this route be progressed through Angus Council

We understand work is already underway and before Angus Council, led by the charity East Haven Together, to work towards protected status for the sensitive historical and natural heritage site of Panmure. Taking this approach, the heritage value of Panmure could be enhanced as an enduring attraction for families, including residents of and visitors to Angus. It could thereby bring year round benefit on a more sustainable basis to a wide range of local businesses such as shops, hotels, guides, restaurants and taxi companies.

Signed

Signed



Date

21/03/2016

Date

21/3/2016

1. TAKING OVER THE STUNNING PANMURE ESTATE  
On Skiddle.com website on 15<sup>th</sup> March 2016

## SKIDDLE.COM TICKET SALES WEBSITE 18 Dec 2015

### festival of house announces underworld, sasha and more



## Festival of House delivers a huge first line up announcement, with Underworld, Sasha, Danny Howard

Last updated: 18th Dec 2015

Taking over the stunning Panmure Estate in Angus this summer is Festival of House, which has delivered on its promise to bring some of the biggest names in house and techno to East Scotland this summer.

- **Date:** Friday 10th June - Saturday 11th June 2016
- **Event:** Festival of House at Panmure Estate Pitlivie Farm
- **Venue:** Panmure Estate Pitlivie Farm

Type of Ticket	Price	Quantity
Day tickets		
<b>Friday Day Ticket</b> Entry to the main party event area. T&C's stated below	<b>£52.50</b> + £5.50 <small>ht</small>	<input type="text"/>
<b>Friday Bumblebee Day Ticket</b> Access to the main party area + the Bumblebee Premium Area. T&C's stated below	<b>£87.50</b> + £9.00 <small>ht</small>	<input type="text"/>
<b>Saturday Day Ticket</b> Entry to the main party event area. T&C's stated below	<b>£52.50</b> + £5.50 <small>ht</small>	<input type="text"/>
<b>Saturday Bumblebee Day Ticket</b> Access to the main party area + the Bumblebee Premium Area. T&C's stated below	<b>£87.50</b> + £9.00 <small>ht</small>	<input type="text"/>
Camping tickets		
<b>Weekend Camping Ticket</b> Entry to main party area + camping from 9th - 12th June. T&C's stated below.	<b>£148.50</b> + £12.47 <small>ht</small>	<input type="text"/>
<b>Weekend Camping Bumblebee Access Ticket</b> Access to the main party area + the Bumblebee Premium	<b>£208.50</b> + £17.51 <small>ht</small>	<input type="text"/>



**Appendix - Objection and Representation on application by Jigsaw Media for a PEL for a proposed electronic music event on 9<sup>th</sup> to 12<sup>th</sup> June 2016 in a section of the previous Panmure estate grounds – Scottish Badgers Tayside**

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**GROUND AND WATERWAYS POLLUTION**

**AT GLASTONBURY, YEAR AFTER YEAR, THE ORGANISERS' APPEALS FOR VOLUNTARY COMPLIANCE HAVE BEEN IGNORED.**



The Fantasy

**"Glastonbury organisers in court over urine pollution**

**About 170,000 people turned out for the 5 day festival at Worthy Farm in Somerset last June.**

**The organisers of Glastonbury Festival are due in Yeovil magistrates court today (14 January) over their handling of human sewage.**

**The Environment Agency monitors a stream flowing through the site, and is prosecuting on the grounds that regulations were breached in 2014.**



The reality- a bleak aftermath

**Gallons of urine are produced by visitors to the site over the week-long event and now the local council claims the staff do not meet environmental requirements in processing all the waste at Worthy Farm."**

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**DUNNICHEN HILL - TEN YEARS ON AND WE RISK ANOTHER PERMANENT BLIGHT.**

**Breakaway camping, year-round use of the site, damage to animals and the environment in a large area around the site, appeals for voluntary 'self-policing' of behaviour failed.**

**The Herald, 27 May 1996**

**"Crackdown on New Age travellers in Angus after weeks of noise and mayhem  
Police silence hilltop ravers**

POLICE have finally cracked down on New Age travellers who have been causing mayhem in the Angus countryside for the past three weeks, according to villagers and farmers.

In a massive military-style raid, officers seized an 8000-watt amplifier, which had been pumping out rave music for 24 hours, under a hail of rocks and abuse.

Yesterday, police refused to allow any more travellers' vehicles up the hill to their camp above Letham village and warned those who left the camp that they would not be allowed to return.

The invasion has led to carnage, with starving dogs, allowed to run wild by their owners, killing 2000 young pheasants, 15 sheep, and 3 roe-deer, and farmers are now claiming that dogs are attacking cattle. Six dogs were shot by estate workers last week.

Several hundred travellers have been on the top of Dunnichen Hill for three weeks now and they were joined by hundreds more revellers for a weekend rave."

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## PEOPLE HAVE DIED. ACCIDENTS HAPPEN.

The Telegraph 2008.



"Norman Cook, otherwise known as the DJ Fatboy Slim, made his name organising and performing at a series of three enormous beach parties in his home town of Brighton.

Called Big Beach Boutique, the events have attracted hundreds of thousands of revellers, caused traffic chaos and provoked tabloid censure. As he prepares for today's fourth in the series, Cook recalls how he found himself hosting the biggest beach parties this country has seen ... ..

... .. the girl who did die, an Australian nurse, fell 20 feet off the promenade hours after the event [later dying of head injuries]."

The Guardian

"A man in his 40s died of a heart attack shortly after the concert, which organisers expected would draw around 60,000 people, after 40,000 turned up for a similar event the previous year.

As the emergency services and council boss continued to discuss how to prevent a repeat of Saturday night's events, Hove-based Fatboy Slim, who's real name is Norman Cook, told the Evening Argus newspaper: "We probably won't do it again. I don't take safety issues lightly.

"I will only do it again if we can guarantee people's safety and if that many people are going to come then we can't."

Huge piles of rubbish, bottles and broken glass were almost cleared away today. Police had been surprised by how many people flocked to the concert; ambulance crews struggled to get through the crowds to treat people and the trains leaving Brighton had been overwhelmed.

Roads descended into chaos as cars queued on the A23 from Hickstead, nearly 10 miles north of the city and coast roads from east and west were also jammed.

Staff at the Royal Sussex County Hospital struggled to cope with 100 injured people, and Sussex police said yesterday that such free parties may be banned in the future.

DJ Fatboy Slim said he would not repeat the beach party unless the public's safety could be guaranteed"

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## **VISITORS TO ANGUS COULD ENJOY PANMURE NATURAL AND HISTORIC HERITAGE THROUGH GUIDED VISITS THROUGHOUT THE YEAR, BRINGING MUCH NEEDED LOCAL TRADE TO SMALL BUSINESSES**



**Mancunian Matters 20 Jan 2015 "All the people, so many people: Anti-Parklife petition rallies Prestwich residents**

**Hundreds of spurned Prestwich residents are rallying behind a recent petition to scrap this year's Parklife festival.**

The Heaton Park event faces growing resentment following the rampant anti-social behaviour, violence and drug taking that marked it last summer.

Since the petition was announced in mid-December, many have voiced compelling reasons to halt the upcoming event, or at least improve its organisation.

Stewart Wilson, owner of Prestwich business, RelionUS DIY, said: "For the past few years we might as well have closed up during the event, as we make nothing.

"People use the back of our shop as toilets, take drugs there, and we are left to pick up the syringes.

"All the roads get closed and with thousands and thousands of people milling around it's just not safe."

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## FIRE

The Mirror, Aug 25, 2014.

Leeds Festival goer wakes to find neighbouring tent on FIRE as people burn their camping gear

*"Revellers were setting their tents alight this morning rather than taking them home from the festival site at Bramham Park*



Wake up call: This young man found the tent next to him was engulfed in flames

A Leeds Festival goer woke up this morning to find the neighbouring tent on FIRE, as revellers set their camping gear alight rather than taking it home.

Throngs of weekend party goers left a trail of burning tents behind them as they left the festival site in West Yorkshire this morning."

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ANIMALS CAN DIE IF THEY INGEST EVEN ORDINARY MEDICATIONS THAT ARE HARMLESS TO HUMANS AND THAT PEOPLE USE EVERY DAY.

EVIDENCE FROM PREVIOUS EVENTS IS THAT AREAS SURROUNDING AN EVENT SITE ARE MOST LIKELY TO BE TARGETTED BY ILLEGAL DEALERS (THEREFORE NOT UNDER THE CONTROL OF THE ORGANISERS)



The Home Office wrote to festival organisers in 2015 explaining that they have "continuing concerns about the availability of illegal drugs and new psychoactive substances (NPS), often inaccurately referred to as "legal highs", at music and dance festivals in the UK..."

**THE SECURITY PROBLEMS ARISE IN THE SURROUNDING AREA.  
UNLIT WOODS AND GORGES PLACE OUR POLICE AND FIRE SERVICE  
PERSONNEL AT RISK**

**Evening Standard 8TH MARCH 2016**

**"Local residents call for ban on music festival in Finsbury Park**

The guards on the gate were seriously outnumbered by the volume of people who stormed the venue, all of whom made it past security.



Local campaigners are calling for a huge north London music festival to be axed after it was beset by rampaging gatecrashers last year.

Residents say the Wireless festival brought "scary" disorder to Finsbury Park in July 2015 and also left

the green space in tatters, with the ground looking like a "desert" and strewn with laughing gas canisters and broken glass. But it hit the headlines for the wrong reasons after large crowds of youths were filmed repeatedly trying to break into the event, with many successfully storming through fences.

One shocking video showed a lone police officer attempting to hold off a crowd of would-be gatecrashers with a baton.

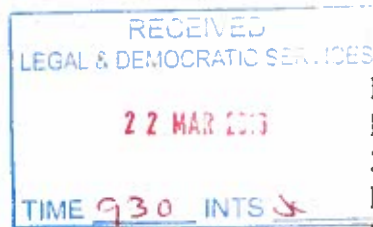
At least eight people were arrested during the course of the event, including for knife possession and actual bodily harm. Now the Friends of Finsbury Park are leading a campaign against plans for this year's festival, which they say is oversized, attracts anti-social behaviour and causes their windows to shake from the booming noise. They also feel it is unfair to exclude local families from such a large area of the park with unsightly fencing they claim spoils the atmosphere.

Tom Palin, 47, the group's chairman, told the Standard: "Last year the event caused severe damage to the fabric of Finsbury Park." "It turned the grass into desert scrubland which stayed that way for months. It encloses a third of the park in a huge sheet metal fence, locking out families." "It's unbelievable that it's allowed to happen. There were problems with break-ins and public disorder last year, it's a scary situation. David Lammy said the park looked like the Serengeti after last year's event. "It's a horrible thing to happen in your local park and it doesn't feel very safe or controlled."

**ENDS**



Head of Law and Admin  
Angus Council  
Angus House  
Orchardbank  
Forfar  
DD8 1AN



Irene Donaldson  
Roselea  
3 Muirdrum  
Nr Carnoustie  
DD7 6LE

19<sup>th</sup> March 2016

Dear Sir/Madam

**Application by Jigsaw Management for a Festival at Panmure Estate**

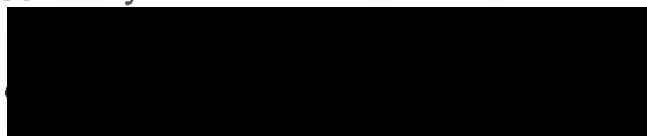
I write to object in relation to the above application for a festival to be held at Panmure estate in June 2016. The grounds for my objection are related to The location of the proposed festival and traffic management. Also public order, public safety and the possibility of undue public nuisance.

1. I grew up in the area, have visited the estate and know how important the history and heritage is to Scotland and the UK. I am concerned that 30,000 festival goers will cause damage to the monuments, wildlife and the natural heritage. Although the festival organisers say that they will fence off all these people they have advertised the festival as 'being in the woods'. People who are disappointed and frustrated at finding themselves in more open land will have every right to leave the fenced off area and go 'into the woods' where the damage could be irreversible. I am very concerned that children and young people who are not allowed in to the event will gain access to the estate from it's numerous entrances around the perimeter and put themselves and the estate at risk of damage. It is not possible to ban people from the estate itself so how are the Police going to protect the people, the monuments and the wild life. I am concerned about what will happen after the music stops at 11pm. There are potentially 5,000 people camping overnight and with nothing happening after that time it is likely that they will want to explore the area further. Some people will probably be 'in the woods' but others may decide to walk down to Muirdrum or Carnoustie. Even if only 1,000 people decide to take a wander, how will this be controlled by Police Scotland. I want to know what plan Police Scotland have to ensure that festival goers do not cause alarm, nuisance or damage to the estate and/or nearby villages during the night?
2. I do not believe that the road network is suitable for this scale of event. It is a totally different scenario to the Golf Open as the road and rail

infrastructure at the Golf is properly designed to cope with the large numbers of vehicles and attendees. Access to the estate can only be via the B9128 country road or the A92 at the Muirdrum access. I have heard that the B9128 may be closed southwards to enable a one way system to be put in place. This would certainly prevent accidents on the narrow road and bends in that location. However, there are many people including local farmers who require this route to remain open. The most major concern is about how the Police are going to keep traffic flowing on the A92. People locally fear that traffic will tail back for miles and that it will be total grid lock. When I went along to the Consultation event in Carnoustie I was told that it would not be a problem for people living in Muirdrum and that we would be able to drive in and out of the village with no problem. However, I am now fearing that it could take hours to get in and out and I just can't see how the Police are going to manage it.

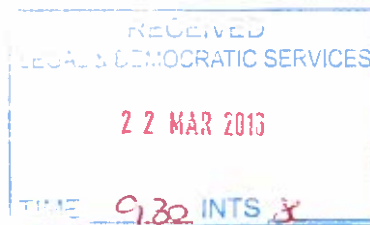
I do hope that you will consider my objections carefully as T in the Park was a complete disaster and we do not want it repeated in Angus.

Yours sincerely

A large black rectangular box redacting the signature of Irene Donaldson.

Irene Donaldson

Head of Law and Admin  
Angus Council  
Angus House  
Orchardbank  
Forfar  
DD8 1AN



20th March 2016

Dear Sir / Madam

**Objections to the application for a Public Entertainment Licence on behalf of Jigsaw Management / Festival of House 26th February 2016**

We would be grateful if you would consider our objections to a Public Entertainment Licence being granted to Jigsaw Events and Management Ltd for the Festival of House music festival which is proposed to be held at Panmure Estate, Carnoustie, between 10 - 12th June 2016.

**The Civic Government (Scotland) Act 1982 states that a licensing Authority shall refuse an application to grant a licence if in their opinion;**

a (ii) the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for it's management is; not a fit and proper person to be the holder of the licence.

c (i) the location, character or condition of the premises (site) or the character or condition of the vehicle or vessel.

c (v) public order or public safety

d there is other good reason for refusing the application

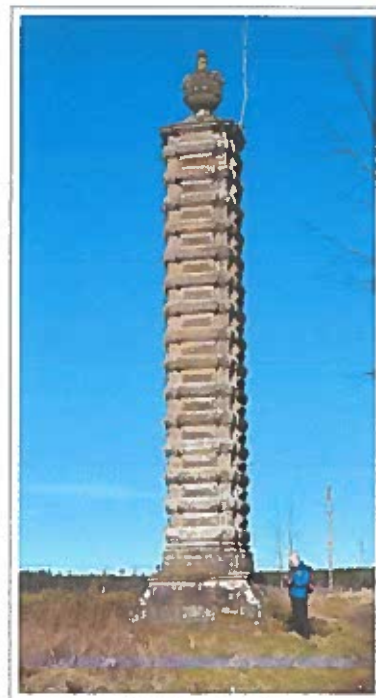
**a (ii) the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for it's management is; not a fit and proper person to be the holder of the licence.**

- Jigsaw Events is a very new company with no previous experience of organising a festival and therefore no proven track record of their ability to manage an event of this nature or size. There are two company directors, Alan Carnegie who owns approximately 99% of the company, whilst Craig Blyth and another share holder own the remainder. At the consultation event in Carnoustie we asked what would happen if the company liquidates on 12 June 2016 following a major incident at the festival. We were told that Red Pepper Events would be responsible as all the event planning has been delegated to them and they have the right level of public liability insurance. However, Red Pepper Events expressed the view that Craig Blyth would be responsible and others thought that Bell Ingram would be responsible as they provide the consultancy reports. We asked about the accountability of consultants and it was stated that they all have personal liability insurance to guard against being sued for providing mitigation strategies that prove ineffective. Finally, some people were of the view that Angus Council will be ultimately liable for any major incident as they approve the Public Entertainment Licence. It is not possible to elicit whose name or signature is on the 'notice for display' for the Public Entertainment Licence but we believe that Alan Carnegie should be the named applicant and that he should accept full responsibility and accountability for the event. Only by doing so and ensuring that there are adequate assets and insurances in place will Jigsaw Management evidence that there is a 'fit and proper person' in place to hold the licence.



## C (i) the location, character or condition of the premises (i.e. site)

- Panmure Estate is said to be the jewel in the crown of Carnoustie and surrounding area, being a place of national and international importance. There are ten B listed scheduled monuments in the estate and two A listed monuments. Historic Environment Scotland are unable to comment on the B listed monuments as they only have a remit for the A listed structures. They have been informed that the two A listed structures are well away from the designated event site. However, the Marriage Column (otherwise known as the Commemorative Column) is within metres of the designated border and would be at enormous risk if festival goers stray from the site and in high spirits attempt to climb it. Any damage to this monument will be irreversible and irreplaceable. It will cause international outrage and to say that, 'we relied upon a Consultants report commissioned by Bell Ingram' will not be acceptable. After all, Bell Ingram supplied reports for T in the Park at Strathallan.
- The risk of festival goers straying from the open site into the woods is very high as the event has been falsely promoted by the organisers as 'in the woods' (Appendix 1). Festival goers are attending in the expectation that they will be 'in the woods' and it will require a massive policing exercise to keep them out of the wider estate over the whole weekend. The organisers estimate that 15,000 people will attend the festival each day and that there will be 5,000 people camping overnight. If a large crowd stray into other areas of the estate wishing to exercise their right to be 'in the woods' as promised, the risk of damage is high and we have seen no evidence of adequate mitigation strategies.
- We understand that the event organisers are concerned about adults and children entering the estate from its numerous access points and that to mitigate against the risks to both public safety and heritage they aim to persuade Government Ministers to relax the 'right to roam' for a few days. However the 'right to roam legislation' only applies to footpaths and roadways so people can still use any of the tracks in the location. As security guards are unable to enforce any relaxation of the 'right to roam' legislation the estate will require to be Policed by hundreds of officers from Police Scotland. As this will require to be 24 hour policing over the best part of three days the expense is likely to exceed the resources that the police are able to commit to the festival.



- Historic Environment Scotland have advised us that Angus Council have statutory duties in relation to the B listed monuments within the estate. St Margaret's Mount is within the designated event site itself with the other monuments being scattered throughout the estate. These monuments are irreplaceable and worth far more to the heritage of Angus over the longer term rather than a two day festival.



#### **C (i) and C (v) public order or public safety**

The B listed Montague bridge spans a gorge and is approximately 80ft high. It has been closed to cars over a long period due to fears about it's safety. We now understand that the festival organisers have decided to use the Montague bridge as a road for emergency vehicles to exit the site. The bridge was only built to take horse and carts and has never been tested using heavy vehicles such as fire engines and ambulances. Any collapse will be catastrophic and the lives of our emergency workers will be put at risk. We have not seen any evidence of a structural engineers report from an independent company to provide assurance that the bridge can withstand the weight of emergency vehicles of the size or number that might be required at the festival.

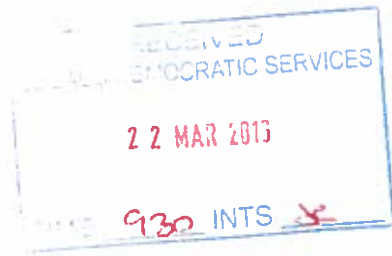
The risk of people falling off the Montague bridge under the influence of alcohol and/or drugs is also very high due to the design of the bridge wall. Although we understand that the organisers do not want any children to attend the event (over 18s only) there are many local people who still believe that the festival is good for the 'young folk of the town'. These same young folk are excited because they know they can enter the estate free of charge from it's many entrances and walk across the Montague bridge. Many of them will want to camp in the grounds overnight and again we have not seen any evidence of how these risks can be adequately mitigated.



On behalf of East Haven Together

Wendy Murray, Lead Trustee





28 Killoch Street

OBJ13

Camarestre

Angus

DD7 7EF

12.3.16

Angus Council, - To Whom it may Concern,  
Re application for 'Public Entertainment Licence'  
by Sigsaw Media and Management.

I wish to lodge my objection to the  
above application for permission to  
hold a 'House' music festival on the  
Pannure Estate, Camarestre in June 2016.

I am very concerned about the  
possible environmental impact such an  
event would have on this location.  
The Pannure Estate is part of our  
natural heritage and is home to a  
variety of species including badgers,  
bats, otters, red squirrels and a  
number of birds including Ospreys and  
White-tailed Eagles. There are also a  
number of irreplaceable historic monuments  
on this estate.

The considerable disruption to the  
above species in terms of breeding  
and feeding at this time concerns me.

2  
Disruption from seriously loud noise from the music itself which creates heavy bass notes, and vibration as well as that of 15,000 people and their associated traffic and movement, could have an enormous impact on both the wildlife and environment.

Badgers are protected in law by the 'Protection of Badgers Act 1992'. Part of this act states - "Interfering with a badger sett, or disturbing a badger while in its sett, or obstructing access to a sett" - is against the law.

In Section 1(2) it states that a 'person is guilty of an offence, except as permitted by or under this Act, he knowingly causes or permits to be done an act which is made unlawful by any of the stated disruption in Section 1. Angus Council has a legal obligation to ensure that no such disruption happens.

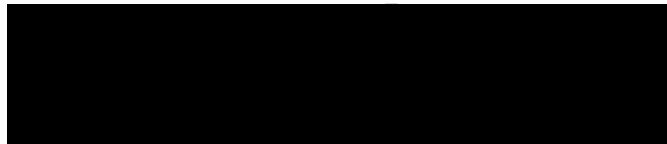
Bats are also protected under Scottish Law. All bats and their roosts are legally protected by the 'Conservation (Natural

3/  
Habitats, +c) Regulations 1994 (as amended) - "the  
Habitats Regulations". A bat roost is any  
structure or place which a bat or group of bats  
use for protection or shelter. As bats  
return to the same places every year,  
a bat roost is protected even if there are  
no bats there.

Angus Council have a legal obligation  
to ensure that the bat roosts on  
Panmure Estate are not disturbed  
by the noise and impact a 'House  
Music' festival would create.

In my opinion the proposed venue  
of the music festival is highly  
inappropriate. I urge Angus Council  
to take these concerns into  
account and decline the licence  
application at this location.

Yours faithfully





Hand Delivered by  
Sheila Pattle  
Tues 22/3/2016  
@ 12.30hrs

Iain & Maggie McKendry  
Balhill House  
Panmure Estate  
Carnoustie,  
Angus  
DD7 6LW  
Tel (home): [REDACTED]  
(mobile): [REDACTED]  
Email: [REDACTED]

March 21, 2016

Head of Law and Administration  
Angus Council  
Angus House  
Orchardbank Business Park  
Forfar  
DD8 1AN

To Whom it May Concern,

**re: Public Entertainment License — Jigsaw Events & Management Limited. Festival of House, Panmure Estate**

I am writing to formally lodge my objections to the above PEL application on the following grounds:

This is a significant event over several days with 15,000 ticketed attendees (5,000 camping) accessing residential and agricultural land in a sensitive estate with historical buildings and which accommodates a variety of wildlife. While I welcome an event of this size to the general area, I believe the choice of site presents insurmountable challenges for the organisers such that a safe, low impact event is impossible, particularly in relation to access and impact on the residents and the area's valued estate land.

I believe the council has a duty of care over

- the residents, as constituents,  
and
- valued estate ground and structures within Panmure Estate,

This should be the council's overriding focus and responsibility in assessing the PEL application.

The organisers have been modifying their plans continuously in this respect such that I cannot know their current or final plan, but those plans I am aware of all suffer the same fundamental problems. My concerns on those are as follows:

**Non-Ticketed Access & Impact to Estate Residents' security, privacy and property.**

The estate incorporates residents scattered throughout and close to the event site; it is porous in terms of access, meaning that while it may be possible to confidently secure the 'event grounds' against unticketed access (a mandatory action for a ticketed event, preserving the cash flow of the organisers), it would appear very difficult to secure the estate grounds, including the residential areas, against unticketed access by people who wish to exercise their right to roam and approach the event site close enough to the secured area to hear or see the acts or attempt to cross the fencing into the arena.

These people could be within the estate during antisocial hours over the duration of the

event, which, according to the public entertainment license application, opens to the public mid-week (Thursday), thereby running through two school days to the weekend, impacting childrens' sleep, school time and residents' working time, when properties may be lying empty and at greater risk of unauthorized access. Allowing for the varying planning of the organisers, this is problematic in the following ways:

- The organisers are planning to secure Montague Bridge<sup>1</sup> by constructing fencing around the bridge for the purpose of mitigating the safety hazard it presents by people climbing on it. This is a puzzling and worrisome choice of action:
  - It represents a double standard in their planning; if their access controls for ticketed people in their event site are secure, which they must be to confidently run the event, there should be no need to protect the ticketed public from themselves by securing the bridge against climbing. If those plans are not secure, then residents on the East, very close to the campsite, and the West of the estate, close to alternative estate access, should be fearful of the public the organisers feel are in need of protection from themselves in constructing a safety fence on the bridge. The organisers don't seem to see a need to similarly protect the same public from the building site only 200 metres further from the bridge, but I would strongly suggest this is an equal hazard in need of attention.
  - If they do see a need to secure the wider estate from the unticketed public, then they should have the powers to do so by revoking the rights of access over that area, which, on recent discussion, they are applying for. If the powers are adequate, and the security team are able to divert the small number of people away from the hazard of the bridge, then the fencing is unnecessary. If the powers are inadequate, then this is again a problem for nearby residents and other safety hazards such as the building site nearby.
  - The bridge does not belong to the organisers or the landowner (Mr Niven) offering his land for the event. Permission has not been requested for this from the relevant landowner (confirmed by estate management). Despite this, contractors have been seen measuring up the bridge for bolt holes to mount the fence to, which would seem inappropriate for a listed structure such as Montague Bridge.
- The powers that the proposed security team have at their disposal are inadequate to confidently deal with the likely number of unticketed people attempting to access the estate over the period of the festival (and potentially wider time period).
  - I don't believe they have the powers to remove people who disobey their requests to move away, and an escalation to the police does not seem a plausible next course of action given the police will already be

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<sup>1</sup> I understand that the organisers are modifying their application to revoke the right to roam over a wider area to include ground outwith their event site (Montague bridge, for example). They have also discussed a further extension to include the west gates and roads between there and Montague Bridge. I cannot determine what the final plans will be, but the objection period is now, so I have to document my concern to this moving target.

stretched by the influx of 15,000 people to the festival and focusing on other issues.

- I have not seen a guarantee that security staffing will be adequate to provide 24/7 security able to prevent access through such a porous estate.
- The proposed and modified application to revoke the rights of access will only cover part of the estate, even at the widest extent of their latest plan. This allows people to access other areas of the estate nearer to residential property.
- I note that early communication with residents regarding the event suggested a 2 day event with a 10pm curfew for event activities. This curfew has since been discarded, and the 3 day entertainment license application we see now lodged extends to 1am on school days, with additional entertainment through the night for those camping. Again, a unacceptable moving target for us to deal with.

Access issues are further compounded by satellite navigation inaccuracies which wrongly route people along estate access such as

- private gated tracks (e.g. opposite Crombie Park entrance),
- tracks marked as "no through road" (e.g. Guildy Den),
- private roads which are maintained by residents and
- open residential routes not typically frequented by large numbers of people and therefore open to damage, unsafe at night for those who may not be fully alert due to alcohol, drugs or general exuberance.
- other unsecured access from surrounding area through forest/woodland with significant inherent safety risk due to uneven ground, ravine, bridge and water hazard.

**Violation of Access Rights & Responsibilities:** The event is highly likely to impact residents in all areas of the wider estate with a significant increase in pedestrian, vehicular and camping access during all hours of the day and night. While I value the 'Right to Roam' myself, I also note that various parts of that legislation are at risk in relation to the likely access on the wider estate outwith the event grounds. For example:

- vehicular access is not part of access rights on estate roads or tracks, but how could this be controlled, patrolled or managed as part of the event planning? I anticipate abandoned vehicles throughout the estate for the duration of the festival and onward which could not be prevented or moved on by 3<sup>rd</sup> party security staff with no effective powers
- wild camping is permitted in the access code, but only if lightweight and in small numbers. I fear the event will attract more than the small numbers implied in the code, due to the easy access to such a porous estate and the benefit to be gained in enjoying the event free of charge. I anticipate noise, damage and litter as a legacy of wild camping associated with the event. I see no way for the organisers to promise anything to mitigate this.
- The Code says, "Access rights do not extend to houses and gardens." In some cases the extent of a garden may be difficult to judge. Many residential areas in



the estate, particularly those nearest to the event site, transition from obviously private grounds to wilder, more public areas. These areas are particularly likely to suffer from intrusion from people unfamiliar with the estate, in the hours of darkness and/or under the influence of alcohol or other substances.

- The information publicised by the organisers mentions an exemption of access rights for the event site for 5 days, but not for the estate grounds as a whole. This plan, as mentioned above, is changing on a regular basis, but even extending the area where the right to roam is revoked to the widest possible would not allow the organisers to patrol or manage undesirable, unticketed access from such a porous estate.
- I understand a phone line will be set up for residents to use should there be an intrusion or other issue regarding security, but I don't see what powers they have or guarantees the organisers can offer to act on any problem in this respect.

The site choice therefore amounts to an invitation to irresponsible access, and I fear that in the likely event of contravention of any access laws to the detriment of residents and their families, we will be unable to deal with it until after everything is over, and the damage is done.

I have heard no guarantees for residents from the organisers (in fact one of their officials admitted the site was 'a poor choice, particularly difficult to manage, and no guarantees were possible for resident's security concerns', at their recent exhibition).

As part of the decision making for this application, can anyone offer guarantees to residents regarding dealing with any of the aforementioned access issues at the time they occur? Do we, as I fear, simply suffer in silence (sic) until after it's all over?

**Damage to the event site and wider estate.** Events such as this typically involve significant waste, litter, damage and crime. Choosing a site such as Panmure Estate increases the likelihood and impact of this and impacts more people in terms of nearby residents compared with a more typical well-secured festival site. I have seen no publically available guarantees from the organisers that litter in difficult to access areas such as the gardens in the ravine formed by Monikie Burn and beyond will be cleared within any sensible timescale and I don't understand why residents or visitors should have to endure this due to a poor and selfish choice of venue for the event. The organisers are depending on a prevailing wind from the south west and clement weather, and recognize that if this is not the case, their plans are not likely to cope, to the detriment of residents to the south and west, and to the Monikie Burn area to the immediate south. The same goes for damage to property, roads, verges and the general environment which is one of particular sensitivity both in terms of buildings and wildlife. The estate roads, verges and paths are used to a small number of people impacting upon it, and an increase of the numbers of unticketed people likely for an event of this size, over a period greater than the few days the event runs for is likely to cause damage which will remain unaddressed by the organisers. We have recently seen an increase in road and verge damage due to the traffic connected to the small number of new houses on the west of the estate; this is a tiny fraction of traffic compared to the likely traffic accessing the estate for setup, tear down, and ticketed and unticketed visitors.

SNH suggest the following advice for running events in the outdoors:

- making sure that the privacy of local residents is respected and that they suffer minimal inconvenience
- planning the event so that easily damaged places are avoided and consulting relevant conservation bodies on what impacts might arise and how best to avoid these;
- accepting responsibility to repair any damage caused;
- putting something back into the outdoors, for example by making contributions to the local community or to help enhance the local environment

I see no offers from the organisers to undertake any of the above advice, and regard this omission from their planning as an insult to those they are impacting by placing this event in such an unsuitable location. Recently I received a verbal offer to make good any damage caused by the event. Verbal offers prompted from outwith the planning team are insufficient; we need guarantees in writing as part of the conditions of the PEL.

**Alternatives Sites.** I believe that the landowner offering the estate land for the event recently took ownership of what amounts to an alternative site at Hatton Airfield, very close to the estate. The comparison between the two sites is stark. Hatton would appear to offer an easily secured, low impact, low risk site, which does not suffer the same issues relating to impact to residents or damage to sensitive monuments, wildlife, environment or others' property. Whilst the purchase of this site is perhaps too recent to switch the location at this time, this comparison between Hatton and Panmure highlights the unsuitable nature of their current choice.

**Poor organisation, no guarantees & poor public information breeds low confidence in the PEL application**

Recent discussions with the organisers have exposed their rapidly changing plans for the event. This makes a mockery of the planning application process, and makes it difficult to factually assess the PEL. During one recent discussion, in response to a concern over the difficulty in assessing the event, I was asked to "judge the event after year one", which shows a distinct lack of concern for those impacted by a poor event (c.f. T in the Park at Strathallan, year one). I fail to see how such a large event should get away with a "suck it and see" approach. I conclude that this demonstrates :

- a lack of confidence in the ability of the team to organise the event and to promise that the event will be safe, secure and low impact.
- an unfairness to those residents such as ourselves who will be the main people to suffer should the poor planning and site choice made result in a less than satisfactory result

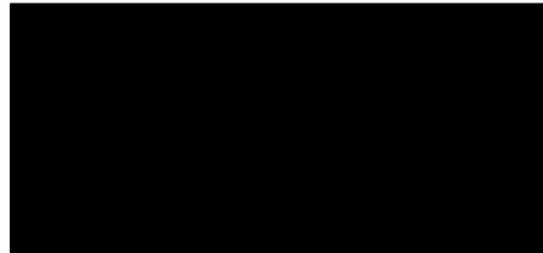
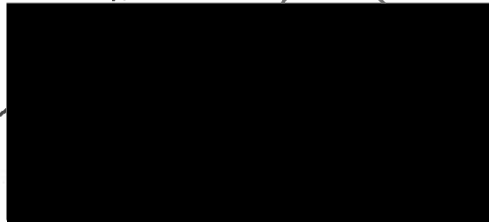
**Angus Council's Duty of Care in approving the license .** Given the aforementioned porous nature of the estate, likely issues to be endured by the residents and estate, what guarantees can the authorities give to assure their constituents who reside in and around the estate that they will receive adequate duty of care in terms of protection from the likely crime, damage and other impact on their privacy and property and wider environment as a result of acceptance of this application for an entertainment license for the event?

In accepting this application, there is a responsibility that lies with those signatories that

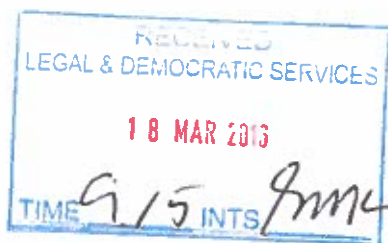
this is a safe and sure event which will not unreasonably impact represented constituents. I don't believe this statement holds up in the context of the Panmure Estate and this event.

I trust that the decision makers within the council, as elected representatives of the residents, will consider the value of Panmure Estate and the likely negative impact on it and on the residents from such a significant and risky event (one which has a preferable alternative site in the area) when deciding on the application being made by the organisers.

Sincerely,



Iain, Maggie, Lucy & Rosie McKendry



30 Clayhills Drive,  
Dundee,  
DD2 1SX

15 March 2016

Dear Sirs,

**Objection to application for Public Entainment License made by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitlvie Farm**

I refer to the above application for a Public Entertainment License, and hereby make a formal objection to the grant of this license. I request an opportunity to address the licensing committee when it meets to consider this application.

This objection is split into three parts:

1. Preliminary Objections
2. Subjective Objections; and
3. Representations

**1. Preliminary Objections**

**1.1. The PEL may not be a competent permission for the activity:**

- a) An Environmental Impact Assessment Screening Opinion was issued by Angus Council in respect of this event under reference 15/01040/EIASC. However a number of other planning applications and notifications have been made in respect of the proposed site which have not been taken into account as part of the EIA screening opinion process. The references for these applications and notifications are as follows:

[15/00811/FULL](#)

[15/00812/FULL](#)

[16/00090/PRIORN](#)

[16/00094/PRIORN](#)

These applications and notices detail changes to the use of the land for agricultural purposes. However, in the interests of fairness, I would request that the Council further investigate to determine whether these changes are for the purposes of improving the land for the festival or to facilitate the festival. In the event that the changes detailed in these

applications and notices are for the purpose of the festival, then the EIA screening opinion carried out in respect of the festival has failed to take into account the true impact of the festival on the proposed site. Moreover if the duration of the works detailed in each of these applications and notices is taken into account in terms of the duration of the festival, then the entire duration of the event is in excess of 28 days in which case the EIA screening Opinion may be incorrect in its assessment that the Festival does not constitute an Environmental Impact Assessment development.

It is therefore submitted that the Council cannot competently grant a PEL in respect of this event at this time without further investigation.

Moreover there are significant differences between the event that was described in the application for an Environmental Screening Opinion and what is being sought in terms of the Public Entertainment license. For example:

- i. The EIA screening request application describes a two day event, the application for the PEL details a three day event.
- ii. The supporting information with the EIA screening assessment application states that the event will conclude at 11pm whereas the PEL notice states the event will conclude at 1am.

It is also therefore submitted that what has been assessed for the purposes of an EIA screening Opinion is substantially different to the event that a PEL is being sought for. The determination that an EIA is not required is now questionable and the matter ought to be reviewed again.

- 1.2. A Public Entertainment License has not turned out to be a suitable permission for an event of this size, nature scale and complexity due to the organisers failure to properly consult and produce all relevant plans and reports in a timeous fashion.

The PEL process does not place any statutory requirements on the organisers to produce or publish reports or relevant information about the event. I understand that the Council have asked the organisers to carry out proper consultation and make information available on a voluntary basis, but the organisers have failed to do so. In this regard, I contacted both the Council (Alan McKeown) and the organisers when the Notice in respect of the application was served on 26 February. I was advised by Mr McKeown that none of the requested reports had been sent to the Council, although the due date for submission was February. The organisers indicated that these reports were still being worked on and would not commit to making the documents public

when they were finished. I understand that the Council have requested the following pieces of information from the organisers:

PLAN
Event Plan
Health and Safety Plan
Risk assessments for each site and activities
Public Health including, sanitation, food safety
Fire Risk assessments
Security & Stewarding Plan - on and offsite (risk areas)
Environmental Plan, water, waste, impact on site and species.
Noise Plan
Traffic Plan
Medical Plan
Drug Management Plan
Alcohol Management Plan
Contingency Plan
Evacuation Plan
Weather Plan
Communications Plan
Maps of the entire site, with clearly marked locations.

The failure to produce these reports gives rise to two significant areas of concern:

1. The organisers' ability to effectively run this event when they have been unable to produce any of these reports within the Council's timescale.
2. The EIA Screening opinion issued by the Council clearly identifies potential detriment to owners and occupiers of premises near the festival in terms of waste, traffic, light and noise. It indicates that such issues will require management and that detailed plans should be produced. Such plans ought to have been made public and therefore open to objective scrutiny.

Where a decision is to be made that may result in detriment or loss of amenity to an individual, then that individual has a right to a fair hearing and to make representations to a decision maker to influence any decision which has the potential to cause her harm. In this case owners and occupiers of land near the festival have a right to make representations to the Licensing Committee in respect of the potential nuisance caused by waste, traffic, light and noise. It is

unfair that their ability to assess the true impact of such nuisance and to prepare valid objection has been undermined by a failure on the part of the organisers to provide all relevant information in respect of this event at the same time as the PEL application was made.

The failure to produce these documents and make them available means that nearby owners and occupiers have not been given fair notice of what is actually proposed. As indicated, these owners and occupiers have been put at a significant disadvantage in terms of assessing the impact of the event on their properties and being able to frame valid and relevant objections, if appropriate.

It is unfair and contrary to Natural Law that these documents were not made available to the public at the same time that the application for the PEL was made. It is impossible to properly understand what is actually being proposed without this information.

It is particularly unfair to those who own or occupy property in close proximity to the site where it is likely that the overbearing impact of the music festival would adversely affect the amenity of those properties.

Moreover, the process gives rise to inequality. The organisers are entitled to receive all objections made in respect of the event to allow them to prepare to deal with those objections before the Committee whereas the public and neighboring proprietors have no right to information in respect of the event to enable them to assess the impact of the event and prepare valid and relevant objections, if appropriate.

Although the organisers have held two consultation events in respect of the event, there was very little information presented at these events. These events seemed aimed toward gathering information rather than sharing information. Moreover, the small amount of information presented at these events is not accessible. Access to the information relied on interested parties being available and having the means and ability to attend these events. The information has not subsequently been published in a manner that is accessible to all.

In view of the manner in which the application process has been approached with a virtual vacuum of information, there is a significant risk that should the Licensing Committee to proceed to make a decision in favour of the event, then it would not be fair or lawful.

In this regard, I would refer the Committee to the Scottish government publication, "right first time: A practical guide for public

authorities in Scotland to decision making and the law" (attached) and in particular to page 28 which deals with fairness.

## **2. Substantive Objections**

**2.1** The premises where the event is to be held is unsuitable having regard to:

### **a. the location, character or condition of the premises**

The former Panmure Estate is an area of outstanding natural beauty, but is not a suitable location to safely and effectively hold a music festival. When asked at a consultation event why the location was chosen Craig Blyth advised me and other interested parties that it was chosen because it is beautiful. I am therefore concerned that the organisers have put aesthetics at the forefront of their plans rather than practicalities. Whilst the festival is a good idea in theory, the organisers have picked an inappropriate location and are effectively trying to put a square peg into a round hole by holding an event of this type in this area.

It is impossible to hold this event at the proposed site without exposing residents to significant noise and light nuisance, or infringement of legal rights of access and egress.

Due to the fact that the final layout of the festival and traffic management plans are not yet available, it is impossible to comment on the exact nature of the prejudice to residents and those who live or own property near the site. However it is impossible to hold the event without prejudicing, some, if not all of the residents and it is unfair that these residents are unable to offer specific and detailed objection to the plans because these plans are not available.

It should be noted that the Estate is porous with a network of roads leading to the festival site and it will be very difficult to manage all routes in and out of the area effectively. The last minute nature of the traffic planning exercise is evidence of the difficulty of this task and the risk that the measures put in place will not be sufficient to avoid traffic chaos is high.

There are also many dangerous features in the area such as a large ravine, networks of ditches etc. There are other sites which pose less of a risk. As indicated, my understanding from talking to Craig Blyth is that other sites were disregarded because they were not as beautiful. It is respectfully submitted that practicalities should have been prioritised ahead of aesthetics.



It is however again very difficult to offer objective comment of the management of risks associated with the site due to the fact that no reports on this subject matter have not been made available. Again it is submitted that this is unfair and further demonstrates that this licensing process is not sufficiently transparent or robust.

An event of this nature, particularly if repeated, will impact on the natural and historical character of the area. Although the organisers are promoting an environmentally friendly ethos it is likely that the carbon foot print will tell another story. The event is likely to produce significant amounts of litter, use diesel-guzzling electric generators and fields normally used for agricultural purposes will be transformed into temporary car parks.

It is however, again very difficult to provide specific and detailed comment on historical, environmental aspects and waste management associated with this music festival because detailed plans and reports have not been made available. It is very difficult to understand why such information was not provided at the time of the application, and it is again submitted that the process is inherently unfair because such information has not been produced to allow proper public scrutiny and adequate time for interested parties to assess the plans independently and produce objective comment on such plans.

#### **a. the nature and extent of the proposed activity**

The proposed event by reason of its size, scale, nature and the noise it will produce will have an unacceptably adverse impact on the amenities of the properties immediately adjacent to the site and the surrounding area by reason of overbearing impact. There are properties which will be completely landlocked by this event and nearby residents will be impacted by the noise and light produced both by the setting up of the event and the event itself. It is also highly likely that residents' normal day to day movements in and around the Estate will be significantly impacted by the event and its set up. There is also a risk of illegal campsites on neighbouring properties with associated health and safety and fire risks. Property owners like me will also be at risk from such activities and will have to bear the cost of any clean up activities required.

Neighbouring proprietors are at a disadvantage to the organisers because they have not been included in Steering Group or Sub-groups and have therefore not had support and assistance provided to the organisers in terms of identifying and mitigating risks associated with a large influx of people to the area.

It is again very difficult to offer objective comment on the nature and extent of the proposed activity due to the lack of finalised plans and it is again submitted that it is unfair.

Moreover, in this respect, it should be noted again that the small amount of information in the public domain is contradictory. The EIA Screening application indicates that the event will take place over 2 days to 11pm at night whereas the PEL Notice of application seems to indicate that the event will take place over 3 days until 1am.

#### **b. public order and public safety**

Individuals who have questioned both the organisers and the Council about substance misuse (drugs and alcohol) at this event have been warned to be cautious when raising an objection on this ground on the basis that they will appear prejudiced or scaremongers. However given the nature of the event and well documented history of instances of substance abuse or misuse at other music festivals, questions about substance misuse are not on the face of it unreasonable. It is unfair to discourage those who live near the proposed event or indeed anyone from asking questions about alcohol and drugs by using the suggestion that such questions are inherently prejudiced. As a parent with a young family, one of my concerns has been about substances that might be left on the estate before and after the event. I asked the organisers about this and received an email on 23 February from Ed Murdoch on behalf of Festival of House which stated:

*"With regards our risk assessment in relation to drugs/drug use, our assessments so far indicate the highest risk as being from festival goers attempting to bring small quantities of drugs into the festival for personal use. Having said that, we do not assess this as being a particularly high risk when compared to some of the scaremongering which has surrounded the festival in this respect. To mitigate the risk of ticket holders attempting to bring any drugs or legal highs for personal use into the festival we will be advising festival goers in advance not to attempt to do so and that robust measures will be in place to prevent drugs entering the festival. This will take the form of a zero tolerance (which includes legal highs/NPS) and proactive disruption approach by our security contractor in conjunction with Police Scotland and will include searches, a secure amnesty area in advance of the security/police checkpoints to encourage those attempting to bring drugs on site to dispose of them in the amnesty bins*

*provided, internal covert/overt security operations and perimeter security patrols and monitoring."*

This assessment does not seem to take into account any assessment of risk before or after the event.

It is also my understanding that public order and safety at the event will be managed to a large extent by a private security firm. In that regard, I would refer the Committee to the recent newspaper coverage of an attack perpetrated at T in the Park by an employee of such a contractor (extract attached). It is unlikely that this person will be involved in the security of the event, but it does highlight the increased risks where public safety and order are contracted to a private firm. It would be reassuring to see information about the firms hiring and vetting practices.

### **3. Representations**

**3.1** The event organisers have put considerable effort into organising a line up, promotion and engaging with the Press in relation to this event. The last minute nature of the reports which were requested some time ago by the Council would suggest less effort has been put into managing the practicalities of the event such as public safety, and traffic management. I am concerned that there is a hope on the part of the organisers that by building up a head of steam behind the "party" aspect of the event through promotion and ticket sales that the Licensing Committee will come under considerable pressure to approve the event to avoid disappointing prospective festival goers. I would request that the Licensing Committee disregard ticket sales and the more frivolous side of the event and focus on the assessment of practical arrangements in reaching a decision on the license. In that regard, I would request that the Council have regard to the last minute nature of much of the practical arrangements and give this due weight. In particular, I would invite the Council to have regard to the last minute planning at T in the Park where ultimately there was traffic chaos.

**3.2** I would also request that the Council have regard to the fact that this is the first time that the festival will take place at any site. How it will turn out is largely unknown. Whilst I anticipate that the reports that the Licensing Committee will eventually have access to will be supportive of the argument that the event can be successfully, safely and effectively managed at this site, I would ask the Committee to bear in mind that many of the reports, and particularly those which deal with environmental concerns, will have been paid for by the organisers and there is therefore a collective interest in seeing the event take place and the production of reports which support that conclusion. In that regard it is also significant that these reports were not made public at the time of the application and therefore it has not been possible for

interested parties to arrange impartial, objective scrutiny of these reports.

Yours sincerely,

A solid black rectangular box used to redact the signature of the sender.

Caroline Gordon

# right first time

A practical guide  
for public authorities  
in Scotland to  
decision-making  
and the law



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# how to use this guide

If you are responsible for making or advising on decisions, the legal considerations you have to take into account may sometimes seem daunting, even bewildering. What should you be thinking about, or doing, and when?

The **checklist** on page 5 and this guide are here to help.

The process will begin with you getting ready to make a decision (or a recommendation to Ministers or officials) by sizing up and scoping out the task in front of you. You will move to gathering and analysing facts, evidence, views and opinions to inform the decision. Having done that you will evaluate the options and take the decision. Finally, you will notify others of the decision.

The **checklist sets out key questions to ask yourself at each step**. The rest of the guide helps you answer them.

The checklist and guide have limitations. They are intended to help with any administrative decision, but they are not specific to a particular kind of decision under a particular power, nor a substitute for the specific guidance that will sometimes be needed. **They are no substitute for asking your lawyer.**

Decision-making will feel and be messier than the checklist suggests. The questions overlap – in places we flag up where one can be relevant if you are considering another, but bear in mind that all of the questions may have to be considered.

**Step 1** | Getting ready to decide  
questions designed to make sure that you understand the law regulating your decision-making power. They are important – you will have to return again and again to these questions and the law regulating your power at each step.

**Step 2** | Investigation/evidence gathering process  
important questions about the way in which the decision is made, i.e. on the *procedure* leading to the decision, not its *substance* or merits.

**Step 3** | Taking the decision  
Make sure the substance of the decision will be respected by the courts.

**Step 4** | Notifying others of the decision  
Do you have to give reasons?

## **What does the legal jargon mean?**

We introduce and explain the legal terms used on page 6.





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### Step 1 | Prepare: Getting ready to decide – 10 questions

- ☐ 01. Where does the power to make this decision come from and what are its legal limits?
- ☐ 02. For what purposes can the power be exercised?
- ☐ 03. What factors should I consider when making the decision?
- ☐ 04. Is there a policy on the exercise of the power?
- ☐ 05. Does anyone have a legitimate expectation as to how the power will be exercised?
- ☐ 06. Can I make this decision or does someone else need to make it?
- ☐ 07. Have devolution and the Scotland Act affected the power?
- ☐ 08. Am I complying with human rights and European law?
- ☐ 09. How has equal opportunities legislation affected the power?
- ☐ 10. Am I handling data in line with Data Protection or Freedom of Information obligations?



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### Step 2 | Investigate: Investigation/evidence gathering process

- ☐ 11. Does the power have to be exercised in a particular way, e.g. does legislation impose procedural conditions or requirements on its use?
- ☐ 12. Have I consulted properly?
- ☐ 13. Will I be acting with procedural fairness towards the persons who will be affected?
- ☐ 14. Could I be, or appear to be, biased?



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### Step 3 | Decide: Taking the decision

- ☐ 15. Have I taken necessary considerations into account, and is my decision reasonable?
- ☐ 16. Does the decision need to be, and is it, proportionate?
- ☐ 17. Are there decisions where the Court is less likely to intervene?



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### Step 4 | Notify: Notifying others of the decision

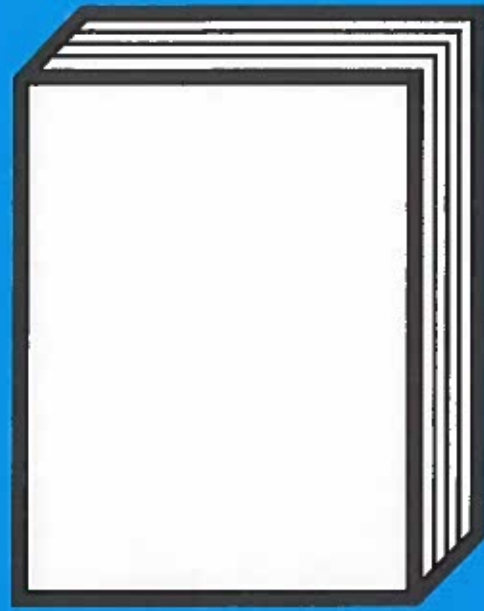
- ☐ 18. To what extent should I give reasons for the decision?
-

## Legal terms used in this guide

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<b>the Court</b>	Usually the Court of Session in Edinburgh by judicial review (see below). Other courts like the Sheriff Court will also enforce the rules described in this guide, e.g. in specific areas like licensing appeals, or if human rights and European law issues arise.
<b>European law</b>	The law which applies as a result of UK membership of the European Union, mainly the law of the European Community. See <b>Question 8</b> and <b>Annex 2</b> . Also known as “Community law”, EC law or EU law.
<b>human rights</b>	The rights protected by the European Convention on Human Rights (also known as “the Convention”) – not directly related to European law (see above). Also known as ECHR or “Convention rights”. See <b>Annex 1</b> .
<b>judicial review</b>	The procedure the Court of Session in Edinburgh uses to supervise decisions of public (and some other) authorities in Scotland. See <b>Annex 3</b> .
<b>the Scotland Act</b>	The Scotland Act 1998 is the piece of legislation that established the Scottish Parliament and the Scottish Government (although referred to in the Act as the Scottish Executive) and gives them their powers.
<b>statute/legislation</b>	Acts of the Westminster or Scottish Parliaments. Also covers regulations, orders or rules made under powers given to Ministers and others by Acts, often published as “Statutory Instruments” (“SIs”), or devolved Scottish Statutory Instruments (“SSIs”).
<b>ultra vires</b>	Latin for “outwith the powers” of an authority. See <b>Question 1</b> .

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# prepare

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## Step 1 | Getting ready to decide – 10 questions

- 01. Where does the power to make this decision come from and what are its legal limits?
  - 02. For what purposes can the power be exercised?
  - 03. What factors should I consider when making the decision?
  - 04. Is there a policy on the exercise of the power?
  - 05. Does anyone have a legitimate expectation as to how the power will be exercised?
  - 06. Can I make this decision or does someone else need to make it?
  - 07. Have devolution and the Scotland Act affected the power?
  - 08. Am I complying with human rights and European law?
  - 09. How has equal opportunities legislation affected the power?
  - 10. Am I handling data in line with Data Protection or Freedom of Information obligations?
-

# question one

## Where does the power to make this decision come from and what are its legal limits?

A decision-maker may appear to have unlimited powers. A statutory provision conferring a power may say "the Scottish Ministers shall grant or refuse the application" without qualification. But however unlimited the power appears to be, there may be legal limits.

To ensure that a decision is lawful and fair, and is not overturned on review by the Court<sup>1</sup> or challenged by any other authority, the starting point is to understand the nature of the power.

- Some limitations may be **express**: the purposes for which a particular power was given, or the criteria to be applied in exercising it, may actually be set out in the legislation.
- Other limits will be **implied** by the statutory scheme that gives the powers.

Other limits may be derived from the principles of administrative law. These include:

### Legality

acting within the scope of any powers and for a proper purpose

### Procedural fairness

for example to give an individual an opportunity to be heard

### Reasonableness or Rationality

following a proper reasoning process and so coming to a reasonable conclusion

### Compatibility

with human rights and European law

To act lawfully, a decision-maker must have the legal power to do what he or she intends to do. If not, that person will be acting *ultra vires* or outside his or her powers. Where the power does exist, it will usually be found in legislation.

It will be necessary to study the legislation to learn the limits and purposes of the power and to consult accompanying documents such as explanatory notes for assistance. Where doubt remains, you should consult your lawyer.

Sometimes the Government and public authorities will derive their power to act from a contract, or, in the case of Government, from Ministers' powers at common law, e.g. power to employ staff. In addition there are some powers which are considered part of the "Royal Prerogative" of the Crown because Ministers act on behalf of Her Majesty The Queen.

If the power is contained in legislation, you will need to look at its words to work out what the decision maker can and cannot do. Usually, words in a statute are given their plain English meaning. Where the words might give rise to a different interpretation, the Court will try to determine the intention of the Parliament that made the legislation. Either way, you will need to understand the general purpose of the statute, as well as the particular provision. It can sometimes be helpful to consider the explanatory notes to an Act or the executive note for subordinate legislation<sup>2</sup>, and the record of any proceedings in the Scottish or UK Parliament<sup>3</sup>. The Court will also read legislation so as to comply with human rights, European law and, in the case of legislation made by the Scottish Parliament, the Scotland Act.

<sup>1</sup> See Annex 3 for a short guide on how such court proceedings, known as judicial review, would operate.

<sup>2</sup> Published at <http://www.opsi.gov.uk/legislation/original.htm> for Acts and SSIs from 1999 and from 1987 for SIs.

<sup>3</sup> E.g. the Scottish Parliament Official Report <http://www.scottish.parliament.uk/business/index.htm> or "Hansard" at Westminster <http://www.publications.parliament.uk/pa/pahansard.htm>.

### **A power or a duty?**

Sometimes, even though the words in the legislation indicate that there is discretion as to whether or not to act – e.g. that the public authority “may” do something – there are cases where that must be interpreted as imposing a duty to act.

For example, a public authority with the power to grant licences may be obliged to do so where an applicant fulfils all the prescribed requirements. In order to determine what a law means when it says “may” (or for that matter “shall”) you have to look at the law in question and its purposes as a whole. If in doubt, contact your lawyer.

There may be a power available to a public authority but it may have a discretion about whether or how it is to be exercised.

### **Who can review decisions?**

For the purposes of this guide reference is made in general to the Court reviewing decisions. However it should be borne in mind that decisions are often reviewed internally as well as by administrative tribunals.

A decision may also be reviewed by the Scottish Public Services Ombudsman. Where a person is unhappy with the service they have received (which could include a decision or series of decisions) from a public body falling under the remit of the SPSO<sup>4</sup> they may make a complaint and have it investigated.

### **See also in particular**

#### **question six**

Can I make this decision or does someone else need to make it?

A patient challenged the Scottish Ministers’ failure to make regulations under the Mental Health (Care and Treatment) Scotland Act 2003 introducing a formal mechanism to allow restricted patients detained in medium and low security hospitals to challenge their conditions of security. Regulations introducing such a mechanism for those detained in high security hospitals had already been introduced. Having examined the background to the Act, its passage through Parliament and guidance issued by the Scottish Health Department following its coming into force, the Court held that it was clear that the provision allowing regulations to be made was intended to deal with a problem which may arise at some point in the future. Parliament had not intended to impose a time limited duty on the Scottish Ministers to make the Regulations.

*RM v Scottish Ministers*  
(2008) CSOH 123

#### **question seven**

Have devolution and the Scotland Act affected the power?

#### **question eight**

Am I complying with human rights and European law?

<sup>4</sup> See <http://www.spsso.org.uk/>



# question two

## For what purposes can the power be exercised?

As well as having the power to act, a public authority must use its power for a lawful purpose. Its action will be *ultra vires* and an abuse of power if it uses the power to achieve a purpose for which the power was not intended.

A circus company applied to a local authority for a temporary public entertainment licence. The licence was refused. The local authority stated that although they had not applied a blanket policy the local authority had a policy which did not permit circuses featuring performing animals based on the fact that the whole concept of animals performing in circuses was wrong. The Court found that the powers the local authority had been given by Parliament related to the registration of those wishing to provide public entertainment. This did not permit the local authority to prohibit types of performance of which it simply disapproved.

Gerry Cottle's Circus Ltd v City of Edinburgh  
DC (OH) 1990 SLT 235

Legislation may expressly set out the purposes for which a power may be exercised, or they may be implied from its objectives. The Court has accepted that a public authority may undertake tasks "conducive to" or "reasonably incidental to" a defined purpose. If for example a decision-maker has the power to hold a public hearing to assist in making a decision, related powers to hire accommodation, pay for IT etc. will be treated as being "reasonably incidental" to that purpose.

### See also in particular

#### [question one](#)

Where does the power to make this decision come from and what are its legal limits?

#### [question three](#)

What factors should I consider when making the decision?

#### [question seven](#)

Have devolution and the Scotland Act affected the power?

# question three

## What factors should I consider when making the decision?

To make a decision which is lawful, two main principles should be followed:

1. You should not base your decision on irrelevant factors or considerations; and
2. if there are factors or considerations which you have a duty to base your decision on, then you must do so.

There are certain rules which will help you to decide what factors you have a duty to consider, what factors are relevant, and those which are irrelevant.

If you are using powers given to the public authority by a statute, it might set out the factors on which you should base your decision. Some statutes set out factors which you have to pay "particular" attention to. So, whilst the statute doesn't set out every factor which you can consider, it does mean that you have to follow the factors that are listed.

If the statute doesn't set out factors to be considered then it helps to look at what the statute is trying to achieve (its purpose) and from that decide what factors are relevant to the decision you are to make. If your decision is challenged the Court will want to know the factors that you considered; for example the media's reaction to a decision is unlikely to be relevant to the purpose of the statute and the Court would be likely to decide that this was an irrelevant factor on which to base a decision.

An application for a regular extension to permitted hours was made to a licensing board. In considering whether or not to grant the application the licensing board was, in terms of the statutory provisions, to have regard to the social circumstances of the locality or to the activities taking place in the locality. The licensing board took into consideration that the local environmental health department had reported one week earlier that the premises were in an unsatisfactory condition. The Court decided that, in terms of the statutory scheme, this was not a relevant factor on which to base the decision.

*Bantop Ltd. v Glasgow District Licensing Board* 1989 SOLR 731

To take into account all relevant considerations required to come to a decision:

- you need to make sure that you have accurate and up-to-date information
- where you don't have the information that you need to make the decision you have to make sure that you can get it from those who have it
- you should consult (see [question twelve](#)) and follow any guidance or points of reference in place within your public authority which relate to the way the decision has to be made
- where representations have been made regarding the decision you should take account of them where appropriate.

# question three

In a planning appeal against the refusal of outline planning permission for a residential development on agricultural land, the Court found that the Reporter, in considering the application, had failed to address the evidence on housing land supply and had also misconstrued the significance of supplementary planning guidance. He had not undertaken sufficient analysis of the evidence and did not take account of material elements. Rather he applied his own personal view of the application and failed to identify any material consideration which would properly allow for departure from the development plan. He had also failed to properly specify what was meant when he gave as one of the reasons for refusal that the developers' proposal did not satisfy the definition of "affordable housing". The decision was struck down.

Aberdeenshire Council v The Scottish Ministers [2008] CSIH 28

It is important to remember that it is the factors which are used in making the decision that are important here and that you must be able to demonstrate that you have properly considered them.

In addition to looking to your powers you should also consider whether your decision could affect an individual's human rights. If so then evidence that you have taken such considerations into

account could assist you in responding to any challenge to the decision.

Whatever factors you decide are relevant, you need to be sure that the facts on which you base your decision are accurate and up to date. You should also consider whether the factors that influenced your decision, and the decision-making process itself, need to be recorded. In determining what should be recorded, it is worth bearing in mind the rights to access information created by the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

## **See also in particular** **question one**

Where does the power to make this decision come from and what are its legal limits?

## **question ten**

Am I handling data in line with Data Protection or Freedom of Information obligations?

## **question eighteen**

To what extent should I give reasons for the decision?

## **Relevant considerations might also be**

- policies (see [question four](#))
- legitimate expectations (see [question five](#))
- representations received (see [questions eleven to thirteen](#))



# question four

## Is there a policy on the exercise of the power?

Where a statute has conferred a discretionary power on Ministers or another public authority to issue something such as a licence, they will potentially have to deal with hundreds or thousands of cases. The statute may spell out the criteria for the grant of the licence in general terms, but the decision-maker may still be left with a wide discretion. To ensure consistency and promote administrative efficiency, the decision-making authority will probably develop a standard way of dealing with such cases; they will try to apply the same criteria, attaching the same weight in each case. They will develop a "policy" for dealing with cases.

However, where statute confers a discretion on an individual, he or she must not surrender that discretion – to another person, to a set of rules, or to a "policy". The decision-maker must keep an open mind and consider each case on its own merits; otherwise there is a failure to exercise discretion properly. The authority must not "close its ears" to particular arguments.

The Court has held that it is lawful for decision-makers to have a policy as to the way in which discretion should be exercised – indeed, to achieve consistency in decision-making it may be essential that there is a policy. But the Court has also held that the decision-maker must nevertheless direct his or her mind to the facts of the particular case and be prepared to make exceptions. This is particularly important in cases involving human rights and considerations of equality. Equally, where a decision-maker does have a policy he or she should not depart from it without giving an explanation or should ensure that a change in policy is compliant with the law.

The Court criticised the Home Secretary for departing from a published policy relating to foreign national prisoners where there had been a decision to deport. The policy was that there was a rebuttable presumption that the prisoner would be released pending deportation. The policy was changed so that the presumption was that the prisoner would not be released, but that change in policy had not been published and so was insufficiently open and accessible.

*Abdi and others v Secretary of State for the Home Department* [2008] EWHC 3166

The decision-maker must keep an open mind and consider the facts of every case – and make it clear that this has been done in the terms of the decision. This approach is also more likely to be proportionate in human rights terms because it allows a proper assessment of whether any interference with human rights is necessary on the facts of the particular case.

### See also in particular

#### [question five](#)

Does anyone have a legitimate expectation as to how the power will be exercised?

#### [question nine](#)

How has equal opportunities legislation affected the power?

#### [question thirteen](#)

Will I be acting with procedural fairness towards the persons who will be affected?

# question five

## Does anyone have a legitimate expectation as to how the power will be exercised?

An authority must act within its powers; must not close off (or "fetter") the exercise of its discretion, and may exercise that discretion in accordance with a "policy", provided it is operated consistently but not too rigidly. Sometimes a tension arises between these principles in practice. Suppose an authority operates a policy or procedure consistently, but a change of circumstances, or a review of where the "public interest" lies, means that there is a need to modify the policy or procedure. Or suppose the decision-maker misunderstands the extent of his or her legal powers and offers to an applicant a benefit (for example, planning permission) for which the applicant is not qualified under statute.

In this kind of situation someone affected by the decision can have a legitimate expectation that because the policy or procedure has been operated in such a way in the past, that this will continue in the future. Equally, if the authority has promised someone in particular a benefit, it may (depending on the circumstances) be unfair to break that promise, even if there are public interest grounds for breaking it.

The key to resolving these tensions is to strike a balance between the public interest, for example in changing the policy, and the private interest in maintaining it. Where a legitimate expectation has arisen, a public authority can still frustrate

that expectation if any over-riding public interest requires it. Whether a legitimate expectation has arisen, and whether it can be overridden, will depend upon a number of factors, such as:

- Were the words or conduct (the "promise" or "representation") which gave rise to the expectation clear and unequivocal?
- Did the person promising the benefit have the legal power to grant it, or was it *ultra vires*?
- Who made the promise and how many people stood to benefit by it?
- Did the person(s) to whom the promise was made take action in reliance upon it which has placed them in a worse position than they would have been in if they had not taken that action?

These are some of the factors which the Court will take into account in deciding whether a legitimate expectation has arisen and whether it is fair, or would be an abuse of power, to allow the public interest to over-ride it. If the decision-maker had no legal power to make the promise/representation, then a claim of legitimate expectation is unlikely to succeed, though there could be exceptions to this where human rights are in play.

Where it is intended to change a policy or a procedure (for example, to change a practice of accepting late applications), practical steps should be taken to address potential claims of legitimate expectation that the policy or procedure would continue – by clear publicity, by careful explanation why the change is necessary, and possibly by consultation with regard to the timing of any change or to the new procedure to be adopted.

**See also in particular**

**question four**

Is there a policy on the exercise of the power?

**question thirteen**

Will I be acting with procedural fairness towards the persons who will be affected?

Mrs M agreed to remove herself voluntarily from a pitch on a travelling person's site on condition that she would be offered a pitch on the site following completion of modernisation works. An unconditional assurance was given and confirmed in writing. When the site was reopened she was not given a pitch. Mrs M sought review of the decision on the grounds that she had a legitimate expectation that her application would be granted. The Court had to consider whether there were factors which would permit the authority to depart from the assurance that had been given. In this case Mrs M had not been honest in her application form and the Court held that this was a factor which would justify departure.

McPhee v North Lanarkshire Council 1998  
SLT 1317

# question six

## Can I make this decision or does someone else need to make it?

The general rule is that where legislation confers a power on a specified individual or body, the power must be exercised by that individual or body and must not be given away to another person or body. However, there are many exceptions to this rule. In particular, the Court accepts that Government Ministers cannot possibly make personally every decision which is made in their name, and that officials may act on their behalf. This is known as “the *Carltona* principle” after the leading case<sup>5</sup>. The theory is that, legally and constitutionally, the acts of officials are the acts of their Ministers provided the official is acting with the express or implied authority of the Minister. The principle does not however apply in local government.

Where the *Carltona* principle applies, a decision may still only be taken on a Minister’s behalf by an official of appropriate seniority and experience. And there will always be some cases where the special importance of the decision, or its consequences, mean that the Minister must make the decision personally.

Sometimes specific statutory provisions require that the Minister make the decision personally.

If the power can be delegated, you need to check whether there are limitations on the seniority of officials who can exercise it on the Minister’s behalf.

Sometimes, before you can make your decision, you will need information or policy input from another public authority. If so, it is important to remember that the decision is one for you as the

In terms of the Scottish Prison Rules, a Governor has the power to remove a prisoner from association for particular reasons including maintaining the good order of the prison, for a period of up to 72 hours. The Scottish Ministers may authorise an extension of that removal on the application of the Governor. On the basis of the *Carltona* doctrine, the decision on an extension may be taken by a duly authorised civil servant of a senior grade on the Ministers’ behalf.

Rule 9.4: The Prisons and Young Offenders Institutions (Scotland) Rules 2006

decision-maker, having regard to all the circumstances, including the advice or recommendation of that other authority. You should not merely ‘rubber-stamp’ the advice or recommendation which you receive from elsewhere.

### See also in particular question seven

Have devolution and the Scotland Act affected the power?

### question fourteen

Could I be, or appear to be, biased?

<sup>5</sup> *Carltona Ltd –v– Commissioners of Works* [1943] 2 All ER 560

# question seven

## Have devolution and the Scotland Act affected the power?

At present, the Scottish Parliament has powers to make laws in devolved areas, but in reserved areas those powers remain with Westminster. The functions of many public authorities in Scotland were relatively unaffected by devolution, though they may be affected by subsequent Acts of the UK or Scottish Parliament. The powers of the Scottish Government (and wider Scottish Administration) on the other hand are closely aligned to the functions of the Scottish Parliament.

Whether a law is devolved or reserved depends on its subject-matter, its purpose and, among other things its effect in all the circumstances.

The UK and Scottish Governments have legal powers only over the matters that are within the range of subjects they control. Ministers and civil servants in the Scottish Government, and in the UK Government, therefore need to ensure that any decisions that they make have a lawful basis given the terms of the Scotland Act. There are, however, a range of mechanisms in the Scotland Act that allow the boundaries of devolution to be altered. Since devolution, a range of alterations have been made.

An Act of the Scottish Parliament or the purported exercise of powers by the Scottish Ministers can be struck down by the Court, if it has an effect beyond that permitted by the Scotland Act on reserved matters, or if it is incompatible with human rights or European law.

However, as a general rule, you can assume that the current legislation is within the competence of the Scottish Parliament and proceed to make your decision on that basis.

### **See also in particular**

#### **question one**

Where does the power to make this decision come from and what are its legal limits?

#### **question eight**

Am I complying with human rights and European law?



# question eight

## Am I complying with human rights and European law?

Human rights considerations permeate many areas of the work of public authorities in Scotland.

The Human Rights Act 1998 requires public bodies to act compatibly with a wide range of the rights set out in the European Convention on Human Rights. For public authorities other than the Scottish Government the only exception to this is where a duty under primary legislation made at Westminster means that you cannot do otherwise<sup>6</sup>. The key human rights are in **Annex 1**.

The Scotland Act also obliges the Scottish Ministers and the Scottish Parliament to act compatibly with both human rights and European law.

As the UK is part of the European Union, European law overrides Scots law. In fields governed by European law (e.g. agriculture and parts of environmental law) broad principles of European law apply. Much significant European legislation applies directly in Scotland and can be relied upon against public authorities in Scotland. Key European law issues are summarised in **Annex 2**.

The use of a power may be unlawful if the effect of the decision is to contravene a person's human rights, or European law.

Mrs B's husband died after receiving contaminated blood. She asked the Lord Advocate to hold a Fatal Accident Inquiry (FAI) into the death in terms of the Fatal Accidents and Sudden Deaths Act 1976. The holding of an FAI is at the discretion of the Lord Advocate. The Lord Advocate declined to hold such an inquiry. Mrs B complained that this refusal was a breach of the investigative obligation present in Article 2 of the Convention (the right to life). The Court agreed and held that the decision not to hold an FAI should be reduced. The investigations that had been carried out were insufficiently wide in scope and there had been no practical or effective investigations into the death.

Kennedy & another v Lord Advocate & Scottish Ministers [2008] CSOH 21

In this case example, the decision made by the Lord Advocate was within the terms of the statute, but the particular exercise of the power was incompatible with a human right and was therefore annulled.

<sup>6</sup> Section 6(2) of the Human Rights Act 1998.

The Human Rights Act also adds an important dimension to interpreting legislation: so far as it is possible to do so, legislation must be given effect to in a way which is compatible with human rights<sup>7</sup>

**See also in particular**

**question seven**

Have devolution and the Scotland Act affected the power?

**question fourteen**

Could I be, or appear to be, biased?

**question sixteen**

Does the decision need to be, and is it, proportionate?

A prisoner challenged the blanket ban on voting which applied to convicted prisoners serving custodial sentences, imposed by section 3(1) of the Representation of the People Act 1983 as amended. The claim was made to the right to free elections in Protocol 3 to the Convention. The Court considered whether it was possible to read the legislation in such a way as to make it human rights compliant but found that there was no way to do so because it could not choose among the multiple policy alternatives. To do so would mean it was effectively legislating on its own account. The Court therefore declared the legislation incompatible with human rights.

Smith v Scott [2007] CSIH. 24 January 2007

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<sup>7</sup> Section 3 of the Human Rights Act 1998.

# question nine

## How has equal opportunities legislation affected the power?

There are a number of pieces of legislation which make it unlawful to act in a particular way or reach a particular decision where it would be discriminatory.

The Human Rights Act 1998 and European law prohibit discrimination in certain circumstances. The Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Equality Act 2006 (and regulations under it) contain prohibitions on discrimination on grounds of sex, race, disability, religion or belief, or sexual orientation in the exercise of most public functions.

The Scotland Act reserves the subject matter of equal opportunities to the UK Parliament, with the exception of the encouragement of equal opportunities by, and the imposition of duties on, the Scottish Government and Scottish public authorities to ensure that their functions are carried out with "due regard" to the need to meet equal opportunities requirements.

A decision may be unlawful, therefore, if it fails to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity. Specific provisions of equalities legislation also impose duties on public authorities to evidence that they have shown due regard to certain matters<sup>8</sup>. The public sector equality duties for race, gender and disability require public authorities to undertake equality impact assessments to ensure that the implications of decision-making, both positive and negative, for different groups in society have been considered. These duties are to be

extended further under the provisions of the UK Equalities Bill.

Decisions must therefore be taken with due regard for the need to:

- eliminate unlawful discrimination and harassment under the Sex Discrimination Act 1975
- eliminate unlawful racial discrimination under the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000
- eliminate discrimination that is unlawful under the Disability Discrimination Act 1995 and harassment of disabled persons related to their disabilities
- promote equality of opportunity between men and women
- promote equality of opportunity and good relations between persons of different racial groups
- promote equality of opportunity between disabled persons and other persons
- take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons
- promote positive attitudes towards disabled persons
- encourage participation by disabled persons in public life.

Failure to do so may lead to a decision being struck down.

<sup>8</sup> Section 76A of the Sex Discrimination Act 1975, section 71 of the Race Relations Act 1976 and section 49A of the Disability Discrimination Act 1995.



In 2007 the Secretary of State made amendments to the rules in accordance with which Secure Training Centres ("STCs") in England and Wales had to be run. STCs accommodate young people ("trainees") who have either been sentenced to custody or who have been remanded in custody. The amendments permitted officers in STCs to physically restrain trainees if it was necessary for the purposes of ensuring good order and discipline. The amendments to the rules were challenged, not because they were discriminatory, but because, amongst other things, no racial equality impact assessment was carried out before the Secretary of State had made them. The courts considered that the amendments to the rules were plainly a change in policy in a matter that might raise issues about racial equality, in view of the significant numbers of black and ethnic minority trainees accommodated in STCs. The Court of Appeal decided that the rule of law and the proper administration of race relations law required the amendment rules to be quashed.

R(C) v The Secretary of State for Justice  
[2008] EWCA Civ 882

As can be seen from the case example, the duty applies even in cases where you might think you are not making a significant change or where you think your decision will affect everyone equally. Other cases where challenges have been brought arguing that the duty was not carried out, or not carried out properly, have included decisions on planning control, an *ex gratia* compensation scheme and the funding of voluntary organisations.

What does a duty to have "due regard" to these needs require you to do when making a decision? There are no reported cases in the Scottish courts but the Court of Appeal in England and Wales has said that due regard means: "the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing".<sup>9</sup>

The duty however is not a duty to achieve the elimination of discrimination or the promotion of equality of opportunity. It is only a duty to have regard to the need to achieve these goals.

There are relevant materials that will assist you in complying with these duties. The Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission (replaced in October 2007 by the Equality and Human Rights Commission) have

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<sup>9</sup> R (Baker & Others) v Secretary of State and London Borough of Bromley [2008] EWCA Civ 141 paragraph 31

# question nine

published Codes of Practice, which still have effect, on the performance of these duties and good practice examples from the implementation of the duties by public bodies<sup>10</sup>. The Scottish Government has published schemes which show how it intends to fulfil these duties.<sup>11</sup> An Equal Opportunities Impact Assessment toolkit and guidance are available through the Scottish Government intranet to all Scottish Government staff to help ensure these duties are met. Other public authorities will have their own schemes and guidance.

## See also in particular question three

What factors should I consider when making the decision?

## question eight

Am I complying with human rights and European law?

### NHS 24 Equal Pay Review

The Gender Equality Duty requires that listed public bodies "consider the need to have objectives to address the causes of any gender pay gap". In late 2007 and early 2008, NHS 24 carried out an equal pay review to ensure their compliance with the element of the Gender Equality Duty that requires public bodies to publish arrangements for delivering equal pay and then to report on progress.

Although the NHS has a national pay review programme (Agenda for Change), NHS 24's first equality and diversity annual report (Delivering Equality. Embracing Diversity, published in September 2007) highlighted the fact that there was a need to gather further information on a number of related issues. These included wage levels, actual earnings, the implication of part-time working, gender segregation, shift work and continuous service, among others. An equal pay review was identified as the most appropriate tool to complement work on, and add value to, meeting specific employment duties as well as providing an evidence base for the delivery of equal pay. The equal pay review is available on the **NHS 24 website**.

The review found an overall pay differential between women and men, and within particular grades, enabling a further exploration as to the underlying reasons. NHS 24 has now committed to undertaking an annual update of the review to help address any structural factors which may cause pay differentials between women and men.

[www.equalityhumanrights.com/scotland](http://www.equalityhumanrights.com/scotland)

- <sup>10</sup> The "Gender Equality Duty Code of Practice, Scotland" available at <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/gedcopScotland.aspx>; the "Statutory Code of Practice on the Duty to Promote Race Equality in Scotland" available at <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/CopREDSScotland.aspx>; and "The Duty to promote Disability Equality: Statutory Code of Practice (Scotland)" available at [http://www.equalityhumanrights.com/Documents/Disability/Public\\_sector/Disability\\_equality\\_duty/Codes\\_of\\_practice/DED\\_code\\_Scotland.pdf](http://www.equalityhumanrights.com/Documents/Disability/Public_sector/Disability_equality_duty/Codes_of_practice/DED_code_Scotland.pdf).
- <sup>11</sup> Gender Equality Scheme available at <http://www.scotland.gov.uk/Publications/2008/06/12114733/0>; Race Equality Scheme available at <http://www.scotland.gov.uk/Publications/2008/11/28092741/0> and Disability Equality Scheme available at <http://www.scotland.gov.uk/Publications/2008/05/22092418/0>

# question ten

## Am I handling data in line with Data Protection or Freedom of Information obligations?

### Data Protection

Information about individuals held by public authorities is governed by the Data Protection Act 1998 ("the DPA"), as is such information held by private bodies. The DPA is a UK statute which gives effect to a European Directive. If the information is biographical, and is capable of being used on its own or in conjunction with other information to identify a person, it is probably covered by the DPA.

Where it applies, the DPA restricts the use you can make of the information, and allows the individual rights to get that information. There are a wide range of exemptions which can apply, e.g. national security, and where disclosure is required by law. However, you should proceed on the basis that any information that you receive or generate about an individual could end up being seen by that individual. You should ensure that all personal information is accurate, up to date, kept for no longer than necessary, and stored safely. More information is available on the general requirements of the DPA<sup>12</sup>.

Issues often arise about sharing information obtained for one public purpose for another (usually known as "data sharing") either between public authorities or within a single public

authority. Information should only be accessed and used in decision-making when there is a proper basis for you to have sight of the information. There is detailed Scottish public sector guidance available<sup>13</sup>.

### Freedom of information

Under the Freedom of Information (Scotland) Act 2002, members of the public are given rights to get information from most Scottish public authorities merely because it is held by the authority. They do not require to give reasons for their request. You should bear in mind when making a decision, that the information you have available to you and the material that you generate in the course of the decision-making process may subsequently require to be released, either proactively or in response to a freedom of information request.

There are a wide range of exemptions, though many are subject to a public interest test. Where that test appears to apply, it has to be considered in relation to each piece of information – you should remember that information should be released unless there is a good reason in terms of the exemption not to release it. Your decision can be reviewed by the Scottish Information Commissioner<sup>14</sup>.

<sup>12</sup> [http://www.ico.gov.uk/Home/for\\_organisations/data\\_protection\\_guide.aspx](http://www.ico.gov.uk/Home/for_organisations/data_protection_guide.aspx)

<sup>13</sup> <http://www.scotland.gov.uk/Publications/2004/10/20158/45784>

<sup>14</sup> <http://www.itspublicknowledge.info/ScottishPublicAuthorities/ScottishPublicAuthorities.asp>



# investigate

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## **Step 2** | Investigation/evidence gathering process

- 11. Does the power to make the decision have to be exercised in a particular way, e.g. does legislation impose procedural conditions or requirements on its use?
  - 12. Have I consulted properly?
  - 13. Will I be acting with procedural fairness towards the persons who will be affected?
  - 14. Could I be, or appear to be, biased?
-



# question eleven

Does the power to make the decision have to be exercised in a particular way, e.g. does legislation impose procedural conditions or requirements on its use?

Correct procedure (or "due process") is vitally important, because there are some tried and tested procedural mechanisms which are likely to secure a just outcome and demonstrate the rule of law. The so-called "rules of natural justice" are rules of procedure. What amounts to a fair process may vary depending on the circumstances. As a general rule, however, a person likely to be affected by a decision should be given adequate notice to allow them to make representations. This may mean that they have a right to an oral hearing or it may just allow them an opportunity to make written submissions. If there is available evidence then there must be an opportunity for all parties to consider and make representations. In determining whether there has been a fair hearing, the Court will consider whether there has been equality of treatment.

In a case involving an application by the holders of an entertainment licence for an extension of permitted hours, the Chief Constable objected on the basis of a number of incidents which had taken place in the immediate vicinity of the premises. The Licensing Board accepted that the objections were relevant to their consideration and of a serious nature, whether taken individually or together. It refused the application on the basis that the extension was likely to cause a public nuisance or be a threat to public order or safety.

The applicants argued that there should have been an opportunity to lead evidence before the Licensing Board, but the Court felt it was sufficient to ensure a fair process that the licence holder had a fair opportunity to correct or contradict the information provided by the Chief Constable. Each party had, and took, the opportunity to make submissions about what was alleged.

JAE (Glasgow) Ltd v City of Glasgow District Licensing Board 1994 SLT 1164

# question eleven

Legislation can also impose specific procedural conditions or requirements which must be satisfied before a power can be exercised. For example, legislation might stipulate that the Scottish Ministers or another public authority must:

- Consult with particular persons;
- Publish a decision in draft;
- Make due inquiry;
- Consider any objections before making a decision.

These procedural requirements are important, and failure to comply with them may make a decision invalid. The decision-maker will need to fulfil them (and be able to show that they have been fulfilled) in spirit, as well as literally.

Occasionally, if the requirement is technical, or breach of the required procedure does not defeat the purpose of the statute or damage the public, a failure to satisfy it will not necessarily be fatal to the decision. It might be for example that the statute required a public authority to carry out a function within a certain time limit. If the public authority performed the function, but was a bit late, the court might hold that there had been substantial compliance so that the breach could be overlooked.

**See also in particular**  
[question twelve](#)

Have I consulted properly?

[question thirteen](#)

Will I be acting with procedural fairness towards the persons who will be affected?

[question fourteen](#)

Could I be, or appear to be, biased?

# question twelve

## Have I consulted properly?

Consultation with the persons likely to be affected by the decision is very often part of the decision-making process. It helps to make the process a transparent and fair one and helps to ensure that the decision-maker is in possession of all the relevant information, so that the decision is a "rational" one as well. Consultation is generally desirable whether it is required by statute or not. Where consultation is undertaken it has to be conducted properly if it is to satisfy the requirement for procedural fairness. Four conditions have to be satisfied.

- Consultation must be undertaken when proposals are still at a formative stage.
- Sufficient explanation for each proposal must be given, so that those consulted can consider them intelligently and respond.
- Adequate time needs to be given for the consultation process.
- Consultees' responses must be conscientiously taken into account when the ultimate decision is taken.

Failures of consultation (and indeed other lapses in due process) usually occur through inadvertence on the part of the decision-maker

and the pressures of work. When such a lapse forms the basis of a challenge to the decision, the decision-maker may be tempted to say "but it was an open and shut case."

Consultation [or an oral hearing; or full disclosure of reasons] would have made no difference. The decision would inevitably have been the same." That may well be true, but the Court is unlikely to be sympathetic to such a response. And for good reason: the principle is that only a fair procedure will enable the merits to be determined with confidence, and must therefore come first.

### See also in particular question eleven

Does the power have to be exercised in a particular way, e.g. does legislation impose procedural conditions or requirements on its use?

### question thirteen

Will I be acting with procedural fairness towards the persons who will be affected?

### question fifteen

Have I taken necessary considerations into account, and is my decision reasonable?

# question thirteen

## Will I be acting with procedural fairness towards the persons who will be affected?

As well as acting within the limits of its powers, the decision-maker will also need to come to a decision in a procedurally fair way. Without such procedural fairness, even if the decision-maker is not acting *ultra vires*, the decision may still be unlawful.

The common law recognises procedural fairness, or the existence of "due process", as a key principle of just decision-making. Fairness is a concept drawn from the constitutional principle of the rule of law, which requires regularity, predictability and certainty in public authorities' dealings with the public.

Where statute confers an administrative power there is a presumption that it will be exercised fairly. What is "fair" will depend on the particular circumstances in which the decision is to be taken and may change with the passage of time. Such principles cannot be applied by rote and what is fair depends on the context of the decision. It will be important to look at the terms of the statute and the parameters in which the discretion is to be exercised. It will often be necessary to allow a person or persons who may be adversely affected by the decision to have an opportunity to make representations and to have notice of the information on which the decision is to be based.

It is a feature of a fair procedure or decision-making process that the person affected by it will know in advance how it will operate, and so how to prepare for it and participate in it. That is the importance of due process.

In a case involving appeals by two City Councils against decisions of the Scottish Information Commissioner one of the grounds of appeal was that the Commissioner's decisions were unlawful as there had been procedural unfairness. The Freedom of Information requests were submitted by a firm of solicitors on behalf of "a client" (who was unnamed but in fact a firm whose business is to find out and sell information about land). One of the City Councils' arguments was that they could find out this information by paying for Property Enquiry Certificates. Providing this information free of charge under FOI would, as well as involving them in a great deal of additional work and expense, prejudice their commercial interests. Without the knowledge of the two City Councils, the Commissioner's staff conducted a survey of other relevant authorities to assess whether any of them had experienced damage to their commercial interests as a result of responding to similar requests. The evidence pointed to little, if any, damage to their commercial interests. Neither of the Councils had been provided with any information about the Commissioner's investigations or their results and they had not had the opportunity to respond to the Commissioner's findings. They had not been given the opportunity to explain why in their situation the result would be different. The Court held that the procedure had been unfair and that the Commissioner should have given the Council notice of any relevant material adverse to their position and invited their comments.

Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73



Human rights, equal opportunities legislation and certain aspects of European law also require that a fair procedure is followed. At each stage of a process, a decision-maker should ensure that such issues have been properly considered and that rights or duties have been respected or followed, as appropriate.

In a case involving the removal of a migrant and whether that would infringe his right to respect for family life under Article 8 of the Convention, the Court held that the task of the appeal body was to decide whether the challenged decision is unlawful because it infringes a Convention right. It did not matter if the procedure in taking the decision was followed impeccably but the appeal body must decide for itself whether the decision challenged was lawful and if not, it must reverse it.

Huang v The Secretary of State for the Home Department [2007] UKHL 11; 2007 2 AC 167

The Court may find that in the interests of fairness additional conditions should be placed on the exercise of statutory or other executive powers. For example, the Court may insist that, before a decision is made, any of the following is required:

- Disclosure of the reasons the decision-maker intends to rely on.

- An opportunity for consultation or making representations.
- An oral hearing where appropriate.

And after the decision:

- Disclosure of material facts, or the reasons for the decision.

#### See also in particular

##### question four

Is there a policy on the exercise of this power?

##### question five

Does anyone have a legitimate expectation as to how the power will be exercised?

##### question eight

Am I complying with human rights and European law?

##### question nine

How has equal opportunities legislation affected the power?

Relevant considerations might also be:

- the right to be heard and procedural conditions in legislation (see [question eleven](#))
- have I consulted? (see [question twelve](#))
- do I need to give reasons? (see [question eighteen](#))

# question fourteen

## Could I be, or appear to be, biased?

One aspect of the rule of natural justice is that "no one shall be the judge in his or her own case". If a decision-maker has a financial or other interest in the outcome of the case, he or she cannot be, or be seen to be, impartial. The rule helps to ensure that the decision-making process is not a sham because the decision-maker's mind was always closed to the opposing case. It deals not only with actual bias, but with the appearance of bias: hence the saying "Justice must not only be done, but be seen to be done". Nobody should be able to allege that the decision was a fix because the decision-maker was biased, whether or not there was any truth in that allegation. The rule must be observed strictly to maintain public confidence in the decision-making process.

Impartiality is the opposite of bias. Its importance is enshrined in human rights: Article 6 of the Convention (fair determination of civil rights) requires that a tribunal must be, and have the appearance of being, impartial and independent. The rule against bias also applies to administrative decision-making (where there may be no "tribunal" as such) just as it does to the courts. It is prudent to have procedures available so as to avoid bias, or any appearance of bias. If, for example, the applicant for a grant is known personally to the decision-maker, or the decision-maker has dealt with the applicant before and decided against the applicant or

expressed a view adverse to the applicant, it may be appropriate to refer the application to a different, or more senior, official.

The principle can have practical implications for the process by which a decision is made. Very often, when statute requires that a public authority make a decision on an application, it (or the officials acting in its name) will require some sort of technical input, or it may be necessary to ask inspectors to carry out an investigation. In order to ensure as much impartiality as possible, it may be necessary to have structures in place so that there is a separation between the people providing the technical input/carrying out the investigation, and the officials taking the decision or submitting the matter to Ministers (when their personal decision is required). This will reduce the risk of an unsuccessful applicant claiming that the decision-maker was not impartial due to being too involved in the case, or had pre-determined the application.

The "independence" of a decision-maker is different from, though closely linked to, impartiality. It refers to independence from external pressure or influence. It has much more direct relevance to judges (by reason for example of the way they were appointed) or the courts themselves than it has to administrative decision-makers who will often be civil servants appointed to carry out Government policy or



# decide

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## Step 3 | Taking the decision

- 15. Have I taken necessary considerations into account, and is my decision reasonable?
  - 16. Does the decision need to be, and is it, proportionate?
  - 17. Are there decisions where the Court is less likely to intervene?
-

# question fifteen

## Have I taken necessary considerations into account, and is my decision reasonable?

We have seen in the discussion of [question three](#) that when making decisions you must take into account all relevant considerations and not take into account irrelevant considerations. Crucially, when it actually comes to making the decision, you must not make a decision that is so unreasonable that no reasonable person acting properly could have taken it. These are often called the “Wednesbury principles” after the name of the court case which first established them.

The test of unreasonableness concerns the decision as well as the way in which it was reached. Even if the decision-maker has taken into account the correct considerations he or she may still come to a decision so wildly unreasonable or perverse that it can be judged to have been outwith the decision-maker’s discretion to make it. If this happens then the decision will be unlawful.

The decision-maker may even have considered all the relevant information and not considered information that was irrelevant, however he or she may have attached a disproportionate weight to a particular factor or made some other mistake with regard to the logic of the decision, which has distorted the decision-making process.

A local authority wished to encourage the development of a key city centre site. It did this by identifying a developer, entering into an agreement to buy the land under a compulsory purchase order, and then transferring it to the developer. This was done in exchange for an undertaking from the developer that it would carry out the development and indemnify the authority from all future costs. Competing developers argued that the local authority had acted in a Wednesbury unreasonable way when it chose its preferred developer. They argued that an indemnity for their costs did not represent the best price or the best terms that could reasonably be obtained for the development of the site. The House of Lords found that the arrangement that had been entered into was reasonably necessary for planning purposes, given the difficulty of developing a site that was in multiple ownership. It could not therefore be said that the local authority reached a decision that no other reasonable local authority would have reached.

Standard Commercial Property Securities Ltd v Glasgow City Council [2006] UKHL 50

# question fifteen

The Court has recognised that when different reasonable people are given the same set of facts, it is perfectly possible for them to come to different conclusions. This means a range of lawful decisions may be within the discretion of the decision-maker. However, at the same time, the Court has defined a category of decisions which lie outside that range of discretion. These have been described as:

- “a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it”;
- “beyond the range of responses open to a reasonable decision-maker”.

These definitions of unreasonableness (or “irrationality”) seem quite extreme, particularly the first – it might seem then that the Court would hardly ever find a decision-maker to have acted “unreasonably”. However, the Court interprets this category of decisions quite widely and will adjust the threshold of unreasonableness according to the circumstances and context of the case.

If a decision is challenged, the Court will examine it to see whether it was made according to logical principles, and will often expressly state that it is not its intention to substitute its own decision for that of the decision-maker. The Court will not make its own decision in place of that of the decision-maker because it bears in mind that the statute

has given the discretion to make the decision to a particular decision-maker, and it is not for the Court to make that decision instead.

The practical affect of this approach is that, where the Court finds that the decision was “unreasonable” and that it has to be remade, the Court will not put in place a more reasonable decision, but will simply cancel the unreasonable one, leaving none in its place. The decision-maker will then be required to make a fresh decision, taking into account any guidance given by the Court, and this time applying logical principles<sup>15</sup>.

There are good practical, as well as legal reasons for the Court adopting this “hands-off” approach: the decision-maker may be aware of policy implications or other aspects of public interest which are not obvious to the Court, or the decision-maker may have access to technical information which is not available to the Court and which must inform the decision.

## **See also in particular** [question three](#)

What factors should I consider when making the decision?

## [question seventeen](#)

Does the decision need to be, and is it, proportionate?

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<sup>15</sup> In some cases the effect of the decision is such that it cannot be ‘undone’. If this is the case then the court can declare it to be unlawful which can lead to political embarrassment and possible damages being awarded. These would probably be payable from your budget.

# question sixteen

## Does the decision need to be, and is it, proportionate?

Proportionality essentially means the decision should meet a legitimate policy goal and should not go further than necessary to achieve that goal – i.e. it must be appropriate and necessary to achieve its aim.

The Court will adjust its view of what is or is not proportionate according to the importance of the rights involved. It will apply a greater intensity of review where (in particular) human rights are engaged; in other words, the Court lowers the threshold for a decision to be found unlawful. This is particularly so because human rights bring their own specific rules of interpretation, which means the Court will look at whether any action or decision which is alleged to infringe human rights was proportionate. In areas where European law applies too, a standard of proportionality will be applied by the Court.

The principle of proportionality may be used by the Court where it is looking at an alleged breach of human rights or European law that has occurred because of the decision, or where it is dealing with a right such as Article 8 (right to private life) which necessarily involves a decision-maker considering if a decision to interfere is proportionate.

Where the Court is applying the principle of proportionality it will generally look more closely at the correctness of the decision given the information available than it would by just applying the *Wednesbury* unreasonableness test (see [question fifteen](#)).

It is important to consider whether your decision is one that involves the area of human rights or is a decision made under European law. If so, the proportionality of your decision can be reviewed by the Court if your decision is later challenged.

Proportionality has also been argued as a ground of review for all decisions, outside the fields of human rights and European law. At present, however, proportionality is not currently an independent ground of judicial review at common law in its own right<sup>16</sup>.

### **See also in particular** [question eight](#)

Am I complying with human rights and European law?

### [question fifteen](#)

Have I taken necessary considerations into account, and is my decision reasonable?

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<sup>16</sup> *Fargie, Petitioner* [2008] CSOH 117 decided in August 2008.



# question seventeen

## Are there decisions where the Court is less likely to intervene?

In principle, the Court is entitled to review the vast majority of decisions taken by public authorities. "In principle", because there are still a handful of types of decision with which the Court is reluctant to concern itself – the award of honours is one example. Even these categories are increasingly restricted, and it can be imagined that if, say the honours system were placed upon a statutory footing, with procedures, consultation and the like, then the Court would no doubt be entitled to supervise at least procedural aspects.

There remains a class of decision where the Court accepts that, because of the subject matter of the decision, the decision-maker is better qualified than the Court to make a judgement. So for example the Court is likely to "defer" to, or recognise a "demarcation of functions" with, the decision-maker in:

- ordering financial priorities, in deciding to spend public money in one way rather than another;

- assessing the needs of national security and public order;
- setting policy on maximum sentences for particular criminal offences.

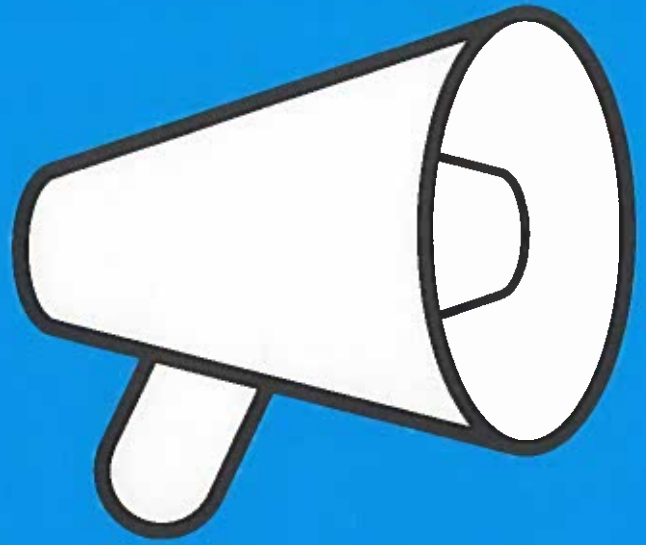
The list could go on (and could be broadened to include any topic requiring specialist knowledge or experience), but what the above topics have in common is that they all concern policy, and require a "political" judgement to be made. In the demarcation of functions, that political judgement should be left to the decision-maker, who understands the policy and has experience of its operation to inform his decision. In this kind of area, the Court may exercise restraint in reviewing the decision-maker, or recognise the demarcation of functions between the Executive branch of government and the Judiciary; the Court is likely to allow a "margin of discretion" or "discretionary area of judgement" depending on the nature of the decision.

This case involved a terminally ill applicant who wished to have her husband assist her to commit suicide but was concerned that if he did so, he might be prosecuted. As a consequence she might have to end her life sooner than she would wish, while she herself was capable of doing so. She claimed that this was an interference with her human rights. The Court recognised the considerable deference to be accorded to the views of the Director of Public Prosecutions in determining whether proceedings for an offence should be instituted, but nonetheless found that he should publicise a policy identifying the facts and circumstances which he would take into account in deciding whether or not to sanction a prosecution for assisting in a suicide.

R (on the application of Purdy) v Director of Public Prosecutions [2009] UKHL 45

It is possible that your decision too will have an element of this kind of political judgement in it; you should identify that element and be prepared to protect it. The decision-maker will usually be allowed a discretionary area of judgement, but this cannot be taken for granted. And, where human rights are involved the Court is likely to be very careful to ensure that what the decision-maker is seeking to protect is genuinely an area of policy, and that the decision is "proportionate".





# notify



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## Step 4 | Notifying others of the decision

- 18. To what extent should I give reasons for the decision?
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# question eighteen

## To what extent should I give reasons for the decision?

When you have made your decision – in accordance with the above principles – you will need to notify it to the person affected by it. In notifying that person, do you have to support your decision with your reasoning? And, if so, how comprehensive does your account of that reasoning have to be? You may also be under an obligation in certain circumstances to publish your decision more widely to ensure that anyone who will be affected by it has had adequate notice.

**Lord President Emslie's words in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345 at 347:**

"[I]n order to comply with the statutory duty imposed upon him the Secretary of State must give proper and adequate reasons for his decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader and the court in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it."

Why should you give any reasons unless statute or regulation require it? There may exist an established practice of giving reasons in this type of case, and failure to give reasons may breach a "legitimate expectation". Your decision itself may appear to be inconsistent with previous policy, or with other decisions in similar cases, so that a decision unsupported by reasons may appear irrational, and it may be necessary to explain why there has been a departure from previous policy, or the Court may assume the decision is unlawful. The subject matter of the decision may be of such importance – it may affect human rights – that fairness requires that a decision be supported by reasons.

In an appeal to the Court of Session against a decision of the Mental Health Tribunal (where the Tribunal has a statutory duty to provide a statement of facts and reasons for its decision) the Court held that the Tribunal required to reach a "clear and reasoned view" on the application of the statutory test at issue. The Court stressed that the Tribunal must reach a decision based on the evidence, and provide clear reasons for making or failing to make findings that are central to the questions in issue. Where any evidence is rejected, the Tribunal must give reasons for the rejection of that evidence. The requirement of a full statement of facts and reasons is not met by a basic assertion of the findings in law. *The Scottish Ministers v The Mental Health Tribunal for Scotland* 2009 SLT 273

# question eighteen

Although it may still be true that there is no general rule requiring that reasons be given for administrative decisions, the circumstances where they are not required are becoming rare. Indeed the general availability of judicial review as a remedy makes it inevitable that in most cases fairness now requires that reasons should be given. The law was developing in this direction even before the Human Rights Act incorporated the Convention, but that (in particular Article 6 – right to a fair trial) has accelerated the process, because decisions involving human rights are likely to be scrutinised more intensely, and that means that they will have to be more fully reasoned.

There is one other important factor which should now encourage the giving of detailed reasons with the decision. Rights for the individual who is the subject of a decision about their case to access information about that decision – including the reasons for it – may arise under the Data Protection Act 1998. In addition, section 1 of the Freedom of Information (Scotland) Act 2002 provides that–

“(1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.”

So, assuming that, in making the decision, the decision-maker had his or her reasons and recorded them, any person will be entitled to request that “information” under the Freedom of Information (Scotland) Act, and (unless an exemption applies) that information will have to be disclosed. There are exemptions in respect of certain categories of information, and one or more of them may be relevant to your decision, but the presumption will be in favour of disclosure. The Act should therefore be a salutary incentive to careful reasoning and good record-keeping.

This does not mean that every decision must be accompanied by copious reasoning; it will depend upon the subject matter and the importance of the interests at stake. Moreover there will be some cases where the issue to be decided does not lend itself to logical analysis, but is more a matter of subjective judgement.

The Scottish Ministers appealed against two decisions by the Scottish Information Commissioner requiring them to release certain documents to two individuals who had made Freedom of Information requests. These related to the coming into force of an Act of the Scottish Parliament, and to the grant of a planning decision. Some information was released to them, but the Commissioner took the view that certain other information was exempt from disclosure under the Freedom of Information (Scotland) Act 2002. One of the Scottish Ministers' grounds of appeal was that the Commissioner failed to give proper and adequate reasons for his decision in one of these cases. The Court held that in coming to his decision, it was sufficient for the Commissioner to state which section of the Act the Ministers had not complied with. While there was a common law duty to give proper and adequate reasons for his decision, that duty was tempered by the need to avoid disclosing information which ought not to be disclosed, so that in the circumstances, there was no need for him to explain his decision further. No error of law was found in his reasoning.

*The Scottish Ministers v the Scottish Information Commissioner* 2007 SLT 274

The need to record reasons when the decision is made with a view to their disclosure may be onerous, but it encourages careful decision-making. The record should show that the decision-maker addressed his mind to the relevant issues and followed the principles of good administration. There is no uniform standard for the quality or lay-out of recorded reasons, but they must at least be intelligible and address the substance of the issues. The following provides a useful outline.

- the record should be clear about what the applicant is applying for and that you understand the application;
- it should set out material findings of fact;
- it should show that all relevant matters have been considered and that no irrelevant ones have been taken into account;
- it should cite and apply any relevant policy statements or guidance;
- it should note any representations or consultation responses as having been considered and taken into account;
- it should show by what process of reasoning issues were resolved, and how the various factors were weighted against each other.

# question eighteen

If all this (or as much as suits the case) is recorded, then it will provide a framework for your decision letter. The reasons given in the decision letter will of course correspond with those recorded: although there is some scope for elaborating or explaining your reasons in the decision letter (or subsequently), it is bad practice – and unlawful – to make your decision first and construct your reasons only when challenged.

## **See also in particular**

### [question five](#)

Does anyone have a legitimate expectation as to how the power will be exercised?

### [question eight](#)

Am I complying with human rights and European law?

### [question ten](#)

Am I handling data in accordance with Data Protection or Freedom of Information obligations?

### [question thirteen](#)

Will I be acting with procedural fairness towards the persons who will be affected?

# annex one

## the main Convention rights

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**article two** | right to life

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**article three** | prohibition of torture

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**article four** | prohibition of slavery and forced labour

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**article five** | right to liberty and security

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**article six** | right to a fair trial

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**article seven** | no punishment without law

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**article eight** | right to respect for private and family life

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**article nine** | freedom of thought, conscience and religion

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**article ten** | freedom of expression

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**article eleven** | freedom of assembly and association

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**article twelve** | right to marry

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**article fourteen** | prohibition of discrimination

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**article one of the First Protocol** | protection of property

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**article two of the First Protocol** | right to education

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**article three of the First Protocol** | right to free elections

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## European law considerations

European law, including European Community (or EC) law, derives from the EC and EU treaties<sup>17</sup>, and is incorporated into the law of the United Kingdom by the European Communities Act 1972. In some circumstances provisions of the EC Treaty or of Directives made under the Treaty confer rights on individuals.

The aim of the EC Treaty is to establish a free and open common market for all forms of economic activity. The EC Treaty does this by establishing the four freedoms. These are the free movement of goods, persons, services and capital.

Individuals may rely on those provisions of the EC Treaty and Directives made under it in national courts even where the provisions have not been implemented in national legislation<sup>18</sup>. These rights are described as having "direct effect".

In addition:

- All European Regulations are directly applicable and enforceable without the need for any national measures to implement them.
- Binding Decisions adopted by the European Council of Ministers or the Commission bind those to whom they are addressed. If addressed to a Member State of the EU, they may have direct effect, giving rise to rights which are enforceable in national courts, provided their terms are clear and precise.

The 1972 Act requires questions as to the validity, meaning and effect of European provisions to be determined according to the principles of EU law, including proportionality. If there is a conflict between EU law and national law, directly enforceable EU rights and obligations take precedence. Domestic measures which are inconsistent, or which are considered to hamper the attainment of the objectives of the EC Treaty, may be found unlawful.

In EU law cases, the Scottish Courts have jurisdiction to grant interim remedies, for example:

- An interim interdict (which is an order to stop someone from doing something in the meantime) against the Scottish Ministers a UK Department, or other public bodies;
- An order to disapply legislation (including primary legislation).

The Court can also seek an authoritative opinion on an issue of EU law from the European Court of Justice ("ECJ") by way of a preliminary reference, sometimes called an "Article 234 reference". After the ECJ has given its ruling, the matter is referred back to the domestic Court to decide accordingly.

The decisions of the ECJ on matters of European law form part of the national law of Member States. Because the EU recognises human rights, and the Convention, and fundamental rights under the treaties, as sources of general principles of law, these rights too can often be enforced in the UK Courts as part of an action based upon EU law.

<sup>17</sup> The EC Treaty is renamed the *Treaty on the Functioning of the European Union* (TFEU) by the Lisbon Treaty on 1 December 2009, and the "European Community" formally replaced by the "European Union".

<sup>18</sup> Treaty provisions have to be sufficiently complete, clear and concise to be enforceable by a court. Provisions in Directives must be unconditional and sufficiently precise. Directives which have direct effect can only be enforced against the state or emanations of the state, such as public bodies, (so-called "vertical direct effect"). Directly effective Treaty provisions also apply as between individuals.



Failure by the decision-maker to give proper effect to binding EU law conferring rights on individuals may give rise to a claim for damages. Community law will confer a right to compensation where three conditions are met:

- The rule of law infringed must be intended to confer rights on individuals;
- The breach must be sufficiently serious (manifest and grave disregard by the Member State of the limits of its discretion);
- There must be a direct causal link between the breach of the obligation resting on the Member State and the damage sustained by the individual.

Liability for such damages is one of the exceptions to the principle that, in general, damages are not awarded for a breach of public law. Damages of this type are often called *Francovich* damages after a leading EC law case.

A basic principle of EU law is that when the liability of a Member State is considered, all its organs of Government are treated as being a single entity. The Scottish Government is responsible for implementing EU obligations relating to devolved matters, and may be liable for any financial penalty for which it is responsible. The UK Government retains the legal power to implement EU law directly under the Scotland Act<sup>19</sup>.

Any Act of the Scottish Parliament, statutory instrument or act of the Scottish Ministers incompatible with EU law is *ultra vires* and can be challenged under the Scotland Act.

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<sup>19</sup> Section 57(1).

# annex three

## A short guide to Judicial Review proceedings in Scotland

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**What decisions are reviewable?**

A decision or failure to take a decision affecting persons by someone empowered by public law and in respect of which there is no other available remedy.

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**Will the Court look at the merits?**

The Court cannot substitute its own decision, but can quash a decision and send it back to be considered again – except where it is an ECHR case, when the Court can re-examine the merits (see *Huang v The Secretary of State for the Home Department* [2007] UKHL 11; 2007 2 AC 167 and *Nasseri* [2009] UKHL 23)

---

**What will the Court be looking at?**

Was the decision wrong in law? Did the person making the decision have power to do so? Did he/she exercise those powers correctly? Did he/she take all the relevant information into account?

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**What's an irrational decision?**

One that no reasonable Minister or public authority would have come to.

---

**Can you give me examples of procedural impropriety?**

A breach of duty to act fairly, failure to consult, being or appearing to be biased, failing to take into account legitimate expectations.

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**What kind of remedy can the Court award?**

It can quash decisions, award damages, make a declaration and make interim orders, including interim interdict. The Court can of course also refuse the petition.

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## what happens?

Judicial Reviews are made by way of a **Petition** to the **Court of Session** in Edinburgh. All Judicial Review actions go to a judge for **First Orders** to be granted. The first order allows the **petitioner** (the person challenging the decision) to serve the petition on the **respondent** (the decision-maker). It is at this stage that the petitioner can also seek **interim orders**, for example to prevent the demolition of a building until the Court has an opportunity to consider what should happen to it at a full hearing of the case. If interim orders are sought, a **caveat** may be triggered. Caveats are a form of early warning system which respondents often put in place in the Court of Session in order to alert them in the event that a petitioner is seeking an award of interim orders against them. The respondent can then arrange to make representations to the judge before first orders are granted.

Once first orders have been granted, the case will be assigned a date for a **First Hearing**. If the matter is urgent, then this could be arranged at short notice. More often, though, a hearing may be fixed for some months ahead. The respondent can then arrange for

an **advocate** to be appointed to represent their interests in the case. Where the respondent is the Scottish Ministers the advocate is drawn from a pre-approved list and is known as a standing junior. Standing juniors generally have either an interest or specialisation in public law. You may be invited to attend a meeting or **consultation** with the advocate before the hearing, and are likely to be asked to provide information regarding the decision challenged for the purpose of instructing the advocate to appear, or seeking their advice.

The first hearing can be either a short one, to decide on future procedure, or it can be a lengthier one, where detailed legal arguments are made on behalf of parties. It is also possible to have a **second hearing**, at which evidence can be led, either by **affidavit** (sworn statement), or in person. The judge may either give his or her opinion orally when he or she is finished hearing the case, or he or she may choose to think about it for a while (**makes avizandum**) before issuing his or her decision. Opinions are published on the Scottish Courts web site on the date of issue.

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## T in the Park security staff member sexually assaulted teenager at festival

24 February 2016 3.02pm.



DC Thomson

A teenager was sexually assaulted at T in the Park by a member of the official security staff.

The 17-year-old girl sought help after becoming detached from her friends but security officer Allan Freedman exploited her vulnerable state to kiss and grope her.

The 43-year-old had his name added to the Sex Offenders Register on Wednesday after he admitted carrying out a sexual attack on the girl.

Freedman's attack was one of a number of incidents recorded at the music festival as serious and sexual assaults reached record levels during the 2015 event.

Fiscal depute Carol Whyte told Perth Sheriff Court that the girl had been with a group of friends at the festival but they had become separated from each other on July 10.

The girl thought they would be in the Slam tent so she found a member of staff – Freedman – and asked him for directions on how to get there.

Ms Whyte told the court it was clear from the fact Freedman was wearing a high visibility vest that he was part of the official security team for the site at Strathallan Estate.

She said Freedman led her towards the tent she was looking for before stopping and groping her as well as kissing her repeatedly on the face and lips.

Ms Whyte said the girl, who cannot be identified for legal reasons, was “terrified” as a result of Freedman’s behaviour and the police were called in.

Freedman, Capelrig Street, Thornliebank, Glasgow, admitted sexually assaulting the girl by handling her knee and waist and repeatedly kissing her without consent.

The court was told that Freedman was no longer working for the security contractor who employed him to work at the festival, and sentence was deferred for reports.

T in the Park recorded the most serious assaults in its history last year, but overall crime at the festival dropped, a police report revealed.

There were six serious assaults at the 2015 event, compared to one in each of the festival’s previous three years.

Chief Superintendent Eddie Smith’s report said that petty assaults rose from 15 to 36 and there were 11 crimes of threatening behaviour.

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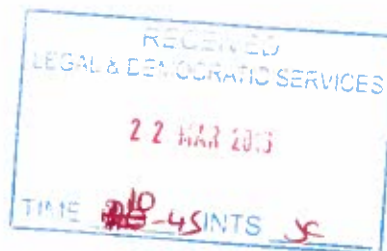
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To Whom it May Concern,

**re: Public Entertainment License – Jigsaw Events & Management Limited. Festival of House (FoH), Panmure Estate**

I am writing to submit an objection to the proposed music festival on Panmure Estate, for a number of reasons.

Firstly, the PEL process, as it has been implemented, has ensured that residents of the estate are now at a considerable disadvantage. While (at the time of writing) the promotional material for The Festival of House has been uploaded to the FoH website, the plans and reports relating to the site layout, noise-level testing, safety, security, public health/pollution, environment and ecology etc. have not.

The festival organisers' decision not to make ongoing plans/reports available, or involve residents in the steering process, has troubled a good number of residents on the former estate. Given the nature and massive scale of the proposed event, without sight of all the information relating to the application, residents can only guess what the impacts are likely to be. This is fundamentally unfair.

While “consultation events” have been held, little information has been made available and what



has, has been subject to continual change. The event duration has been changed from 2 days to 4 days for example. Live acts would finish at 11pm according to the screening opinion request submitted initially, but a license application has been submitted since, stating 1am. No formal details have been given to residents about security or what mitigation measures will be implemented to protect their rights to access.

It is felt collectively that with only nine working days until the objection deadline, we are unable to properly represent ourselves as a result.

While the Civic Government (Scotland) Act 1982 dictates that there is “no requirement” to make these details available, the enclosed government document “Right First Time: A Practical Guide for Public Authorities in Scotland to Decision-Making and The Law” (Document 1 p18) states that “The use of power may be unlawful if the effect of the decision is to contravene a person’s human rights, or European Law.” It also states “As the UK is part of the European Union, European law overrides Scots law.”

The Scotland Act also obliges the Scottish Parliament to act compatibly with both human rights and the law.

The impacts of a festival as large as the one proposed, will be significant and detrimental to many on the site. They will be also complex, widespread and not immediately apparent/foreseeable in the way that those associated with smaller scale events that require a licence are. Since the FoH application is different from most other PEL applications in that sense, the matter should have been considered on its own merits and the process should have been amended accordingly in order to allow residents a “real opportunity to present their case” so it complies fully with the principles of “Natural Justice” as outlined in article 6.1 of the European Convention of Human Rights.

(Document 2)

Page 27 of “Right First Time” (referred to above) states that:

- Consultation must be undertaken when proposals are still at a formative stage,.
- Sufficient explanation for each proposal must be given, so that those consulted can consider them intelligently and respond.
- Adequate time needs to be given for the consultation process
- Consultees' responses must be conscientiously taken into account when the ultimate decision is taken.

It goes on to outline that:

..."Failures of consultation (and indeed any other lapses in due process) usually occur through inadvertence on the part of the decision-maker and the pressures of work. When such a lapse forms the basis of a challenge to the decision, the decision-maker may be tempted to say "but it was an open and shut case. Consultation or [or and oral hearing; or full disclosure of reasons] would have made no difference. The decisions would have inevitably have been the same." That may well be true but the Court is unlikely to be sympathetic to such a response. And for good reason: the principle is that only a fair procedure will enable the merits to be determined with confidence, and must therefore come first..."

Arguably, the fact that myself and other residents on the site are still desperately swapping snippets of information between us, and relying on hearsay to piece together a picture of what losses of amenity we will suffer as a result of the planned festival, is evidence that an "insufficient explanation" for this proposal has been given and so we have been unable to "consider them intelligently and respond".

At the very least, a deadline for objections should not have been imposed, until plans giving residents a better idea of what to expect had been made available to view. The licensing committee will no doubt, be in receipt of a multitude of conflicting, or inconsistent objections but this is a direct consequence of a failure to engage with the public, on the part of the festival organisers. I ask therefore, that you bear this in mind when you consider objections put before you.

The festival organisers hope to attract 15,000 visitors, 300 staff personnel and somewhere in the region of 2,000 vehicular movements per day throughout the course of the festival. 5,000 are expected to use the camping facilities and 6,000 cars are expected in total. The site is a virgin site, of recognised national, natural and historical importance, and such an amount of traffic (both human and vehicular) is unprecedented in the area. Despite this, the festival organisers (in initial screening opinion request) state that the expected activity amounts to "no more than agricultural activity". I believe however that the proposed activity will fundamentally alter the character of the estate permanently. Agricultural activity does not often bring with it an increased risk of accidents, vandalism, public order offences, traffic congestion and serious public safety issues and threats to numerous protected wildlife species. To suggest otherwise is to be intellectually dishonest.

While the festival organisers have not made the most recent full ecological report available to view, (despite requests) both organisers and Scottish National Heritage have confirmed that badgers, otters, bats, red squirrels, red kite, kingfisher and barn owls are just some of the protected species known to be present in the vicinity. Surveys to determine the location of their habitats however, can only have been conducted during autumn/winter months since the earliest planning application was made in the middle of July 2015. Until that point, only a desk-top survey had been completed.

Without a comprehensive ecological survey conducted over the summer months to incorporate “the key ecological processes or species activity periods” (Document 3, p10, 2.20 Box 9 -Guidelines for the Impact Assessment in the UK and Ireland; Terrestrial, Freshwater and Coastal CIEEM -copy provided) the seasonal variations in distribution, abundance and activity of wildlife on Panmure Estate cannot be known. Bats, for example, hibernate throughout winter. In short, if organisers cannot predict where protected species are likely to be present at the time of the proposed festival in June, they cannot devise effective mitigation measures to ensure the safety of these protected animals.

In a recent press release, Jigsaw Events Ltd stated that wildlife will adapt the way they adapt to farming activity, but the levels of noise, vibrations, pollution, waste and human traffic do not compare with routine agricultural activity and they will cause significant amounts of stress to the protected wildlife in the area. It's worth noting that while the event itself will last a few days, the planning application has granted the festival organisers the use of the land for a month in order to set up, and undertake the clean-up operation.

A month in the summer, is a significant proportion of many resident species' breeding period. If tents and litter are left on the site six months after the event as they have been at “T in The Park” according to the post-event Perth and Kinross Council review, the damage and disruption caused would be more severe still.

There are also a number of issues with regards to safety and public disorder that have yet to be adequately addressed.

The local infrastructure will struggle to cope with festival traffic. All the roads surrounding the site are unlit, narrow and winding. (See Document 14 for images) None have footpaths for pedestrians. At the west end of the estate a good proportion of the roads are flanked with deep ditches that are not visible in the low light/dark. Even drivers who are familiar with them, have to pay especially

close attention to avoid accidents. I have attached images to illustrate. While FoH organisers have said they would refuse admittance to the site after 10pm, doubtlessly, they cannot prevent people from leaving it.

Jigsaw Events have stated that there is “confidence that a Traffic Management Plan (TMP) would be successful in delivering mitigation measures” to cope with the massive increase of traffic in the area, “the way they have done for similar and larger events”, but TMPs are not infallible.

It is likely that the organisers of “T in the Park” felt the same confidence in their TMP before their most recent, heavily criticised event in 2015 which resulted in thousands experiencing serious safety issues, including delays due to abandoned vehicles, and people wandering around in dangerous, narrow roads (similar to those around Panmure) in the rain, in darkness and in heavy vehicular traffic. The poor weather exacerbated the problems and adverse weather conditions cannot be predicted. Locals in the area surrounding TITP reported people urinating in inappropriate places en route to the festival, due to lack of access to toilets and traffic delays.

In light of these details, residents on the site have concerns about accessing their property freely and easily throughout the duration of the festival. In my case, I have deep concerns about the lack of available access routes for emergency services, both for festival goers (given the number of on-site risks) but more selfishly, for my young son who is a brittle diabetic and who twice last year needed emergency medical treatment.

After the recent, troubled “T in the Park” event, organisers attributed a lot of the traffic problems road-users experienced in and around their festival site to “unofficial satellite camps”.

In 1991, an annual official Dunnichen festival in Letham, (Angus) was eventually discontinued as an associated unofficial event had become the main attraction, with unofficial camps remaining in place for a number of weeks after the bands had played.

The event was even mentioned in the House of Commons (see Document 4 p2-3) when in 1996, violence erupted after police attempted to confiscate a large sound system following complaints made by local residents. Many complaints of antisocial behaviour were lodged, including reports of the killing of livestock (sheep and 2,000 pheasant chicks) by dogs.

Given that official camping festival tickets are more costly, and that unofficial camp sites are a regular feature of festivals, it is safe to assume that the woodland surrounding the festival site will be seen as an attractive alternative to the official camping ground. It would seem that the FoH hope

to deter people from using unofficial camp sites, by insisting that festival attendees will not be admitted on foot, but it's fair to assume that anyone coming to camp in the area will probably have travelled to the area in a car. Those measures to deter unofficial campers appear somewhat tokenistic.

There is also a long festival tradition of “fence-jumping”. The organisers of FoH gave assurances that their fences could not be breached but at Wireless festival Finsbury Park 2016, (Footage appears on “Youtube”) gatecrashers brought down the festival's perimeter sheet fencing and crowd barriers, highlighting the dangers of complacency and the importance of regular, patrols around the perimeter. The woodland to the south of the site would provide perfect cover for those wishing to gain entry unseen. .

To his credit, in correspondence to residents on site, Craig Blythe (director FoH) acknowledged the need to monitor the west end of the estate to address concerns about gatecrashers and unofficial camping, however those that know the site well, and indeed those who have visited the site for themselves, believe that even with the very best of intentions, the area around the Panmure site is impossible to secure. It is huge and there is an infinite number of routes into the grounds. The extensive woodland surrounding the site on all sides is unfenced, and even private residential gardens also offer access to the estate. The large areas of forest to the north and south of the site seem to have escaped the organisers' attention altogether.

The density of cover in the form of woodland and foliage throughout much of Panmure Estate, drastically cuts down light levels, even in the day. Inwards of ten feet into the woodland, a person can disappear from view altogether. At night, the absence of any street lighting would make effective police and security surveillance totally unachievable. Even if the organisers are successful in their application for a temporary suspension of “Right to Roam” (something I learned about today) I feel doubtful that Police Scotland and festival security will be able to prevent people accessing the woodland, in order to deal with the public disorder, nuisance and safety issues they would present.

The cultural heritage on the site is precious and Panmure is home to a number of listed buildings and monuments. There are genuine concerns about the threat of vandalism to these and private property on the site. Camp fires, cigarettes and BBQs in the woods surrounding the festival site present a serious, credible fire risk also. The large, dense forest floor will be tinder-box dry in summer.

I believe therefore, that a fire safety assessment for the festival ground and immediate surroundings only, would be dangerously insufficient.

The lack of lighting and the dense nature of the woodland could also contribute to an increase risk of sexual violence, something that is becoming an increasing concern on the festival circuit and now, a source of increasing unease for residents that live on the site.

Other risks include disease and infection. There is a very realistic chance that festival attendees (especially campers) may contract Lyme disease. This is not a vague, hypothetical assertion. Crombie, Monikie and the Panmure Estate in Angus, are renowned locally for being "Tick-Hotspots" and a recent report published in the Journal Of The Royal College Of Physicians Edinburgh, (Document 5) revealed a "significant" rise in cases of Lyme disease in Tayside. According to this report, cases in the area, which are thought to have originated in the region's large forested areas, rose from just five in 2005 to 67 in 2010. Most of cases were caught in the early stages, but around a quarter had neurological symptoms, which can include meningitis, palsy and encephalitis.

Most local dog walkers know to dress appropriately to minimise risks of picking up ticks, and take pains to check themselves and their animals after walks on Panmure Estate and surrounds. During the summer months my own dog in fact, regularly picks up ticks after a walk on the proposed festival site, and in summer 2015, he needed a course of antibiotics after a tick bite caused serious eye inflammation. The local veterinary surgeon (Wallace's Carnoustie) told me there had been "an explosion" and they were seeing "real problems" caused by ticks in the areas mentioned above. On the advice of my vet, I now give my dog prescription medication during the summer months to kill ticks within five hours of him picking them up, thus limiting the chances of him contracting an infection/disease.

The doctors authoring the report issued warnings advising people to be "vigilant". Festival attendees will not be aware of the risks and will not dress appropriately.

Potentially fatal falls are another fear. Little if any mention has been made of the bridge spanning a steep-sided ravine that runs a few yards away from the perimeter of the site.

It has been suggested by the festival organisers that the bridge would be utilised by festival staff, performers and by residents of the estate to access their homes throughout the duration of the festival, but the event is likely to draw festival-goers, gatecrashers and unofficial campers to the area also.

The ravine, which is dangerous in itself, cuts through woodland and is at best guess, somewhere between 100-150ft deep. The bridge spanning it has sides only 4ft in height in some parts, and only 2ft in height in others. Areas at either end of the bridge are unsecured entirely. As such, the bridge presents a very real accident risk.

How will the event organisers secure the bridge, while still allowing access, in the low-light/darkness? Will the steep-sided ravine also be secured?

I recently made an attempt at a short-cut, by crossing the river to access the lower part of the festival site and I stumbled upon the derelict gasworks (as it is locally known). Adjacent to the crumbling building, is a large, deep, sunken, well approx 4m in diameter, that has become filled with stagnant water and rusted metal. This tank lies only a few hundred meters from the field where the old stables are situated (which is part of the of the proposed festival site). Will there be safety measures implemented there, to prevent injury to people trying the access the general area of the site the way I did? All these questions remain unanswered.

Since the festival planning application was made, residents have given several prominent members of the community a tour of the estate with a view to highlighting the risks associated with the bridge, ravine and woodland. On seeing the level of danger present, all have expressed concerns and I urge each member of the licensing committee to visit the area in person to gain an understanding for themselves, before making a PEL decision. Maps and photographs do not give an adequate indication of the dangers.

When the subject of drugs has arisen in conversations about the proposed rave, the response has often been cautious or indignant. While drugs are illegal and most festivals ostensibly operate a “no tolerance” policy, drugs still find their way into festivals. After a specially commissioned study, in 2015, the Home Office sent a letter (Document 6) to all festival organisers stating that they have concerns about the recent upsurge in the use of New Psychoactive Substances, (Legal Highs) alongside the more established drugs (MDMA, mephedrone and ketamine) which are more commonly found at festivals.

If the Home Office are able to deal frankly and openly with the issue of drugs at festivals, by acknowledging their presence and the dangers they present, I feel that all those involved in the planning of this festival ought to feel able to do the same.

The proposed event is a rave for 15,000 people. It is more than reasonable, based on past evidence,



to assume that many attendees, with or without tickets, may well be under the influence of alcohol and/or drugs (cocaine, ketamine, ecstasy, amphetamines, marijuana). These substances all contribute to disorientation, poor decision making and decreased capacity for hazard awareness. For any festival-goer, this is a potentially lethal condition to be in, in a densely covered forest area without mobile phone coverage, that is littered with seriously dangerous hazards, and strewn with obstacles for responding emergency services. Without the acknowledgement of the presence of drugs, I feel festival attendees will be put at risk as the full range of dangers present on the Panmure Estate cannot be fully understood.

Pollution from the lower camp site in particular, is another potential environmental hazard. Environmental reports from SEPA on “the quality of fresh waters needing protection or improvement in order to support fresh fish life” (p 7 Document7) show that in 2007, Monike Burn (the river that runs through the valley very close to the southern end of the proposed camp site) twice failed to meet Directive 78/659/EEC guideline standards. I cannot find more recent data but I expect SEPA will be consulted.

The area marked for the proposed camping ground, is on an incline and so polluted groundwater, will eventually join the river that is already, according to the SEPA report , “under severe pressure”.

Festivals are coming under increasing scrutiny for their failure to combat open-air defecation and urination on site. Glastonbury now runs a poster campaign because the water pollution and damage to the soil that occurs threatens the environment and the organiser's chances of securing future Public Entertainment Licences (Document 8) The FoH organisers refer to open-air urination on their publicity pages and state that those offending will be ejected from the site, however, I feel again that this is a difficult thing to police. Especially at night.

Festival toilets are notoriously unpleasant places and that is why many people don't like to use them.

Monikie Burn is especially under strain (according to the SEPA report) because

“As land use in the Angus coastal catchments is predominantly agriculture, diffuse pollution is the greatest threat to meeting the Directive’s guideline standards, particularly from arable land. Angus is also seen as the abstraction capital of Scotland due to the large volume of water used for irrigation, of potatoes in particular, but also vegetable and soft fruit growing. This puts watercourses in the area under severe pressure during the growing season, especially as the east coast has a drier climate than the rest of Scotland...”

Water from Monikie burn is used for the irrigation of potatoes. I sought an informal conversation with my father, Dr R.A.E. North (PhD. Public Sector Food-Poisoning Surveillance, Qualified Environmental Health Officer, author and blogger on EU affairs). I sent him a plan of the site to demonstrate proximity to burn used for crop irrigation (Document 9) and the attached SEPA report about Monikie Burn. I also explained that the camp site has until recently, been used to rear cattle. He explained to me that should traces of raw sewerage be found to be in contact with crops grown for human consumption they would be rendered unfit and the supermarkets could reject them. In a later email he wrote:

“I did some work on pasture land in Scotland after the John Barr E.coli outbreak, and recovered viable samples of pathogenic strains from fields which had not seen cattle grazed for six months - indicating that their survival was a serious issue and a potential route of infection. The results were shown on the “Dispatches” (TV) Programme.

Yes ... potential introduction of human or zoonotic pathogens into a farming environment is very much to be avoided. It is an unnecessary hazard”.

In light of this statement, and given that the burn undoubtedly supplies water for irrigation to farmers not associated with the planning of the proposed festival, I feel that the potential risks of pollution are not a private issue. In the interests of public health and indeed fairness, the farmers who could potentially suffer substantial losses ought to be given an opportunity to comment.

I feel sure that those camping at the festival, given their limited access to hygiene facilities, will be unable to adhere to the advice from the Scottish Executive, “E. Coli 0157 Recreational Use of Animal Pasture” (Document 10) which recommends hand-washing before the consumption of food and careful handling of soiled clothing, in order to minimise chances infection from pathogens in the soil.

Please find enclosed also, a copy of “Statutory Instrument 1989 No,1263 The Sludge (Use in Agriculture) Regulations 1989, for an overview of issues resulting in the restriction of slurry use in farming. (Document 11)

Noise and nuisance are unavoidable. The festival will cause considerable disruption and misery because noise levels are expected to reach 100-102db. (The festival organisers' own screening checklist clearly states this.)

On page 8 of the report entitled "Hearing Loss Due to Recreational Exposure of Loud Sounds" (issued by the World Health Organisation- (Document 12) it states that noise at that level becomes unsafe after a maximum of 15 minutes.

Daily permissible noise level exposure <sup>a</sup>	
Time per day	Sound level ( $L_{Aeq}$ ), dB
25 hours	80
8 hours	85
2 hours 30 minutes	90
47 minutes	95
15 minutes	100
4 minutes	105
1 minute 30 seconds	110
28 seconds	115
9 seconds	120

<sup>a</sup> <http://www.cdc.gov/niosh/docs/98-126/pdfs/98-126.pdf> : p. 2.

The highest safe exposure level is considered to be 85 dB for up to a maximum of 8 hours (33, 129–132). The permissible time for safe listening decreases as sound levels increase. Thus, the safe duration of exposure to a sound level of 100 dB — the level produced by a subway train — is only 15 minutes a day. The output of personal audio devices may range from 75 dB to as much as 136 dB (11); maximum output levels vary with the regulations and legislation in different parts of the world. Typically, users of personal audio devices set the volume between 75 and 105 dB (34).

Children are even more vulnerable to injury from noise. 100-102db equates to the level of noise a jet take-off makes at 305m, which can cause chronic, permanent hearing damage to children if they are exposed to it for more than one minute, according to page 7nof a training manual issued by the World Health Organisation (WHO) for healthcare providers. (Document 13 p7)

## Children and noise

### MAGNITUDE AND EFFECTS OF SOUND

COMMON EXAMPLE	dBA	EFFECT
Breathing	0-10	Hearing threshold
Conversation at home	50	Quiet
Freeway traffic (15 m), vacuum cleaner, noisy party	70	Annoying, intrusive, interferes with phone use
Average factory, train (at 15 m)	80	Possible hearing damage
Jet take-off (at 305 m), motorcycle	100	Damage if over 1 minute
Thunderclap, textile loom, chain saw, siren, rock concert	120	Human pain threshold
Toy cap pistol, Jet takeoff (at 25 m), firecracker	150	Eardrum rupture

There are children residing immediately adjacent to the proposed festival site so it is vital that safety checks are completed and guidelines are adhered in order to ensure the levels of noise these children are exposed to are within safe limits.

Finally, the FoH organisers have stated that the festival will bring economic benefits to the area and that they intend to use local businesses where possible. It would appear that the organisers' definition of "local" differs from mine however, given that Stuart Wilson Hutton who was named as the applicant for the Alcohol Sales License is based in Stanley, Perthshire.

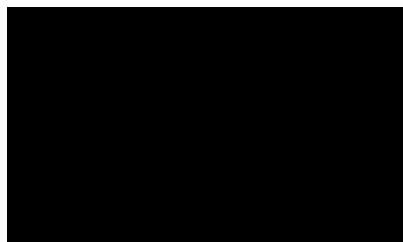
Few businesses in the locality are large enough and specialised enough to cater for vast numbers of people and it seems reasonable to assume that festival attendees will be unlikely to make the journey into the main town. They would miss the headlining acts they had paid to see.

Catering for festivals is also a specialised industry and most festivals employ caterers that tour the festival circuit. Usually campers taking cars will take their own food or buy it from those vendors on the site. This being the likelihood, arguably, the benefits will not outweigh the cost to the Carnoustie and Panmure communities.

I agree with the director of the “Festival of House” on one thing only. The Panmure site is beautiful. It would seem ironic then, that its unspoiled beauty would be a reason given for its exploitation.

I urge you please to refuse the PEL license for this event.

Yours sincerely,



Emma McGregor

# right first time

A practical guide  
for public authorities  
in Scotland to  
decision-making  
and the law



# right first time

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# how to use this guide

If you are responsible for making or advising on decisions, the legal considerations you have to take into account may sometimes seem daunting, even bewildering. What should you be thinking about, or doing, and when?

The **checklist** on page 5 and this guide are here to help.

The process will begin with you getting ready to make a decision (or a recommendation to Ministers or officials) by sizing up and scoping out the task in front of you. You will move to gathering and analysing facts, evidence, views and opinions to inform the decision. Having done that you will evaluate the options and take the decision. Finally, you will notify others of the decision.

The **checklist sets out key questions to ask yourself at each step**. The rest of the guide helps you answer them.

The checklist and guide have limitations. They are intended to help with any administrative decision, but they are not specific to a particular kind of decision under a particular power, nor a substitute for the specific guidance that will sometimes be needed. **They are no substitute for asking your lawyer.**

Decision-making will feel and be messier than the checklist suggests. The questions overlap – in places we flag up where one can be relevant if you are considering another, but bear in mind that all of the questions may have to be considered.

**Step 1** | Getting ready to decide  
questions designed to make sure that you understand the law regulating your decision-making power. They are important – you will have to return again and again to these questions and the law regulating your power at each step.

**Step 2** | Investigation/evidence gathering process  
important questions about the way in which the decision is made, i.e. on the *procedure* leading to the decision, not its *substance* or merits.

**Step 3** | Taking the decision  
Make sure the substance of the decision will be respected by the courts.

**Step 4** | Notifying others of the decision  
Do you have to give reasons?

## **What does the legal jargon mean?**

We introduce and explain the legal terms used on page 6.



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### Step 1 | Prepare: Getting ready to decide – 10 questions

- ☐ 01. Where does the power to make this decision come from and what are its legal limits?
- ☐ 02. For what purposes can the power be exercised?
- ☐ 03. What factors should I consider when making the decision?
- ☐ 04. Is there a policy on the exercise of the power?
- ☐ 05. Does anyone have a legitimate expectation as to how the power will be exercised?
- ☐ 06. Can I make this decision or does someone else need to make it?
- ☐ 07. Have devolution and the Scotland Act affected the power?
- ☐ 08. Am I complying with human rights and European law?
- ☐ 09. How has equal opportunities legislation affected the power?
- ☐ 10. Am I handling data in line with Data Protection or Freedom of Information obligations?



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### Step 2 | Investigate: Investigation/evidence gathering process

- ☐ 11. Does the power have to be exercised in a particular way, e.g. does legislation impose procedural conditions or requirements on its use?
- ☐ 12. Have I consulted properly?
- ☐ 13. Will I be acting with procedural fairness towards the persons who will be affected?
- ☐ 14. Could I be, or appear to be, biased?



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### Step 3 | Decide: Taking the decision

- ☐ 15. Have I taken necessary considerations into account, and is my decision reasonable?
- ☐ 16. Does the decision need to be, and is it, proportionate?
- ☐ 17. Are there decisions where the Court is less likely to intervene?



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### Step 4 | Notify: Notifying others of the decision

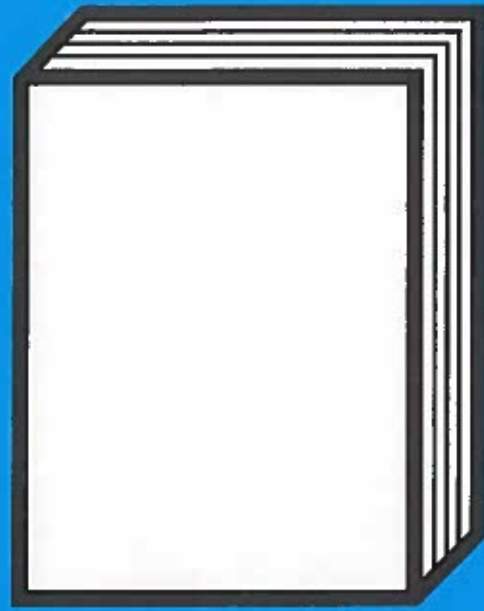
- ☐ 18. To what extent should I give reasons for the decision?
-

## Legal terms used in this guide

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<b>the Court</b>	Usually the Court of Session in Edinburgh by judicial review (see below). Other courts like the Sheriff Court will also enforce the rules described in this guide, e.g. in specific areas like licensing appeals, or if human rights and European law issues arise.
<b>European law</b>	The law which applies as a result of UK membership of the European Union, mainly the law of the European Community. See <b>Question 8</b> and <b>Annex 2</b> . Also known as “Community law”, EC law or EU law.
<b>human rights</b>	The rights protected by the European Convention on Human Rights (also known as “the Convention”) – not directly related to European law (see above). Also known as ECHR or “Convention rights”. See <b>Annex 1</b> .
<b>judicial review</b>	The procedure the Court of Session in Edinburgh uses to supervise decisions of public (and some other) authorities in Scotland. See <b>Annex 3</b> .
<b>the Scotland Act</b>	The Scotland Act 1998 is the piece of legislation that established the Scottish Parliament and the Scottish Government (although referred to in the Act as the Scottish Executive) and gives them their powers.
<b>statute/legislation</b>	Acts of the Westminster or Scottish Parliaments. Also covers regulations, orders or rules made under powers given to Ministers and others by Acts, often published as “Statutory Instruments” (“SIs”), or devolved Scottish Statutory Instruments (“SSIs”).
<b>ultra vires</b>	Latin for “outwith the powers” of an authority. See <b>Question 1</b> .

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# prepare

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## Step 1 | Getting ready to decide – 10 questions

- 01. Where does the power to make this decision come from and what are its legal limits?
  - 02. For what purposes can the power be exercised?
  - 03. What factors should I consider when making the decision?
  - 04. Is there a policy on the exercise of the power?
  - 05. Does anyone have a legitimate expectation as to how the power will be exercised?
  - 06. Can I make this decision or does someone else need to make it?
  - 07. Have devolution and the Scotland Act affected the power?
  - 08. Am I complying with human rights and European law?
  - 09. How has equal opportunities legislation affected the power?
  - 10. Am I handling data in line with Data Protection or Freedom of Information obligations?
-



# question one

## Where does the power to make this decision come from and what are its legal limits?

A decision-maker may appear to have unlimited powers. A statutory provision conferring a power may say "the Scottish Ministers shall grant or refuse the application" without qualification. But however unlimited the power appears to be, there may be legal limits.

To ensure that a decision is lawful and fair, and is not overturned on review by the Court<sup>1</sup> or challenged by any other authority, the starting point is to understand the nature of the power.

- Some limitations may be **express**: the purposes for which a particular power was given, or the criteria to be applied in exercising it, may actually be set out in the legislation.
- Other limits will be **implied** by the statutory scheme that gives the powers.

Other limits may be derived from the principles of administrative law. These include:

### Legality

acting within the scope of any powers and for a proper purpose

### Procedural fairness

for example to give an individual an opportunity to be heard

### Reasonableness or Rationality

following a proper reasoning process and so coming to a reasonable conclusion

### Compatibility

with human rights and European law

To act lawfully, a decision-maker must have the legal power to do what he or she intends to do. If not, that person will be acting *ultra vires* or outside his or her powers. Where the power does exist, it will usually be found in legislation.

It will be necessary to study the legislation to learn the limits and purposes of the power and to consult accompanying documents such as explanatory notes for assistance. Where doubt remains, you should consult your lawyer.

Sometimes the Government and public authorities will derive their power to act from a contract, or, in the case of Government, from Ministers' powers at common law, e.g. power to employ staff. In addition there are some powers which are considered part of the "Royal Prerogative" of the Crown because Ministers act on behalf of Her Majesty The Queen.

If the power is contained in legislation, you will need to look at its words to work out what the decision maker can and cannot do. Usually, words in a statute are given their plain English meaning. Where the words might give rise to a different interpretation, the Court will try to determine the intention of the Parliament that made the legislation. Either way, you will need to understand the general purpose of the statute, as well as the particular provision. It can sometimes be helpful to consider the explanatory notes to an Act or the executive note for subordinate legislation<sup>2</sup>, and the record of any proceedings in the Scottish or UK Parliament<sup>3</sup>. The Court will also read legislation so as to comply with human rights, European law and, in the case of legislation made by the Scottish Parliament, the Scotland Act.

<sup>1</sup> See Annex 3 for a short guide on how such court proceedings, known as judicial review, would operate.

<sup>2</sup> Published at <http://www.opsi.gov.uk/legislation/original.htm> for Acts and SSIs from 1999 and from 1987 for SIs.

<sup>3</sup> E.g. the Scottish Parliament Official Report <http://www.scottish.parliament.uk/business/index.htm> or "Hansard" at Westminster <http://www.publications.parliament.uk/pa/pahansard.htm>.

### **A power or a duty?**

Sometimes, even though the words in the legislation indicate that there is discretion as to whether or not to act – e.g. that the public authority “may” do something – there are cases where that must be interpreted as imposing a duty to act.

For example, a public authority with the power to grant licences may be obliged to do so where an applicant fulfils all the prescribed requirements. In order to determine what a law means when it says “may” (or for that matter “shall”) you have to look at the law in question and its purposes as a whole. If in doubt, contact your lawyer.

There may be a power available to a public authority but it may have a discretion about whether or how it is to be exercised.

### **Who can review decisions?**

For the purposes of this guide reference is made in general to the Court reviewing decisions. However it should be borne in mind that decisions are often reviewed internally as well as by administrative tribunals.

A decision may also be reviewed by the Scottish Public Services Ombudsman. Where a person is unhappy with the service they have received (which could include a decision or series of decisions) from a public body falling under the remit of the SPSO<sup>4</sup> they may make a complaint and have it investigated.

### **See also in particular**

#### **question six**

Can I make this decision or does someone else need to make it?

A patient challenged the Scottish Ministers’ failure to make regulations under the Mental Health (Care and Treatment) Scotland Act 2003 introducing a formal mechanism to allow restricted patients detained in medium and low security hospitals to challenge their conditions of security. Regulations introducing such a mechanism for those detained in high security hospitals had already been introduced. Having examined the background to the Act, its passage through Parliament and guidance issued by the Scottish Health Department following its coming into force, the Court held that it was clear that the provision allowing regulations to be made was intended to deal with a problem which may arise at some point in the future. Parliament had not intended to impose a time limited duty on the Scottish Ministers to make the Regulations.

*RM v Scottish Ministers*  
(2008) CSOH 123

#### **question seven**

Have devolution and the Scotland Act affected the power?

#### **question eight**

Am I complying with human rights and European law?

<sup>4</sup> See <http://www.spsos.org.uk/>



# question two

## For what purposes can the power be exercised?

As well as having the power to act, a public authority must use its power for a lawful purpose. Its action will be *ultra vires* and an abuse of power if it uses the power to achieve a purpose for which the power was not intended.

A circus company applied to a local authority for a temporary public entertainment licence. The licence was refused. The local authority stated that although they had not applied a blanket policy the local authority had a policy which did not permit circuses featuring performing animals based on the fact that the whole concept of animals performing in circuses was wrong. The Court found that the powers the local authority had been given by Parliament related to the registration of those wishing to provide public entertainment. This did not permit the local authority to prohibit types of performance of which it simply disapproved.

Gerry Cottle's Circus Ltd v City of Edinburgh  
DC (OH) 1990 SLT 235

Legislation may expressly set out the purposes for which a power may be exercised, or they may be implied from its objectives. The Court has accepted that a public authority may undertake tasks "conducive to" or "reasonably incidental to" a defined purpose. If for example a decision-maker has the power to hold a public hearing to assist in making a decision, related powers to hire accommodation, pay for IT etc. will be treated as being "reasonably incidental" to that purpose.

### See also in particular

#### [question one](#)

Where does the power to make this decision come from and what are its legal limits?

#### [question three](#)

What factors should I consider when making the decision?

#### [question seven](#)

Have devolution and the Scotland Act affected the power?

# question three

## What factors should I consider when making the decision?

To make a decision which is lawful, two main principles should be followed:

1. You should not base your decision on irrelevant factors or considerations; and
2. if there are factors or considerations which you have a duty to base your decision on, then you must do so.

There are certain rules which will help you to decide what factors you have a duty to consider, what factors are relevant, and those which are irrelevant.

If you are using powers given to the public authority by a statute, it might set out the factors on which you should base your decision. Some statutes set out factors which you have to pay "particular" attention to. So, whilst the statute doesn't set out every factor which you can consider, it does mean that you have to follow the factors that are listed.

If the statute doesn't set out factors to be considered then it helps to look at what the statute is trying to achieve (its purpose) and from that decide what factors are relevant to the decision you are to make. If your decision is challenged the Court will want to know the factors that you considered; for example the media's reaction to a decision is unlikely to be relevant to the purpose of the statute and the Court would be likely to decide that this was an irrelevant factor on which to base a decision.

An application for a regular extension to permitted hours was made to a licensing board. In considering whether or not to grant the application the licensing board was, in terms of the statutory provisions, to have regard to the social circumstances of the locality or to the activities taking place in the locality. The licensing board took into consideration that the local environmental health department had reported one week earlier that the premises were in an unsatisfactory condition. The Court decided that, in terms of the statutory scheme, this was not a relevant factor on which to base the decision.

*Bantop Ltd. v Glasgow District Licensing Board* 1989 SCLR 731

To take into account all relevant considerations required to come to a decision:

- you need to make sure that you have accurate and up-to-date information
- where you don't have the information that you need to make the decision you have to make sure that you can get it from those who have it
- you should consult (see [question twelve](#)) and follow any guidance or points of reference in place within your public authority which relate to the way the decision has to be made
- where representations have been made regarding the decision you should take account of them where appropriate.

# question three

In a planning appeal against the refusal of outline planning permission for a residential development on agricultural land, the Court found that the Reporter, in considering the application, had failed to address the evidence on housing land supply and had also misconstrued the significance of supplementary planning guidance. He had not undertaken sufficient analysis of the evidence and did not take account of material elements. Rather he applied his own personal view of the application and failed to identify any material consideration which would properly allow for departure from the development plan. He had also failed to properly specify what was meant when he gave as one of the reasons for refusal that the developers' proposal did not satisfy the definition of "affordable housing". The decision was struck down.

Aberdeenshire Council v The Scottish Ministers [2008] CSIH 28

It is important to remember that it is the factors which are used in making the decision that are important here and that you must be able to demonstrate that you have properly considered them.

In addition to looking to your powers you should also consider whether your decision could affect an individual's human rights. If so then evidence that you have taken such considerations into

account could assist you in responding to any challenge to the decision.

Whatever factors you decide are relevant, you need to be sure that the facts on which you base your decision are accurate and up to date. You should also consider whether the factors that influenced your decision, and the decision-making process itself, need to be recorded. In determining what should be recorded, it is worth bearing in mind the rights to access information created by the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002.

## **See also in particular** **question one**

Where does the power to make this decision come from and what are its legal limits?

## **question ten**

Am I handling data in line with Data Protection or Freedom of Information obligations?

## **question eighteen**

To what extent should I give reasons for the decision?

## **Relevant considerations might also be**

- policies (see [question four](#))
- legitimate expectations (see [question five](#))
- representations received (see [questions eleven to thirteen](#))

# question four

## Is there a policy on the exercise of the power?

Where a statute has conferred a discretionary power on Ministers or another public authority to issue something such as a licence, they will potentially have to deal with hundreds or thousands of cases. The statute may spell out the criteria for the grant of the licence in general terms, but the decision-maker may still be left with a wide discretion. To ensure consistency and promote administrative efficiency, the decision-making authority will probably develop a standard way of dealing with such cases; they will try to apply the same criteria, attaching the same weight in each case. They will develop a "policy" for dealing with cases.

However, where statute confers a discretion on an individual, he or she must not surrender that discretion – to another person, to a set of rules, or to a "policy". The decision-maker must keep an open mind and consider each case on its own merits; otherwise there is a failure to exercise discretion properly. The authority must not "close its ears" to particular arguments.

The Court has held that it is lawful for decision-makers to have a policy as to the way in which discretion should be exercised – indeed, to achieve consistency in decision-making it may be essential that there is a policy. But the Court has also held that the decision-maker must nevertheless direct his or her mind to the facts of the particular case and be prepared to make exceptions. This is particularly important in cases involving human rights and considerations of equality. Equally, where a decision-maker does have a policy he or she should not depart from it without giving an explanation or should ensure that a change in policy is compliant with the law.

The Court criticised the Home Secretary for departing from a published policy relating to foreign national prisoners where there had been a decision to deport. The policy was that there was a rebuttable presumption that the prisoner would be released pending deportation. The policy was changed so that the presumption was that the prisoner would not be released, but that change in policy had not been published and so was insufficiently open and accessible.

*Abdi and others v Secretary of State for the Home Department* [2008] EWHC 3166

The decision-maker must keep an open mind and consider the facts of every case – and make it clear that this has been done in the terms of the decision. This approach is also more likely to be proportionate in human rights terms because it allows a proper assessment of whether any interference with human rights is necessary on the facts of the particular case.

### See also in particular

#### [question five](#)

Does anyone have a legitimate expectation as to how the power will be exercised?

#### [question nine](#)

How has equal opportunities legislation affected the power?

#### [question thirteen](#)

Will I be acting with procedural fairness towards the persons who will be affected?

# question five

## Does anyone have a legitimate expectation as to how the power will be exercised?

An authority must act within its powers; must not close off (or "fetter") the exercise of its discretion, and may exercise that discretion in accordance with a "policy", provided it is operated consistently but not too rigidly. Sometimes a tension arises between these principles in practice. Suppose an authority operates a policy or procedure consistently, but a change of circumstances, or a review of where the "public interest" lies, means that there is a need to modify the policy or procedure. Or suppose the decision-maker misunderstands the extent of his or her legal powers and offers to an applicant a benefit (for example, planning permission) for which the applicant is not qualified under statute.

In this kind of situation someone affected by the decision can have a legitimate expectation that because the policy or procedure has been operated in such a way in the past, that this will continue in the future. Equally, if the authority has promised someone in particular a benefit, it may (depending on the circumstances) be unfair to break that promise, even if there are public interest grounds for breaking it.

The key to resolving these tensions is to strike a balance between the public interest, for example in changing the policy, and the private interest in maintaining it. Where a legitimate expectation has arisen, a public authority can still frustrate

that expectation if any over-riding public interest requires it. Whether a legitimate expectation has arisen, and whether it can be overridden, will depend upon a number of factors, such as:

- Were the words or conduct (the "promise" or "representation") which gave rise to the expectation clear and unequivocal?
- Did the person promising the benefit have the legal power to grant it, or was it *ultra vires*?
- Who made the promise and how many people stood to benefit by it?
- Did the person(s) to whom the promise was made take action in reliance upon it which has placed them in a worse position than they would have been in if they had not taken that action?

These are some of the factors which the Court will take into account in deciding whether a legitimate expectation has arisen and whether it is fair, or would be an abuse of power, to allow the public interest to over-ride it. If the decision-maker had no legal power to make the promise/representation, then a claim of legitimate expectation is unlikely to succeed, though there could be exceptions to this where human rights are in play.



Where it is intended to change a policy or a procedure (for example, to change a practice of accepting late applications), practical steps should be taken to address potential claims of legitimate expectation that the policy or procedure would continue – by clear publicity, by careful explanation why the change is necessary, and possibly by consultation with regard to the timing of any change or to the new procedure to be adopted.

**See also in particular**

**question four**

Is there a policy on the exercise of the power?

**question thirteen**

Will I be acting with procedural fairness towards the persons who will be affected?

Mrs M agreed to remove herself voluntarily from a pitch on a travelling person's site on condition that she would be offered a pitch on the site following completion of modernisation works. An unconditional assurance was given and confirmed in writing. When the site was reopened she was not given a pitch. Mrs M sought review of the decision on the grounds that she had a legitimate expectation that her application would be granted. The Court had to consider whether there were factors which would permit the authority to depart from the assurance that had been given. In this case Mrs M had not been honest in her application form and the Court held that this was a factor which would justify departure.

McPhee v North Lanarkshire Council 1998  
SLT 1317

# question six

## Can I make this decision or does someone else need to make it?

The general rule is that where legislation confers a power on a specified individual or body, the power must be exercised by that individual or body and must not be given away to another person or body. However, there are many exceptions to this rule. In particular, the Court accepts that Government Ministers cannot possibly make personally every decision which is made in their name, and that officials may act on their behalf. This is known as “the *Carltona* principle” after the leading case<sup>5</sup>. The theory is that, legally and constitutionally, the acts of officials are the acts of their Ministers provided the official is acting with the express or implied authority of the Minister. The principle does not however apply in local government.

Where the *Carltona* principle applies, a decision may still only be taken on a Minister’s behalf by an official of appropriate seniority and experience. And there will always be some cases where the special importance of the decision, or its consequences, mean that the Minister must make the decision personally.

Sometimes specific statutory provisions require that the Minister make the decision personally.

If the power can be delegated, you need to check whether there are limitations on the seniority of officials who can exercise it on the Minister’s behalf.

Sometimes, before you can make your decision, you will need information or policy input from another public authority. If so, it is important to remember that the decision is one for you as the

In terms of the Scottish Prison Rules, a Governor has the power to remove a prisoner from association for particular reasons including maintaining the good order of the prison, for a period of up to 72 hours. The Scottish Ministers may authorise an extension of that removal on the application of the Governor. On the basis of the *Carltona* doctrine, the decision on an extension may be taken by a duly authorised civil servant of a senior grade on the Ministers’ behalf.

Rule 9.4: The Prisons and Young Offenders Institutions (Scotland) Rules 2006

decision-maker, having regard to all the circumstances, including the advice or recommendation of that other authority. You should not merely ‘rubber-stamp’ the advice or recommendation which you receive from elsewhere.

### See also in particular question seven

Have devolution and the Scotland Act affected the power?

### question fourteen

Could I be, or appear to be, biased?

<sup>5</sup> *Carltona Ltd –v– Commissioners of Works* [1943] 2 All ER 560



# question seven

## Have devolution and the Scotland Act affected the power?

At present, the Scottish Parliament has powers to make laws in devolved areas, but in reserved areas those powers remain with Westminster. The functions of many public authorities in Scotland were relatively unaffected by devolution, though they may be affected by subsequent Acts of the UK or Scottish Parliament. The powers of the Scottish Government (and wider Scottish Administration) on the other hand are closely aligned to the functions of the Scottish Parliament.

Whether a law is devolved or reserved depends on its subject-matter, its purpose and, among other things its effect in all the circumstances.

The UK and Scottish Governments have legal powers only over the matters that are within the range of subjects they control. Ministers and civil servants in the Scottish Government, and in the UK Government, therefore need to ensure that any decisions that they make have a lawful basis given the terms of the Scotland Act. There are, however, a range of mechanisms in the Scotland Act that allow the boundaries of devolution to be altered. Since devolution, a range of alterations have been made.

An Act of the Scottish Parliament or the purported exercise of powers by the Scottish Ministers can be struck down by the Court, if it has an effect beyond that permitted by the Scotland Act on reserved matters, or if it is incompatible with human rights or European law.

However, as a general rule, you can assume that the current legislation is within the competence of the Scottish Parliament and proceed to make your decision on that basis.

### **See also in particular**

#### **question one**

Where does the power to make this decision come from and what are its legal limits?

#### **question eight**

Am I complying with human rights and European law?

# question eight

## Am I complying with human rights and European law?

Human rights considerations permeate many areas of the work of public authorities in Scotland.

The Human Rights Act 1998 requires public bodies to act compatibly with a wide range of the rights set out in the European Convention on Human Rights. For public authorities other than the Scottish Government the only exception to this is where a duty under primary legislation made at Westminster means that you cannot do otherwise<sup>6</sup>. The key human rights are in Annex 1.

The Scotland Act also obliges the Scottish Ministers and the Scottish Parliament to act compatibly with both human rights and European law.

As the UK is part of the European Union, European law overrides Scots law. In fields governed by European law (e.g. agriculture and parts of environmental law) broad principles of European law apply. Much significant European legislation applies directly in Scotland and can be relied upon against public authorities in Scotland. Key European law issues are summarised in Annex 2.

The use of a power may be unlawful if the effect of the decision is to contravene a person's human rights, or European law.

Mrs B's husband died after receiving contaminated blood. She asked the Lord Advocate to hold a Fatal Accident Inquiry (FAI) into the death in terms of the Fatal Accidents and Sudden Deaths Act 1976. The holding of an FAI is at the discretion of the Lord Advocate. The Lord Advocate declined to hold such an inquiry. Mrs B complained that this refusal was a breach of the investigative obligation present in Article 2 of the Convention (the right to life). The Court agreed and held that the decision not to hold an FAI should be reduced. The investigations that had been carried out were insufficiently wide in scope and there had been no practical or effective investigations into the death.

Kennedy & another v Lord Advocate & Scottish Ministers [2008] CSOH 21

In this case example, the decision made by the Lord Advocate was within the terms of the statute, but the particular exercise of the power was incompatible with a human right and was therefore annulled.

<sup>6</sup> Section 6(2) of the Human Rights Act 1998.

The Human Rights Act also adds an important dimension to interpreting legislation: so far as it is possible to do so, legislation must be given effect to in a way which is compatible with human rights<sup>7</sup>

**See also in particular**

**question seven**

Have devolution and the Scotland Act affected the power?

**question fourteen**

Could I be, or appear to be, biased?

**question sixteen**

Does the decision need to be, and is it, proportionate?

A prisoner challenged the blanket ban on voting which applied to convicted prisoners serving custodial sentences, imposed by section 3(1) of the Representation of the People Act 1983 as amended. The claim was made to the right to free elections in Protocol 3 to the Convention. The Court considered whether it was possible to read the legislation in such a way as to make it human rights compliant but found that there was no way to do so because it could not choose among the multiple policy alternatives. To do so would mean it was effectively legislating on its own account. The Court therefore declared the legislation incompatible with human rights.

Smith v Scott [2007] CSIH. 24 January 2007

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<sup>7</sup> Section 3 of the Human Rights Act 1998.

# question nine

## How has equal opportunities legislation affected the power?

There are a number of pieces of legislation which make it unlawful to act in a particular way or reach a particular decision where it would be discriminatory.

The Human Rights Act 1998 and European law prohibit discrimination in certain circumstances. The Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 and the Equality Act 2006 (and regulations under it) contain prohibitions on discrimination on grounds of sex, race, disability, religion or belief, or sexual orientation in the exercise of most public functions.

The Scotland Act reserves the subject matter of equal opportunities to the UK Parliament, with the exception of the encouragement of equal opportunities by, and the imposition of duties on, the Scottish Government and Scottish public authorities to ensure that their functions are carried out with "due regard" to the need to meet equal opportunities requirements.

A decision may be unlawful, therefore, if it fails to have due regard to the need to eliminate unlawful discrimination and promote equality of opportunity. Specific provisions of equalities legislation also impose duties on public authorities to evidence that they have shown due regard to certain matters<sup>8</sup>. The public sector equality duties for race, gender and disability require public authorities to undertake equality impact assessments to ensure that the implications of decision-making, both positive and negative, for different groups in society have been considered. These duties are to be

extended further under the provisions of the UK Equalities Bill.

Decisions must therefore be taken with due regard for the need to:

- eliminate unlawful discrimination and harassment under the Sex Discrimination Act 1975
- eliminate unlawful racial discrimination under the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000
- eliminate discrimination that is unlawful under the Disability Discrimination Act 1995 and harassment of disabled persons related to their disabilities
- promote equality of opportunity between men and women
- promote equality of opportunity and good relations between persons of different racial groups
- promote equality of opportunity between disabled persons and other persons
- take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons
- promote positive attitudes towards disabled persons
- encourage participation by disabled persons in public life.

Failure to do so may lead to a decision being struck down.

<sup>8</sup> Section 76A of the Sex Discrimination Act 1975, section 71 of the Race Relations Act 1976 and section 49A of the Disability Discrimination Act 1995.

In 2007 the Secretary of State made amendments to the rules in accordance with which Secure Training Centres ("STCs") in England and Wales had to be run. STCs accommodate young people ("trainees") who have either been sentenced to custody or who have been remanded in custody. The amendments permitted officers in STCs to physically restrain trainees if it was necessary for the purposes of ensuring good order and discipline. The amendments to the rules were challenged, not because they were discriminatory, but because, amongst other things, no racial equality impact assessment was carried out before the Secretary of State had made them. The courts considered that the amendments to the rules were plainly a change in policy in a matter that might raise issues about racial equality, in view of the significant numbers of black and ethnic minority trainees accommodated in STCs. The Court of Appeal decided that the rule of law and the proper administration of race relations law required the amendment rules to be quashed.

R(C) v The Secretary of State for Justice  
[2008] EWCA Civ 882

As can be seen from the case example, the duty applies even in cases where you might think you are not making a significant change or where you think your decision will affect everyone equally. Other cases where challenges have been brought arguing that the duty was not carried out, or not carried out properly, have included decisions on planning control, an *ex gratia* compensation scheme and the funding of voluntary organisations.

What does a duty to have "due regard" to these needs require you to do when making a decision? There are no reported cases in the Scottish courts but the Court of Appeal in England and Wales has said that due regard means: "the regard that is appropriate in all the circumstances. These include on the one hand the importance of the areas of life of the members of the disadvantaged group that are affected by the inequality of opportunity and the extent of the inequality; and on the other hand, such countervailing factors as are relevant to the function which the decision-maker is performing".<sup>9</sup>

The duty however is not a duty to achieve the elimination of discrimination or the promotion of equality of opportunity. It is only a duty to have regard to the need to achieve these goals.

There are relevant materials that will assist you in complying with these duties. The Equal Opportunities Commission, the Commission for Racial Equality and the Disability Rights Commission (replaced in October 2007 by the Equality and Human Rights Commission) have

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<sup>9</sup> R (Baker & Others) v Secretary of State and London Borough of Bromley [2008] EWCA Civ 141 paragraph 31



# question nine

published Codes of Practice, which still have effect, on the performance of these duties and good practice examples from the implementation of the duties by public bodies<sup>10</sup>. The Scottish Government has published schemes which show how it intends to fulfil these duties.<sup>11</sup> An Equal Opportunities Impact Assessment toolkit and guidance are available through the Scottish Government intranet to all Scottish Government staff to help ensure these duties are met. Other public authorities will have their own schemes and guidance.

## **See also in particular** **question three**

What factors should I consider when making the decision?

## **question eight**

Am I complying with human rights and European law?

### **NHS 24 Equal Pay Review**

The Gender Equality Duty requires that listed public bodies "consider the need to have objectives to address the causes of any gender pay gap". In late 2007 and early 2008, NHS 24 carried out an equal pay review to ensure their compliance with the element of the Gender Equality Duty that requires public bodies to publish arrangements for delivering equal pay and then to report on progress.

Although the NHS has a national pay review programme (Agenda for Change), NHS 24's first equality and diversity annual report (Delivering Equality. Embracing Diversity, published in September 2007) highlighted the fact that there was a need to gather further information on a number of related issues. These included wage levels, actual earnings, the implication of part-time working, gender segregation, shift work and continuous service, among others. An equal pay review was identified as the most appropriate tool to complement work on, and add value to, meeting specific employment duties as well as providing an evidence base for the delivery of equal pay. The equal pay review is available on the **NHS 24 website**.

The review found an overall pay differential between women and men, and within particular grades, enabling a further exploration as to the underlying reasons. NHS 24 has now committed to undertaking an annual update of the review to help address any structural factors which may cause pay differentials between women and men.

[www.equalityhumanrights.com/scotland](http://www.equalityhumanrights.com/scotland)

- <sup>10</sup> The "Gender Equality Duty Code of Practice, Scotland" available at <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/gedcopScotland.aspx>; the "Statutory Code of Practice on the Duty to Promote Race Equality in Scotland" available at <http://www.equalityhumanrights.com/en/publicationsandresources/Pages/CopREDSScotland.aspx>; and "The Duty to promote Disability Equality: Statutory Code of Practice (Scotland)" available at [http://www.equalityhumanrights.com/Documents/Disability/Public\\_sector/Disability\\_equality\\_duty/Codes\\_of\\_practice/DED\\_code\\_Scotland.pdf](http://www.equalityhumanrights.com/Documents/Disability/Public_sector/Disability_equality_duty/Codes_of_practice/DED_code_Scotland.pdf).
- <sup>11</sup> Gender Equality Scheme available at <http://www.scotland.gov.uk/Publications/2008/06/12114733/0>; Race Equality Scheme available at <http://www.scotland.gov.uk/Publications/2008/11/28092741/0> and Disability Equality Scheme available at <http://www.scotland.gov.uk/Publications/2008/05/22092418/0>

# question ten

## Am I handling data in line with Data Protection or Freedom of Information obligations?

### Data Protection

Information about individuals held by public authorities is governed by the Data Protection Act 1998 ("the DPA"), as is such information held by private bodies. The DPA is a UK statute which gives effect to a European Directive. If the information is biographical, and is capable of being used on its own or in conjunction with other information to identify a person, it is probably covered by the DPA.

Where it applies, the DPA restricts the use you can make of the information, and allows the individual rights to get that information. There are a wide range of exemptions which can apply, e.g. national security, and where disclosure is required by law. However, you should proceed on the basis that any information that you receive or generate about an individual could end up being seen by that individual. You should ensure that all personal information is accurate, up to date, kept for no longer than necessary, and stored safely. More information is available on the general requirements of the DPA<sup>12</sup>.

Issues often arise about sharing information obtained for one public purpose for another (usually known as "data sharing") either between public authorities or within a single public

authority. Information should only be accessed and used in decision-making when there is a proper basis for you to have sight of the information. There is detailed Scottish public sector guidance available<sup>13</sup>.

### Freedom of information

Under the Freedom of Information (Scotland) Act 2002, members of the public are given rights to get information from most Scottish public authorities merely because it is held by the authority. They do not require to give reasons for their request. You should bear in mind when making a decision, that the information you have available to you and the material that you generate in the course of the decision-making process may subsequently require to be released, either proactively or in response to a freedom of information request.

There are a wide range of exemptions, though many are subject to a public interest test. Where that test appears to apply, it has to be considered in relation to each piece of information – you should remember that information should be released unless there is a good reason in terms of the exemption not to release it. Your decision can be reviewed by the Scottish Information Commissioner<sup>14</sup>.

<sup>12</sup> [http://www.ico.gov.uk/Home/for\\_organisations/data\\_protection\\_guide.aspx](http://www.ico.gov.uk/Home/for_organisations/data_protection_guide.aspx)

<sup>13</sup> <http://www.scotland.gov.uk/Publications/2004/10/20158/45784>

<sup>14</sup> <http://www.itspublicknowledge.info/ScottishPublicAuthorities/ScottishPublicAuthorities.asp>





# investigate

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## **Step 2** | Investigation/evidence gathering process

- 11. Does the power to make the decision have to be exercised in a particular way, e.g. does legislation impose procedural conditions or requirements on its use?
  - 12. Have I consulted properly?
  - 13. Will I be acting with procedural fairness towards the persons who will be affected?
  - 14. Could I be, or appear to be, biased?
-

# question eleven

Does the power to make the decision have to be exercised in a particular way, e.g. does legislation impose procedural conditions or requirements on its use?

Correct procedure (or "due process") is vitally important, because there are some tried and tested procedural mechanisms which are likely to secure a just outcome and demonstrate the rule of law. The so-called "rules of natural justice" are rules of procedure. What amounts to a fair process may vary depending on the circumstances. As a general rule, however, a person likely to be affected by a decision should be given adequate notice to allow them to make representations. This may mean that they have a right to an oral hearing or it may just allow them an opportunity to make written submissions. If there is available evidence then there must be an opportunity for all parties to consider and make representations. In determining whether there has been a fair hearing, the Court will consider whether there has been equality of treatment.

In a case involving an application by the holders of an entertainment licence for an extension of permitted hours, the Chief Constable objected on the basis of a number of incidents which had taken place in the immediate vicinity of the premises. The Licensing Board accepted that the objections were relevant to their consideration and of a serious nature, whether taken individually or together. It refused the application on the basis that the extension was likely to cause a public nuisance or be a threat to public order or safety.

The applicants argued that there should have been an opportunity to lead evidence before the Licensing Board, but the Court felt it was sufficient to ensure a fair process that the licence holder had a fair opportunity to correct or contradict the information provided by the Chief Constable. Each party had, and took, the opportunity to make submissions about what was alleged.

JAE (Glasgow) Ltd v City of Glasgow District Licensing Board 1994 SLT 1164

# question eleven

Legislation can also impose specific procedural conditions or requirements which must be satisfied before a power can be exercised. For example, legislation might stipulate that the Scottish Ministers or another public authority must:

- Consult with particular persons;
- Publish a decision in draft;
- Make due inquiry;
- Consider any objections before making a decision.

These procedural requirements are important, and failure to comply with them may make a decision invalid. The decision-maker will need to fulfil them (and be able to show that they have been fulfilled) in spirit, as well as literally.

Occasionally, if the requirement is technical, or breach of the required procedure does not defeat the purpose of the statute or damage the public, a failure to satisfy it will not necessarily be fatal to the decision. It might be for example that the statute required a public authority to carry out a function within a certain time limit. If the public authority performed the function, but was a bit late, the court might hold that there had been substantial compliance so that the breach could be overlooked.

**See also in particular**  
[question twelve](#)

Have I consulted properly?

[question thirteen](#)

Will I be acting with procedural fairness towards the persons who will be affected?

[question fourteen](#)

Could I be, or appear to be, biased?

# question twelve

## Have I consulted properly?

Consultation with the persons likely to be affected by the decision is very often part of the decision-making process. It helps to make the process a transparent and fair one and helps to ensure that the decision-maker is in possession of all the relevant information, so that the decision is a "rational" one as well. Consultation is generally desirable whether it is required by statute or not. Where consultation is undertaken it has to be conducted properly if it is to satisfy the requirement for procedural fairness. Four conditions have to be satisfied.

- Consultation must be undertaken when proposals are still at a formative stage.
- Sufficient explanation for each proposal must be given, so that those consulted can consider them intelligently and respond.
- Adequate time needs to be given for the consultation process.
- Consultees' responses must be conscientiously taken into account when the ultimate decision is taken.

Failures of consultation (and indeed other lapses in due process) usually occur through inadvertence on the part of the decision-maker

and the pressures of work. When such a lapse forms the basis of a challenge to the decision, the decision-maker may be tempted to say "but it was an open and shut case."

Consultation [or an oral hearing; or full disclosure of reasons] would have made no difference. The decision would inevitably have been the same." That may well be true, but the Court is unlikely to be sympathetic to such a response. And for good reason: the principle is that only a fair procedure will enable the merits to be determined with confidence, and must therefore come first.

### See also in particular question eleven

Does the power have to be exercised in a particular way, e.g. does legislation impose procedural conditions or requirements on its use?

### question thirteen

Will I be acting with procedural fairness towards the persons who will be affected?

### question fifteen

Have I taken necessary considerations into account, and is my decision reasonable?



# question thirteen

## Will I be acting with procedural fairness towards the persons who will be affected?

As well as acting within the limits of its powers, the decision-maker will also need to come to a decision in a procedurally fair way. Without such procedural fairness, even if the decision-maker is not acting *ultra vires*, the decision may still be unlawful.

The common law recognises procedural fairness, or the existence of "due process", as a key principle of just decision-making. Fairness is a concept drawn from the constitutional principle of the rule of law, which requires regularity, predictability and certainty in public authorities' dealings with the public.

Where statute confers an administrative power there is a presumption that it will be exercised fairly. What is "fair" will depend on the particular circumstances in which the decision is to be taken and may change with the passage of time. Such principles cannot be applied by rote and what is fair depends on the context of the decision. It will be important to look at the terms of the statute and the parameters in which the discretion is to be exercised. It will often be necessary to allow a person or persons who may be adversely affected by the decision to have an opportunity to make representations and to have notice of the information on which the decision is to be based.

It is a feature of a fair procedure or decision-making process that the person affected by it will know in advance how it will operate, and so how to prepare for it and participate in it. That is the importance of due process.

In a case involving appeals by two City Councils against decisions of the Scottish Information Commissioner one of the grounds of appeal was that the Commissioner's decisions were unlawful as there had been procedural unfairness. The Freedom of Information requests were submitted by a firm of solicitors on behalf of "a client" (who was unnamed but in fact a firm whose business is to find out and sell information about land). One of the City Councils' arguments was that they could find out this information by paying for Property Enquiry Certificates. Providing this information free of charge under FOI would, as well as involving them in a great deal of additional work and expense, prejudice their commercial interests. Without the knowledge of the two City Councils, the Commissioner's staff conducted a survey of other relevant authorities to assess whether any of them had experienced damage to their commercial interests as a result of responding to similar requests. The evidence pointed to little, if any, damage to their commercial interests. Neither of the Councils had been provided with any information about the Commissioner's investigations or their results and they had not had the opportunity to respond to the Commissioner's findings. They had not been given the opportunity to explain why in their situation the result would be different. The Court held that the procedure had been unfair and that the Commissioner should have given the Council notice of any relevant material adverse to their position and invited their comments.

Glasgow City Council and Dundee City Council v Scottish Information Commissioner [2009] CSIH 73

Human rights, equal opportunities legislation and certain aspects of European law also require that a fair procedure is followed. At each stage of a process, a decision-maker should ensure that such issues have been properly considered and that rights or duties have been respected or followed, as appropriate.

In a case involving the removal of a migrant and whether that would infringe his right to respect for family life under Article 8 of the Convention, the Court held that the task of the appeal body was to decide whether the challenged decision is unlawful because it infringes a Convention right. It did not matter if the procedure in taking the decision was followed impeccably but the appeal body must decide for itself whether the decision challenged was lawful and if not, it must reverse it.

Huang v The Secretary of State for the Home Department [2007] UKHL 11; 2007 2 AC 167

The Court may find that in the interests of fairness additional conditions should be placed on the exercise of statutory or other executive powers. For example, the Court may insist that, before a decision is made, any of the following is required:

- Disclosure of the reasons the decision-maker intends to rely on.

- An opportunity for consultation or making representations.
- An oral hearing where appropriate.

And after the decision:

- Disclosure of material facts, or the reasons for the decision.

#### See also in particular

##### question four

Is there a policy on the exercise of this power?

##### question five

Does anyone have a legitimate expectation as to how the power will be exercised?

##### question eight

Am I complying with human rights and European law?

##### question nine

How has equal opportunities legislation affected the power?

Relevant considerations might also be:

- the right to be heard and procedural conditions in legislation (see [question eleven](#))
- have I consulted? (see [question twelve](#))
- do I need to give reasons? (see [question eighteen](#))

# question fourteen

## Could I be, or appear to be, biased?

One aspect of the rule of natural justice is that "no one shall be the judge in his or her own case". If a decision-maker has a financial or other interest in the outcome of the case, he or she cannot be, or be seen to be, impartial. The rule helps to ensure that the decision-making process is not a sham because the decision-maker's mind was always closed to the opposing case. It deals not only with actual bias, but with the appearance of bias: hence the saying "Justice must not only be done, but be seen to be done". Nobody should be able to allege that the decision was a fix because the decision-maker was biased, whether or not there was any truth in that allegation. The rule must be observed strictly to maintain public confidence in the decision-making process.

Impartiality is the opposite of bias. Its importance is enshrined in human rights: Article 6 of the Convention (fair determination of civil rights) requires that a tribunal must be, and have the appearance of being, impartial and independent. The rule against bias also applies to administrative decision-making (where there may be no "tribunal" as such) just as it does to the courts. It is prudent to have procedures available so as to avoid bias, or any appearance of bias. If, for example, the applicant for a grant is known personally to the decision-maker, or the decision-maker has dealt with the applicant before and decided against the applicant or

expressed a view adverse to the applicant, it may be appropriate to refer the application to a different, or more senior, official.

The principle can have practical implications for the process by which a decision is made. Very often, when statute requires that a public authority make a decision on an application, it (or the officials acting in its name) will require some sort of technical input, or it may be necessary to ask inspectors to carry out an investigation. In order to ensure as much impartiality as possible, it may be necessary to have structures in place so that there is a separation between the people providing the technical input/carrying out the investigation, and the officials taking the decision or submitting the matter to Ministers (when their personal decision is required). This will reduce the risk of an unsuccessful applicant claiming that the decision-maker was not impartial due to being too involved in the case, or had pre-determined the application.

The "independence" of a decision-maker is different from, though closely linked to, impartiality. It refers to independence from external pressure or influence. It has much more direct relevance to judges (by reason for example of the way they were appointed) or the courts themselves than it has to administrative decision-makers who will often be civil servants appointed to carry out Government policy or





# decide

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## Step 3 | Taking the decision

- 15. Have I taken necessary considerations into account, and is my decision reasonable?
  - 16. Does the decision need to be, and is it, proportionate?
  - 17. Are there decisions where the Court is less likely to intervene?
-

# question fifteen

## Have I taken necessary considerations into account, and is my decision reasonable?

We have seen in the discussion of [question three](#) that when making decisions you must take into account all relevant considerations and not take into account irrelevant considerations. Crucially, when it actually comes to making the decision, you must not make a decision that is so unreasonable that no reasonable person acting properly could have taken it. These are often called the “Wednesbury principles” after the name of the court case which first established them.

The test of unreasonableness concerns the decision as well as the way in which it was reached. Even if the decision-maker has taken into account the correct considerations he or she may still come to a decision so wildly unreasonable or perverse that it can be judged to have been outwith the decision-maker’s discretion to make it. If this happens then the decision will be unlawful.

The decision-maker may even have considered all the relevant information and not considered information that was irrelevant, however he or she may have attached a disproportionate weight to a particular factor or made some other mistake with regard to the logic of the decision, which has distorted the decision-making process.

A local authority wished to encourage the development of a key city centre site. It did this by identifying a developer, entering into an agreement to buy the land under a compulsory purchase order, and then transferring it to the developer. This was done in exchange for an undertaking from the developer that it would carry out the development and indemnify the authority from all future costs. Competing developers argued that the local authority had acted in a Wednesbury unreasonable way when it chose its preferred developer. They argued that an indemnity for their costs did not represent the best price or the best terms that could reasonably be obtained for the development of the site. The House of Lords found that the arrangement that had been entered into was reasonably necessary for planning purposes, given the difficulty of developing a site that was in multiple ownership. It could not therefore be said that the local authority reached a decision that no other reasonable local authority would have reached.

Standard Commercial Property Securities Ltd v Glasgow City Council [2006] UKHL 50.

# question fifteen

The Court has recognised that when different reasonable people are given the same set of facts, it is perfectly possible for them to come to different conclusions. This means a range of lawful decisions may be within the discretion of the decision-maker. However, at the same time, the Court has defined a category of decisions which lie outside that range of discretion. These have been described as:

- “a decision which is so outrageous in its defiance of logic or accepted moral standards that no sensible person who had applied his mind to the question could have arrived at it”;
- “beyond the range of responses open to a reasonable decision-maker”.

These definitions of unreasonableness (or “irrationality”) seem quite extreme, particularly the first – it might seem then that the Court would hardly ever find a decision-maker to have acted “unreasonably”. However, the Court interprets this category of decisions quite widely and will adjust the threshold of unreasonableness according to the circumstances and context of the case.

If a decision is challenged, the Court will examine it to see whether it was made according to logical principles, and will often expressly state that it is not its intention to substitute its own decision for that of the decision-maker. The Court will not make its own decision in place of that of the decision-maker because it bears in mind that the statute

has given the discretion to make the decision to a particular decision-maker, and it is not for the Court to make that decision instead.

The practical affect of this approach is that, where the Court finds that the decision was “unreasonable” and that it has to be remade, the Court will not put in place a more reasonable decision, but will simply cancel the unreasonable one, leaving none in its place. The decision-maker will then be required to make a fresh decision, taking into account any guidance given by the Court, and this time applying logical principles<sup>15</sup>.

There are good practical, as well as legal reasons for the Court adopting this “hands-off” approach: the decision-maker may be aware of policy implications or other aspects of public interest which are not obvious to the Court, or the decision-maker may have access to technical information which is not available to the Court and which must inform the decision.

## **See also in particular** [question three](#)

What factors should I consider when making the decision?

## [question seventeen](#)

Does the decision need to be, and is it, proportionate?

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<sup>15</sup> In some cases the effect of the decision is such that it cannot be ‘undone’. If this is the case then the court can declare it to be unlawful which can lead to political embarrassment and possible damages being awarded. These would probably be payable from your budget.

# question sixteen

## Does the decision need to be, and is it, proportionate?

Proportionality essentially means the decision should meet a legitimate policy goal and should not go further than necessary to achieve that goal – i.e. it must be appropriate and necessary to achieve its aim.

The Court will adjust its view of what is or is not proportionate according to the importance of the rights involved. It will apply a greater intensity of review where (in particular) human rights are engaged; in other words, the Court lowers the threshold for a decision to be found unlawful. This is particularly so because human rights bring their own specific rules of interpretation, which means the Court will look at whether any action or decision which is alleged to infringe human rights was proportionate. In areas where European law applies too, a standard of proportionality will be applied by the Court.

The principle of proportionality may be used by the Court where it is looking at an alleged breach of human rights or European law that has occurred because of the decision, or where it is dealing with a right such as Article 8 (right to private life) which necessarily involves a decision-maker considering if a decision to interfere is proportionate.

Where the Court is applying the principle of proportionality it will generally look more closely at the correctness of the decision given the information available than it would by just applying the *Wednesbury* unreasonableness test (see [question fifteen](#)).

It is important to consider whether your decision is one that involves the area of human rights or is a decision made under European law. If so, the proportionality of your decision can be reviewed by the Court if your decision is later challenged.

Proportionality has also been argued as a ground of review for all decisions, outside the fields of human rights and European law. At present, however, proportionality is not currently an independent ground of judicial review at common law in its own right<sup>16</sup>.

### **See also in particular** [question eight](#)

Am I complying with human rights and European law?

### [question fifteen](#)

Have I taken necessary considerations into account, and is my decision reasonable?

---

<sup>16</sup> *Fargie, Petitioner* [2008] CSOH 117 decided in August 2008.

# question seventeen

## Are there decisions where the Court is less likely to intervene?

In principle, the Court is entitled to review the vast majority of decisions taken by public authorities. "In principle", because there are still a handful of types of decision with which the Court is reluctant to concern itself – the award of honours is one example. Even these categories are increasingly restricted, and it can be imagined that if, say the honours system were placed upon a statutory footing, with procedures, consultation and the like, then the Court would no doubt be entitled to supervise at least procedural aspects.

There remains a class of decision where the Court accepts that, because of the subject matter of the decision, the decision-maker is better qualified than the Court to make a judgement. So for example the Court is likely to "defer" to, or recognise a "demarcation of functions" with, the decision-maker in:

- ordering financial priorities, in deciding to spend public money in one way rather than another;

- assessing the needs of national security and public order;
- setting policy on maximum sentences for particular criminal offences.

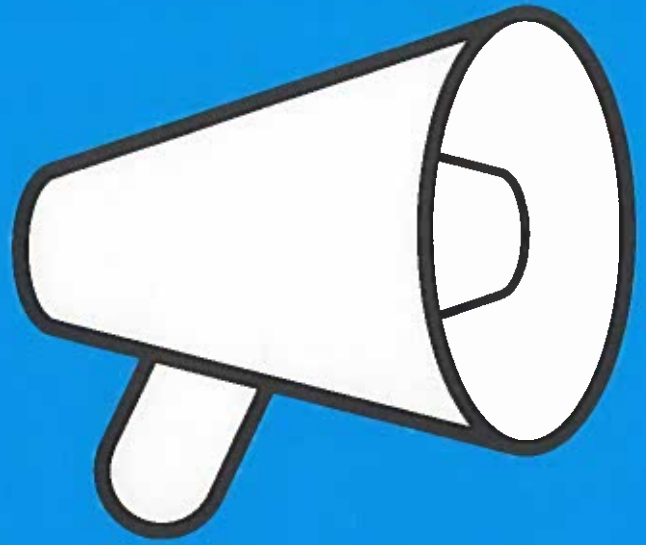
The list could go on (and could be broadened to include any topic requiring specialist knowledge or experience), but what the above topics have in common is that they all concern policy, and require a "political" judgement to be made. In the demarcation of functions, that political judgement should be left to the decision-maker, who understands the policy and has experience of its operation to inform his decision. In this kind of area, the Court may exercise restraint in reviewing the decision-maker, or recognise the demarcation of functions between the Executive branch of government and the Judiciary; the Court is likely to allow a "margin of discretion" or "discretionary area of judgement" depending on the nature of the decision.

This case involved a terminally ill applicant who wished to have her husband assist her to commit suicide but was concerned that if he did so, he might be prosecuted. As a consequence she might have to end her life sooner than she would wish, while she herself was capable of doing so. She claimed that this was an interference with her human rights. The Court recognised the considerable deference to be accorded to the views of the Director of Public Prosecutions in determining whether proceedings for an offence should be instituted, but nonetheless found that he should publicise a policy identifying the facts and circumstances which he would take into account in deciding whether or not to sanction a prosecution for assisting in a suicide.

R (on the application of Purdy) v Director of Public Prosecutions [2009] UKHL 45

It is possible that your decision too will have an element of this kind of political judgement in it; you should identify that element and be prepared to protect it. The decision-maker will usually be allowed a discretionary area of judgement, but this cannot be taken for granted. And, where human rights are involved the Court is likely to be very careful to ensure that what the decision-maker is seeking to protect is genuinely an area of policy, and that the decision is "proportionate".





# notify



---

## Step 4 | Notifying others of the decision

- 18. To what extent should I give reasons for the decision?
-

# question eighteen

## To what extent should I give reasons for the decision?

When you have made your decision – in accordance with the above principles – you will need to notify it to the person affected by it. In notifying that person, do you have to support your decision with your reasoning? And, if so, how comprehensive does your account of that reasoning have to be? You may also be under an obligation in certain circumstances to publish your decision more widely to ensure that anyone who will be affected by it has had adequate notice.

**Lord President Emslie's words in *Wordie Property Co Ltd v Secretary of State for Scotland* 1984 SLT 345 at 347:**

"[I]n order to comply with the statutory duty imposed upon him the Secretary of State must give proper and adequate reasons for his decision which deal with the substantial questions in issue in an intelligible way. The decision must, in short, leave the informed reader and the court in no real and substantial doubt as to what the reasons for it were and what were the material considerations which were taken into account in reaching it."

Why should you give any reasons unless statute or regulation require it? There may exist an established practice of giving reasons in this type of case, and failure to give reasons may breach a "legitimate expectation". Your decision itself may appear to be inconsistent with previous policy, or with other decisions in similar cases, so that a decision unsupported by reasons may appear irrational, and it may be necessary to explain why there has been a departure from previous policy, or the Court may assume the decision is unlawful. The subject matter of the decision may be of such importance – it may affect human rights – that fairness requires that a decision be supported by reasons.

In an appeal to the Court of Session against a decision of the Mental Health Tribunal (where the Tribunal has a statutory duty to provide a statement of facts and reasons for its decision) the Court held that the Tribunal required to reach a "clear and reasoned view" on the application of the statutory test at issue. The Court stressed that the Tribunal must reach a decision based on the evidence, and provide clear reasons for making or failing to make findings that are central to the questions in issue. Where any evidence is rejected, the Tribunal must give reasons for the rejection of that evidence. The requirement of a full statement of facts and reasons is not met by a basic assertion of the findings in law. *The Scottish Ministers v The Mental Health Tribunal for Scotland* 2009 SLT 273

# question eighteen

Although it may still be true that there is no general rule requiring that reasons be given for administrative decisions, the circumstances where they are not required are becoming rare. Indeed the general availability of judicial review as a remedy makes it inevitable that in most cases fairness now requires that reasons should be given. The law was developing in this direction even before the Human Rights Act incorporated the Convention, but that (in particular Article 6 – right to a fair trial) has accelerated the process, because decisions involving human rights are likely to be scrutinised more intensely, and that means that they will have to be more fully reasoned.

There is one other important factor which should now encourage the giving of detailed reasons with the decision. Rights for the individual who is the subject of a decision about their case to access information about that decision – including the reasons for it – may arise under the Data Protection Act 1998. In addition, section 1 of the Freedom of Information (Scotland) Act 2002 provides that–

“(1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.”

So, assuming that, in making the decision, he decision-maker had his or her reasons and recorded them, any person will be entitled to request that “information” under the Freedom of Information (Scotland) Act, and (unless an exemption applies) that information will have to be disclosed. There are exemptions in respect of certain categories of information, and one or more of them may be relevant to your decision, but the presumption will be in favour of disclosure. The Act should therefore be a salutary incentive to careful reasoning and good record-keeping.

This does not mean that every decision must be accompanied by copious reasoning; it will depend upon the subject matter and the importance of the interests at stake. Moreover there will be some cases where the issue to be decided does not lend itself to logical analysis, but is more a matter of subjective judgement.

The Scottish Ministers appealed against two decisions by the Scottish Information Commissioner requiring them to release certain documents to two individuals who had made Freedom of Information requests. These related to the coming into force of an Act of the Scottish Parliament, and to the grant of a planning decision. Some information was released to them, but the Commissioner took the view that certain other information was exempt from disclosure under the Freedom of Information (Scotland) Act 2002. One of the Scottish Ministers' grounds of appeal was that the Commissioner failed to give proper and adequate reasons for his decision in one of these cases. The Court held that in coming to his decision, it was sufficient for the Commissioner to state which section of the Act the Ministers had not complied with. While there was a common law duty to give proper and adequate reasons for his decision, that duty was tempered by the need to avoid disclosing information which ought not to be disclosed, so that in the circumstances, there was no need for him to explain his decision further. No error of law was found in his reasoning.

*The Scottish Ministers v the Scottish Information Commissioner* 2007 SLT 274

The need to record reasons when the decision is made with a view to their disclosure may be onerous, but it encourages careful decision-making. The record should show that the decision-maker addressed his mind to the relevant issues and followed the principles of good administration. There is no uniform standard for the quality or lay-out of recorded reasons, but they must at least be intelligible and address the substance of the issues. The following provides a useful outline.

- the record should be clear about what the applicant is applying for and that you understand the application;
- it should set out material findings of fact;
- it should show that all relevant matters have been considered and that no irrelevant ones have been taken into account;
- it should cite and apply any relevant policy statements or guidance;
- it should note any representations or consultation responses as having been considered and taken into account;
- it should show by what process of reasoning issues were resolved, and how the various factors were weighted against each other.

# question eighteen

If all this (or as much as suits the case) is recorded, then it will provide a framework for your decision letter. The reasons given in the decision letter will of course correspond with those recorded: although there is some scope for elaborating or explaining your reasons in the decision letter (or subsequently), it is bad practice – and unlawful – to make your decision first and construct your reasons only when challenged.

## **See also in particular**

### [question five](#)

Does anyone have a legitimate expectation as to how the power will be exercised?

### [question eight](#)

Am I complying with human rights and European law?

### [question ten](#)

Am I handling data in accordance with Data Protection or Freedom of Information obligations?

### [question thirteen](#)

Will I be acting with procedural fairness towards the persons who will be affected?

# annex one

## the main Convention rights

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**article two** | right to life

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**article three** | prohibition of torture

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**article four** | prohibition of slavery and forced labour

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**article five** | right to liberty and security

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**article six** | right to a fair trial

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**article seven** | no punishment without law

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**article eight** | right to respect for private and family life

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**article nine** | freedom of thought, conscience and religion

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**article ten** | freedom of expression

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**article eleven** | freedom of assembly and association

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**article twelve** | right to marry

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**article fourteen** | prohibition of discrimination

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**article one of the First Protocol** | protection of property

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**article two of the First Protocol** | right to education

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**article three of the First Protocol** | right to free elections

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## European law considerations

European law, including European Community (or EC) law, derives from the EC and EU treaties<sup>17</sup>, and is incorporated into the law of the United Kingdom by the European Communities Act 1972. In some circumstances provisions of the EC Treaty or of Directives made under the Treaty confer rights on individuals.

The aim of the EC Treaty is to establish a free and open common market for all forms of economic activity. The EC Treaty does this by establishing the four freedoms. These are the free movement of goods, persons, services and capital.

Individuals may rely on those provisions of the EC Treaty and Directives made under it in national courts even where the provisions have not been implemented in national legislation<sup>18</sup>. These rights are described as having "direct effect".

In addition:

- All European Regulations are directly applicable and enforceable without the need for any national measures to implement them.
- Binding Decisions adopted by the European Council of Ministers or the Commission bind those to whom they are addressed. If addressed to a Member State of the EU, they may have direct effect, giving rise to rights which are enforceable in national courts, provided their terms are clear and precise.

The 1972 Act requires questions as to the validity, meaning and effect of European provisions to be determined according to the principles of EU law, including proportionality. If there is a conflict between EU law and national law, directly enforceable EU rights and obligations take precedence. Domestic measures which are inconsistent, or which are considered to hamper the attainment of the objectives of the EC Treaty, may be found unlawful.

In EU law cases, the Scottish Courts have jurisdiction to grant interim remedies, for example:

- An interim interdict (which is an order to stop someone from doing something in the meantime) against the Scottish Ministers a UK Department, or other public bodies;
- An order to disapply legislation (including primary legislation).

The Court can also seek an authoritative opinion on an issue of EU law from the European Court of Justice ("ECJ") by way of a preliminary reference, sometimes called an "Article 234 reference". After the ECJ has given its ruling, the matter is referred back to the domestic Court to decide accordingly.

The decisions of the ECJ on matters of European law form part of the national law of Member States. Because the EU recognises human rights, and the Convention, and fundamental rights under the treaties, as sources of general principles of law, these rights too can often be enforced in the UK Courts as part of an action based upon EU law.

<sup>17</sup> The EC Treaty is renamed the *Treaty on the Functioning of the European Union* (TFEU) by the Lisbon Treaty on 1 December 2009, and the "European Community" formally replaced by the "European Union".

<sup>18</sup> Treaty provisions have to be sufficiently complete, clear and concise to be enforceable by a court. Provisions in Directives must be unconditional and sufficiently precise. Directives which have direct effect can only be enforced against the state or emanations of the state, such as public bodies, (so-called "vertical direct effect"). Directly effective Treaty provisions also apply as between individuals.

Failure by the decision-maker to give proper effect to binding EU law conferring rights on individuals may give rise to a claim for damages. Community law will confer a right to compensation where three conditions are met:

- The rule of law infringed must be intended to confer rights on individuals;
- The breach must be sufficiently serious (manifest and grave disregard by the Member State of the limits of its discretion);
- There must be a direct causal link between the breach of the obligation resting on the Member State and the damage sustained by the individual.

Liability for such damages is one of the exceptions to the principle that, in general, damages are not awarded for a breach of public law. Damages of this type are often called *Francovich* damages after a leading EC law case.

A basic principle of EU law is that when the liability of a Member State is considered, all its organs of Government are treated as being a single entity. The Scottish Government is responsible for implementing EU obligations relating to devolved matters, and may be liable for any financial penalty for which it is responsible. The UK Government retains the legal power to implement EU law directly under the Scotland Act<sup>19</sup>.

Any Act of the Scottish Parliament, statutory instrument or act of the Scottish Ministers incompatible with EU law is *ultra vires* and can be challenged under the Scotland Act.

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<sup>19</sup> Section 57(1).

# annex three

## A short guide to Judicial Review proceedings in Scotland

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**What decisions are reviewable?**

A decision or failure to take a decision affecting persons by someone empowered by public law and in respect of which there is no other available remedy.

---

**Will the Court look at the merits?**

The Court cannot substitute its own decision, but can quash a decision and send it back to be considered again – except where it is an ECHR case, when the Court can re-examine the merits (see *Huang v The Secretary of State for the Home Department* [2007] UKHL 11; 2007 2 AC 167 and *Nasseri* [2009] UKHL 23)

---

**What will the Court be looking at?**

Was the decision wrong in law? Did the person making the decision have power to do so? Did he/she exercise those powers correctly? Did he/she take all the relevant information into account?

---

**What's an irrational decision?**

One that no reasonable Minister or public authority would have come to.

---

**Can you give me examples of procedural impropriety?**

A breach of duty to act fairly, failure to consult, being or appearing to be biased, failing to take into account legitimate expectations.

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**What kind of remedy can the Court award?**

It can quash decisions, award damages, make a declaration and make interim orders, including interim interdict. The Court can of course also refuse the petition.

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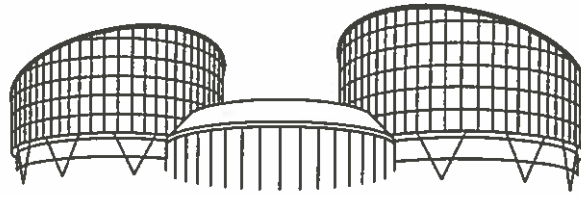
## what happens?

Judicial Reviews are made by way of a **Petition** to the **Court of Session** in Edinburgh. All Judicial Review actions go to a judge for **First Orders** to be granted. The first order allows the **petitioner** (the person challenging the decision) to serve the petition on the **respondent** (the decision-maker). It is at this stage that the petitioner can also seek **interim orders**, for example to prevent the demolition of a building until the Court has an opportunity to consider what should happen to it at a full hearing of the case. If interim orders are sought, a **caveat** may be triggered. Caveats are a form of early warning system which respondents often put in place in the Court of Session in order to alert them in the event that a petitioner is seeking an award of interim orders against them. The respondent can then arrange to make representations to the judge before first orders are granted.

Once first orders have been granted, the case will be assigned a date for a **First Hearing**. If the matter is urgent, then this could be arranged at short notice. More often, though, a hearing may be fixed for some months ahead. The respondent can then arrange for

an **advocate** to be appointed to represent their interests in the case. Where the respondent is the Scottish Ministers the advocate is drawn from a pre-approved list and is known as a standing junior. Standing juniors generally have either an interest or specialisation in public law. You may be invited to attend a meeting or **consultation** with the advocate before the hearing, and are likely to be asked to provide information regarding the decision challenged for the purpose of instructing the advocate to appear, or seeking their advice.

The first hearing can be either a short one, to decide on future procedure, or it can be a lengthier one, where detailed legal arguments are made on behalf of parties. It is also possible to have a **second hearing**, at which evidence can be led, either by **affidavit** (sworn statement), or in person. The judge may either give his or her opinion orally when he or she is finished hearing the case, or he or she may choose to think about it for a while (**makes avizandum**) before issuing his or her decision. Opinions are published on the Scottish Courts web site on the date of issue.



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## **GUIDE ON ARTICLE 6**

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### **RIGHT TO A FAIR TRIAL** (civil limb)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



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## INTRODUCTION

### **Article 6 § 1 – Right to a fair hearing:**

*“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”*

1. This guide is intended to provide information for legal practitioners concerning the most important judgments on the subject delivered by the Strasbourg Court from its inception up to the present day<sup>1</sup>. It therefore sets out the key principles developed by the Court’s case-law, together with relevant precedents. The case-law cited is selective: these are leading, significant and recent judgments and decisions<sup>2</sup>.

2. The Court’s judgments in fact serve not only to decide those cases brought before the Court but, more generally, to elucidate, safeguard and develop the rules instituted by the Convention, thereby contributing to the observance by the States of the engagements undertaken by them as Contracting Parties (*Ireland v. the United Kingdom*, § 154). The mission of the Convention system is thus to determine issues on public-policy grounds in the common interest, thereby raising the general standards of protection of human rights and extending human rights jurisprudence throughout the community of the Convention States (*Konstantin Markin v. Russia* [GC], § 89).

<sup>1</sup>. Case-law references updated to 1<sup>st</sup> May 2013.

<sup>2</sup>. The hyperlinks to the judgments and decisions cited provide a link to the original text in English or French (the two official languages of the Court). Readers can consult the [HUDOC](#) database of the Court’s case-law, which gives access to the judgments and decisions in English and/or French and to translations into around twenty other languages.

## I. SCOPE: THE CONCEPT OF “CIVIL RIGHTS AND OBLIGATIONS”<sup>3</sup>

### Article 6 § 1

*“In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by [a] ... tribunal ....”*

#### 1. General requirements for applicability of Article 6 § 1

3. The concept of “civil rights and obligations” cannot be interpreted solely by reference to the respondent State’s domestic law; it is an “autonomous” concept deriving from the Convention. Article 6 § 1 of the Convention applies irrespective of the parties’ status, the character of the legislation which governs how the “dispute” is to be determined, and the character of the authority which has jurisdiction in the matter (*Georgiadis v. Greece*, § 34).

4. However, the principle that the autonomous concepts contained in the Convention must be interpreted in the light of present-day conditions does not give the Court power to interpret Article 6 § 1 as though the adjective “civil” (with the restrictions which the adjective necessarily places on the category of “rights and obligations” to which that Article applies) were not present in the text (*Ferrazzini v. Italy* [GC], § 30).

5. The applicability of Article 6 § 1 in civil matters firstly depends on the existence of a “dispute”. Secondly the dispute must relate to “rights and obligations” which, arguably at least, can be said to be recognised under domestic law. Lastly these “rights and obligations” must be “civil” ones within the meaning of the Convention, although Article 6 does not itself assign any specific content to them in the Contracting States’ legal systems (*James and others v. United Kingdom*, § 81).

#### (a) THE TERM “DISPUTE”

6. The word “dispute” (in French, “*contestation*”) must be given a substantive meaning rather than a formal one (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 45). It is necessary to look beyond the appearances and the language used and concentrate on the realities of the situation according to the circumstances of each case (*Gorou v. Greece (no. 2)* [GC], § 29; and *Boulois v. Luxembourg* [GC], § 92). Article 6 does not apply to a non-contentious and unilateral procedure which does not involve opposing parties and which is available only where there is no dispute over rights (*Alaverdyan v. Armenia*, (dec.), § 35).

7. The “dispute” must be genuine and of a serious nature (*Sporrong and Lönnroth v. Sweden*, § 81). This rules out, for example, civil proceedings taken against prison authorities on account of the mere presence in the prison of HIV-infected prisoners (*Skorobogatykh v. Russia* (dec.)). For example, the Court held a “dispute” to be real in a case concerning a request to the public prosecutor to lodge an appeal on points of law, as it formed an integral part of the whole of the proceedings that the applicant had joined as a civil party with a view to obtaining compensation (*Gorou v. Greece (no. 2)* [GC], § 35).

8. The dispute may relate not only to the actual existence of a right but also to its scope or the manner in which it is to be exercised (*Bentham v. the Netherlands*, § 32). It may also concern matters of fact.

9. The result of the proceedings must be directly decisive for the right in question (for example, *Ulyanov v. Ukraine* (dec.)). Consequently, a tenuous connection or remote consequences are not enough to bring Article 6 § 1 into play (*Boulois v. Luxembourg* [GC],

<sup>3</sup> This is an updated version of the relevant section from the Admissibility Guide.

§ 90). For example, the Court found that proceedings challenging the legality of extending a nuclear power station's operating licence did not fall within the scope of Article 6 § 1 because the connection between the extension decision and the right to protection of life, physical integrity and property was "*too tenuous and remote*", the applicants having failed to show that they personally were exposed to a danger that was not only specific but above all imminent (*Balmer-Schafroth and Others v. Switzerland*, § 40; *Athanassoglou and Others v. Switzerland* [GC], §§ 46-55); see, most recently, *Sdruzeni Jihoceske Matky v. the Czech Republic* (dec.); for a case concerning limited noise pollution at a factory, see *Zapletal v. the Czech Republic* (dec.); for the hypothetical environmental impact of a plant for treatment of mining waste, see *Ivan Atanasov v. Bulgaria*, §§ 90-95. Similarly, proceedings which two public-sector employees brought to challenge one of their colleagues' appointment to a post could have only remote effects on their civil rights (specifically, their own right to appointment: see *Revel and Mora v. France* (dec.)).

10. In contrast, the Court found Article 6 § 1 to be applicable to a case concerning the building of a dam which would have flooded the applicants' village (*Gorraiz Lizarraga and Others v. Spain*, § 46) and to a case about the operating permit for a gold mine using cyanidation leaching near the applicants' villages (*Taşkın and Others v. Turkey*, § 133; see also *Zander v. Sweden*, §§ 24-25). More recently, in a case regarding the appeal submitted by a local environmental-protection association for judicial review of a planning permission, the Court found that there was a sufficient link between the dispute and the right claimed by the legal entity, in particular in view of the status of the association and its founders, and the fact that the aim it pursued was limited in space and in substance (*L'Erablière A.S.B.L. v. Belgium*, §§ 28-30). Furthermore, proceedings for the restoration of a person's legal capacity are directly decisive for his or her civil rights and obligations (*Stanev v. Bulgaria* [GC], § 233).

#### (b) EXISTENCE OF AN ARGUABLE RIGHT IN DOMESTIC LAW

11. The applicant must be able to claim, on arguable grounds, a right recognised in domestic law (*Masson and Van Zon v. the Netherlands*, § 48; *Gutfreund v. France*, § 41; and *Boulois v. Luxembourg* [GC], §§ 90-94). Article 6 does not lay down any specific content for a "right" in Contracting States' domestic law, and in principle the Court must refer to domestic law in determining whether a right exists. Whether or not the authorities enjoyed discretion in deciding whether to grant the measure requested by a particular applicant may be taken into consideration and may even be decisive. Nevertheless, the mere fact that the wording of a legal provision affords an element of discretion does not in itself rule out the existence of a right. Other criteria which may be taken into consideration by the Court include the recognition of the alleged right in similar circumstances by the domestic courts or the fact that the latter examined the merits of the applicant's request (*Boulois v. Luxembourg* [GC], §§ 91-101).

12. The Court may decide that rights such as the right to life, to health, to a healthy environment and to respect for property are recognised in domestic law (*Athanassoglou and Others v. Switzerland* [GC], § 44).

13. The right in question has to have a legal basis in domestic law (*Szücs v. Austria*, § 33).

14. However, it is important to point out that whether a person has an actionable domestic claim may depend not only on the content, properly speaking, of the relevant civil right as defined in national law but also on the existence of procedural bars preventing or limiting the possibilities of bringing potential claims to court. In the latter category of cases, Article 6 § 1 of the Convention may apply (*Al-Adsani v. the United Kingdom* [GC], §§ 47; *McElhinney v. Ireland* [GC], § 25). In principle, though, it cannot have any application to substantive



limitations on a right existing under domestic law (*Roche v. the United Kingdom* [GC], § 119). The Convention institutions may not create through the interpretation of Article 6 § 1 a substantive civil right which has no legal basis in the State concerned (*ibid.*, § 117).

15. In deciding whether there is a civil “right” and whether to classify a restriction as substantive or procedural, regard must first be had to the relevant provisions of national law and how the domestic courts interpret them (*Masson and Van Zon v. the Netherlands*, § 49). It is necessary to look beyond the appearances, examine how domestic law classifies the particular restriction and concentrate on the realities (*Van Droogenbroeck v. Belgium*, § 38). Lastly, a final court decision does not necessarily retrospectively deprive applicants’ complaints of their arguability (*Le Calvez v. France*, § 56). For instance, the limited scope of the judicial review of an act of foreign policy (NATO air strikes on Serbia) cannot make the applicants’ claims against the State retrospectively unarguable, since the domestic courts were called upon to decide for the first time on this issue (*Markovic and Others v. Italy* [GC], §§ 100-02).

16. Applying the distinction between substantive limitations and procedural bars in the light of these criteria, the Court has, for example, recognised as falling under Article 6 § 1 civil actions for negligence against the police (*Osman v. the United Kingdom*) or against local authorities (*Z and Others v. the United Kingdom* [GC]) and has considered whether a particular limitation (exemption from prosecution or non-liability) was proportionate from the standpoint of Article 6 § 1. On the other hand it held that the Crown’s exemption from civil liability *vis-à-vis* members of the armed forces derived from a substantive restriction and that domestic law consequently did not recognise a “right” within the meaning of Article 6 § 1 of the Convention (*Roche v. the United Kingdom* [GC], § 124; see also *Hotter v. Austria* (dec.), and *Andronikashvili v. Georgia* (dec.)).

17. The Court has accepted that associations also qualify for protection under Article 6 § 1 if they seek recognition of specific rights and interests of their members (*Gorraiz Lizarraga and Others v. Spain*, § 45) or even of particular rights to which they have a claim as legal persons (such as the right of the “public” to information and to take part in decisions regarding the environment (*Collectif national d’information et d’opposition à l’usine Melox – Collectif Stop Melox et Mox v. France* (dec.)), or when the association’s action cannot be regarded as an *actio popularis* (*L’Erablière A.S.B.L. v. Belgium*).

18. Where legislation lays down conditions for admission to an occupation or profession, a candidate who satisfies them has a right to be admitted to the occupation or profession (*De Moor v. Belgium*, § 43). For example, if the applicant has an arguable case that he or she meets the legal requirements for registration as a doctor, Article 6 applies (*Chevrol v. France*, § 55; see, conversely, *Bouilloc v. France* (dec.)). At all events, when the legality of proceedings concerning a civil right is challengeable by a judicial remedy of which the applicant has made use, it has to be concluded that there was a “dispute” concerning a “civil right” even if the eventual finding was that the applicant did not meet the legal requirements (right to continue practising the medical specialisation which the applicant had taken up abroad: see *Kök v. Turkey*, § 37).

#### (c) “CIVIL” NATURE OF THE RIGHT

19. Whether or not a right is to be regarded as civil in the light of the Convention must be determined by reference to the substantive content and effects of the right – and not its legal classification – under the domestic law of the State concerned. In the exercise of its supervisory functions, the Court must also take into account the Convention’s object and purpose and the national legal systems of the other Contracting States (*König v. Germany*, § 89).

20. In principle the applicability of Article 6 § 1 to disputes between private individuals which are classified as civil in domestic law is uncontested before the Court (for a judicial separation case, see *Airey v. Ireland*, § 21).

(d) PRIVATE RIGHTS: THE PECUNIARY DIMENSION

21. The Court regards as falling within the scope of Article 6 § 1 proceedings which, in domestic law, come under “public law” and whose result is decisive for private rights and obligations. Such proceedings may, *inter alia*, have to do with permission to sell land (*Ringeisen v. Austria*, § 94), running a private clinic (*König v. Germany*, §§ 94-95), building permission (see, *inter alia*, *Sporrong and Lönnroth v. Sweden*, § 79), the ownership and use of a religious building (*Sâmbata Bihor Greco-Catholic Parish v. Romania*, § 65), administrative permission in connection with requirements for carrying on an occupation (*Bentham v. the Netherlands*, § 36), a licence for serving alcoholic beverages (*Tre Traktörer Aktiebolag v. Sweden*, § 43), or a dispute concerning the payment of compensation for a work-related illness or accident (*Chaudet v. France*, § 30).

22. On the same basis Article 6 is applicable to disciplinary proceedings before professional bodies where the right to practise the profession is at stake (*Le Compte, Van Leuven and De Meyere v. Belgium*; *Philis v. Greece (No. 2)*, § 45), a negligence claim against the State (*X. v. France*), an action for cancellation of an administrative decision harming the applicant’s rights (*De Geouffre de la Pradelle v. France*), administrative proceedings concerning a ban on fishing in the applicants’ waters (*Alatulkkila and Others v. Finland*, § 49) and proceedings for awarding a tender in which a civil right – such as the right not to be discriminated against on grounds of religious belief or political opinion when bidding for public-works contracts – is at stake (*Tinnelly & Sons Ltd and Others and McElduff and Others v. the United Kingdom*, § 61; contrast *I.T.C. Ltd v. Malta* (dec.)).

23. Article 6 § 1 is applicable to a civil-party complaint in criminal proceedings (*Perez v. France* [GC], §§ 70-71), except in the case of a civil action brought purely to obtain private vengeance or for punitive purposes (*Sigalas v. Greece*, § 29; *Mihova v. Italy* (dec.)). The Convention does not confer any right, as such, to have third parties prosecuted or sentenced for a criminal offence. To fall within the scope of the Convention, such right must be indissociable from the victim’s exercise of a right to bring civil proceedings in domestic law, even if only to secure symbolic reparation or to protect a civil right such as the right to a “good reputation” (*Perez v. France* [GC], § 70; see also, regarding a symbolic award, *Gorou v. Greece (no. 2)* [GC], § 24). Therefore, Article 6 applies to proceedings involving civil-party complaints from the moment the complainant is joined as a civil party, unless he or she has waived the right to reparation in an unequivocal manner.

24. Article 6 § 1 is also applicable to a civil action seeking compensation for ill-treatment allegedly committed by agents of the State (*Aksoy v. Turkey*, § 92).

2. Extension to other types of dispute

25. The Court has held that Article 6 § 1 is applicable to disputes concerning social matters, including proceedings relating to an employee’s dismissal by a private firm (*Buchholz v. Germany*), proceedings concerning social-security benefits (*Feldbrugge v. the Netherlands*), even on a non-contributory basis (*Salesi v. Italy*), and also proceedings concerning compulsory social-security contributions (*Schouten and Meldrum v. the Netherlands*). (For the challenging by an employer of the finding that an employee’s illness was occupation-related, see *Eternit v. France* (dec.), § 32). In these cases the Court took the view that the private-law aspects predominated over the public-law ones. In addition, it has held that there were similarities between entitlement to a welfare allowance and entitlement



to receive compensation for Nazi persecution from a private-law foundation (*Woś v. Poland*, § 76).

26. Disputes concerning public servants fall in principle within the scope of Article 6 § 1. In *Pellegrin v. France* [GC], §§ 64-71, the Court had adopted a “functional” criterion. In its judgment in *Vilho Eskelinen and Others v. Finland* [GC], §§ 50-62, it decided to adopt a new approach. The principle is now that there will be a presumption that Article 6 applies, and it will be for the respondent government to demonstrate, firstly, that a civil-servant applicant does not have a right of access to a court under national law and, secondly, that the exclusion of the rights under Article 6 for the civil servant is justified (see § 62 in particular). If the applicant had access to a court under national law, Article 6 applies (even to active army officers and their claims before the military courts: see *Pridatchenko and Others v. Russia*, § 47). A non-judicial body under domestic law may be qualified as a “court”, in the substantive sense of the term, if it quite clearly performs judicial functions (*Oleksandr Volkov v. Ukraine*, §§ 88-91). With regard to the second criterion, the exclusion must be justified on “objective grounds in the State’s interest”; this obliges the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond between the civil servant and the State. Thus, there can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question (see, for instance, a dispute regarding police personnel’s entitlement to a special allowance in *Vilho Eskelinen and Others v. Finland* [GC]). In the light of the criteria laid down in the *Vilho Eskelinen* judgment, the Court declared Article 6 § 1 to be applicable to proceedings for unfair dismissal instituted by an embassy employee (a secretary and switchboard operator in the Polish embassy: see *Cudak v. Lithuania* [GC], §§ 44-47; and, to similar effect, a head accountant: *Sabeh El Leil v. France* [GC], § 39), a senior police officer (*Šikić v. Croatia*, §§ 18-20) or an army officer in the military courts (*Vasilchenko v. Russia*, §§ 34-36), to proceedings regarding the right to obtain the post of parliamentary assistant (*Savino and Others v. Italy*), to disciplinary proceedings against a judge (*Olujčić v. Croatia*), to an appeal by a prosecutor against a presidential decree ordering his transfer (*Zalli v. Albania* (dec.) and the other references cited therein), and to proceedings concerning the professional career of a customs officer (right to apply for an internal promotion: see *Fiume v. Italy*, §§ 33-36).

27. Constitutional disputes may also come within the ambit of Article 6 if the constitutional proceedings have a decisive bearing on the outcome of the dispute (about a “civil” right) in the ordinary courts (*Ruiz-Mateos v. Spain*). This does not apply in the case of disputes relating to a presidential decree granting citizenship to an individual as an exceptional measure, or to the determination of whether the President has breached his constitutional oath (*Paksas v. Lithuania* [GC], §§ 65-66). The criteria governing the application of Article 6 § 1 to an interim measure extend to the Constitutional Court (*Kübler v. Germany*, §§ 47-48).

28. Lastly, Article 6 is also applicable to other not strictly pecuniary matters such as the environment, where disputes may arise involving the right to life, to health or to a healthy environment (*Taşkın and Others v. Turkey*); the fostering of children (*McMichael v. the United Kingdom*); children’s schooling arrangements (*Ellès and Others v. Switzerland*, §§ 21-23); the right to have paternity established (*Alaverdyan v. Armenia* (dec.), § 33); the right to liberty (*Laidin v. France (no. 2)*); prisoners’ detention arrangements (for instance, disputes concerning the restrictions to which prisoners are subjected as a result of being placed in a high-security unit (*Enea v. Italy* [GC], §§ 97-107) or in a high-security cell (*Stegarescu and Bahrin v. Portugal*)), or disciplinary proceedings resulting in restrictions on

family visits to prison (*Gülmez v. Turkey*, § 30) or other similar restrictions (*Ganci v. Italy*, § 25); the right to a good reputation (*Helmers v. Sweden*); the right of access to administrative documents (*Loiseau v. France* (dec.)), or an appeal against an entry in a police file affecting the right to a reputation, the right to protection of property and the possibility of finding employment and hence earning a living (*Pocius v. Lithuania*, §§ 38-46, and *Užkauskas v. Lithuania*, §§ 32-40); the right to be a member of an association (*Sakellaropoulos v. Greece* (dec.) – similarly, proceedings concerning the lawful existence of an association concern the association’s civil rights, even if under domestic legislation the question of freedom of association belongs to the field of public law: see *APEH Üldözötteinek Szövetsége and Others v. Hungary*, §§ 34-35); and, lastly, the right to continue higher education studies (*Emine Araç v. Turkey*, §§ 18-25), a position which applies *a fortiori* in the context of primary education (*Oršuš and Others v. Croatia* [GC], § 104). Thus, Article 6 extends to proceedings which may unquestionably have a direct and significant impact on the individual’s private life (*Alexandre v. Portugal*, §§ 51 and 54).

### 3. Applicability of Article 6 to proceedings other than main proceedings

29. *Preliminary proceedings*, like those concerned with the grant of an interim measure such as an injunction, were not normally considered to “determine” civil rights and obligations and did not therefore normally fall within the protection of Article 6 (see, *inter alia*, *Verlagsgruppe News GmbH v. Austria* (dec.), and *Libert v. Belgium* (dec.)). However, the Court has recently departed from its previous case-law and *taken a new approach*.

30. In *Micallef v. Malta* [GC], §§ 83-86, the Court established that the applicability of Article 6 to interim measures will depend on whether certain conditions are fulfilled. Firstly, the right at stake in both the main and the injunction proceedings should be “civil” within the meaning of the Convention. Secondly, the nature of the interim measure, its object and purpose as well as its effects on the right in question should be scrutinised. Whenever an interim measure can be considered effectively to determine the civil right or obligation at stake, notwithstanding the length of time it is in force, Article 6 will be applicable.

31. An interlocutory judgment can be equated to interim or provisional measures and proceedings, and the same criteria are thus relevant to determine whether Article 6 is applicable under its civil head (*Mercieca and Others v. Malta*, § 35).

32. Again with reference to the principles established in *Micallef v. Malta* [GC], Article 6 may apply to the stay of execution proceedings in accordance with the above-mentioned criteria (*Central Mediterranean Development Corporation Limited v. Malta* (no. 2), §§ 21-23).

33. Article 6 is applicable to interim proceedings which pursue the same purpose as the pending main proceedings, where the interim injunction is immediately enforceable and entails a ruling on the same right (*RTBF v. Belgium*, §§ 64-65).

34. As regards *consecutive criminal and civil proceedings*, if a State’s domestic law provides for proceedings consisting of two stages – the first where the court rules on whether there is entitlement to damages and the second where it fixes the amount – it is reasonable, for the purposes of Article 6 § 1, to regard the civil right as not having been “determined” until the precise amount has been decided: determining a right entails ruling not only on the right’s existence, but also on its scope or the manner in which it may be exercised, which of course includes assessing the damages (*Torri v. Italy*, § 19).

35. With regard to the *execution of court decisions*, Article 6 § 1 applies to all stages of legal proceedings for the “determination of ... civil rights and obligations”, not excluding stages subsequent to judgment on the merits. Execution of a judgment given by any court must therefore be regarded as an integral part of the “trial” for the purposes of Article 6

(*Hornsby v. Greece*, § 40; *Romańczyk v. France*, § 53, concerning the execution of a judgment authorising the recovery of maintenance debts). Regardless of whether Article 6 is applicable to the initial proceedings, an enforcement title determining civil rights does not necessarily have to result from proceedings to which Article 6 is applicable (*Buj v. Croatia*, § 19). The *exequatur* of a foreign court's forfeiture order falls within the ambit of Article 6, under its civil head only (*Saccoccia v. Austria* (dec.)).

36. *Applications to have proceedings reopened*: Article 6 is not applicable to proceedings concerning an application for the reopening of civil proceedings which have been terminated by a final decision (*Sablon v. Belgium*, § 86). This reasoning also applies to an application to reopen proceedings after the Court has found a violation of the Convention (*Verein gegen Tierfabriken Schweiz (VgT) v. Switzerland (no. 2)* § 24). There was one highly exceptional case, however, in which a procedure denoted in the domestic legal system as an application for the reopening of proceedings was the only legal means of seeking redress in respect of civil claims, and its outcome was thus held to be decisive for the applicant's "civil rights and obligations" (*Melis v. Greece*, §§ 19-20).

37. Article 6 has also been declared applicable to a third-party appeal which had a direct impact on the applicants' civil rights and obligations (*Kakamoukas and Others v. Greece* [GC], § 32).

#### 4. Excluded matters

38. Merely showing that a dispute is "pecuniary" in nature is not in itself sufficient to attract the applicability of Article 6 § 1 under its civil head (*Ferrazzini v. Italy* [GC], § 25).

39. Matters outside the scope of Article 6 include *tax proceedings*: tax matters still form part of the hard core of public-authority prerogatives, with the public nature of the relationship between the taxpayer and the community remaining predominant (*ibid.*, § 29). Similarly excluded are summary injunction proceedings concerning customs duties or charges (*Emesa Sugar N.V. v. the Netherlands* (dec.)).

40. The same applies, in *the immigration field*, to the entry, residence and removal of aliens, in relation to proceedings concerning the granting of political asylum or deportation (application for an order quashing a deportation order: see *Maaouia v. France* [GC] § 38; extradition: see *Peñafiel Salgado v. Spain* (dec.) and *Mamatkulov and Askarov v. Turkey* [GC], §§ 81-83; and an action in damages by an asylum-seeker on account of the refusal to grant asylum: see *Panjeheighalehei v. Denmark* (dec.)), despite the possibly serious implications for private or family life or employment prospects. This inapplicability extends to the inclusion of an alien in the Schengen Information System (*Dalea v. France* (dec.)). The right to hold a passport and the right to nationality are not civil rights for the purposes of Article 6 (*Smirnov v. Russia* (dec.)). However, a foreigner's right to apply for a work permit may come under Article 6, both for the employer and the employee, even if, under domestic law, the employee has no *locus standi* to apply for it, provided that what is involved is simply a procedural bar that does not affect the substance of the right (*Jurisić and Collegium Mehreuer v. Austria*, §§ 54-62).

41. According to *Vilho Eskelinen and Others v. Finland* [GC], *disputes relating to public servants* do not fall within the scope of Article 6 when two criteria are met: the State in its national law must have expressly excluded access to a court for the post or category of staff in question, and the exclusion must be justified on objective grounds in the State's interest (§ 62). That was the case of a soldier discharged from the army for breaches of discipline who was unable to challenge his discharge before the courts and whose "special bond of trust and loyalty" with the State had been called into question (*Suküt v. Turkey* (dec.)). In order for the exclusion to be justified, it is not enough for the State to establish that the civil servant in



question participates in the exercise of public power or that there exists, to use the words of the Court in *Pellegrin*, a “*special bond of trust and loyalty*” between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. There can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question *Vilho Eskelinen and Others v. Finland* [GC], § 62).

42. Lastly, *political rights* such as the right to stand for election and retain one’s seat (electoral dispute: see *Pierre-Bloch v. France*, § 50), the right to a pension as a former member of Parliament (*Papon v. France* (dec.)), or a political party’s right to carry on its political activities (for a case concerning the dissolution of a party, see *Refah Partisi (The Welfare Party) and Others v. Turkey* (dec.)) cannot be regarded as civil rights within the meaning of Article 6 § 1. Similarly, proceedings in which a non-governmental organisation conducting parliamentary-election observations was refused access to documents not containing information relating to the applicant itself fell outside the scope of Article 6 § 1 (*Geraguyun Khorhurd Patgamavorakan Akumb v. Armenia* (dec.)).

43. In addition, the Court recently reaffirmed that the right to report matters stated in open court is not a civil right (*Mackay and BBC Scotland v. the United Kingdom*, §§ 20-22).

44. *Conclusion*: Where there exists a “*dispute*” concerning “*civil rights and obligations*”, as defined according to the above-mentioned criteria, Article 6 § 1 secures to the person concerned the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. In this way the Article embodies the “*right to a court*”, of which the right of access, that is the right to institute proceedings before courts in civil matters, constitutes one aspect. To this are added the guarantees laid down by Article 6 § 1 as regards both the organisation and composition of the court and the conduct of the proceedings. In sum, the whole makes up the right to a “*fair hearing*” (*Golder v. the United Kingdom*, § 36).

## II. RIGHT TO A COURT

### Article 6 § 1

*“In the determination of his civil rights and obligations ..., everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”*

#### 1. Right and access to a court

45. The right to a fair trial, as guaranteed by Article 6 § 1, must be construed in the light of the rule of law, which requires that litigants should have an *effective judicial remedy* enabling them to assert their civil rights (*Beles and others v. the Czech Republic*, § 49).

Everyone has the right to have any claim relating to his “*civil rights and obligations*” brought before a court or tribunal. In this way Article 6 § 1 embodies the “*right to a court*”, of which the right of access, that is, the right to institute proceedings before courts in civil matters, constitutes one aspect (*Golder v. the United Kingdom*, § 36). The “*right to a court*” and the right of access are not absolute. They may be subject to limitations, but these must not restrict or reduce the access left to the individual in such a way or to such an extent that

question participates in the exercise of public power or that there exists, to use the words of the Court in *Pellegrin*, a “special bond of trust and loyalty” between the civil servant and the State, as employer. It is also for the State to show that the subject matter of the dispute in issue is related to the exercise of State power or that it has called into question the special bond. There can in principle be no justification for the exclusion from the guarantees of Article 6 of ordinary labour disputes, such as those relating to salaries, allowances or similar entitlements, on the basis of the special nature of the relationship between the particular civil servant and the State in question *Vilho Eskelinen and Others v. Finland* [GC], § 62).

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the very essence of the right is impaired (*Philis v. Greece*, § 59; *De Geouffre de la Pradelle v. France*, § 28, and *Stanev v. Bulgaria* [GC], § 229).<sup>4</sup>

(a) A RIGHT THAT IS PRACTICAL AND EFFECTIVE

46. The right of access to a court must be “*practical and effective*” (*Bellet v. France*, § 38). For the right of access to be effective, an individual must “*have a clear, practical opportunity to challenge an act that is an interference with his rights*” (*Bellet v. France*, § 36; *Nunes Dias v. Portugal* (dec.) regarding the rules governing notice to appear). The rules governing the formal steps to be taken and the time-limits to be complied with in lodging an appeal or an application for judicial review are aimed at ensuring a proper administration of justice and compliance, in particular, with the principle of legal certainty (*Cañete de Goñi v. Spain*, § 36). That being so, the rules in question, or their application, should not prevent litigants from using an available remedy (*Miragall Escolano v. Spain*; *Zvolsky and Zvolkska v. the Czech Republic*, § 51).

47. In the specific circumstances of a case, the practical and effective nature of this right may be impaired, for instance:

- by the prohibitive cost of the proceedings in view of the individual’s financial capacity:
  - the excessive amount of security for costs in the context of an application to join criminal proceedings as a civil party (*Aït-Mouhoub v. France*, §§ 57-58; see also *Garcia Manibardo v. Spain*, §§ 38-45;
  - excessive court fees (*Kreuz v. Poland (no. 1)*, §§ 60-67); *Podbielski and PPU PolPure v. Poland*, §§ 65-66; *Weissman and others v. Romania*, § 42; see also, conversely, *Reuther v. Germany* (dec.));
- by issues relating to time-limits:
  - the time taken to hear an appeal leading to its being declared inadmissible (*Melnyk v. Ukraine*, § 26);
  - where “*the fact that the applicants were told that their action was statute-barred at such a late stage of the proceedings, which they had been conducting in good faith and with sufficient diligence, deprived them once and for all of any possibility of asserting their right*” (*Yagtzilar and Others v. Greece*, § 27);
- by the existence of procedural bars preventing or limiting the possibilities of applying to a court:
  - a particularly strict interpretation by the domestic courts of a procedural rule (excessive formalism) may deprive applicants of their right of access to a court (*Perez de Rada Cavanilles v. Spain*, § 49; *Miragall Escolano v. Spain*, § 38; *Société anonyme Sotiris and Nikos Koutras ATTEE v. Greece*, § 20; *Beles and others v. Czech Republic*, § 50; *RTBF v. Belgium*, §§ 71, 72, 74);
  - the requirements linked to execution of an earlier ruling may impair the right of access to a court, for instance where the applicant’s lack of funds makes it impossible for him even to begin to comply with the earlier judgment (*Annoni di Gussola and Others v. France*, § 56; compare with *Arvanitakis v. France* (dec.));
  - procedural rules barring certain subjects of law from taking court proceedings (*The Holy Monasteries v. Greece* § 83; *Philis v. Greece*, § 65; see also *Lupas*

<sup>4</sup>. See also the section on *Fairness*.



*and others v. Romania (no.1)*, §§ 64-67; regarding minors lacking capacity: *Stanev v. Bulgaria* [GC], §§ 241-245)<sup>5</sup>.

However, again on the subject of formalism, the conditions of admissibility of an appeal on points of law may quite legitimately be stricter than for an ordinary appeal. Given the special nature of the Court of Cassation's role, the procedure followed in the Court of Cassation may be more formal, especially where the proceedings before it follow the hearing of the case by a first-instance court and then a court of appeal, each with full jurisdiction (*Levages Prestations Services v. France*, §§ 44-48; *Brualla Gomez de la Torre v. Spain*, §§ 34-39).

48. Furthermore, the right to a court includes not only the right to institute proceedings but also the right to obtain a determination of the dispute by a court (*Kutic v. Croatia*, § 25 and § 32 regarding the staying of proceedings; *Acimovic v. Croatia*, § 41; *Beneficio Cappella Paolini v. San Marino*, § 29 concerning a denial of justice). The right to a court may also be infringed where a court fails to comply with the statutory time-limit in ruling on appeals against a series of decisions of limited duration (*Musumeci v. Italy*, §§ 41-43) or in the absence of a decision (*Ganci v. Italy*, § 31). The “right to a court” also encompasses the execution of judgments<sup>6</sup>.

#### (b) LIMITATIONS

49. The right of access to the courts is not absolute but may be subject to limitations permitted by implication (*Golder v. the United Kingdom*, § 38; *Stanev v. Bulgaria* [GC], §§ 230). This applies in particular where the conditions of admissibility of an appeal are concerned, since by its very nature it calls for regulation by the State, which enjoys a certain margin of appreciation in this regard (*Luordo v. Italy*, § 85).

50. Nonetheless, the limitations applied must not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a “legitimate aim” and if there is not a “reasonable relationship of proportionality between the means employed and the aim sought to be achieved” (*Ashingdane v. the United Kingdom*, § 57; *Fayed v. the United Kingdom*, § 65; *Markovic and Others v. Italy* [GC], § 99).

51. The right of access to a court may also be subject, in certain circumstances, to legitimate restrictions, such as statutory limitation periods (*Stubbings and Others v. the United Kingdom*, §§ 51-52), security for costs orders (*Tolstoy Miloslavsky v. the United Kingdom*, §§ 62-67) or a legal representation requirement (*R.P. and Others v. the United Kingdom*, §§ 63-67).

52. Where access to a court is restricted by law or in practice, the Court examines whether the restriction affects the substance of the right and, in particular, whether it pursues a legitimate aim and whether there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved: *Ashingdane v. the United Kingdom*, § 57. No violation of Article 6 § 1 can be found if the restriction is compatible with the principles established by the Court.

53. International organisations' immunity from national jurisdiction: this treaty-based rule – which pursues a legitimate aim (*Waite and Kennedy v. Germany* [GC], § 63) – is permissible from the standpoint of Article 6 § 1 only if the restriction stemming from it is not

<sup>5</sup>. See also the section on *Legal aid*.

<sup>6</sup>. See the section on *Execution*.

disproportionate. Hence, it will be compatible with Article 6 § 1 if the persons concerned have available to them reasonable alternative means to protect effectively their rights under the Convention (*Waite and Kennedy v. Germany* [GC], §§ 68-74; *Prince Hans-Adam II of Liechtenstein v. Germany* [GC] § 48; *Chapman v. Belgium* (dec.), §§ 51-56).

54. State immunity: the doctrine of State immunity is generally accepted by the community of nations. Measures taken by a member State which reflect generally recognised rules of public international law on State immunity do not automatically constitute a disproportionate restriction on the right of access to court (*Fogarty v. the United Kingdom* [GC], § 36; *McElhinney v. Ireland* [GC], § 37; *Sabeh El Leil v. France* [GC], § 49).

- State immunity from jurisdiction: In cases where the application of the principle of State immunity from jurisdiction restricts the exercise of the right of access to a court, it must be ascertained whether the circumstances of the case justify such restriction. The restriction must pursue a legitimate aim and be proportionate to that aim (*Cudak v. Lithuania* [GC], § 59; *Sabeh El Leil v. France* [GC], §§ 51-54). The grant of sovereign immunity to a State in civil proceedings pursues the “legitimate aim” of complying with international law to promote comity and good relations between States (*Fogarty v. the United Kingdom* [GC], § 34, and *Al-Adsani v. the United Kingdom* [GC], § 54; *Treska v. Albania and Italy*, (dec.)). As to whether the measure taken is proportionate, it may in some cases impair the very essence of the individual’s right of access to a court (*Cudak v. Lithuania* [GC], § 74; *Sabeh El Leil v. France* [GC], § 49) while in other cases it may not (*Al-Adsani v. the United Kingdom* [GC], § 67; *Fogarty v. the United Kingdom* [GC], § 39; *McElhinney v. Ireland* [GC], § 38).

State immunity from jurisdiction has been circumscribed by developments in customary international law: for instance, the immunity rule does not apply to a State’s employment contracts with the staff of its diplomatic missions abroad, except in situations that are exhaustively enumerated (*Sabeh El Leil v. France* [GC], §§ 53-54 and §§ 57-58). A restrictive approach to immunity may also be taken in relation to commercial transactions between the State and foreign private individuals (*Oleynikov v. Russia*, §§ 61 and 66). On the other hand, the Court noted in 2001 that, while there appeared to be a trend in international and comparative law towards limiting State immunity in respect of personal injury caused by an act or omission within the forum State, that practice was by no means universal (*McElhinney v. Ireland* [GC], § 38).

- State immunity from execution is not in itself contrary to Article 6 § 1. The Court noted in 2005 that all the international legal instruments governing State immunity set forth the general principle that, subject to certain strictly delimited exceptions, foreign States enjoyed immunity from execution in the territory of the forum State (*Manoilescu and Dobrescu v. Romania and Russia* (dec.), § 73). By way of illustration, the Court held in 2002 that “although the Greek courts ordered the German State to pay damages to the applicants, this did not necessarily oblige the Greek State to ensure that the applicants could recover their debt through enforcement proceedings in Greece” (*Kalogeropoulou and Others v. Greece and Germany* (dec.)). These decisions are valid in relation to the state of international law at the relevant time and do not preclude future developments in that law.

55. Parliamentary immunity: it is a long-standing practice for States generally to confer varying degrees of immunity on parliamentarians, with the aim of allowing free speech for representatives of the people and preventing partisan complaints from interfering with

parliamentary functions (*C.G.I.L. and Cofferati (no. 2) v. Italy*, § 44). Hence, parliamentary immunity may be compatible with Article 6, provided that it:

- pursues legitimate aims: protecting free speech in Parliament and maintaining the separation of powers between the legislature and the judiciary (*A. v. the United Kingdom*, §§ 75-77 and § 79);
- is not disproportionate to the aims sought to be achieved (if the person concerned has reasonable alternative means to protect effectively his or her rights (*A. v. the United Kingdom*, § 86) and immunity attaches only to the exercise of parliamentary functions (*A. v. the United Kingdom*, § 84; *Zollmann v. the United Kingdom* (dec.)). A lack of any clear connection with parliamentary activity calls for a narrow interpretation of the concept of proportionality between the aim sought to be achieved and the means employed (*Cordova v. Italy (no. 2)*, § 64; *Syngelidis v. Greece*, § 44). Individuals' right of access to a court cannot be restricted in a manner incompatible with Article 6 § 1 whenever the impugned remarks were made by a member of Parliament (*Cordova v. Italy (no. 1)*, § 63; *C.G.I.L. and Cofferati (no. 2) v. Italy*, §§ 46-50, where, in addition, the victims did not have any reasonable alternative means to protect their rights).

56. Judges' exemption from jurisdiction is likewise not incompatible with Article 6 § 1 if it pursues a legitimate aim, namely the proper administration of justice (*Ernst and Others v. Belgium*, § 50), and observes the principle of proportionality in the sense that the applicants have reasonable alternative means to protect effectively their rights under the Convention (*Ernst and Others v. Belgium*, § 53-55).

57. Immunities enjoyed by civil servants: limitations on the ability of individuals to take legal proceedings to challenge statements and findings made by civil servants which damage their reputation may pursue a legitimate aim in the public interest (*Fayed v. the United Kingdom*, § 70); however, there must be a relationship of proportionality between the means employed and that legitimate aim (*Fayed v. the United Kingdom*, §§ 75-82).

58. Limits to immunity: it would not be consistent with the rule of law in a democratic society or with the basic principle underlying Article 6 § 1 – namely that civil claims must be capable of being submitted to a judge for adjudication – if a State could, without restraint or control by the Convention enforcement bodies, remove from the jurisdiction of the courts a whole range of civil claims or confer immunities from civil liability on large groups or categories of persons (*Fayed v. the United Kingdom*, § 65; *McElhinney v. Ireland* [GC], §§ 23-26; *Sabeh El Leil v. France* [GC], § 50).

## 2. Waiver

### (a) PRINCIPLE

59. In the Contracting States' domestic legal systems a waiver of a person's right to have his or case heard by a court or tribunal is frequently encountered in civil matters, notably in the shape of arbitration clauses in contracts. The waiver, which has undeniable advantages for the individual concerned as well as for the administration of justice, does not in principle offend against the Convention (*Deweert v. Belgium*, § 49).

### (b) CONDITIONS

60. Persons may waive their right to a court in favour of arbitration, provided that such waiver is permissible and is established freely and unequivocally (*Suda v. the Czech Republic*, §§ 48-49). In a democratic society too great an importance attaches to the right to a

court for its benefit to be forfeited solely by reason of the fact that an individual is a party to a settlement reached in the course of a procedure ancillary to court proceedings (*ibid.*)<sup>7</sup>.

### 3. Legal aid

#### (a) GRANTING OF LEGAL AID

61. Article 6 § 1 does not imply that the State must provide free legal aid for every dispute relating to a “civil right” (*Airey v. Ireland*, § 26). There is a clear distinction between Article 6 § 3 (c) – which guarantees the right to free legal aid in criminal proceedings subject to certain conditions – and Article 6 § 1, which makes no reference to legal aid (*Essaadi v. France*, § 30).

62. However, the Convention is intended to safeguard rights which are practical and effective, in particular the right of access to a court. Hence, Article 6 § 1 may sometimes compel the State to provide for the assistance of a lawyer when such assistance proves indispensable for an effective access to court (*Airey v. Ireland*, § 26).

63. The question whether or not Article 6 requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case (*Airey v. Ireland*, § 26; *McVicar v. the United Kingdom*, § 48; *Steel and Morris v. the United Kingdom*, § 61). What has to be ascertained is whether, in the light of all the circumstances, the lack of legal aid would deprive the applicant of a fair hearing (*McVicar v. the United Kingdom*, § 51).

64. The question whether Article 6 implies a requirement to provide legal aid will depend, among other factors, on:

- the importance of what is at stake for the applicant (*Steel and Morris v. the United Kingdom*, § 61);
- the complexity of the relevant law or procedure (*Airey v. Ireland*, § 24);
- the applicant’s capacity to represent him or herself effectively (*McVicar v. the United Kingdom*, §§ 48-62; *Steel and Morris v. the United Kingdom*, § 61; *P., C. and S. v. the United Kingdom*, § 100);
- the existence of a statutory requirement to have legal representation (*Airey v. Ireland*, § 26; *Gnahoré v. France*, § 41 *in fine*).

65. However, the right in question is not absolute and it may therefore be permissible to impose conditions on the grant of legal aid based in particular on the following considerations, in addition to those cited in the preceding paragraph:

- the financial situation of the litigant (*Steel and Morris v. the United Kingdom*, § 62);
- his or her prospects of success in the proceedings (*Steel and Morris v. the United Kingdom*, § 62).

Hence, a legal aid system may exist which selects the cases which qualify for it. However, the system established by the legislature must offer individuals substantial guarantees to protect them from arbitrariness (*Gnahoré v. France*, § 41; *Essaadi v. France*, § 36; *Del Sol v. France*, § 26; *Bakan v. Turkey*, §§ 76 and 75 with a reference to the judgment in *Aerts v. Belgium* concerning an impairment of the very essence of the right to a court). It is therefore important to have due regard to the quality of a legal aid scheme within a State (*Essaadi v. France*, § 35) and to verify whether the method chosen by the authorities is compatible with the Convention

<sup>7</sup>. See also the section on *Public hearing*.



(*Santambrogio v. Italy*, § 52; *Bakan v. Turkey*, §§ 74-78; *Pedro Ramos v. Switzerland*, §§ 41-45).

66. It is essential for the court to give reasons for refusing legal aid and to handle requests for legal aid with diligence (*Tabor v. Poland*, §§ 45-46; *Saoud v. France*, §§ 133-136).

67. Furthermore, the refusal of legal aid to foreign legal persons is not contrary to Article 6 (*Granos Organicos Nacionales S.A. v. Germany*, §§ 48-53).

#### (b) EFFECTIVENESS OF THE LEGAL AID GRANTED

68. The State is not accountable for the actions of an officially appointed lawyer. It follows from the independence of the legal profession from the State (*Staroszczyk v. Poland*, § 133), that the conduct of the defence is essentially a matter between the defendant and his counsel, whether counsel is appointed under a legal aid scheme or is privately financed. The conduct of the defence as such cannot, other than in special circumstances, incur the State's liability under the Convention (*Tuziński v. Poland* (dec.)).

69. However, assigning a lawyer to represent a party does not in itself guarantee effective assistance (*Siałkowska v. Poland*, §§ 110 and 116). The lawyer appointed for legal aid purposes may be prevented for a protracted period from acting or may shirk his duties. If they are notified of the situation, the competent national authorities must replace him; should they fail to do so, the litigant would be deprived of effective assistance in practice despite the provision of free legal aid (*Bertuzzi v. France*, § 30).

70. It is above all the responsibility of the State to ensure the requisite balance between the effective enjoyment of access to justice on the one hand and the independence of the legal profession on the other. The Court has clearly stressed that any refusal by a legal aid lawyer to act must meet certain quality requirements. Those requirements will not be met where the shortcomings in the legal aid system deprive individuals of the "practical and effective" access to a court to which they are entitled (*Staroszczyk v. Poland*, § 135; *Siałkowska v. Poland*, § 114 - violation).

### III. INSTITUTIONAL REQUIREMENTS

#### Article 6 § 1

"In the determination of his civil rights and obligations ..., everyone is entitled to a ... hearing ... by an independent and impartial tribunal established by law. ..."

#### 1. Concept of a "tribunal"

##### (a) AUTONOMOUS CONCEPT

71. An authority not classified as one of the courts of a State may nonetheless, for the purposes of Article 6 § 1, come within the concept of a "tribunal" in the substantive sense of the term (*Sramek v. Austria*, § 36).

72. A court or tribunal is characterised in the substantive sense of the term by its judicial function, that is to say determining matters within its competence on the basis of rules of law and after proceedings conducted in a prescribed manner (*Sramek v. Austria*, § 36; *Cyprus v. Turkey* [GC], § 233).

73. A power of decision is inherent in the very notion of “tribunal”. The proceedings must provide the “*determination by a tribunal of the matters in dispute*” which is required by Article 6 § 1 (*Bentham v. the Netherlands*, § 40).

74. The power simply to issue advisory opinions without binding force is therefore not sufficient, even if those opinions are followed in the great majority of cases (*ibid.*).

75. For the purposes of Article 6 § 1 a “tribunal” need not be a court of law integrated within the standard judicial machinery of the country concerned. It may be set up to deal with a specific subject matter which can be appropriately administered outside the ordinary court system. What is important to ensure compliance with Article 6 § 1 are the guarantees, both substantive and procedural, which are in place (*Rolf Gustafson v. Sweden*, § 45).

76. Hence, a “tribunal” may comprise a body set up to determine a limited number of specific issues, provided always that it offers the appropriate guarantees (*Lithgow and Others v. the United Kingdom*, § 201 – in the context of an arbitration tribunal).

77. The fact that it performs many functions (administrative, regulatory, adjudicative, advisory and disciplinary) cannot *in itself* preclude an institution from being a “tribunal” (*H. v. Belgium*, § 50).

78. The power to give a binding decision which may not be altered by a non-judicial authority to the detriment of an individual party is inherent in the very notion of a “tribunal” (*Van de Hurk v. the Netherlands*, § 45). One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue their ruling should not be called into question (Similarly, in the case of applications for leave to appeal (*Brumarescu v. Romania* [GC], § 61).<sup>8</sup>

79. A “tribunal” must also satisfy a series of further requirements – independence, in particular of the executive; impartiality; duration of its members’ terms of office; guarantees afforded by its procedure – several of which appear in the text of Article 6 § 1 (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 55; *Cyprus v. Turkey* [GC], § 233). Indeed, both independence and impartiality are key components of the concept of a “tribunal”.<sup>9</sup>

80. Examples of bodies recognised as having the status of a “tribunal” within the meaning of Article 6 § 1 of the Convention include:

- a regional real-property transactions authority: *Sramek v. Austria*, § 36;
- a criminal damage compensation board: *Rolf Gustafson v. Sweden*, § 48;
- a forestry disputes resolution committee: *Argyrou and Others v. Greece*, § 27.

#### (b) LEVEL OF JURISDICTION

81. While Article 6 § 1 does not compel the Contracting States to set up courts of appeal or of cassation, a State which does institute such courts is required to ensure that persons amenable to the law shall enjoy before these courts the fundamental guarantees contained in Article 6 § 1 (*Platakou v. Greece*, § 38):

- assessment in concreto: the manner in which Article 6 § 1 applies to courts of appeal or of cassation will, however, depend on the special features of the proceedings concerned. The conditions of admissibility of an appeal on points of law may be stricter than for an ordinary appeal (*Levages Prestations Services v. France*, § 45);
- assessment in globo: Account must be taken of the entirety of the proceedings conducted in the domestic legal order (*Levages Prestations Services v. France*, §§ 44-45). Consequently, a higher or the highest court may, in some circumstances,

<sup>8</sup>. See also the section on *Execution of judgments*.

<sup>9</sup>. See the section on *Independence and impartiality*.



make reparation for an initial violation of one of the Convention's provisions (*De Haan v. the Netherlands*, § 54).

82. Demands of flexibility and efficiency, which are fully compatible with the protection of human rights, may justify the prior intervention of administrative or professional bodies and, *a fortiori*, of judicial bodies which do not satisfy the requirements of Article 6 in every respect (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 51). No violation of the Convention can be found if the proceedings before those bodies are “*subject to subsequent control by a judicial body that has full jurisdiction*” and does provide the guarantees of Article 6 (*Zumtobel v. Austria*, §§ 29-32; *Bryan v. the United Kingdom*, § 40).

83. Likewise, the fact that the duty of adjudicating is conferred on professional disciplinary bodies does not *in itself* infringe the Convention. Nonetheless, in such circumstances the Convention calls for at least one of the following two systems: either the professional disciplinary bodies themselves comply with the requirements of that Article, or they do not so comply but are subject to subsequent review by “*a judicial body that has full jurisdiction*” and does provide the guarantees of Article 6 § 1 (*Albert and Le Compte v. Belgium*, § 29; *Gautrin and Others v. France*, § 57).

84. Accordingly, the Court has consistently reiterated that under Article 6 § 1 it is necessary that the decisions of administrative authorities which do not themselves satisfy the requirements of that Article should be subject to subsequent control by “*a judicial body that has full jurisdiction*” (*Ortenberg v. Austria*, § 31).<sup>10</sup>

#### (c) REVIEW BY A COURT HAVING FULL JURISDICTION

85. Only an institution that has full jurisdiction merits the designation “*tribunal*” within the meaning of Article 6 § 1 (*Beaumartin v. France*, § 38). Article 6 § 1 requires the courts to carry out an effective judicial review (*Obermeier v. Austria*, § 70). The principle that a court should exercise full jurisdiction requires it not to abandon any of the elements of its judicial function (*Chevrol v. France*, § 63).

86. The “*tribunal*” in question must have jurisdiction to examine all questions of fact and law relevant to the dispute before it (*Terra Woningen B.V. v. the Netherlands*, § 52).

87. However, there are some specialised areas of the law (for instance, in the sphere of town and country planning) where the courts have limited jurisdiction as to the facts, but may overturn the administrative authorities' decision if it was based on an inference from facts which was perverse or irrational. More generally, this raises the issue of the scope of review of administrative decisions (*Bryan v. the United Kingdom*, §§ 44-47; *Crompton v. the United Kingdom*, §§ 70-73).

88. The case-law has established certain criteria for assessing whether the review was conducted by a body with “*full jurisdiction*” for the purposes of the Convention (*Sigma Radio Television Ltd v. Cyprus*, §§ 151-157). Thus, in order to determine whether the judicial body in question provided a sufficient review, the following three criteria must be considered in combination:

- *the subject matter of the decision appealed against:*
  - if the administrative decision concerned a simple question of fact the court's scrutiny will need to be more intense than if it concerned a specialised field requiring specific technical knowledge;

<sup>10</sup>. See also the section on *Fairness*.

- the systems existing in Europe usually limit the courts' power to review factual issues, while not preventing them from overturning the decision on various grounds. This is not called into question by the case-law.
- *the manner in which that decision was arrived at*: what procedural safeguards were in place before the administrative authority concerned?
  - if the complainant enjoyed procedural safeguards satisfying many of the requirements of Article 6 during the prior administrative procedure, this may justify a lighter form of subsequent judicial control (*Bryan v. the United Kingdom*, §§ 46-47; *Holding and Barnes plc v. the United Kingdom* (dec.)).
- *the content of the dispute, including the desired and actual grounds of appeal* (*Bryan v. the United Kingdom*, § 45):
  - the judgment must be able to examine all the complainant's submissions on their merits, point by point, without declining to examine any of them, and to give clear reasons for rejecting them. As to the facts, the court must be empowered to re-examine those which are *central to the complainant's case*. Hence, if the complainant makes only procedural submissions, he or she cannot subsequently criticise the court for not having ruled on the facts (*Potocka and Others v. Poland*, § 57).

89. For **example**, the refusal of a court to rule independently on certain issues of fact which are crucial to the settlement of the dispute before it may amount to a violation of Article 6 § 1 (*Terra Woningen B.V. v. the Netherlands*, §§ 53-55). The same applies if the court does not have jurisdiction to determine the central issue in the dispute (*Tsfayo v. the United Kingdom* § 48). In such cases the matter which is decisive for the outcome of the case is not subjected to independent judicial scrutiny.

90. If a ground of appeal is upheld, the reviewing court must have the power to quash the impugned decision and to either take a fresh decision itself or remit the case for decision by the same or a different body (*Kingsley v. the United Kingdom* [GC], §§ 32, 34).

91. Where the facts have already been established by the administrative authority in the course of a quasi-judicial procedure satisfying many of the requirements laid down by Article 6 § 1, where there is no dispute as to the facts thus established or the inferences drawn from them by the administrative authority, and where the court has dealt point by point with the litigant's other grounds of appeal, the scope of the review conducted by the appellate court will be held to be sufficient to comply with Article 6 § 1 (*Bryan v. the United Kingdom*, §§ 44-47).

92. Below are some **examples** of judicial bodies that have not been considered to have "full jurisdiction":

- an administrative court which was empowered only to determine whether the discretion enjoyed by the administrative authorities was used in a manner compatible with the object and purpose of the law (*Obermeier v. Austria*, § 70);
- a court which heard appeals on points of law from decisions of the disciplinary sections of professional associations, without having the power to assess whether the penalty was proportionate to the misconduct (*Diennet v. France*, § 34, in the context of a medical association, and *Merigaud v. France*, § 69, in the context of an association of surveyors);

- a Constitutional Court which could inquire into the contested proceedings solely from the point of view of their conformity with the Constitution, thus preventing it from examining all the relevant facts (*Zumtobel v. Austria*, §§ 29-30);
- the *Conseil d'Etat* which, in accordance with its own case-law, was obliged, in resolving the issue before it concerning the applicability of treaties, to abide by the opinion of the minister – an external authority who was also a representative of the executive – without subjecting that opinion to any criticism or discussion by the parties. The minister's involvement, which was decisive for the outcome of the legal proceedings, was not open to challenge by the applicant, who was, moreover, not afforded any opportunity to have the basis of her own reply to the minister examined (*Chevrol v. France*, §§ 81-82).

93. By contrast:

- *Chaudet v. France*: the *Conseil d'État* determined an application for judicial review as the court of first and last instance. In this case the *Conseil d'Etat* did not have “full jurisdiction”, which would have had the effect of substituting its decision for that of the civil aviation medical board. However, it was clear from the case file that it had nonetheless addressed all of the submissions made by the applicant, on factual and legal grounds, and assessed all of the evidence in the medical file, having regard to the conclusions of all the medical reports discussed before it by the parties. The Court therefore held that the applicant's case had been examined in compliance with the requirements of Article 6 § 1 (§§ 37-38);
- *Zumtobel v. Austria*: the Court held that the Austrian Administrative Court had met the requirements of Article 6 § 1 in relation to matters not exclusively within the discretion of the administrative authorities, and that it had considered the submissions on their merits, point by point, without ever having to decline jurisdiction in replying to them or in ascertaining various facts (§§ 31-32) – also *Ortenberg v. Austria*, §§ 33-34; *Fischer v. Austria*, § 34.
- *McMichael v. the United Kingdom*: in this case, an order of the Sheriff Court freeing a child for adoption was subject to appeal to the Court of Session. The latter had full jurisdiction in that regard; it normally proceeded on the basis of the Sheriff's findings of fact but was not obliged to do so. It could, where appropriate, take evidence itself or remit the case to the Sheriff with instructions as to how he should proceed (§ 66). Furthermore, the Sheriff Court, in determining appeals against the decisions of children's hearings, also had full jurisdiction, being empowered to examine both the merits and alleged procedural irregularities (§ 82);
- *Potocka and Others v. Poland*: the scope of the Supreme Administrative Court's jurisdiction as determined by the Code of Administrative Procedure was limited to the assessment of the lawfulness of contested administrative decisions. However, the court was also empowered to set aside a decision wholly or in part if it was established that procedural requirements of fairness had not been met in the proceedings which had led to its adoption. The reasoning of the Supreme Administrative Court showed that in fact it had examined the expediency aspect of the case. Even though the court could have limited its analysis to finding that the contested decisions had to be upheld in the light of the procedural and substantive flaws in the applicants' application, it had considered all their submissions on their merits, point by point, without ever having to decline jurisdiction in replying to them or in ascertaining the relevant facts. It had delivered a judgment which was carefully reasoned, and the applicants' arguments relevant to the outcome of the case had been

dealt with thoroughly. Accordingly, the scope of review of the Supreme Administrative Court had been sufficient to comply with Article 6 § 1 (§§ 56-59).

#### (d) EXECUTION OF JUDGMENTS

##### • Right to prompt implementation of a final and binding judicial decision

94. Article 6 § 1 protects the implementation of final, binding judicial decisions (as distinct from the implementation of decisions which may be subject to review by a higher court) (*Ouzounis and Others v. Greece*, § 21).

95. The right to execution of such decisions, given by any court, is an integral part of the “*right to a court*” (*Hornsby v. Greece*, § 40; *Scordino v. Italy (no. 1)* [GC], § 196). Otherwise, the provisions of Article 6 § 1 would be deprived of all useful effect (*Burdov v. Russia*, §§ 34 and 37).

96. This is of even greater importance in the context of administrative proceedings. By lodging an application for judicial review with the State’s highest administrative court, the litigant seeks not only annulment of the impugned decision but also and above all the removal of its effects.

97. The effective protection of the litigant and the restoration of legality therefore presuppose an obligation on the administrative authorities’ part to comply with the judgment (*Hornsby v. Greece*, § 41; *Kyrtatos v. Greece*, §§ 31-32).

98. Thus, while some delay in the execution of a judgment may be justified in particular circumstances, the delay may not be such as to impair the litigant’s right to enforcement of the judgment (*Burdov v. Russia*, §§ 35-37).

99. Understood in this way, execution must be full and exhaustive and not just partial (*Matheus v. France*, § 58; *Sabin Popescu v. Romania*, §§ 68-76), and may not be prevented, invalidated or unduly delayed (*Immobiliare Saffi v. Italy* [GC], § 74).

100. The refusal of an authority to take account of a ruling given by a higher court – leading potentially to a series of judgments in the context of the same set of proceedings, repeatedly setting aside the decisions given – is also contrary to Article 6 § 1 (*Turczanik v. Poland*, §§ 49-51).

101. An unreasonably long delay in enforcement of a binding judgment may breach the Convention. The reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant’s own behaviour and that of the competent authorities, and the amount and nature of the court award (*Raylyan v. Russia*, § 31).

102. For example, the Court held that by refraining for more than five years from taking the necessary measures to comply with a final, enforceable judicial decision the national authorities had deprived the provisions of Article 6 § 1 of all useful effect (*Hornsby v. Greece*, § 45).

103. In another case, the overall period of nine months taken by the authorities to enforce a judgment was found not to be unreasonable in view of the circumstances (*Moroko v. Russia*, §§ 43-45).

104. The Court has found the right to a court under Article 6 § 1 to have been breached on account of the authorities’ refusal, over a period of approximately four years, to use police assistance to enforce an order for possession against a tenant (*Lunari v. Italy*, §§ 38-42), and on account of a stay of execution – for over six years – resulting from the intervention of the legislature calling into question a court order for a tenant’s eviction, which was accordingly deprived of all useful effect by the impugned legislative provisions (*Immobiliare Saffi v. Italy* [GC], §§ 70 and 74).



105. A person who has obtained judgment against the State at the end of legal proceedings may not be expected to bring separate enforcement proceedings (*Burdov v. Russia* (no. 2), § 68). The burden to ensure compliance with a judgment against the State lies with the State authorities (*Yavorivskaya v. Russia*, § 25), starting from the date on which the judgment becomes binding and enforceable (*Burdov v. Russia* (no. 2), § 69).

106. A successful litigant may be required to undertake certain procedural steps in order to allow or speed up the execution of a judgment. The requirement of the creditor's cooperation must not, however, go beyond what is strictly necessary and does not relieve the authorities of their obligations (*Burdov v. Russia* (no. 2), § 69).

107. It follows that the late payment, following enforcement proceedings, of amounts owing to the applicant cannot cure the national authorities' long-standing failure to comply with a judgment and does not afford adequate redress (*Scordino v. Italy* (no. 1) [GC], § 198).

108. The Court has also held that the authorities' stance of holding the applicant responsible for the initiation of execution proceedings in respect of an enforceable decision in his favour, coupled with the disregard for his financial situation, constituted an excessive burden and restricted his right of access to a court to the extent of impairing the very essence of that right (*Apostol v. Georgia*, § 65).

109. A litigant may not be deprived of the benefit, within a reasonable time, of a final decision awarding him compensation for damage (*Burdov v. Russia*, § 35), or housing (*Teteriny v. Russia*, §§ 41-42), regardless of the complexity of the domestic enforcement procedure or of the State budgetary system. It is not open to a State authority to cite lack of funds or other resources as an excuse for not honouring a judgment debt (*Burdov v. Russia*, § 35; *Amat-G Ltd and Mebaghishvili v. Georgia*, § 47; *Scordino v. Italy* (no. 1) [GC], § 199). Nor may it cite a lack of alternative accommodation as an excuse for not honouring a judgment (*Prodan v. Moldova*, § 53).

110. A distinction has to be made between debts owed by the State (*Burdov v. Russia* (no. 2), §§ 68 and 69 and §§ 72 et seq.) and those owed by an individual: the responsibility of the State cannot be engaged on account of non-payment of an enforceable debt as a result of the insolvency of a "private" debtor (*Sanglier v. France*, § 39; *Ciprova v. the Czech Republic* (dec.); *Cubănit v. Romania* (dec.)). Nevertheless, the State has a positive obligation to organise a system for enforcement of final decisions in disputes between private persons that is effective both in law and in practice (*Fuklev v. Ukraine*, § 84). The State's responsibility may therefore be engaged if the public authorities involved in enforcement proceedings fail to display the necessary diligence, or even prevent enforcement (*Fuklev v. Ukraine*, § 67). The measures taken by the national authorities to secure enforcement must be adequate and sufficient for that purpose (*Ruianu v. Romania*, § 66), in view of their obligations in the matter of execution, since it is they who exercise public authority (*ibid.*, §§ 72-73).

111. Thus, for example, the Court held that, by refraining from taking sanctions in respect of the failure of a (private) third party to cooperate with the authorities empowered to enforce final enforceable decisions, the national authorities deprived the provisions of Article 6 § 1 of all useful effect (*Pini and Others v. Romania*, §§ 186-188; in that case, the private institution where two children were living had prevented the execution for over three years of the orders for the children's adoption).

112. Nevertheless, where the State has taken all the steps envisaged by the law to ensure that a private individual complies with a decision, the State cannot be held responsible for the debtor's refusal to comply with his obligations (*Fociac v. Romania*, §§ 74 and 78).

113. Lastly, the right to a court likewise protects the right of access to enforcement proceedings, that is, the right to have enforcement proceedings initiated (*Apostol v. Georgia*, § 56).

• Right not to have a final judicial decision called into question

114. Furthermore, the right to a fair hearing must be interpreted in the light of the rule of law. One of the fundamental aspects of the rule of law is the principle of legal certainty, (*Okay and others v. Turkey*, § 73), which requires, *inter alia*, that where the courts have finally determined an issue their ruling should not be called into question (*Brumarescu v. Romania* [GC], § 61; *Agrokompleks v. Ukraine*, § 148).

115. Judicial systems characterised by final judgments that are liable to review indefinitely and at risk of being set aside repeatedly are in breach of Article 6 § 1 (*Sovtransavto Holding v. Ukraine*, §§ 74, 77 and 82: this case concerned the *protest* procedure, whereby the President of the Supreme Arbitration Tribunal, the Attorney-General and their deputies had discretionary power to challenge final judgments under the supervisory review procedure by lodging an objection).

116. The calling into question of decisions in this manner is not acceptable, whether it be by judges and members of the executive (*Tregubenko v. Ukraine*, § 36) or by non-judicial authorities (*Agrokompleks v. Ukraine*, § 150-151).

117. A final decision may be called into question only when this is made necessary by circumstances of a substantial and compelling character such as a judicial error (*Ryabykh v. Russia*, § 52).

## 2. Establishment by law

118. In the light of the principle of the rule of law, inherent in the Convention system, the Court considers that a “tribunal” must always be “established by law”, as it would otherwise lack the legitimacy required in a democratic society to hear individual cases (*Lavents v. Latvia*, § 81).

119. The phrase “established by law” covers not only the legal basis for the very existence of a “tribunal”, but also compliance by the tribunal with the particular rules that govern it (*Sokurenko and Strygun v. Ukraine*, § 24). The lawfulness of a court or tribunal must by definition also encompass its composition (*Buscarini v. San Marino* (dec.)). The practice of tacitly renewing judges’ terms of office for an indefinite period after their statutory term of office had expired and pending their reappointment was held to be contrary to the principle of a “tribunal established by law” (*Oleksandr Volkov v. Ukraine*, § 151). The procedures governing the appointment of judges could not be relegated to the status of internal practice (*ibid.*, §§ 154-156).

120. “Law”, within the meaning of Article 6 § 1, thus comprises not only legislation providing for the establishment and competence of judicial organs, but also any other provision of domestic law which, if breached, would render the participation of one or more judges in the examination of a case irregular (*DMD Group, A.S. v. Slovakia*, § 59). This includes, in particular, provisions concerning the independence of the members of a “tribunal”, the length of their term of office, impartiality and the existence of procedural safeguards (*Gurov v. Moldova*, § 36).

121. In principle, a breach by a court of these domestic legal provisions gives rise to a violation of Article 6 § 1 (*DMD Group, A.S. v. Slovakia*, § 61). The Court may therefore examine whether the domestic law has been complied with in this respect. However, having regard to the general principle that it is, in the first place, for the national courts themselves to interpret the provisions of domestic law, the Court finds that it may not question their interpretation unless there has been a flagrant violation of the legislation (*DMD Group, A.S. v. Slovakia*, § 61). A court which, without any explanation, oversteps the usual limits of its jurisdiction in deliberate breach of the law is not a “tribunal established by law” in the proceedings in question (*Sokurenko and Strygun v. Ukraine*, §§ 27-28).



122. The object of the term “*established by law*” in Article 6 § 1 is to ensure that the organisation of the judicial system does not depend on the discretion of the executive but is regulated by law emanating from Parliament (*Savino and Others v. Italy*, § 94).

123. Nor, in countries where the law is codified, can organisation of the judicial system be left to the discretion of the judicial authorities, although this does not mean that the courts do not have some latitude to interpret the relevant national legislation (*Savino and Others v. Italy*, § 94).

124. Furthermore, delegating powers in matters concerning the organisation of the judicial system is permissible provided that this possibility is enshrined in the domestic law of the State, including the relevant provisions of the Constitution (*ibid.*).

### 3. Independence and impartiality

#### (a) GENERAL CONSIDERATIONS

125. The right to a fair hearing under Article 6 § 1 requires that a case be heard by an “*independent and impartial tribunal*”. There is a close inter-relationship between the guarantees of an “*independent*” and an “*impartial*” tribunal. For this reason the Court commonly considers the two requirements together (*Kleyn and Others v. the Netherlands* [GC], § 192).

126. The participation of lay judges in a case is not, as such, contrary to Article 6 § 1. The existence of a panel with mixed membership comprising, under the presidency of a judge, civil servants and representatives of interested bodies does not in itself constitute evidence of bias (*Le Compte, Van Leuven and De Meyere v. Belgium*, §§ 57 and 58), nor is there any objection *per se* to expert lay members participating in the decision-making in a court (*Pabla Ky v. Finland*, § 32).

127. The principles established in the case-law concerning impartiality apply to lay judges as to professional judges (*Langborger v. Sweden*, §§ 34-35; *Cooper v. the United Kingdom* [GC], § 123).

128. As a matter of principle, a violation of Article 6 § 1 cannot be grounded on the lack of independence or impartiality of a decision-making tribunal or the breach of an essential procedural guarantee by that tribunal, if the decision taken was subject to subsequent control by a judicial body that has “*full jurisdiction*” and ensures respect for the relevant guarantees by curing the failing in question (*De Haan v. the Netherlands*, §§ 52-55).<sup>11</sup>

129. The Court has consistently stressed that the scope of the State’s obligation to ensure a trial by an “*independent and impartial tribunal*” under Article 6 § 1 of the Convention is not limited to the judiciary. It also implies obligations on the executive, the legislature and any other State authority, regardless of its level, to respect and abide by the judgments and decisions of the courts, even when they do not agree with them. Thus, the State’s respecting the authority of the courts is an indispensable precondition for public confidence in the courts and, more broadly, for the rule of law. For this to be the case, the constitutional safeguards of the independence and impartiality of the judiciary do not suffice. They must be effectively incorporated into everyday administrative attitudes and practices (*Agrokompleks v. Ukraine*, § 136).

<sup>11</sup>. See also the sections on *Review by a court having full jurisdiction* and *Fairness*.

## (b) AN INDEPENDENT TRIBUNAL

130. The term “*independent*” refers to independence *vis-à-vis* the other powers (the executive and the Parliament) (*Beaumont v. France*, § 38) and also *vis-à-vis* the parties (*Sramek v. Austria*, § 42).

131. Although the notion of the separation of powers between the political organs of government and the judiciary has assumed growing importance in the Court’s case-law, neither Article 6 nor any other provision of the Convention requires States to comply with any theoretical constitutional concepts regarding the permissible limits of the powers’ interaction. The question is always whether, in a given case, the requirements of the Convention are met (*Kleyn and Others v. the Netherlands* [GC], § 193). Indeed, the notion of independence of a tribunal entails the existence of procedural safeguards to separate the judiciary from other powers.

• Independence *vis-à-vis* the executive

132. The independence of judges will be undermined where the executive intervenes in a case pending before the courts with a view to influencing the outcome (*Sovtransavto Holding v. Ukraine*, § 80; *Mosteanu and Others v. Romania*, § 42).

133. The fact that judges are appointed by the executive and are removable does not *per se* amount to a violation of Article 6 § 1 (*Clarke v. the United Kingdom* (dec.)). The appointment of judges by the executive is permissible provided that the appointees are free from influence or pressure when carrying out their adjudicatory role (*Flux v. Moldova (no. 2)*, § 27).

134. The fact that the President of the Court of Cassation is appointed by the executive does not in itself undermine his independence provided that, once appointed, he is not subject to any pressure, does not receive any instructions and performs his duties with complete independence (*Zolotas v. Greece*, § 24).

135. Likewise, the mere fact that judges of the Council of Administrative Law are appointed by the regional administrative authority is not capable of casting doubt on their independence or impartiality provided that, once appointed, they are not subject to any pressure, do not receive any instructions and exercise their judicial activity with complete independence (*Majorana v. Italy*, (dec.)).

• Independence *vis-à-vis* Parliament

136. The fact that judges are appointed by Parliament does not by itself render them subordinate to the authorities if, once appointed, they receive no pressure or instructions in the performance of their judicial duties (*Sacilor-Lormines v. France*, § 67). Furthermore, the fact that one of the expert members of the Court of Appeal, comprising mainly professional judges, was also a member of Parliament did not *per se* breach the right to an independent and impartial tribunal (*Pabla Ky v. Finland*, §§ 31-35).

• Independence *vis-à-vis* the parties

137. Where a tribunal’s members include a person who is in a subordinate position, in terms of his duties and the organisation of his service, *vis-à-vis* one of the parties, litigants may entertain a legitimate doubt about that person’s independence. Such a situation seriously affects the confidence which the courts must inspire in a democratic society (*Sramek v. Austria*, § 42).

• **Criteria for assessing independence**

138. In determining whether a body can be considered to be “*independent*”, the Court has had regard, *inter alia*, to the following criteria (*Langborger v. Sweden*, § 32; *Kleyn and Others v. the Netherlands* [GC], § 190):

- the manner of appointment of its members and the duration of their term of office;
- the existence of guarantees against outside pressures; and
- whether the body presents an appearance of independence.

(i) Manner of appointment of a body’s members

139. Questions have been raised as to the intervention of the Minister of Justice in the appointment and/or removal from office of members of a decision-making body (*Sramek v. Austria*, § 38; *Brudnicka and Others v. Poland*, § 41; *Clarke v. United Kingdom* (dec.)).

140. Although the assignment of a case to a particular judge or court falls within the margin of appreciation enjoyed by the domestic authorities in such matters, the Court must be satisfied that it was compatible with Article 6 § 1, and, in particular, with the requirements of independence and impartiality (*Bochan v. Ukraine*, § 71).

(ii) Duration of appointment of a body’s members

141. The Court has not specified any particular term of office for the members of a decision-making body, although their irremovability during their term of office must in general be considered as a corollary of their independence. However, the absence of a formal recognition of this irremovability in the law does not in itself imply lack of independence provided that it is recognised in fact and that other necessary guarantees are present (*Sacilor-Lormines v. France*, § 67; *Luka v. Romania*, § 44).

(iii) Guarantees against outside pressure

142. Judicial independence demands that individual judges be free from undue influence outside the judiciary, and from within. Internal judicial independence requires that they be free from directives or pressures from fellow judges or those who have administrative responsibilities in the court such as the president of the court or the president of a division in the court. The absence of sufficient safeguards securing the independence of judges within the judiciary and, in particular, *vis-à-vis* their judicial superiors, may lead the Court to conclude that an applicant’s doubts as to the independence and impartiality of a court can be said to have been objectively justified (*Parlov-Tkalčić v. Croatia*, § 86; *Agrokompleks v. Ukraine*, § 137).

143. The judges of a County Court were found to be sufficiently independent of that court’s president since court presidents performed only administrative (managerial and organisational) functions, which were strictly separated from the judicial function. The legal system provided for adequate safeguards against the arbitrary exercise of court presidents’ duty to (re)assign cases to judges (*Parlov-Tkalčić v. Croatia*, §§ 88-95).

(iv) Appearance of independence

144. In order to determine whether a tribunal can be considered to be independent as required by Article 6 § 1, appearances may also be of importance (*Sramek v. Austria*, § 42). As to the appearance of independence, the standpoint of a party is important but not decisive; what is decisive is whether the fear of the party concerned can be held to be “*objectively justified*” (*Sacilor-Lormines v. France*, § 63). Therefore, no problem arises as regards independence when the Court is of the view that an “*objective observer*” would see no cause

for concern about it in the circumstances of the case at hand (*Clarke v. United Kingdom* (dec.)).

### (c) AN IMPARTIAL TRIBUNAL

145. Article 6 § 1 requires a tribunal falling within its scope to be impartial. Impartiality normally denotes the absence of prejudice or bias and its existence or otherwise can be tested in various ways (*Wettstein v. Switzerland*, § 43; *Micallef v. Malta* [GC], § 93). The concepts of independence and impartiality are closely linked and, depending on the circumstances, may require joint examination (*Sacilor-Lormines v. France* § 62; *Oleksandr Volkov v. Ukraine*, § 107).

#### • Criteria for assessing impartiality

146. The existence of impartiality must be determined on the basis of the following (*Micallef v. Malta* [GC], §§ 93):

- a subjective test, where regard must be had to the personal conviction and behaviour of a particular judge, that is, whether the judge held any personal prejudice or bias in a given case;
- and also according to an objective test, that is to say by ascertaining whether the tribunal itself and, among other aspects, its composition, offered sufficient guarantees to exclude any legitimate doubt in respect of its impartiality.

147. However, there is no watertight division between subjective and objective impartiality since the conduct of a judge may not only prompt objectively held misgivings as to impartiality from the point of view of the external observer (objective test) but may also go to the issue of his or her personal conviction (subjective test).

148. Thus, in some cases where it may be difficult to procure evidence with which to rebut the presumption of the judge's subjective impartiality, the requirement of objective impartiality provides a further important guarantee (see *Micallef v. Malta* [GC], §§ 95 and 101).

#### (i) Subjective approach

149. In applying the subjective test, the Court has consistently held that “*the personal impartiality of a judge must be presumed until there is proof to the contrary*” (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 58, *in fine*; *Micallef v. Malta* [GC], § 94). As regards the type of proof required, the Court has, for example, sought to ascertain whether a judge has displayed hostility (*Buscemi v. Italy*, §§ 67-68). The fact that a judge did not withdraw from dealing with a civil action on appeal following his earlier participation in another related set of civil proceedings did not constitute the required proof to rebut the presumption (*Golubović v. Croatia*, § 52).

150. The principle that a tribunal shall be presumed to be free of personal prejudice or partiality is long-established in the case-law of the Court (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 58; *Driza v. Albania*, § 75).

#### (ii) Objective approach

151. It must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality. When applied to a body sitting as a bench, it means determining whether, quite apart from the personal conduct of any of the members of that body, there are ascertainable facts which may raise doubts as to the impartiality of the body itself. This implies that, in deciding whether in a given case there is a



legitimate reason to fear that a particular judge (*Morel v. France*, §§ 45-50; *Pescador Valero v. Spain*, § 23) or a body sitting as a bench (*Luka v. Romania*, § 40) lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (*Wettstein v. Switzerland*, § 44; *Pabla Ky v. Finland*, § 30; *Micallef v. Malta* [GC], § 96).

152. The objective test mostly concerns hierarchical or other links between the judge and other actors in the proceedings (see cases regarding the dual role of a judge, for example *Mežnarić v. Croatia*, § 36; *Wettstein v. Switzerland*, § 47, where the lawyer representing the applicant's opponents subsequently judged the applicant in a single set of proceedings and overlapping proceedings respectively) which objectively justify misgivings as to the impartiality of the tribunal, and thus fail to meet the Convention standard under the objective test.

153. Therefore, it must be decided in each individual case whether the relationship in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (*Micallef v. Malta*, [GC], §§ 97 and 102).

154. In this respect even appearances may be of a certain importance or, in other words, “justice must not only be done, it must also be seen to be done”. What is at stake is the confidence which the courts in a democratic society must inspire in the public. Thus, any judge in respect of whom there is a legitimate reason to fear a lack of impartiality must withdraw (*Micallef v. Malta* [GC], § 98).

155. In order that the courts may inspire in the public the confidence which is indispensable, account must also be taken of questions of internal organisation. The existence of national procedures for ensuring impartiality, namely rules regulating the withdrawal of judges, is a relevant factor (see the specific provisions regarding the challenging of judges, *Micallef v. Malta* [GC], § 99-100). Such rules manifest the national legislature's concern to remove all reasonable doubts as to the impartiality of the judge or court concerned and constitute an attempt to ensure impartiality by eliminating the causes of such concerns. In addition to ensuring the absence of actual bias, they are directed at removing any appearance of partiality and so serve to promote the confidence which the courts in a democratic society must inspire in the public (*Mežnarić v. Croatia*, § 27).

• **Situations in which the question of a lack of judicial impartiality may arise**

156. There are two possible situations in which the question of a lack of judicial impartiality may arise:

- The first is functional in nature and concerns, for instance, the exercise of different functions within the judicial process by the same person, or hierarchical or other links with another actor in the proceedings.
- The second is of a personal character and derives from the conduct of the judges in a given case.

• **Situations of a functional nature**

(i) The exercise of both advisory and judicial functions in the same case

157. The consecutive exercise of advisory and judicial functions within one body may, in certain circumstances, raise an issue under Article 6 § 1 as regards the impartiality of the body seen from the objective viewpoint (*Procola v. Luxembourg*, § 45 – violation).

158. The issue is whether there has been an exercise of judicial and advisory functions concerning “the same case”, “the same decision” or “analogous issues” (*Kleyn and Others v. the Netherlands* [GC], § 200; *Sacilor-Lormines v. France*, § 74 – no violation).

(ii) The exercise of both judicial and extra-judicial functions in the same case

159. When determining the objective justification for the applicant's fear, such factors as the judge's dual role in the proceedings, the time which elapsed between the two occasions on which he participated and the extent to which he was involved in the proceedings may be taken into consideration (*McGonnell v. the United Kingdom*, §§ 52-57).

160. Any direct involvement in the passage of legislation, or of executive rules, is likely to be sufficient to cast doubt on the judicial impartiality of a person subsequently called on to determine a dispute over whether reasons exist to permit a variation from the wording of the legislation or rules at issue (see *McGonnell v. the United Kingdom*, § 55-58, where the Court found a violation of Article 6 § 1 on account of the direct involvement of a judge in the adoption of the development plan at issue in the proceedings; compare with *Pabla Ky v. Finland*, § 34 – no violation).

161. When there are two parallel sets of proceedings with the same person in the dual role of judge on the one hand and legal representative of the opposing party on the other, an applicant could have reason for concern that the judge would continue to regard him as the opposing party (*Wettstein v. Switzerland*, §§ 44-47).

162. The hearing of a constitutional complaint by a judge who had acted as counsel for the applicant's opponent at the start of the proceedings led to a finding of a violation of Article 6 § 1 (*Mežnarić v. Croatia*, § 36). As to the impartiality of a Constitutional Court judge who had acted as legal expert for the applicant's opponent in the civil proceedings at first instance, see *Švarc and Kavnik v. Slovenia*, § 44.

(iii) The exercise of different judicial functions

163. The assessment of whether the participation of the same judge in different stages of a civil case complies with the requirement of impartiality laid down by Article 6 § 1 is to be made on a case-by-case basis, regard being had to the circumstances of the individual case.

164. The mere fact that a judge has already taken pre-trial decisions cannot by itself be regarded as justifying concerns about his impartiality. What matters is the scope and nature of the measures taken by the judge before the trial. Likewise, the fact that the judge has detailed knowledge of the case file does not entail any prejudice on his part that would prevent his being regarded as impartial when the decision on the merits is taken. Nor does a preliminary analysis of the available information mean that the final analysis has been prejudged. What is important is for that analysis to be carried out when judgment is delivered and to be based on the evidence produced and argument heard at the hearing (*Morel v. France*, § 45).

165. It is necessary to consider whether the link between substantive issues determined at various stages of the proceedings is so close as to cast doubt on the impartiality of the judge participating in the decision-making at these stages (*Toziczka v. Poland*, § 36).

For example:

- It cannot be stated as a general rule resulting from the obligation to be impartial, that a superior court which sets aside an administrative or judicial decision is bound to send the case back to a different jurisdictional authority or to a differently composed branch of that authority (*Ringeisen v. Austria, in fine* § 97);
- An issue may arise if a judge takes part in two sets of proceedings relating to the same sets of facts (*Indra v. Slovakia*, §§ 51-53);
- A judge who is the presiding judge of an appeals tribunal assisted by two lay judges should not hear an appeal from his own decision (*De Haan v. the Netherlands*, § 51);
- A Court of Appeal in which the trial judges are called upon to ascertain whether or not they themselves committed an error of legal interpretation or application in their previous decision can raise doubts as to impartiality (*San Leonard Band Club v. Malta*, § 64);



- It is not *prima facie* incompatible with the requirements of impartiality if the same judge is involved, first, in a decision on the merits of a case and, subsequently, in proceedings in which the admissibility of an appeal against that decision is examined (*Warsicka v. Poland*, §§ 38-47);
- A judge having a dual role, as counsel representing the party opposing the applicants' company in the first set of proceedings and as a Court of Appeal judge in the second set of proceedings: having regard in particular to the remoteness in time and the different subject matter of the first set of proceedings in relation to the second set and to the fact that the functions as counsel and judge did not overlap in time, the Court found that the applicants could not have entertained any objectively justified doubts as to the judge's impartiality (*Puolitaival and Pirttiahho v. Finland*, §§ 46-54);
- The Court found a violation of the principle of impartiality in a case where some judges who had already ruled on the case were required to decide whether or not they had erred in their earlier decision and where another three judges had already expressed their opinions on the matter (*Driza v. Albania*, §§ 78-83 – violation);
- One of the judges involved in the proceedings concerning an appeal on points of law had prior involvement in the case as a judge of the Higher Court (*Peruš v. Slovenia*, §§ 38-39).

• *Situations of a personal nature*

166. The principle of impartiality will also be infringed where the judge has a personal interest in the case (*Langborger v. Sweden*, § 35; *Gautrin and Others v. France*, § 59).

167. Professional or personal links between a judge and a party to a case, or the party's advocate, may also raise questions of impartiality (*Pescador Valero v. Spain*, § 27; *Tocono and Profesorii Prometeiști v. Moldova*, § 31; *Micallef v. Malta* [GC], § 102). Even indirect factors may be taken into account (*Pétur Thór Sigurðn v. Iceland*, § 45).

## IV. PROCEDURAL REQUIREMENTS

### 1. Fairness

#### **Article 6 § 1:**

*"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] tribunal ..."*

#### (a) GENERAL PRINCIPLES

168. A prominent place: the Court has always emphasised the prominent place held in a democratic society by the right to a fair trial (*Airey v. Ireland*, § 24; *Stanev v. Bulgaria* [GC], § 231). This guarantee *"is one of the fundamental principles of any democratic society, within the meaning of the Convention"* (*Pretto and Others v. Italy*, § 21). There can therefore be no justification for interpreting Article 6§ 1 restrictively (*Moreira de Azevedo v. Portugal*, § 66). The requirement of fairness applies to proceedings in their entirety; it is not confined to hearings *inter partes* (*Stran Greek Refineries and Stratis Andreadis v. Greece*, § 49).

169. Content: civil claims must be capable of being submitted to a judge (*Fayed v. the United Kingdom*, § 65; *Sabeh El Leil v. France* [GC], § 46). Article 6 § 1 describes in detail the procedural guarantees afforded to parties in civil proceedings. It is intended above all to secure the interests of the parties and those of the proper administration of justice (*Nideröst-Huber v. Switzerland*, § 30). Litigants must therefore be able to argue their case with the requisite effectiveness (*H. v. Belgium*, § 53).

170. Role of the national authorities: the Court has always said that the national authorities must ensure in each individual case that the requirements of a “fair hearing” within the meaning of the Convention are met (*Dombo Beheer B.V. v. the Netherlands*, § 33 *in fine*).

171. The litigant’s claims: it is a matter of principle that in the determination of his “civil rights and obligations” – as defined in the case-law of the Strasbourg Court<sup>12</sup> – everyone is entitled to a fair hearing by a tribunal. To this are added the guarantees laid down by Article 6 § 1 as regards both the organisation and the composition of the court, and the conduct of the proceedings. In sum, the whole makes up the right to a fair hearing (*Golder v. the United Kingdom*, § 36).

172. Principles of interpretation:

- The principle whereby a civil claim must be capable of being submitted to a judge ranks as one of the universally recognised fundamental principles of law; the same is true of the principle of international law which forbids the denial of justice. Article 6 § 1 must be read in the light of these principles (*Golder v. the United Kingdom*, § 35);
- The right to a fair hearing before a tribunal as guaranteed by Article 6 § 1 must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the Contracting States (*Brumarescu v. Romania*, § 61; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 57);
- The principle of legal certainty constitutes one of the basic elements of the rule of law (*Beian v. Romania (No. 1)*, § 39);
- In a democratic society within the meaning of the Convention, the right to a fair administration of justice holds such a prominent place that a restrictive interpretation of Article 6 § 1 would not correspond to the aim and the purpose of that provision (*Ryakib Biryukov v. Russia*, § 37);
- In addition, the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective (*Airey v. Ireland*, § 24).

173. States have greater latitude in civil matters: the Court has acknowledged that the requirements inherent in the concept of a “fair hearing” are not necessarily the same in cases concerning the determination of civil rights and obligations as they are in cases concerning the determination of a criminal charge: “the Contracting States have greater latitude when dealing with civil cases concerning civil rights and obligations than they have when dealing with criminal cases” (*Dombo Beheer B.V. v. the Netherlands*, § 32; *Levages Prestations Services v. France*, § 46). The requirements of Article 6 § 1 as regards cases concerning civil rights are less onerous than they are for criminal charges (*König v. Germany*, § 96).

<sup>12</sup>. See next section: “Scope”.

## (b) SCOPE

174. An effective right: the parties to the proceedings have the right to present the observations which they regard as relevant to their case. This right can only be seen to be effective if the observations are actually “heard”, that is to say duly considered by the trial court. In other words, the “tribunal” has a duty to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (*Kraska v. Switzerland*, § 30; *Van de Hurk v. the Netherlands*, § 59; *Perez v. France*, § 80). In order for the right guaranteed by this Article to be effective, the authorities must exercise “diligence”: for an appellant not represented by a lawyer, see *Kerojärvi v. Finland*, § 42 and *Fretté v. France*, § 49; for an appellant represented by a lawyer, see *Göç v. Turkey* [GC], § 57.

175. Proper participation of the appellant party in the proceedings requires the court, of its own motion, to communicate the documents at its disposal. It is not material, therefore, that the applicant did not complain about the non-communication of the relevant documents or took the initiative to access the case file (*Kerojärvi v. Finland*, § 42). The mere possibility for the appellant to consult the case file and obtain a copy of it is not, of itself, a sufficient safeguard (*Göç v. Turkey* [GC], § 57).

176. Obligation incumbent on the administrative authorities: the appellant must have access to the relevant documents in the possession of the administrative authorities, if necessary via a procedure for the disclosure of documents (*McGinley and Egan v. the United Kingdom*, §§ 86 and 90). Were the respondent State, without good cause, to prevent appellants from gaining access to documents in its possession which would have assisted them in defending their case, or to falsely deny their existence, this would have the effect of denying them a fair hearing, in violation of Article 6 § 1 (*ibid.*).

177. Assessment of the proceedings as a whole: whether or not proceedings are fair is determined by examining them in their entirety (*Ankerl v. Switzerland*, § 38; *Centro Europa 7 S.R.L. and di Stefano v. Italy* [GC], § 197).

178. That being so, any shortcoming in the fairness of the proceedings may, under certain conditions, be remedied at a later stage, either at the same level (*Helle v. Finland*, § 54) or by a higher court (*Schuler-Zraggen v. Switzerland*, § 52; contrast *Albert and Le Compte v. Belgium*, § 36; *Feldbrugge v. the Netherlands*, §§ 45-46).

179. In any event, if the defect lies at the level of the highest judicial body – for example because there is no possibility of replying to conclusions submitted to that body – there is an infringement of the right to a fair hearing (*Ruiz-Mateos v. Spain*, §§ 65-67).

180. A procedural flaw can be remedied only if the decision in issue is subject to review by an independent judicial body that has full jurisdiction and itself offers the guarantees required by Article 6 § 1. It is the scope of the appeal court’s power of review that matters, and this is examined in the light of the circumstances of the case (*Obermeier v. Austria*, § 70).<sup>13</sup>

181. Previous decisions which do not offer the guarantees of a fair hearing: in such cases no question arises if a remedy was available to the appellant before an independent judicial body which had full jurisdiction and itself provided the safeguards required by Article 6 § 1 (*Oerlemans v. the Netherlands*, §§ 53-58; *British-American Tobacco Company Ltd v. the Netherlands*, § 78). What counts is that such a remedy offering sufficient guarantees exists (*Air Canada v. the United Kingdom*, § 62).

182. Before the appellate courts: Article 6 § 1 does not compel the Contracting States to set up courts of appeal or of cassation, but where such courts do exist the State is required to ensure that litigants before these courts enjoy the fundamental guarantees contained in Article 6 § 1 (*Andrejeva v. Latvia* [GC], § 97). However, the manner of application of

<sup>13</sup>. See also the section on *Review by a court having full jurisdiction*.

Article 6 § 1 to proceedings before courts of appeal depends on the special features of the proceedings involved; account must be taken of the entirety of the proceedings in the domestic legal order and of the role played therein by the appellate court (*Helmers v. Sweden*, § 31) or the court of cassation (*Levages Prestations Services v. France*, §§ 44-45; *K.D.B. v. the Netherlands*, § 41).

183. Given the special nature of the Court of Cassation's role, which is limited to reviewing whether the law has been correctly applied, the procedure followed may be more formal (*Levages Prestations Services v. France*, §§ 48). The requirement to be represented by a specialist lawyer before the Court of Cassation is not in itself contrary to Article 6 (*G.L. and S.L. v. France* (dec.); *Tabor v. Poland*, § 42).

184. *Limits*: as a general rule it is for the national courts to assess the facts: is not the Court's role to substitute its own assessment of the facts for that of the national courts (*Dombo Beheer B.V. v. the Netherlands*, § 31).<sup>14</sup> Furthermore, while appellants have the right to present the observations which they regard as relevant to their case, Article 6 § 1 does not guarantee a litigant a favourable outcome (*Andronicou and Constantinou v. Cyprus*, § 201).

185. *The theory of appearances*: the Court has stressed the importance of appearances in the administration of justice; it is important to make sure the fairness of the proceedings is apparent. The Court has also made it clear, however, that the standpoint of the persons concerned is not in itself decisive; the misgivings of the individuals before the courts with regard to the fairness of the proceedings must in addition be capable of being held to be objectively justified (*Kraska v. Switzerland*, § 32). It is therefore necessary to examine how the courts handled the case.

186. In other cases, before Supreme Courts, the Court has pointed out that the public's increased sensitivity to the fair administration of justice justified the growing importance attached to appearances (*Kress v. France* [GC], § 82; *Martinie v. France* [GC], § 53 ; *Menchinskaya v. Russia*, § 32). The Court attached importance to appearances in these cases (see also *Vermeulen v. Belgium*, § 34; *Lobo Machado v. Portugal*, § 32).

187. *Judicial practice*: in order to take the reality of the domestic legal order into account, the Court has always attached a certain importance to judicial practice in examining the compatibility of domestic law with Article 6 § 1 (*Kerojärvi v. Finland*, § 42; *Gorou v. Greece* (No. 2) [GC], § 32). Indeed, the general factual and legal background to the case should not be overlooked in the assessment of whether the litigants had a fair hearing (*Stankiewicz v. Poland*, § 70).

188. *The State authorities cannot dispense with effective control by the courts on grounds of national security or terrorism*: there are techniques that can be employed which accommodate both legitimate security concerns and the individual's procedural rights (*Dağtekin and Others v. Turkey*, § 34).

189. *A principle independent of the outcome of the proceedings*: the procedural guarantees of Article 6 § 1 apply to all litigants, not just those who have not won their cases in the national courts (*Philis v. Greece* (No. 2), § 45).

- Examples: the case-law has covered numerous situations, including:

190. *Observations submitted by the court to the appellate court manifestly aimed at influencing its decision*: the parties must be able to comment on the observations, irrespective of their actual effect on the court, and even if the observations do not present any fact or argument which has not already appeared in the impugned decision in the opinion of the

<sup>14</sup>. See the section on *Fourth instance*.



appellate court (*Nideröst-Huber v. Switzerland*, §§ 26-32) or of the respondent Government before the Strasbourg Court (*APEH Üldözötteinek Szövetsége and Others v. Hungary*, § 42).

191. Preliminary questions: where a preliminary reference mechanism exists, refusal by a domestic court to grant a request for such a referral may, in certain circumstances, infringe the fairness of proceedings (*Ullens de Schooten and Rezabek v. Belgium*, §§ 57-67, with further references). This is so where the refusal proves arbitrary:

- where there has been a refusal even though the applicable rules allow no exception to the principle of preliminary reference or no alternative thereto;
- where the refusal is based on reasons other than those provided for by the rules;
- or where the refusal has not been duly reasoned in accordance with those rules.

192. Article 6 § 1 does not, therefore, guarantee any right to have a case referred by a domestic court to the Court of Justice of the European Union (*Dotta v. Italy* (dec.)). Applying the case-law cited above, the Court examines whether the refusal appears arbitrary (*Canela Santiago v. Spain* (dec.)).

193. Changes in domestic case-law: the requirement of legal certainty and the protection of legitimate expectations do not involve the right to an established jurisprudence (*Unédic v. France*, § 74). Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would prevent any reform or improvement (*Atanasovski v. "The former Yugoslav Republic of Macedonia"*, § 38). In that judgment the Court held that the existence of well-established jurisprudence imposed a duty on the Supreme Court to make a more substantial statement of reasons justifying its departure from the case-law, failing which the individual's right to a duly reasoned decision would be violated. In some cases changes in domestic jurisprudence which affect pending civil proceedings may violate the Convention (*Petko Petkov v. Bulgaria*, §§ 32-34).

194. On the subject of divergences in case-law, the Court has stressed the importance of setting mechanisms in place to ensure consistency in the practice of the courts and uniformity of case-law (*Frimu and Others v. Romania* (dec.), §§ 43-44). However, achieving consistency of the law may take time, and periods of conflicting case-law may therefore be tolerated without undermining legal certainty (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 83; *Albu and Others v. Romania*, §§ 36 and 40-43).<sup>15</sup>

195. Entry into force of a law when a case to which the State is a party is still pending: the Court is especially mindful of the dangers inherent in the use of retrospective legislation which has the effect of influencing the judicial determination of a dispute to which the State is a party, including where the effect is to make pending litigation unwinable. Any reasons adduced to justify such measures must be closely examined (*National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, § 112). In principle the legislature is not precluded in civil matters from adopting new retrospective provisions to regulate rights arising under existing laws. Article 6 does, however preclude any interference by the legislature with the administration of justice designed to influence the judicial determination of a dispute – except on “*compelling grounds of the general interest*” (*Zielinski and Pradal and Gonzalez and Others v. France* [GC], § 57; *Scordino v. Italy (No. 1)* [GC], § 126).

The Court found *violations*, for example, in respect of:

- intervention by the legislature – at a time when proceedings to which the State was party had been pending for nine years and the applicants had a final, enforceable

<sup>15</sup>. See also the section on *Fourth instance*.

judgment against the State – to influence the imminent outcome of the case in the State's favour (*Stran Greek Refineries and Stratis Andreadis v. Greece*, §§ 49-50);

- a law which decisively influenced the imminent outcome of a case favour of the State (*Zielinski and Pradal and Gonzalez and Others v. France*, [GC], § 59);
- the enactment, at a crucial point in proceedings before the Court of Cassation, of a law which for practical purposes resolved substantive issues and made carrying on with the litigation pointless (*Papageorgiou v. Greece*);
- a decision of an appellate court based, even subsidiarily, on a law enacted in the course of proceedings and which affected the outcome of the proceedings (*Anagnostopoulos and Others v. Greece*, §§ 20-21).

However, Article 6 § 1 cannot be interpreted as preventing any interference by the authorities with pending legal proceedings to which they are party. In other cases the Court has held that the considerations relied on by the respondent State were based on the compelling public-interest motives required to justify the retroactive effect of the law (*National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, § 112; *Forrer-Niedenthal v. Germany*, § 64; *OGIS-Institut Stanislas, OGEC Saint-Pie X and Blanche de Castille and Others v. France*, §§ 71-72; *EEG-Slachthuis Verbist Izegem v. Belgium* (dec.)).

196. This case-law also applies to cases where the State, although not a party, vitiates the proceedings through its legislative powers (*Ducret v. France*, §§ 33-42).

197. Other types of legislative intervention:

- Laws may be enacted before the start of proceedings (*Organisation nationale des syndicats d'infirmiers libéraux (O.N.S.I.L.) v. France* (dec.)) or once they have ended (*Preda and Dardari v. Italy* (dec.)) without raising an issue under Article 6;
- The enactment of general legislation may prove unfavourable to litigants without actually targeting pending judicial proceedings and thereby circumventing the principle of the rule of law (*Gorraiz Lizarraga and Others v. Spain*, § 72);
- A law may be declared unconstitutional while proceedings are pending without there being any intention of influencing those proceedings (*Dolca v. Romania* (dec.)).

198. Failure to communicate the observations of an "independent member of the national legal service" to litigants before a Supreme Court (members of the public prosecutor's department): *Vermeulen v. Belgium*, *Van Orshoven v. Belgium*; *K.D.B. v. the Netherlands - Principal Public Prosecutor / Attorney General*: *Göç v. Turkey* [GC]; *Lobo Machado v. Portugal - Government Commissioner*: *Kress v. France*; *Martinie v. France* [GC], and no opportunity to reply to such observations: many respondent States have argued that this category of members of the national legal service was neither party to the proceedings nor the ally or adversary of any party, but the Court has found that regard must be had to the part actually played in the proceedings by the official concerned, and more particularly to the content and effects of his submissions (*Vermeulen v. Belgium*, § 31; *Kress v. France* [GC], § 71 *in fine*).

199. The Court has stressed the importance of adversarial proceedings in cases where the submissions of an independent member of the national legal service in a civil case were not communicated in advance to the parties, depriving them of an opportunity to reply to them (*Vermeulen v. Belgium*, § 33; *Lobo Machado v. Portugal*, § 31; *Van Orshoven v. Belgium*, § 41; *Göç v. Turkey* [GC], §§ 55-56; *Kress v. France*, § 76; *Immeubles Groupe Kosser v. France*, § 26).



200. Participation by and even the mere presence of these members of the national legal service in the deliberations, be it “active” or “passive”, after they have publicly expressed their views on the case has been condemned (*Vermeulen v. Belgium*, § 34; *Lobo Machado v. Portugal*, § 32; *Kress v. France*, § 87). This case-law is largely based on the theory of appearances<sup>16</sup> (*Martinie v. France* [GC], § 53).

201. The conditions in which the proceedings took place must therefore be examined, and in particular whether the proceedings were adversarial and complied with the equality of arms principle (compare *Kress v. France*, § 76, and *Göç v. Turkey* §§ 55-57), in order to determine whether the problem was attributable to the litigant’s conduct or to the attitude of the State or the applicable legislation (*Fretté v. France*, §§ 49-51).

For the procedure before the CJEC<sup>17</sup>: *Coöperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (dec.).

202. Limits:

- Equality of arms does not entail a party’s right to have disclosed to him or her, before the hearing, submissions which have not been disclosed to the other party to the proceedings or to the reporting judge or the judges of the trial bench (*Kress v. France*, § 73);
- There is no point in recognising a right that has no real reach or substance: that would be the case if the right relied on under the Convention would have had no incidence on the outcome of the case because the legal solution adopted was legally unobjectionable (*Stepinska v. France*, § 18).

(c) FOURTH INSTANCE<sup>18</sup>

(i) General principles

203. One particular category of complaints submitted to the Court comprises what are commonly referred to as “fourth-instance” complaints. This term – which does not feature in the text of the Convention and has become established through the case-law of the Convention institutions (*Kemmache v. France (No. 3)*, § 44) – is somewhat paradoxical, as it places the emphasis on what the Court is not: it is not a court of appeal or a court which can quash rulings given by the courts in the States Parties to the Convention or retry cases heard by them, nor can it re-examine cases in the same way as a Supreme Court. Fourth-instance applications therefore stem from a frequent misapprehension on two levels.

204. Firstly, there is often a widespread misconception on the part of the applicants as to the Court’s role and the nature of the judicial machinery established by the Convention. It is not the Court’s role to substitute itself for the domestic courts; its powers are limited to verifying the Contracting States’ compliance with the human rights engagements they undertook in acceding to the Convention. Furthermore, in the absence of powers to intervene directly in the legal systems of the Contracting States, the Court must respect the autonomy of those legal systems. That means that it is not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors may have infringed rights and freedoms protected by the Convention. It may not itself assess the facts which have led a national court to adopt one decision rather than another. If it were otherwise, the Court would be acting as a court of third or fourth instance, which would be to disregard the limits imposed on its action (*Garcia Ruiz v. Spain* [GC], § 28).

<sup>16</sup>. See above.

<sup>17</sup>. Court of Justice of the European Communities/Court of Justice of the European Union.

<sup>18</sup>. This is an updated version of the relevant section from the Admissibility Guide.

205. Secondly, there is often misunderstanding as to the exact meaning of the term “fair” in Article 6 § 1 of the Convention. The “fairness” required by Article 6 § 1 is not “substantive” fairness (a concept which is part-legal, part-ethical and can only be applied by the trial court), but “procedural” fairness. Article 6 § 1 only guarantees “procedural” fairness, which translates in practical terms into adversarial proceedings in which submissions are heard from the parties and they are placed on an equal footing before the court (*Star Cate Epilekta Gevmata and Others v. Greece* (dec.)). The fairness of proceedings is always assessed by examining them in their entirety, so that an isolated irregularity may not be sufficient to render the proceedings as a whole unfair (*Miroļubovs and Others v. Latvia*, § 103).

206. Furthermore, the Court respects the diversity of Europe’s legal and judicial systems, and it is not the Court’s task to standardise them. Just as it is not its task to examine the wisdom of the domestic courts’ decisions where there is no evidence of arbitrariness (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], §§ 68, 89 and 94).

(ii) Scope and limits of the Court’s supervision

207. The Court has always said that it is generally not its task to deal with errors of fact or law allegedly committed by a national court unless and in so far as such errors are manifest and infringed rights and freedoms protected by the Convention (*García Ruiz v. Spain* [GC], § 28; *Perez v. France* [GC], § 82; in *Dulaurans v. France* (§ 38) the Court found a violation of Article 6 § 1 because of a “manifest error of judgment”; but contrast *Société anonyme d’habitations à loyers modérés terre et famille v. France* (dec.)).

208. This means that the Court may not, as a general rule, question the findings and conclusions of the domestic courts as regards:

- (a) The establishment of the facts of the case: the Court cannot challenge the findings of the domestic courts, save where they are flagrantly and manifestly arbitrary (*García Ruiz v. Spain* [GC], §§ 28-29).
- (b) The interpretation and application of domestic law: it is primarily for the domestic courts to resolve problems of interpretation of national legislation (*Perez v. France* [GC], § 82), not for the Strasbourg Court, whose role is to verify whether the effects of such interpretation are compatible with the Convention (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 49). In exceptional cases the Court may draw the appropriate conclusions where a Contracting State’s domestic courts have interpreted a domestic law in a manifestly arbitrary or erroneous manner (*Barać and Others v. Montenegro*, §§ 32-34, with further references; *Andelković v. Serbia*, §§ 24-27 (denial of justice); see also *Laskowska v. Poland* § 61), but it generally does so under other provisions of the Convention rather than under Article 6 § 1 (*Kushoglu v. Bulgaria*, § 50; *Işyar v. Bulgaria*, § 48; *Fabris v. France* [GC], § 60).
- (c) The admissibility and assessment of evidence<sup>19</sup>: the guarantees under Article 6 § 1 only cover the *administration* of evidence at the procedural level. The *admissibility* of evidence or the way it should be *assessed* on the merits are primarily matters for the national courts, whose task it is to weigh the evidence before them (*García Ruiz v. Spain* [GC], § 28; *Farange S.A. v. France* (dec.)).

209. So Article 6 § 1 does not allow the Court to question the substantive fairness of the outcome of a civil dispute, where more often than not one of the parties wins and the other loses.

<sup>19</sup>. See also the section on the *Administration of evidence*.

210. A fourth-instance complaint under Article 6 § 1 of the Convention will be rejected by the Court on the grounds that the applicant had the benefit of adversarial proceedings; that he was able, at the various stages of those proceedings, to adduce the arguments and evidence he considered relevant to his case; that he had the opportunity of challenging effectively the arguments and evidence adduced by the opposing party; that all his arguments which, viewed objectively, were relevant to the resolution of the case were duly heard and examined by the courts; that the factual and legal reasons for the impugned decision were set out at length; and that, accordingly, the proceedings taken as a whole were fair (*García Ruiz v. Spain* [GC], § 29). The majority of fourth-instance applications are declared inadmissible *de plano* by a single judge or a three-judge Committee (Articles 27 and 28 of the Convention). By contrast, see, for example, *Donadze v. Georgia*, § 35.

(iii) Consistency of domestic case-law

211. Article 6 § 1 does not confer an acquired right to consistency of case-law. Case-law development is not, in itself, contrary to the proper administration of justice since a failure to maintain a dynamic and evolutive approach would risk hindering reform or improvement (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], § 58).

212. In principle it is not the Court's role, even in cases which at first sight appear comparable or connected, to compare the various decisions pronounced by the domestic courts, whose independence it must respect. The possibility of divergences in case-law is an inherent consequence of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction. Such divergences may even arise within the same court. That in itself cannot be considered contrary to the Convention (*Santos Pinto v. Portugal*, § 41). Furthermore, there can be no “divergence” where the factual situations in issue are objectively different (*Uçar v. Turkey* (dec.)).

213. There may, however, be cases where divergences in case-law lead to a finding of a violation of Article 6 § 1. Here the Court's approach differs depending on whether the divergences exist within the same branch of courts or between two different branches of court which are completely independent from one another.

214. In the first case the divergent decisions are pronounced by a single domestic Supreme Court, or by various courts in the same branch of the legal system ruling in the last instance. In such cases the persistence of conflicting judgments can create a state of legal uncertainty likely to reduce public confidence in the judicial system, whereas such confidence is clearly one of the essential components of a State based on the rule of law. The Court determines whether such uncertainty exists case by case, based on three main criteria:

- (a) whether the divergences in the case-law are profound and lasting;
- (b) whether the domestic law provides for mechanisms capable of resolving such inconsistencies; and
- (c) whether those mechanisms were applied and to what effect. The Contracting States have an obligation to organise their legal systems in such a way as to avoid the adoption of divergent judgments and resolve any serious contradictions by appropriate procedural means (*Beian v. Romania (No. 1)*, §§ 37 et 39; *Nejdet Şahin and Perihan Şahin v. Turkey* [GC], §§ 56-57 and 80).

An additional criterion the Court takes into account is whether the inconsistency is an isolated case or affects large numbers of people (*Albu and Others v. Romania*, § 38).

215. In the second hypothesis the conflicting decisions are pronounced at last instance by courts in two different branches of the legal system, each with its own, independent Supreme Court not subject to any common judicial hierarchy. Here Article 6 § 1 does not go as far as

to demand the implementation of a vertical review mechanism or a common regulatory authority (such as a jurisdiction disputes court). In a judicial system with several different branches of courts, and where several Supreme Courts exist side by side and are required to give interpretations of the law at the same time and in parallel, achieving consistency of case-law may take time, and periods of conflicting case-law may therefore be tolerated without undermining legal certainty. So two courts, each with its own area of jurisdiction, examining different cases may very well arrive at divergent but nevertheless rational and reasoned conclusions regarding the same legal issue raised by similar factual circumstances without violating Article 6 § 1 (*Nejdet Şahin and Perihan Şahin v. Turkey* [GC], §§ 81-83 & 86).

(d) ADVERSARIAL PROCEEDINGS

216. *The adversarial principle*: the concept of a fair trial comprises the fundamental right to adversarial proceedings.

217. The requirements resulting from the right to adversarial proceedings are in principle the same in both civil and criminal cases (*Werner v. Austria*, § 66).

218. The desire to save time and expedite the proceedings does not justify disregarding such a fundamental principle as the right to adversarial proceedings (*Nideröst-Huber v. Switzerland*, § 30).

219. *Content*: the right to adversarial proceedings means in principle the opportunity for the parties to a criminal or civil trial to have knowledge of and comment on all evidence adduced or observations filed, even by an independent member of the national legal service, with a view to influencing the court's decision (*Ruiz-Mateos v. Spain*, § 63; *McMichael v. the United Kingdom*, § 80; *Vermeulen v. Belgium*, § 33; *Lobo Machado v. Portugal*, § 31; *Kress v. France* [GC], § 74). This requirement may also apply before a Constitutional Court (*Milatova v. the Czech Republic*, §§ 63-66; *Gaspari v. Slovenia*, § 53).

- The actual effect on the court's decision is of little consequence (*Nideröst-Huber v. Switzerland*, § 27; *Ziegler v. Switzerland*, § 38);
- The right to adversarial proceedings must be capable of being exercised in satisfactory conditions: a party to the proceedings must have the possibility to familiarise itself with the evidence before the court, as well as the possibility to comment on its existence, contents and authenticity in an appropriate form and within an appropriate time (*Krčmář and Others v. the Czech Republic*, § 42; *Immeubles Groupe Kosser v. France*, § 26), if necessary by obtaining an adjournment (*Yvon v. France* § 39);
- The parties should have the opportunity to make known any evidence needed for their claims to succeed (*Clinique des Acacias and Others v. France*, § 37);
- The court itself must respect the adversarial principle, for example if it rules that the right to appeal on points of law has been forfeited on grounds of inadmissibility which it advances of its own motion (*Clinique des Acacias and Others v. France*, § 38; compare *Andret and Others v. France* (dec.), inadmissible: in this last case the Court of Cassation had informed the parties that new arguments were envisaged and the applicants had had an opportunity to reply before the Court of Cassation pronounced judgment);
- It is for the parties to a dispute alone to decide whether a document produced by the other party or evidence given by witnesses calls for their comments. Litigants' confidence in the workings of justice is based on the knowledge that they have had the opportunity to express their views on every document in the file (including documents obtained by the court of its own motion: *K.S. v. Finland*, § 22) (*Nideröst-Huber v. Switzerland*, § 29; *Pellegrini v. Italy*, § 45).



220. **Examples** of infringement of the right to adversarial proceedings as a result of non-disclosure of the following documents or evidence:

- in proceedings concerning the placement of a child, of reports by the social services containing information about the child and details of the background to the case and making recommendations, even though the parents were informed of their content at the hearing (*McMichael v. the United Kingdom*, § 80);
- evidence adduced by the public prosecutor, irrespective of whether he was or was not regarded as a “party”, since he was in a position, above all by virtue of the authority conferred on him by his functions, to influence the court’s decision in a manner that might be unfavourable to the person concerned (*Ferreira Alves v. Portugal (No. 3)*, §§ 36-39);
- a note from the lower court to the appellate court aimed at influencing the latter court’s decision, even though the note did not set out any new facts or arguments (*Ferreira Alves v. Portugal (No. 3)*, § 41);
- documents obtained directly by the judges, containing reasoned opinions on the merits of the case (*K.S. v. Finland*, §§ 23-24).

221. **Limit:** the right to adversarial proceedings is not absolute and its scope may vary depending on the specific features of the case in question (*Hudakova and others v. Slovakia*, §§ 26-27). The adversarial principle does not require that each party must transmit to its opponent documents which have not been presented to the court either (*Yvon v. France*, § 38). Nor does it require production of a memorial not capable of affecting the outcome of the case (*Asnar v. France (no. 2)*, § 26).

#### e) EQUALITY OF ARMS

222. **The principle of “equality of arms”** is inherent in the broader concept of a fair trial. The requirement of “equality of arms”, in the sense of a “fair balance” between the parties, applies in principle to civil as well as to criminal cases (*Feldbrugge v. the Netherlands*, § 44).

223. **Content: maintaining a “fair balance” between the parties:** equality of arms implies that each party must be afforded a reasonable opportunity to present his case – including his evidence – under conditions that do not place him at a substantial disadvantage *vis-à-vis* the other party: *Dombo Beheer B.V. v. the Netherlands*, § 33.

- It is inadmissible for one party to make submissions to a court without the knowledge of the other and on which the latter has no opportunity to comment. It is a matter for the parties alone to assess whether a submission deserves a reaction (*APEH Üldözötteinek Szövetsége and Others v. Hungary*, § 42);
- However, if observations submitted to the court are not communicated to either of the parties there will be no infringement of equality of arms as such, but rather of the broader fairness of the proceedings (*Nideröst-Huber v. Switzerland*, §§ 23-24; *Clinique des Acacias and Others v. France*, §§ 36-37).

224. **Examples** of failure to observe the equality of arms principle: this principle was found to have been breached in the following cases because one of the parties had been placed at a clear disadvantage:

- A party’s appeal was not served on the other party, who therefore had no possibility to respond (*Beer v. Austria*, § 19);

- Time had ceased to run against one of the parties only, placing the other at a substantial disadvantage (*Platakou v. Greece*, § 48; *Wynen v. Belgium*, § 32);
- Only one of the two key witnesses was permitted to be heard (*Dombo Beheer B.V. v. the Netherlands*, §§ 34-35);
- The opposing party enjoyed significant advantages as regards access to relevant information, occupied a dominant position in the proceedings and wielded considerable influence with regard to the court's assessment (*Yvon v. France*, § 37);
- The opposing party held positions or functions which put them at an advantage and the court made it difficult for the other party to challenge them seriously by not allowing it to adduce relevant documentary or witness evidence (*De Haes and Gijssels v. Belgium*, §§ 54 and 58);
- In administrative proceedings the reasons given by the administrative authority were too summary and general to enable the appellant to mount a reasoned challenge to their assessment; and the tribunals of fact declined to allow the applicant to submit arguments in support of his case (*Hentrich v. France*, § 56);
- The denial of legal aid to one of the parties deprived them of the opportunity to present their case effectively before the court in the face of a far wealthier opponent (*Steel and Morris v. the United Kingdom*, § 72);
- In its *Martinie v. France* [GC] judgment (§ 50) the Court considered that there was an imbalance detrimental to litigants on account of State Counsel's position in the proceedings before the Court of Audit: unlike the other party, he was present at the hearing, was informed beforehand of the reporting judge's point of view, heard the latter's submissions at the hearing, fully participated in the proceedings and could express his own point of view orally without being contradicted by the other party, and that imbalance was accentuated by the fact that the hearing was not public;
- The prosecutor intervened in support of the arguments of the applicant's opponent (*Menchinskaya v. Russia*, §§ 35-39).

225. However, the Court found compatible with Article 6 § 1 a difference of treatment in respect of the hearing of the parties' witnesses (evidence given under oath for one party and not for the other), as it had not, in practice, influenced the outcome of the proceedings (*Ankerl v. Switzerland*, § 38).

226. *Specific case of a civil-party action*: the Court has distinguished between the system of a complaint accompanied by a civil-party action and an action brought by the public prosecutor, who is vested with public authority and responsible for defending the general interest (*Guigue and SGEN-CFDT v. France* (dec.)). As a result, different formal conditions and time-limits for lodging an appeal (a shorter time-limit for the private party) did not breach the "equality of arms" principle, provided that meaningful use could be made of that remedy (cf. the special nature of the system concerned).

227. The Court has also found it compatible with the principle of equality of arms for a provision to limit the civil party's possibilities of appeal without limiting those of the public prosecutor – as their roles and objectives are clearly different (*Berger v. France*, § 38).

228. As regards cases *opposing* the prosecuting authorities and a private individual, the prosecuting authorities may enjoy a privileged position justified for the protection of the legal order. However, this should not result in a party to civil proceedings being put at an undue disadvantage *vis-à-vis* the prosecuting authorities (*Stankiewicz v. Poland*, § 68).

#### (f) ADMINISTRATION OF EVIDENCE



229. *General principles*<sup>20</sup>: the Convention does not lay down rules on evidence as such (*Mantovanelli v. France*, § 34). The admissibility of evidence and the way it should be assessed are primarily matters for regulation by national law and the national courts (*Garcia Ruiz v. Spain* [GC], § 28). The same applies to the probative value of evidence and the burden of proof (*Tiemann v. France and Germany* (dec.)). It is also for the national courts to assess the relevance of proposed evidence (*Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], § 198).

- However, the Court's task under the Convention is to ascertain whether the proceedings as a whole were fair, including the way in which evidence was taken (*Elsholz v. Germany* [GC], § 66). It must therefore establish whether the evidence was presented in such a way as to guarantee a fair trial (*Blucher v. the Czech Republic*, § 65);
- It is the duty of the national courts to conduct a proper examination of the submissions, arguments and evidence adduced by the parties (*Van de Hurk v. the Netherlands*, § 59).

(i) *Witness evidence*

230. Article 6 § 1 does not explicitly guarantee the right to have witnesses called, and the admissibility of witness evidence is in principle a matter of domestic law. However, the proceedings in their entirety, including the way in which evidence was permitted, must be “fair” within the meaning of Article 6 § 1 (*Dombo Beheer B.V. v. the Netherlands*, § 31).

- Where courts refuse requests to have witnesses called, they must give sufficient reasons and the refusal must not be tainted by arbitrariness: it must not amount to a disproportionate restriction of the litigant's ability to present arguments in support of his case (*Wierzbicki v. Poland*, § 45);
- A difference of treatment in respect of the hearing of the parties' witnesses may be such as to infringe the “equality of arms” principle (*Ankerl v. Switzerland* § 38): in this case, however, the Court found that the difference of treatment had not placed the applicant at a substantial disadvantage *vis-à-vis* his opponent (§ 38 *in fine*) – contrast *Dombo Beheer B.V. v. the Netherlands*, (§ 35) where only one of the two participants in the events in issue was allowed to give evidence (violation).

(ii) *Expert opinions*

231. *Refusal to order an expert opinion:*

- Refusal to order an expert opinion is not, in itself, unfair; the Court must ascertain whether the proceedings as a whole were fair (*H. v. France*, § 61 and 70). The reasons given for the refusal must be reasonable;
- Refusal to order a psychological report in a case concerning child custody and access must also be examined in the light of the particular circumstances of the case (*Elsholz v. Germany* [GC], § 66, and *mutatis mutandis* *Sommerfeld v. Germany*, [GC], § 71);
- In a child abduction case (*Tiemann v. France and Germany* (dec.)) the Court examined whether a Court of Appeal had given sufficient grounds for its refusal to allow the applicant's request for a second expert opinion, in order to ascertain whether the refusal had been reasonable.

<sup>20</sup>. See also the *Fourth instance* section.

232. *Appointment of an expert*: just like observance of the other procedural safeguards enshrined in Article 6 § 1, compliance with the adversarial principle relates to proceedings in a “tribunal”; no general, abstract principle may therefore be inferred from this provision that, where an expert has been appointed by a court, the parties must in all instances be able to attend the interviews held by him or be shown the documents he has taken into account.

233. What is essential is that the parties should be able to participate properly in the proceedings (*Mantovanelli v. France*, § 33).

234. Lack of neutrality on the part of an expert, together with his position and role in the proceedings, can tip the balance of the proceedings in favour of one party to the detriment of the other, in violation of the equality of arms principle (*Sara Lind Eggertsdottir v. Iceland*, § 53); likewise, the expert may occupy a preponderant position in the proceedings and exert considerable influence on the court’s assessment (*Yvon v. France*, § 37).

235. A *medical expert report* pertaining to a technical field that is not within the judges’ knowledge is likely to have a preponderant influence on their assessment of the facts; it is an essential piece of evidence and the parties must be able to comment effectively on it (*Mantovanelli v. France*, § 36; *Storck v. Germany*, § 135).

- In the *Mantovanelli v. France* case the fact that the applicants were not able to comment effectively on the findings of the expert report, which was the main piece of evidence, violated Article 6 § 1;
- In the *Augusto v. France* case the failure to disclose the opinion of an accredited doctor as to whether the applicant met the medical requirements for entitlement to a welfare benefit, which was likely to have a decisive influence on the judgment, violated Article 6 § 1 even though that opinion was not binding on the judge by law.

236. Concerning *the parties’ rights vis-à-vis the expert*: compare *Feldbrugge v. the Netherlands*, § 44 (violation) with *Olsson v. Sweden (No. 1)*, §§ 89-91 (no violation). As regards the requirement to disclose an *adverse report*: *L. v. United Kingdom* (dec.).

#### (g) REASONING OF JUDICIAL DECISIONS

237. The guarantees enshrined in Article 6 § 1 include the obligation for courts to give sufficient reasons for their decisions (*H. v. Belgium*, § 53). A reasoned decision shows the parties that their case has truly been heard.

238. Although a domestic court has a certain margin of appreciation when choosing arguments and admitting evidence, it is obliged to justify its activities by giving reasons for its decisions (*Suominen v. Finland*, § 36).

239. The reasons given must be such as to enable the parties to make effective use of any existing right of appeal (*Hirvisaari v. Finland*, § 30 *in fine*).

240. Article 6 § 1 obliges courts to give reasons for their decisions, but cannot be understood as requiring a detailed answer to every argument (*Van de Hurk v. the Netherlands*, § 61; *Garcia Ruiz v. Spain* [GC], § 26; *Jahnke and Lenoble v. France* (déc.); *Perez v. France* [GC], § 81).

241. The extent to which this duty to give reasons applies may vary according to the nature of the decision (*Ruiz Torija v. Spain*, § 29; *Hiro Balani v. Spain*, § 27) and can only be determined in the light of the circumstances of the case: it is necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the courts and the differences existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments (*Ruiz Torija v. Spain*, § 29; *Hiro Balani v. Spain*, § 27).

242. However, where a party's submission is decisive for the outcome of the proceedings, it requires a specific and express reply (*Ruiz Torija v. Spain*, § 30; *Hiro Balani v. Spain*, § 28).

243. The courts are therefore required to examine:

- the litigants' main arguments (*Buzescu v. Romania*, § 67 ; *Donadze v. Georgia* §35);
- pleas concerning the rights and freedoms guaranteed by the Convention and its Protocols: the national courts are required to examine these with particular rigour and care (*Wagner and J.M.W.L. v. Luxembourg*, § 96).

244. Article 6 § 1 does not require an appellate court to give more detailed reasoning when it simply applies a specific legal provision to dismiss an appeal on points of law as having no prospects of success, without further explanation (*Burg and others v. France*, (dec.); *Gorou v. Greece (No. 2)* [GC], § 41).

245. Similarly, in the case of an application for leave to appeal, which is the precondition for a hearing of the claims by the superior court and the eventual issuing of a judgment, Article 6 § 1 cannot be interpreted as requiring that the rejection of leave be itself subject to a requirement to give detailed reasons (*Kukkonen v. Finland no. 2*, § 24; see also *Bufferne v. France* (dec.))

246. Furthermore, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (*Garcia Ruiz v. Spain* [GC], § 26 – contrast *Tatishvili v. Russia*, § 62). However, the notion of a fair procedure requires that a national court which has given sparse reasons for its decisions, whether by incorporating the reasons of a lower court or otherwise, did in fact address the essential issues which were submitted to its jurisdiction and did not merely endorse without further ado the findings reached by a lower court (*Helle v. Finland*, § 60). This requirement is all the more important where a litigant has not been able to present his case orally in the domestic proceedings (*ibid.*).

## 2. Public hearing

### Article 6 § 1

*"In the determination of his civil rights and obligations ... everyone is entitled to a fair and public hearing ... by a ... tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice."*

#### (a) HEARING

247. General principles: in principle litigants have a right to a public hearing when none of the possible exceptions outlined in the second sentence of Article 6 § 1 applies (see above, and further explanations below). The public hearing protects litigants against the administration of justice in secret with no public scrutiny. Rendering the administration of justice visible contributes to the achievement of the aim of Article 6 § 1, namely a fair trial (*Diennet v. France*, § 33; *Martinie v. France* [GC], § 39).

248. To establish whether a trial complies with the requirement of publicity, it is necessary to consider the proceedings as a whole (*Axen v. Germany*, § 28).

249. In proceedings before a court of first and only instance the right to a “public hearing” under Article 6 § 1 entails an entitlement to an “oral hearing” (*Fredin v. Sweden* (No.2), §§ 21-22; *Allan Jacobsson v. Sweden* (No. 2), and § 46; *Göç v. Turkey* [GC], § 47) unless there are exceptional circumstances that justify dispensing with such a hearing (*Hesse-Anger v. Germany*, (dec.)).

250. The exceptional character of the circumstances that may justify dispensing with an oral hearing essentially comes down to the nature of the issues to be decided by the competent national court, not to the frequency of such situations (*Miller v. Sweden*, § 29; *Martinie v. France* [GC], § 41).

251. The absence of a hearing before a second or third instance may be justified by the special features of the proceedings concerned, provided a hearing has been held at first instance (*Helmers v. Sweden*, § 36, but contrast §§ 38-39). Thus, leave-to-appeal proceedings and proceedings involving only questions of law, as opposed to questions of fact, may comply with the requirements of Article 6 even though the appellant was not given an opportunity of being heard in person by the appeal or cassation court (*Miller v. Sweden*, § 30).

252. Accordingly, unless there are exceptional circumstances that justify dispensing with a hearing, the right to a public hearing under Article 6 § 1 implies a right to an oral hearing at least before one instance (*Fischer v. Austria*, § 44; *Salomonsson v. Sweden*, § 36).

253. Civil proceedings on the merits which are conducted in private in accordance with a general and absolute principle, without the litigant being able to request a public hearing on the ground that his case presents special features, cannot in principle be regarded as compatible with Article 6 § 1 of the Convention; other than in wholly exceptional circumstances, litigants must at least have the opportunity of requesting a public hearing, though the court may refuse the request and hold the hearing in private on account of the circumstances of the case and for pertinent reasons (*Martinie v. France* [GC], § 42).

254. Lastly, the lack of a hearing at the decisive stage of the proceedings may or may not be sufficiently remedied at a later stage in the proceedings (*Le Compte, Van Leuven and De Meyere v. Belgium*, §§ 60-61; *Malhous v. the Czech Republic* [GC], § 62).

255. Specific applications:

- A hearing may not be required where there are no issues of credibility or contested facts which necessitate a hearing and the courts may fairly and reasonably decide the case on the basis of the parties’ submissions and other written materials (*Döry v. Sweden*, § 37; *Saccoccia v. Austria*, § 73);
- The Court has also accepted that forgoing a hearing may be justified in cases raising merely legal issues of a limited nature (*Allan Jacobsson v. Sweden* (No. 2), §§ 48-49; *Valová and Others v. Slovakia*, §§ 65-68) or which present no particular complexity (*Varela Assalino v. Portugal* (dec.); *Speil v. Austria* (dec.));
- The same also applies to highly technical questions. The Court has had regard to the technical nature of disputes over social-security benefits, which are better dealt with in writing than by means of oral argument. It has repeatedly held that in this sphere the national authorities, having regard to the demands of efficiency and economy, could abstain from holding a hearing since systematically holding hearings could be an obstacle to the particular diligence required in social-security proceedings (*Schuler-Zgraggen v. Switzerland*, § 58; *Döry v. Sweden*, § 41; and contrast *Salomonsson v. Sweden*, §§ 39-40).

256. By contrast, holding an oral hearing will be deemed necessary, for example, when the court’s jurisdiction extends to issues of law and important factual questions (*Fischer*



*v. Austria*, § 44), or to the assessment of whether the facts were correctly established by the authorities (*Malhous v. the Czech Republic* [GC], § 60), in circumstances which would require the courts to gain a personal impression of the applicants to afford the applicant the right to explain his personal situation, in person or through his representative (*Miller v. Sweden*, § 34, *in fine Andersson v. Sweden*, § 57) – for example when the applicant should be heard on elements of personal suffering relevant to levels of compensation (*Göç v. Turkey* [GC], § 51; *Lorenzetti v. Italy*, § 33) – or to enable the court to obtain clarifications on certain points, *inter alia* by this means (*Fredin v. Sweden (No. 2)*, § 22; *Lundevall v. Sweden*, § 39).

257. Presence of press and public: The right to a public hearing implies, in principle, a public hearing before the relevant court. Article 6 § 1 does not, however, prohibit courts from deciding, in the light of the special features of the case, to derogate from this principle (*Martinie v. France* [GC], § 40). The wording of Article 6 § 1 provides for several exceptions to this rule.

258. “[T]he press and public may be excluded from all or part of the trial”:

- “in the interests of morals, public order or national security in a democratic society” (*B. and P. v. the United Kingdom*, § 39; *Zagorodnikov v. Russia*, § 26);
- “where the interests of juveniles or the protection of the private life of the parties so require”: the interests of juveniles or the protection of the private life of the parties are in issue, for example, in proceedings concerning the residence of minors following their parents’ separation, or disputes between members of the same family (*B. and P. v. the United Kingdom*, § 38); however, in cases involving the transfer of a child to a public institution the reasons for excluding a case from public scrutiny must be subject to careful examination (*Moser v. Austria*, § 97).  
As for disciplinary proceedings against a doctor, while the need to protect professional confidentiality and the private lives of patients may justify holding proceedings in private, such an occurrence must be strictly required by the circumstances (*Diennet v. France*, § 34; and for an example of proceedings against a lawyer, *Hurter v. Switzerland*, §§ 30-32).
- “or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice”: it is possible to limit the open and public nature of proceedings in order to protect the safety and privacy of witnesses, or to promote the free exchange of information and opinion in the pursuit of justice (*B. and P. v. the United Kingdom*, § 38; *Osinger v. Austria*, § 45).

259. Waiver of the right to a public hearing: neither the letter nor the spirit of Article 6 § 1 prevents an individual from waiving his right to a public hearing of his own free will, whether expressly or tacitly, but such a waiver must be made in an unequivocal manner and must not run counter to any important public interest (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 59; *Håkansson and Sturesson v. Sweden*, § 66; *Exel v. the Czech Republic*, § 46). The summons to appear must also have been received in good time (*Yakovlev v. Russia*, §§ 20-22).

260. Conditions governing waiver of the right to a public hearing: the person concerned must consent (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 59), of his own free will (*Albert and Le Compte v. Belgium*, § 35). The right may be waived expressly or tacitly (*Le Compte, Van Leuven and De Meyere v. Belgium*, § 59). But it must be done in an unequivocal manner (*Albert and Le Compte v. Belgium*, § 35, and *Håkansson and Sturesson v. Sweden*, § 67) and it must not run counter to any important public interest (*Håkansson and Sturesson v. Sweden*, § 66).

261. Failure to request a public hearing does not necessarily mean the person concerned has waived the right to have one held; regard must be had to the relevant domestic law (*Exel v. the Czech Republic*, § 47; *Göç v. Turkey* [GC], § 48, *in fine*). Whether or not the applicant requested a public hearing is irrelevant if the applicable domestic law expressly excludes that possibility (*Eisenstecken v. Austria*, § 33).

262. Examples: waiver of the right to a public hearing in disciplinary proceedings: *Le Compte, Van Leuven and De Meyere v. Belgium*, § 59; *H. v. Belgium*, § 54. Unequivocal waiver of the right to a public hearing: *Schuler-Zraggen v. Switzerland*, § 58; and contrast *Exel v. the Czech Republic*, §§ 48-53.

#### (b) DELIVERY

263. The public character of proceedings before judicial bodies protects litigants against the administration of justice in secret with no public scrutiny (*Fazliyski v. Bulgaria*, § 69, concerning a case classified secret: violation). It is also a means of maintaining confidence in the courts (*Pretto and Others v. Italy*, § 21).

264. Article 6 § 1 states “*Judgment shall be pronounced publicly*”, which would seem to suggest that reading out in open court is required. The Court has found, however, that “*other means of rendering a judgment public*” may also be compatible with Article 6 § 1 (*Moser v. Austria*, § 101).

265. In order to determine whether the forms of publicity provided for under domestic law are compatible with the requirement for judgments to be pronounced publicly within the meaning of Article 6 § 1, “*in each case the form of publicity to be given to the judgment under the domestic law ... must be assessed in the light of the special features of the proceedings in question and by reference to the object and purpose of Article 6 § 1*” (*Pretto and Others v. Italy*, § 26, and *Axen v. Germany*, § 31). The object pursued by Article 6 § 1 in this context – namely, to ensure scrutiny of the judiciary by the public with a view to safeguarding the right to a fair trial – must have been achieved during the course of the proceedings, which must be taken as a whole (*Axen v. Germany*, § 32).

266. Where judgment is not pronounced publicly it must be ascertained whether sufficient publicity was achieved by other means.

267. In the following examples sufficient publicity was achieved by means other than public pronouncement:

- Higher courts which did not publicly pronounce decisions rejecting appeals on points of law: in order to determine whether the manner in which a Court of Cassation delivered its judgment met the requirements of Article 6 § 1, account must be taken of the entirety of the proceedings conducted in the domestic legal order and of the role of that court therein (*Pretto and Others v. Italy*, § 27).

In finding no violation of Article 6 § 1 the Court paid particular attention to the stage of the procedure and to the scrutiny effected by these courts – which was limited to points of law – and to the judgments they delivered, upholding the decisions of the lower courts without any change to the consequences for the applicants. In the light of these considerations it found that the requirement for public pronouncement had been complied with where, by being deposited in the court registry, the full text of the judgment had been made available to everyone (*Pretto and Others v. Italy*, §§ 27-28), or where a judgment upholding that of a lower court which itself had been pronounced publicly had been given without a hearing (*Axen v. Germany*, § 32);

- Trial court: the Court found no violation in a case where an appellate court publicly delivered a judgment summarising and upholding the decision of a first-instance court



particular circumstances (*Frydlender v. France* [GC], § 43), which may call for a global assessment (*Obermeier v. Austria*, § 72; *Comingersoll S.A. v. Portugal* [GC], § 23).

280. The whole of the proceedings must be taken into account (*König v. Germany*, § 98 in fine).

- While different delays may not in themselves give rise to any issue, they may, when viewed together and cumulatively, result in a reasonable time being exceeded (*Deumeland v. Germany*, § 90).
- A delay during a particular phase of the proceedings may be permissible provided that the total duration of the proceedings is not excessive (*Pretto and Others v. Italy*, § 37).
- “[L]ong periods during which the proceedings ... stagnate...” without any explanations being forthcoming are not acceptable (*Beaumartin v. France*, § 33).

281. The applicability of Article 6 § 1 to preliminary proceedings will depend on whether certain conditions are fulfilled (*Micallef v. Malta* [GC], §§ 83-86).<sup>21</sup>

282. Proceedings concerning the referral of a question to the CJEC/CJEU for a preliminary ruling are not taken into consideration<sup>22</sup> (*Pafitis and Others v. Greece*, § 95).

#### (ii) Criteria

283. The reasonableness of the length of proceedings must be assessed in the light of the following criteria established by the Court’s case-law: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute (*Comingersoll S.A. v. Portugal* [GC]; *Frydlender v. France* [GC], § 43; *Sürmeli v. Germany* [GC], § 128).

##### • Complexity of the case

284. The complexity of a case may relate both to the facts and to the law (*Katte Klitsche de la Grange v. Italy*, § 55; *Papachelas v. Greece* [GC] § 39). It may relate, for instance, to the involvement of several parties in the case (*H. v. the United Kingdom*, § 72) or to the various items of evidence that have to be obtained (*Humen v. Poland* [GC] § 63).

285. The complexity of the domestic proceedings may explain their length (*Tierce v. San Marino*, § 31).

##### • The applicant’s conduct

286. Article 6 § 1 does not require applicants actively to cooperate with the judicial authorities, nor can they be blamed for making full use of the remedies available to them under domestic law (*Erkner and Hofauer v. Austria*, § 68).

287. The person concerned is required only to show diligence in carrying out the procedural steps relating to him, to refrain from using delaying tactics and to avail himself of the scope afforded by domestic law for shortening the proceedings (*Unión Alimentaria Sanders S.A. v. Spain*, § 35).

288. Applicants’ behaviour constitutes an objective fact which cannot be attributed to the respondent State and which must be taken into account for the purpose of determining whether or not the reasonable time referred to in Article 6 § 1 has been exceeded (*Poiss v. Austria*, § 57; *Wiesinger v. Austria*, § 57; *Humen v. Poland* [GC], § 66). An applicant’s conduct cannot by itself be used to justify periods of inactivity.

<sup>21</sup>. See the section on *Scope*.

<sup>22</sup>. Court of Justice of the European Communities/Court of Justice of the European Union.

289. Some **examples** concerning the applicant's conduct:

- a lack of alacrity by the parties in filing their submissions may contribute decisively to the slowing-down of the proceedings (*Vernillo v. France*, § 34);
- frequent/repeated changes of counsel (*König v. Germany*, § 103);
- requests or omissions which have an impact on the conduct of the proceedings (*Acquaviva v. France*, § 61);
- an attempt to secure a friendly settlement (*Pizzetti v. Italy* § 18; *Laino v. Italy* [GC] § 22);
- proceedings brought erroneously before a court lacking jurisdiction (*Beaumartin v. France*, § 33).

290. Although the domestic authorities cannot be held responsible for the conduct of a defendant, the delaying tactics used by one of the parties do not absolve the authorities from their duty to ensure that the proceedings are conducted within a reasonable time (*Mincheva v. Bulgaria*, § 68).

#### - Conduct of the competent authorities

291. Only delays attributable to the State may justify a finding of failure to comply with the “reasonable time” requirement (*Buchholz v. Germany*, § 49; *Papageorgiou v. Greece*, § 40; *Humen v. Poland* [GC], § 66). The State is responsible for all its authorities: not just the judicial organs, but all public institutions (*Martins Moreira v. Portugal*, § 60).

292. Even in legal systems applying the principle that the procedural initiative lies with the parties, the latter's attitude does not absolve the courts from the obligation to ensure the expeditious trial required by Article 6 § 1 (*Pafitis and Others v. Greece*, § 93; *Tierce v. San Marino*, § 31; *Sürmeli v. Germany* [GC], § 129).

293. The same applies where the cooperation of an expert is necessary during the proceedings: responsibility for the preparation of the case and the speedy conduct of the trial lies with the judge (*Capuano v. Italy*, §§ 30-31; *Versini v. France*, § 29; *Sürmeli v. Germany* [GC], § 129).

294. It is for the Contracting States to organise their legal systems in such a way that their courts can guarantee the right of everyone to obtain a final decision on disputes relating to civil rights and obligations within a reasonable time (*Scordino v. Italy (no. 1)* [GC], § 183, and *Sürmeli v. Germany* [GC], § 129).

295. Although this obligation applies also to a Constitutional Court, when so applied it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account other considerations than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms (compare *Süßmann v. Germany* [GC], §§ 56-58; *Voggenreiter v. Germany*, §§ 51-52; *Oršuš and Others v. Croatia* [GC], § 109). Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice (*Von Maltzan and Others v. Germany* (dec.) [GC], § 132). Nevertheless, a chronic overload cannot justify excessive length of proceedings (*Probstmeier v. Germany*, § 64).

296. Since it is for the member States to organise their legal systems in such a way as to guarantee the right to obtain a judicial decision within a reasonable time, an excessive workload cannot be taken into consideration (*Vocaturo v. Italy*, § 17; *Cappello v. Italy*, § 17). Nonetheless, a temporary backlog of business does not involve liability on the part of the State provided the latter has taken reasonably prompt remedial action to deal with an

exceptional situation of this kind (*Buchholz v. Germany*, § 51). Methods which may be considered, as a provisional expedient, include choosing to deal with cases in a particular order, based not just on the date when they were brought but on their degree of urgency and importance and, in particular, on what is at stake for the persons concerned. However, if a state of affairs of this kind is prolonged and becomes a matter of structural organisation, such methods are no longer sufficient and the State must ensure the adoption of effective measures (*Zimmermann and Steiner v. Switzerland*, § 29; *Guincho v. Portugal*, § 40). The fact that such backlog situations have become commonplace does not justify the excessive length of proceedings (*Unión Alimentaria Sanders S.A. v. Spain*, § 40).

297. Furthermore, the introduction of a reform designed to speed up the examination of cases cannot justify delays since States are under a duty to organise the entry into force and implementation of such measures in a way that avoids prolonging the examination of pending cases (*Fisanotti v. Italy*, § 22). In that connection, the adequacy or otherwise of the domestic remedies introduced by a member State in order to prevent or provide redress for the problem of excessively long proceedings must be assessed in the light of the principles established by the Court (*Scordino v. Italy (no. 1)* [GC], §§ 178 et seq. and 223).

298. The State was also held to be responsible for the failure to comply with the reasonable-time requirement in a case where there was an excessive amount of judicial activity focusing on the applicant's mental state. The domestic courts continued to have doubts in that regard despite the existence of five reports attesting the applicant's soundness of mind and the dismissal of two guardianship applications; moreover, the litigation lasted for over nine years (*Bock v. Germany*, § 47).

299. A strike by members of the Bar cannot by itself render a Contracting State liable with respect to the "reasonable time" requirement; however, the efforts made by the State to reduce any resultant delay are to be taken into account for the purposes of determining whether the requirement has been complied with (*Papageorgiou v. Greece*, § 47).

300. Where repeated changes of judge slow down the proceedings because each of the judges has to begin by acquainting himself with the case, this cannot absolve the State from its obligations regarding the reasonable-time requirement, since it is the State's task to ensure that the administration of justice is properly organised (*Lechner and Hess v. Austria*, § 58).

#### • What is at stake in the dispute

301. *Examples of categories of cases which by their nature call for particular expedition:*

- Particular diligence is required in cases concerning civil status and capacity (*Bock v. Germany*, § 49; *Laino v. Italy* [GC], § 18; *Mikulić v. Croatia*, § 44);
- Child custody cases must be dealt with speedily (*Hokkanen v. Finland*, § 72; *Niederböster v. Germany*, § 39), all the more so where the passage of time may have irreversible consequences for the parent-child relationship (*Tsikakis v. Germany*, §§ 64 & 68) – likewise, cases concerning parental responsibility and contact rights call for particular expedition (*Paulsen-Medalen and Svensson v. Sweden*, § 39; *Laino v. Italy* [GC], § 22);
- Employment disputes by their nature call for expeditious decision (*Vocaturo v. Italy*, § 17) – whether the issue at stake is access to a liberal profession (*Thlimmenos v. Greece* [GC], §§ 60 & 62), the applicant's whole professional livelihood (*König v. Germany*, § 111), the continuation of the applicant's occupation (*Garcia v. France*, § 14), an appeal against dismissal (*Buchholz v. Germany*, § 52; *Frydlender v. France* [GC], § 45), the applicant's suspension (*Obermeier v. Austria*, § 72), his transfer (*Sartory v. France*, § 34) or his reinstatement (*Ruotolo v. Italy*, § 117), or

where an amount claimed is of vital significance to the applicant (*Doustaly v. France*, § 48). This category includes pensions disputes (*Borgese v. Italy*, § 18);

- Exceptional diligence is required from the authorities in the case of an applicant who suffers from an “incurable disease” and has “reduced life expectancy”: *X. v. France*, § 47; *A. and Others v. Denmark*, §§ 78-81.

### 302. Other precedents

- Special diligence was required of the relevant judicial authorities in investigating a complaint lodged by an individual alleging that he had been subjected to violence by police officers (*Caloc v. France*, § 120);
- In a case where the applicant’s disability pension made up the bulk of his resources, the proceedings by which he sought to have that pension increased in view of the deterioration of his health were of particular significance for him, justifying special diligence on the part of the domestic authorities (*Mocié v. France*, § 22);
- In a case concerning an action for damages brought by an applicant who had suffered physical harm and was aged 65 when she applied to join the proceedings as a civil party, the issue at stake called for particular diligence from the domestic authorities (*Codarcea v. Romania*, § 89).
- The issue at stake for the applicant may also be the right to education (*Oršuš and Others v. Croatia* [GC], § 109).

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Chartered  
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Ecology and  
Environmental  
Management

# GUIDELINES FOR ECOLOGICAL IMPACT ASSESSMENT IN THE UK AND IRELAND

## Terrestrial, Freshwater and Coastal

## PREFACE TO SECOND EDITION

The *Guidelines for Ecological Impact Assessment* were originally commissioned by the Council of the Institute of Ecology and Environmental Management (IEEM) and produced by a Working Group formed from its members. They were first published in 2006. The Guidelines were developed with the involvement of a wide range of interested parties to establish and set out good practice for each stage in the EclA process.

This second edition of the Guidelines has been revised by a Technical Review Group formed from members of the Chartered Institute of Ecology and Environmental Management (CIEEM) and continues the aim of the Guidelines to:

- promote good practice
- promote a scientifically rigorous and transparent approach to Ecological Impact Assessment (EclA)
- provide a common framework to EclA in order to promote better communication and closer cooperation between ecologists involved in EclA; and
- provide decision-makers with relevant information about the likely ecological effects of a project.

The purpose of the revision was to:

- update the 2006 Guidelines
- expand the 2006 Guidelines to be applicable to the Republic of Ireland
- address feedback from practitioners on the application of the Guidelines since 2006
- take account of changes in legislation since 2006
- achieve alignment between the revised Guidelines and the *Guidelines for Ecological Impact Assessment in Britain and Ireland: Marine and Coastal (2010)* (*EclA Marine Guidelines 2010*).

*Biodiversity: Code of practice for planning and development*<sup>2</sup> published by the British Standards Institute (BS 42020:2013) cites CIEEM EclA Guidelines as the acknowledged reference on ecological impact assessment. These guidelines are consistent with the British Standard on Biodiversity, which provides recommendations on topics such as professional practice, proportionality, pre-application discussions, ecological surveys, adequacy of ecological information, reporting and monitoring.

The following organisations have endorsed these Guidelines



This document should be referenced as

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## **AMENDMENTS AND CORRECTIONS**

(Minor amendments and corrections will be added during the lifetime of this document.)

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## SUMMARY

The Chartered Institute of Ecology and Environmental Management (CIEEM) has developed these Guidelines to promote good practice in Ecological Impact Assessment (EclA) relating to terrestrial, freshwater and coastal environments (to the mean low water mark) in the UK and Ireland. They update the Institute's 2006 Guidelines and align with *CIEEM's EclA Marine Guidelines 2010*: there will be examples on the coast where a project will be subject to both marine and terrestrial consent processes and both sets of guidance may be relevant.

***EclA is a process of identifying, quantifying and evaluating potential effects of development-related or other proposed actions on habitats, species and ecosystems***<sup>3</sup>. The findings of an assessment can help competent authorities understand ecological issues when determining applications for consent. EclA can be used for the appraisal of projects of any scale including the ecological component of Environmental Impact Assessment (EIA). When undertaken as part of an EIA, EclA is subject to the relevant EIA Regulations. However unlike EIA, EclA on its own is not a statutory requirement. It is a best practice evaluation process undertaken to support a range of assessments.

EclA is a process that is most effective if all contributing ecologists and other specialists work in collaboration. An EclA report (or the ecological chapter of an EIA Environmental Statement) should clearly and simply describe the significant effects of any project so that all interested parties understand the implications of what is proposed. These Guidelines explain the key elements of the EclA process:

**Chapter 1 – Introduction.** Overview of the EclA process and underpinning principles.

**Chapter 2 – Scoping.** Determining the matters to be addressed in the EclA, including consultation to ensure the most effective input to defining the scope. Scoping is an ongoing process – the scope of the EclA may be modified following further ecological survey/research and during impact assessment.

**Chapter 3 – Establishing the baseline.** Collecting information and describing the ecological conditions in the absence of the proposed project, to inform the assessment of impacts.

**Chapter 4 – Important ecological features.** Identifying important ecological features (habitats, species and ecosystems, including ecosystem function and processes) that may be affected, with reference to a geographical context in which they are considered important.

**Chapter 5 – Impact assessment.** An assessment of whether important ecological features will be subject to impacts and characterisation of these impacts and their effects<sup>4</sup>. Assessment of residual ecological impacts of the project remaining after mitigation and the significance of their effects, including cumulative effects.

**Chapter 6 – Avoidance, mitigation, compensation and enhancement.** Incorporating measures to avoid, reduce and compensate ecological impacts, and the provision of ecological enhancements. Monitoring impacts of the development and evaluation of the success of proposed mitigation, compensation and enhancement measures.

**Chapter 7 – Consequences for decision making.** Consideration of the legal and policy framework throughout the EclA process.

# 1. INTRODUCTION

- 1.1. The purpose of these Guidelines is to promote good practice in Ecological Impact Assessment (EclA) relating to terrestrial, freshwater and coastal environments to the mean low water mark in the UK and Ireland.
- 1.2. The context of EclA is well established. The EU Biodiversity Strategy<sup>5</sup> and national biodiversity strategies<sup>6</sup> reflect the need to conserve biodiversity in the face of pressure from development, other land use change and climate change. International work on the benefits of nature to society (natural capital and ecosystem services), the UK National Ecosystem Assessment<sup>7</sup> and *The Economic and Social Aspects of Biodiversity in Ireland*<sup>8</sup>, have increased understanding of the importance of conserving biodiversity for human wellbeing and the economy. This is reflected in national policy objectives for nature conservation, such as the Natural Environment White Paper<sup>9</sup> in England, White Paper on Natural Resources<sup>10</sup> in Wales, the *Land Use Strategy for Scotland*<sup>11</sup> and *Actions for Biodiversity – Ireland's National Biodiversity Plan 2011-2016*<sup>12</sup>. EclA supports implementation of national biodiversity strategies and national planning policies for safeguarding biodiversity and supporting the delivery of sustainable development.
- 1.3. **EclA is a process of identifying, quantifying and evaluating the potential effects of development-related or other proposed actions on habitats, species and ecosystems.** EclA can be used for the appraisal of projects of any scale: it is a systematic, repeatable process applicable to a wide range of projects.
- 1.4. Two particular uses of EclA are:
  - providing the ecological component of Environmental Impact Assessment (EIA) required under EIA Regulations; and
  - demonstrating how a project accords with relevant planning policy and legislation where an EIA is not required.
- 1.5. The EclA process can be fitted seamlessly into the EIA process or it can stand alone. Summary information on EIA is provided in Box 1.

## Box 1: Environmental Impact Assessment

EIAs are carried out to meet the requirements of Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directives 97/11/EC, 2003/35/EC and 2009/31/EC and redrafted in a codified version Directive 2011/92/EU. The amended Environmental Impact Assessment (EIA) Directive 2014/52/EU entered into force in 2014 to simplify the rules for assessing the potential effects of projects on the environment and Member States have to apply these rules from May 2017<sup>13</sup>.

The Directive requires EIA to be carried out before development consent is granted for projects that are likely to have significant environmental effects. EIA is a mandatory requirement for projects listed in Annex I of the Directive. It is also required for projects that meet the criteria for Annex II development and are likely to have significant environmental effects (as defined in Annex III of the Directive). EIAs should provide a comprehensive understanding of the implications of a project proposal, including consideration of impacts on fauna and flora, and interactions with soil, water and air.

EIA Regulations are particular to each country and to different types of development or activity. The main statutory instruments that implement the Directive in the UK are available on the website for UK legislation<sup>14</sup>. In the Republic of Ireland the EIA Directive was transposed in planning legislation in 2000 and given further effect in 2013<sup>15</sup>.

- 1.6. Work undertaken for EclA can inform Habitats Regulations Assessments (HRAs) and Water Framework Directive (WFD) Assessments. These Guidelines do not cover these Assessments, but a summary is provided in Box 2.

## Box 2: Habitats Regulations Assessment and Water Framework Directive Assessment

Projects affecting designated sites protected by the Habitats Directive<sup>16</sup> (transposed into national Regulations<sup>17</sup>) will require specific assessments in accordance with the Directive. Similarly, projects affecting water bodies may require assessment under the Water Framework Directive (WFD)<sup>18</sup>. These Guidelines do not explain the specific assessment processes to be applied or the criteria governing decisions. Guidance on implementing the Habitats Directive is provided by the European Commission in *Managing Natura 2000 sites the provisions of Article 6 of the 'Habitats' Directive 92/43/EEC*<sup>19</sup> and in more detail in *The Habitats Regulations Assessment Handbook*<sup>20</sup> and in *Appropriate Assessment of Plans and Projects in Ireland: Guidance for Planning Authorities*<sup>21</sup>. Information on the WFD is available on the Joint Nature Conservation Committee website<sup>22</sup> and on the Irish Water Framework Directive website<sup>23</sup>.

Information assembled for an EclA that is relevant to subsequent Habitats Regulations Assessment (HRA) and/or WFD assessments should be presented in a format that can be readily extracted for these other assessments.

## Use of these Guidelines

- 1.7. These Guidelines should be followed by ecologists undertaking EclA. The Guidelines also provide regulators, decision-makers and those submitting projects with an indication of the information needed to adequately consider projects in the light of biodiversity legislation and policy.
- 1.8. These Guidelines are applicable to ecologists acting for:
  - a project proposer such as a developer submitting a planning application;
  - a competent authority making the decision about consent for a proposed project;
  - public bodies with biodiversity and landscape duties and/or WFD duties; and
  - consultees such as those who advise the competent authority in a statutory or voluntary capacity.

## Differing Scales of EclA and a Proportionate Approach

- 1.9. EclA can be applied to projects of widely varying scales. The EclA principles and process outlined in this guidance are relevant to all developments that may impact on ecological features - this term is used throughout to cover 'habitats, species and ecosystems'. However, the level of detail required in an EclA will inevitably be proportionate to the scale of the development and complexity of its potential impacts. These Guidelines do not prescribe exactly how to undertake an EclA, but provide guidance to practitioners for refining their own methodologies.
- 1.10. Scoping (Chapter 2) should be proportionate to potential effects on ecological features. For smaller developments expected to have low impact on ecological features, it may not be necessary to undertake a comprehensive scoping process: it may be sufficient to use Preliminary Ecological Appraisal (Box 5). Professional ecologists need to use their knowledge and experience to judge the resources required to complete an adequate and effective EclA.
- 1.11. Emphasis in EclA is on 'significant effects' (see 5.25) rather than all ecological effects. Relevant legislation, regulations, plans and policies should be considered at an early stage, as these will have a bearing on the scope of investigations, how potential effects are interpreted, and the criteria needed for determining significance.

## A Rigorous and Transparent Approach

- 1.12. A scientifically rigorous and transparent approach to EclA is essential. EclA should be undertaken by qualified professionals with an appropriate level of experience in ecological survey and impact assessment who are recognised by a relevant professional body such as CIEEM.
- 1.13. All interested parties should understand the assessment process and who is responsible for implementing and monitoring the actions needed to deliver biodiversity objectives. The EclA must provide reliable and defensible information about, and interpretation of, the likely significant ecological effects from inception to operation and, where appropriate, decommissioning.
- 1.14. Account needs to be taken of existing information and understanding, in conjunction with the results of EclAs undertaken elsewhere. CIEEM encourages all practitioners to share data and results, for example through Local Record Centres (LRCs) in Britain<sup>24</sup>, the Centre for Environmental Data and Recording (CEDaR) in Northern Ireland<sup>25</sup> and the National Biodiversity Data Centre in Ireland<sup>26</sup>. Consideration should also be given to the publication of findings to allow review and learning by others.
- 1.15. The EclA should consider the significant ecological effects of a project in the light of relevant planning policies and legislation. Legislation relating to terrestrial, freshwater and coastal environments is evolving and practitioners should always check for changes and revisions. These Guidelines are based on requirements at the time of publication and changes in legislation and policy may necessitate periodic review. The Guidelines do not attempt to explain legislative detail, and users should refer to relevant legislation and case law or seek specialist legal advice.
- 1.16. EclA benefits from early consultation with the competent authority (usually the local planning authority), Statutory Nature Conservation Organisations (SNCOs), Environment(al) Protection Agencies (EPAs) and Non-Governmental Organisations (NGOs). Through EclA the developer/project proposer can be made fully aware of matters such as site designations, protected habitats and protected species, and their implications, before pursuing a project. Engagement with consultees on a regular basis will help refinement of the proposal, smooth progression through the planning process and minimise misunderstanding and controversy.
- 1.17. There will be examples on the coast where a project will be subject to both marine and terrestrial consent processes. Early consultation provides an opportunity to agree the scope of the assessment and arrangements for the assessment process in these circumstances.
- 1.18. Good communication is essential between ecologists and other professionals engaged in the assessment process (e.g. geomorphologists, hydrologists, social practitioners, EIA coordinators), together with proponents, to help inform judgements and refine proposals.



## Key Principles

1.19. The following principles<sup>27</sup> underpin EclA:

Avoidance	Seek options that avoid harm to ecological features (for example, by locating on an alternative site).
Mitigation	Adverse effects should be avoided or minimised through mitigation measures, either through the design of the project or subsequent measures that can be guaranteed – for example, through a condition or planning obligation.
Compensation	Where there are significant residual adverse ecological effects despite the mitigation proposed, these should be offset by appropriate compensatory measures.
Enhancements	Seek to provide net benefits for biodiversity over and above requirements for avoidance, mitigation or compensation.

## The EclA Process

1.20. The EclA process is summarised in Box 3. EclA is an iterative process; for example, scoping is an ongoing process - the initially proposed scope of the EclA may be modified following further ecological survey/research and during impact assessment.

### Box 3: Summary of the EclA process

#### Initial project design

At the outset of the project, the proponent's ecologist(s) should:

- obtain information on the project, any alternatives that have been studied and existing ecological information;
- undertake a gap analysis between known and needed information and plan and prioritise gap filling;
- review ecological implications of alternatives;
- discuss key ecological considerations about the project design (and alternatives) with the project proposer and the design team (e.g. engineers, architects);
- recommend modifications to the design to avoid negative ecological impacts or, where this is not possible, to reduce them; and
- explore opportunities for ecological enhancements as early as possible.

#### Screening (EIA only)

The project proposer may seek a formal screening opinion from the competent authority to determine the need for EIA under the EIA Regulations.

#### Scoping EclA

Scoping determines the issues to be covered by the EclA. Where an EIA is required, the competent authority must provide a 'scoping opinion' if requested by the developer. In all other cases it is advisable to seek the competent authorities and key consultees' views on the proposed scope of the EclA.

In all cases, scoping will need to:

- identify any potential licensing requirements for survey and/or development regarding legally protected species;
- identify all proposed construction, operating, maintenance, closure and decommissioning activities that may generate significant ecological impacts;
- identify significant other developments that may give rise to cumulative impacts
- identify potentially important ecological features;
- identify for assessment those important ecological features that could sustain significant positive or negative impacts;
- identify relationships with other issues e.g. water, landscapes
- identify data gaps;
- propose suitable spatial and temporal scopes for the assessment and identify the main ecological issues to be addressed;

- undertake preliminary assessment of potential ecological impacts on identified features, incorporating existing data/information;
- reconsider spatial and temporal scope and amend the extent of preliminary investigations if necessary;
- list those features that do not need further assessment, with appropriate justification;
- identify suitable survey/research methodologies that (ideally) have been agreed with consultees;
- confirm potential opportunities for avoidance of impacts, mitigation and enhancement of biodiversity; and
- ensure compliance with standards and consistency with formal methods of evaluation.

For EIA projects, and as good practice for non-EIA projects, scoping should also:

- involve appropriate consultation with the competent authorities, statutory agencies, other regulatory bodies, and possibly relevant NGOs and other non-statutory consultees, regarding the project and the proposed scope of the assessment; and
- produce a scoping report/summary that can be circulated for comment and modified accordingly.

### **Impact assessment**

The EclA team will be involved in the following assessment process, which should cover construction, operation maintenance, closure and decommissioning stages of any project:

- determine the importance of ecological features affected, through survey and/or research;
- assess impacts potentially affecting important features;
- characterise the impacts by describing their extent, magnitude, duration, reversibility, timing and frequency;
- identify cumulative impacts; and
- identify significant effects of impacts in the absence of any mitigation.

The surveys and research that are undertaken may indicate that the scope of the assessment should be adjusted and further studies carried out.

### **Evolution of project design and mitigation**

The design process should include the following steps:

- consider alternative location(s) or layouts for the proposed development;
- identify mitigation measures and explain their likely success;
- identify opportunities for enhancement;
- design and agree monitoring strategy and monitoring of mitigation performance with the competent authority (and, in some cases, consultees); and
- provide sufficient information for mitigation measures to be implemented effectively, e.g. through an Environmental management Plan (EMP).

### **Identify significant residual effects and their legal, policy and development management consequences**

The authors of the report should ensure that they:

- produce a clear summary of the residual impacts and the significance of their effects following incorporation of avoidance and mitigation measures;
- consider the implications of significant effects on the features of interest in accordance with planning policies and legislation;

### Reporting

The final EcIA report (or for EIAs, the Environmental (Impact) Statement) should clearly set out all the ecological information necessary for a robust decision to be made. Key aspects include a description of the following:

- ecological baseline and trends if the project were not to go ahead;
- criteria used to evaluate ecological features;
- criteria used to assess the significance of impacts of the project;
- justification of methods used;
- the identification of likely impacts (positive and negative) on ecological features together with an explanation of the significance of their effects
- mitigation, compensation and enhancement measures;
- legal and policy consequences;
- a note of any key data that were unavailable or missing; and
- a presentation of any analytical techniques used and the analysis itself.

### Follow-up and monitoring

The final stage of the process should :

- confirm the implementation of conditions/planning agreements;
- audit predicted impacts against the actual situation; and
- take measures to rectify unexpected negative impacts and ineffective mitigation, compensation, enhancement measures.

### EcIA Reports

- 1.21 EcIA reports should be tailored to suit individual circumstances and different formats are acceptable. However CIEEM considers it important that the structure and content of EcIA reports are standardised. A logical structure for a report is provided in CIEEM Guidelines for Ecological Report Writing and is reproduced in Appendix 2. Where an EIA is required, the Ecological Impact Assessment will be presented in a way that fits the overall style and structure of the Environmental (Impact) Statement, However, the content of Appendix 2 remains relevant. Where elements of this content lie outside the presentation of the main Ecological Impact Assessment (usually an ecological chapter of the EIA), cross reference should be included.

**Note:** The following definitions are used for the terms 'impact' and 'effect':

Impact – Actions resulting in changes to an ecological feature. For example, the construction activities of a development removing a hedgerow.

Effect – Outcome to an ecological feature from an impact. For example, the effects on a dormouse population from loss of a hedgerow.

## 2. SCOPING

### Purpose and Objectives of Scoping

- 2.1. Scoping is the process of determining the ecological issues to be addressed in the EclA. It sets out the methods and resources to be used and establishes the spatial and temporal limits for surveys and assessments.
- 2.2. Scoping is essential to:
  - establish an initial understanding of the baseline ecological conditions and the potential significant effects that could arise (see 5.25);
  - determine and agree the zone of influence of the project and which important ecological features could be significantly affected;
  - determine and agree the proposed surveys and methods for survey, evaluation and assessment; and
  - determine and agree the content of the EclA.
- 2.3. Scoping ensures that the project proposer is aware of the matters that need to be considered, and the likely costs and timeframes associated with the EclA. Scoping requires collation of any pre-existing and/or relevant background information and the use of professional judgement to determine the sites, species, ecosystems and habitats that are likely to require assessment.
- 2.4. The timing of scoping is very important. It should begin at the earliest opportunity to ensure sufficient time is allowed to adequately inform the EclA process. Early scoping will also allow for effective consultation and any adjustment to the scope of the assessment if necessary. It will also enable early identification of potential impacts and the opportunity to refine the proposal in response. Some of the benefits of scoping are outlined in Box 4.

#### Box 4: The benefits of scoping

- Early stakeholder engagement and input, identifying issues of concern.
- Early identification of possible changes to scheme location and design needed to avoid or reduce significant ecological effects.
- A proportionate assessment focused on significant effects.
- Clear terms of reference for all engaged in the EclA, including an understanding of the criteria that will be used to evaluate the significance of findings.
- Early identification of existing data and data gaps, and how these will be addressed.
- Justification for the exclusion of potential impacts on ecological features from the EclA where appropriate.
- Identification of the fieldwork required, methods to be used and timescales required including timings for seasonally dependent surveys.
- Identification of the data needed from other members of the assessment team, such as noise or traffic data.

- 2.5. National, regional and local policies expect projects to achieve biodiversity benefits, not simply no net loss through avoiding or mitigating negative effects. Scoping provides an early opportunity for ecologists to work with others to achieve national and local policy objectives and lays the foundation for the whole consultation and assessment process.

### Initial and ongoing scoping

- 2.6. Where an EclA is carried out as part of an EIA under EIA Directive 2011/92/EU<sup>29</sup> (Directive 2014/52/EU by 2017), competent authorities are required to provide a 'scoping opinion' if requested by a developer. A scoping opinion summarises the specific advice of the competent authority concerning the required coverage and content of the EIA. Although not a legal requirement, a scoping opinion can help to avoid problems by ensuring consensus on the scope of the assessment.
- 2.7. Where EclA is not part of an EIA, it is also advisable to seek the views of the competent authority and key consultees on the proposed scope of the EclA. Published documents such as statutory agencies' standing advice and use of a Preliminary Ecological Appraisal can also assist the scoping of the EclA (see Box 5).
- 2.8. The results of scoping can be presented as a formal report and/or letter to the competent authority. This is strongly recommended for any project that requires detailed ecological survey, and particularly where it is important to get stakeholder agreement on the terms of reference for the EclA. For EclAs that are part of EIAs, a scoping report/letter can be used as the basis for applying for a formal scoping opinion from the competent authority.
- 2.9. This initial scoping (and any scoping opinion) represents the proposed scope at a specific moment in time. However, the process of scoping is iterative and may continue throughout the early stages of a project. The proposed scope of an EclA may change following the preparation of a scoping report/letter/initial consultation.

This may be in response to concerns identified by statutory or other consultees, changes in the project design, or availability of environmental information. It is good practice to record the final scope of the assessment within the EclA report or, when in relation to an EIA, in the Environmental (Impact) Statement.

#### **Box 5: Preliminary Ecological Appraisal**

Preliminary Ecological Appraisal<sup>30</sup> (PEA) can be undertaken in a variety of contexts, often as a preliminary assessment of likely impacts of a development scheme. PEA can help the project proposer and planning authority to agree the appropriate scope of any subsequent impact assessment or determine that ecological issues will not be significant in determining the application. A PEA, together with any ecological evaluation undertaken, does not replace an EclA. A PEA may be prepared before undertaking a full EclA or may be a stand-alone document where no EclA is required.

### **The Scoping Process**

#### **Overview**

- 2.10. Scoping should be a flexible, adaptive and iterative process based on consultations, literature searches, site visits and discussions with the wider project team. Box 6 outlines the key activities in the scoping process.

#### **Box 6: Key activities in scoping**

- obtain information about the project from the project proposer or their engineers/designers;
- identify any particular environmental aims or objectives of the project;
- liaise with other environmental specialists to enable consistent assessment across environmental disciplines;
- identify stakeholders and establish a consultation strategy;
- establish the zone(s) of influence of the proposed activities (area(s) over which ecological features may be affected by the biophysical changes caused by the proposed project and associated activities) or identify the need for modelling to determine the zone(s) of influence (see Box 9) – this can be an iterative process following further research and survey;
- carry out a desk study and site visit to assess likely issues and concerns and to identify habitats and species populations which may be exposed to change as a result of the proposed activities – this should include the full distribution or extent of any ecological features which overlap with the zone of influence;
- identify designated sites within the zone of influence;
- identify data gaps and agree details of proposed survey and research methodologies, including temporal; and spatial considerations – note that this does not preclude requests from stakeholders for further information at a later stage of the EclA;
- determine criteria for selecting ecological features to be included in the assessment, based on their importance (Chapter 4);
- identify relevant legislation, regulations, policies and plans and review their requirements;
- identify all relevant conservation objectives, including any specific objectives for designated sites;
- identify (as far as possible) the need for other consents, in addition to planning permission e.g. European protected species licences or water abstraction licences;
- identify information required to determine the baseline ecological conditions, including environmental trends, management activities, completed developments and development for which consent has been or is likely to be granted;
- identify the factors likely to affect habitats, species and ecosystems, including the structure and function of relevant ecosystems and habitats and the conservation status of relevant habitats and species;
- evaluate experience gained and outcomes of relevant previous projects;
- identify other projects/proposals that could result in significant cumulative effects;
- consider options with the developer and project team for changes in location, siting, phasing and design where significant effects are likely;
- identify opportunities for mitigation and enhancement, including protecting and enhancing ecological networks (Chapter 6); and
- continue to refine the scope, 'scoping out' (excluding) potential effects that are no longer considered likely to be significant (providing justification) and addressing newly identified effects that are likely to be significant.

### **Identifying and consulting with stakeholders**

- 2.11. Consideration should be given to the best methods of engaging stakeholders. Where there are potentially significant effects on ecological features of particular value to local communities, it is important to consult with those communities or local groups.
- 2.12. Statutory and non-statutory consultees have an important role in providing site-specific data, contextual information and expertise. Consultation will enable evaluation and agreement of the scope and methods of any investigations, including the period for data collection.
- 2.13. Preliminary discussions with stakeholders should determine:
  - ecological features that could be affected; and
  - appropriate assessment methodologies.

There should also be discussions as early as possible with key stakeholders regarding:

- potential strategies to avoid or minimise any negative impacts;
  - potential ways of compensating for any significant negative residual effects (after mitigation); and
  - possible enhancement measures.
- 2.14. Where a project does not include a specific consultation stage, it is still important to consult with stakeholders. In some cases the details of a project will be confidential at the scoping stage, requiring the proponent's ecologist to scope the project without consultation. In such circumstances a precautionary approach to scoping should be taken and consultation carried out as soon as possible. Initial findings of scoping should be circulated to stakeholders for comment.

### **Defining the project and project activities**

- 2.15. It is important to consider all development and activity associated with the main proposal to enable assessment of the impacts of the project as a whole. Associated development (such as transmission lines for a power station) may be subject to separate planning applications and consents and needs to be considered along with other relevant projects that may contribute to cumulative impacts (see 5.20).
- 2.16. Gathering accurate information about the project is essential:
  - What are the proposed activities during construction, operation, decommissioning/closure?
  - Where, when, how and for what period of time will they take place?
  - What biophysical changes in the environment are likely to occur?
  - What are the information gaps, including ecological information and data from other sources, such as traffic, air quality, hydrological or noise data?

Box 7 indicates the information required for effective scoping.

#### **Box 7: Information about the project**

Effective scoping in EclA requires information on:

- location, size, extent and spatial organisation of infrastructure and activities, including ancillary development;
- lifetime of project including decommissioning;
- activities likely to cause bio-physical changes during construction, operation and decommissioning, and their timing, frequency, duration, location, extent and magnitude e.g. emissions (type, volume, range), construction activities etc. (Box 8);
- zone(s) of influence of the activities, including activities off site that may be relevant, such as access route construction;
- other developments within the zone(s) of influence for which consent has been or is likely to be granted
- pathway for emissions (e.g. water, soil or air) and the receiving environment;
- best and worst case operating conditions including construction practices that could affect biodiversity; and
- proposed measures designed to deliver biodiversity enhancements.

To assess the effects of any alternatives considered, information will be needed on each alternative, for example:

- sites;
- designs/layouts;
- processes;
- timescales; and
- means of meeting the objectives of the project.



- 2.17. For projects that require an EIA, reference should be made to the relevant schedules of the country's EIA Regulations (see Box 1) that specify the type and scale of development requiring EIA and the key issues to consider.
- 2.18. Box 8 gives examples of activities with potential to generate ecological impacts. It can be difficult at the scoping stage to establish the full extent of likely effects, and a precautionary approach is needed to ensure that the study area incorporates all areas where significant effects could occur throughout the life of the project.

### **Box 8: Examples of activities that can generate ecological impacts**

#### **Preliminary activities prior to the main construction contract**

- ground investigations e.g. for contaminated land;
- vegetation clearance; and
- archaeological excavation

#### **Construction phase**

- access and travel on/off-site, including temporary access routes for construction vehicles and vessels;
- areas for plant maintenance and for storage of oils, fuels and chemicals;
- movement of materials to/from or within a site;
- demolition operations;
- acoustic disturbance and vibration from construction activities;
- assembly areas for components of construction;
- blasting e.g. for minerals operations;
- dewatering or drawdown e.g. for reservoir safety works, mining;
- infilling of wetland;
- temporary diversion of water courses, water abstraction, discharge to a water body;
- dredging;
- dust generation;
- on-site borrow pits;
- soil stripping;
- environmental incidents and accidents e.g. spillages, noise and emissions;
- burning of waste;
- lighting;
- provision of services and utilities e.g. underground power lines, water supply and drainage;
- setup and subsequent removal of site offices/compounds and final site clearance after construction;
- storage areas for construction / excavated materials;
- structural works for new building and engineering;
- structural works to existing buildings, including conversions; and
- vegetation/habitat clearance including tree felling.
- 

#### **Occupation/operational phase**

- access to site (both route and means);
- drainage;
- implementation of landscape design and habitat management (type and location);
- presence of people, vehicles and their activities e.g. increased public access and recreational pressure, risk of fires;
- lighting;
- physical presence of structures e.g. a new road or a wind turbine;
- presence of pets; and
- site operation and management e.g. maintenance operations, industrial processes generating emissions, lighting, noise, operation of wind turbines, use of a road by traffic etc.

### **Decommissioning phase**

- blasting;
- water management pumps, mine shafts;
- removal of contaminated water or soil;
- removal or demolition of disused structures that may damage habitat or have been colonised e.g. roosting bats, barn owls;
- removal of ancillary developments including culverts; and
- removal or neglect of structures which might cause pollution.

### **Restoration phase**

- where operations/phases have finished e.g. for mineral extractions.

### **Potential non-standard operations**

- one-off incidents and accidents (including fuel leaks and spills, vandalism, erosion and sediment run-off).

Note that some developments, such as quarrying, will operate in continuous phases of construction, operation and restoration. Mitigation works may also be damaged by one-off incidents such as accidents or vandalism.

Adapted from: *Developing Naturally. A handbook for incorporating the natural environment into planning and development*<sup>31</sup>

### **Establishing zone(s) of influence**

- 2.19. The 'zone of influence' for a project is the area over which ecological features may be subject to significant effects as a result of the proposed project and associated activities. This is likely to extend beyond the project site, for example where there are ecological or hydrological links beyond the site boundaries. Activities associated with the construction, operation (best and worst-case operating conditions), decommissioning and restoration phases should be separately identified. The location and distribution of activities are best shown on geo-referenced maps or plans for overlaying onto maps of ecological features.
- 2.20. The zone of influence will vary for different ecological features depending on their sensitivity to an environmental change. It may be appropriate to identify different zones of influence for different features. The features affected could include habitats, species, and ecosystems and the processes on which they depend. Box 9 provides the key considerations in establishing the zone(s) of influence.

### **Box 9: Ecological considerations for establishing the zone(s) of influence**

The following questions will help to determine the zone(s) of influence on ecological features:

- What 'important' ecological features (see Chapter 4) are known to occur within the project site and the surrounding area?
- What other 'important' ecological features could occur within the project site and surrounding area based on knowledge of the local distribution of relevant habitats and species?
- What activities may generate ecological impacts (see Box 8)
- Is the project likely to affect migratory species?
- Is the area used by mobile species that make regular movements to, from, or across the site?
- What are the key ecological processes or species activity periods? Are there seasonal variations in distribution, abundance and activity?
- Does the project affect any sites, directly or indirectly, that are designated or likely to be designated in the foreseeable future? What are the reasons for designation?
- What is required for the maintenance of particular ecosystems, networks, habitats or species populations? How would these be affected by project activities?
  - What are their distribution and status elsewhere for comparison?
  - What were their historical distributions, status and management compared with present?
  - Is anything known about the key factors influencing distribution and abundance of the feature(s)?
  - What are their scales of variation, vulnerability and likely exposure to the project?
- Are there any features whose disappearance would have significant consequences for other features?
- Are there any other projects planned within the same area or time-frame that may contribute to cumulative effects? (see 5.20)

- 2.21. Box 10 provides an example of how the zones of influence for a proposed quarry have been determined. It considers impacts on habitats and species within the site, but also on habitats and dependent species that are linked to the hydrology of the site, in some cases at some distance away.

**Box 10: Example of defining the zones of influence of a proposed quarry**

- All ecological features occurring within the area to be worked will be affected by changes in land cover caused by topsoil stripping and excavation.
- Blasting, noise, dust and changes in human activity will also affect species in adjacent habitats.
- If the quarry involves major, long-term dewatering operations, there could be consequences for water-dependent habitats and species that are many miles from the quarry. It may not be possible to determine the zone of influence of dewatering without undertaking hydrological/hydrogeological (cone of depression) modelling. The zone of influence should include all water-dependent features that could be significantly affected by the predicted draw-down, providing they are of sufficient importance to be considered in the assessment.
- If the quarry requires new infrastructure (e.g. roads, power supply or waste water disposal) there could be significant consequences for ecological features beyond the boundaries of the site in addition to those affected by dewatering.
- If the project could affect the breeding territory of a sub-population of a bird species, it would be necessary to consider the implications of localised effects in relation to the birds' wider population. If there were a number of sub-populations in the area, then it might be appropriate to consider the zone of influence to only include the specific sub-population of birds affected. However, if the birds were at the edge of their range, or the sub-population affected was an important link in the distribution pattern, then it might be necessary to consider implications for the zone of influence to include the regional, or even the national population.

- 2.22. Study boundaries should be drawn to include areas within the zone(s) of influence however remote from the project site. The results of professionally accredited or published scientific studies should be used, where available, to establish the spatial and temporal limits of the biophysical changes likely to be caused by specific activities and to justify decisions about the zone of influence. For example, the Somerset 'Econet' project<sup>32</sup> has defined 'effect distances' for use in EclA based on home ranges and vulnerability to different activities e.g. disturbance to breeding birds caused by road traffic. Statutory organisations may also specify impact zones in standing advice or guidance documents e.g. Natural England's SSSI Impact Risk Zones and National Parks and Wildlife Services' (NPWS) likely zones of impact as discussed in Guidance for Planning Authorities. Indirect effects should also be taken into account (e.g. the effects of displaced individuals on other populations). Defining study boundaries will rely heavily on the professional judgment of an ecologist. Assumptions based on studies should be recorded.
- 2.23. The zone of influence should be regularly reviewed and amended as the project evolves. If inadequate information is available to properly define the zone of influence, this should be acknowledged and a precautionary approach adopted.

**Transboundary effects**

- 2.24. Projects may affect ecological features over several administrative areas. Impact assessments should cover the zone of influence regardless of administrative boundaries and information on transboundary effects should be notified to the relevant authorities to enable them to take appropriate action.

**Selecting ecological features for detailed assessment**

- 2.25. Once the likely direct and indirect impacts have been identified, it is necessary to undertake a systematic assessment of 'important' ecological features (Chapter 4) that could be significantly affected (including negative and positive effects). This is consistent with EIA Regulations which only require investigation of likely significant effects. Determining the significance of effects is explained in Chapter 5. To ensure clarity, the rationale and criteria used to select, or exclude, certain features for detailed assessment should be agreed with relevant stakeholders and documented during scoping.
- 2.26. In some cases the data collected as part of the scoping process will be sufficient to inform the assessment of effects on a given feature. In other cases additional surveys will need to be undertaken.

- 2.27. Ecologists undertaking EclAs should determine whether an ecological feature within the zone of influence of a development should be 'scoped out' (excluded) and justify the reasons for doing so. Features can be scoped out of the assessment at this stage because they are not important enough to warrant further consideration (see Chapter 4) or because they will not be significantly affected. Where impacts on a feature are uncertain the feature should be 'scoped-in' (included) for more detailed assessment.

### **Conclusions of the Scoping Process**

2.28. The outcomes of the scoping process should be:

- a description of the zone(s) of influence of the project;
- the identification of key ecological impacts which could be addressed through changes to project design, including consideration of alternatives;
- a list of the ecological features to be given detailed consideration in the EclA and, in some cases, the specific impacts that will be considered in relation to each feature;
- a description of the surveys to be undertaken to provide the necessary data to inform the assessment, including methods and timing; and
- a list of relevant ecological features that will not be given detailed consideration in the EclA and a justification for their exclusion.

### 3. ESTABLISHING THE BASELINE

#### Introduction

- 3.1. Ecological baseline conditions are those existing in the absence of proposed activities. The impact assessment determines how the conditions will change in relation to this baseline to facilitate a clear understanding of the effects of a project.
- 3.2. The conditions that define the baseline need to be carefully considered. This is because the baseline at the time when the project proceeds may differ from conditions that exist at the time an assessment is made. Assessing the impacts of any project and associated activities requires an understanding of the baseline conditions prior to and at the time of the project proceeding or specific activities taking place. If there is likely to be a lengthy time between project concept and inception, potential changes in the ecological baseline during that time should be identified.
- 3.3. It is the predicted baseline conditions at the time the project will be implemented that dictates the baseline against which the impact of the proposal should be assessed. The rationale and assumptions used in predicting the baseline will need to be set out with supporting evidence. Box 11 provides an example of predicting a future baseline scenario.

#### **Box 11: Establishing the baseline: an example**

A power station that draws cooling water from a river is to close down due to a rationalisation of the power supply network. During the many years that the power station has been in use, the riverine invertebrate, fish and bird assemblages in the immediate vicinity have adapted to reflect local, increased temperatures caused by the regular discharge of heated river water. Closure of the power station will mean that this discharge will stop. Once closed, it is proposed to convert the power station to residential units. The EclA for the residential development is being undertaken prior to closing down the power station. In this instance, the baseline for the EclA is the predicted post-closure situation, rather than that evident at the time of undertaking the EclA. The surveys and investigations to describe the baseline must be designed to predict the likely post-closure situation as accurately as possible.

- 3.4. Examples of factors that should be used to identify potential changes in baseline conditions include:
  - trends in species population and distribution;
  - rates of potential colonisation by new species and habitats;
  - ecological processes, such as succession;
  - likely changes in agricultural practice, including agri-environment schemes;
  - expected outcomes from current and predicted management practices;
  - trends in habitat quality e.g. resulting from pollution or pollution control;
  - environmental trends e.g. climate change;
  - management plans and conservation objectives for designated sites; and
  - the effects of other projects (see 3.7 and Box 12).
- 3.5. Any EclA therefore requires the identification of the likely baseline conditions at some point in the future, based on data collected in the past. In the majority of cases, ecological data are likely to have been collected within one or two years prior to an EclA being written and development activities may take place one or two years after. In these cases the survey data may represent a reliable indication of the baseline conditions. However in other cases the identification of the baseline based on survey data will be more difficult, for example:
  - where the feature is dynamic (such as coastal erosion) and changing in response to predictable activities such as habitat management, or
  - where there is a considerable time-lag between the date the assessment is written and the date when activities are likely to take place e.g. for multi-phase developments or projects where activity will occur well into the future.

In such cases it will be important to establish trends based on historical desk study information or field survey over more than one season. It is important to acknowledge any such limitations and uncertainties rather than report them as fact.
- 3.6. The baseline conditions for each ecological feature should be described clearly, objectively and succinctly within the EclA, using figures and plans where necessary. Where an extensive amount of survey data has been generated, this can be provided as appendices.

## Considering Other Development Projects when Predicting the Baseline

- 3.7. In some cases, other development projects (besides the one being assessed) can influence the baseline and need to be taken into account. This will be the case in circumstances where another development has been consented or recently constructed and is predicted to have an impact on an ecological feature being considered as part of the EclA. The baseline may also be affected where another development has an ongoing incremental 'operational' phase effect. An example of this is given in Box 12. Impacts arising from other developments will, in some cases, need to be considered as cumulative impacts. Information on cumulative impact assessment is given in paragraphs 5.20 to 5.23.

### **Box 12: Establishing the baseline: consideration of other development projects**

#### **The scenario**

An EIA is being carried out for a proposed wind farm in the uplands. The proposal includes 20 turbines and associated permanent infrastructure, and a temporary works area during construction. The wind farm adjoins a nationally designated site for nature conservation. Construction of another wind farm within the same range of hills is already underway.

#### **Predicting the baseline**

The approach to establishing the baseline should be agreed after discussion between the competent authority, the statutory nature conservation organisation and any other relevant agencies. It is likely to include consideration of:

- ecological and other trends affecting the baseline condition of upland habitats and their bird populations e.g. grazing pressure, afforestation, peat extraction, climate change, anticipated changes in the level of disturbance caused by the public;
- predicted impacts arising from the wind farm under construction, as reported in the Environmental (Impact) Statement; and
- predicted (but yet to occur) impacts of other completed, in-construction and consented projects e.g. the operational impacts of other wind farms elsewhere in the uplands.

## Informing the Baseline

- 3.8. During scoping, spatial and temporal limits need to be established for obtaining the necessary baseline information and a clear rationale presented. Variation in populations, habitats or ecosystems over time in the absence of the project should always be considered. This may require more than one year or one season of data to give an accurate reflection of the situation. In many cases this may be determined from historical information, knowledge of general trends and management activities etc. and an understanding of how each feature/resource might respond.
- 3.9. The spatial and temporal extent of the baseline should also be informed by the potential for cumulative effects, as well as the need for information to support design of suitable mitigation and compensation measures.
- 3.10. The spatial extent of baseline studies should be flexible to accommodate different needs. For example, impacts on part of an ecosystem, habitat or population may have implications for the whole ecosystem, habitat or population so that a larger study area may be needed. Vulnerability of different habitats and species may vary greatly depending on the type of project (see 'zone of influence' 2.19).

## Data

- 3.11. Data used to establish baseline conditions can be obtained from a range of sources, including desk study and field surveys. These surveys may have been carried out during scoping, or scoping may have identified the need for further baseline survey to address gaps. Standard survey methods should be used to ensure that the data collected are robust and results can be easily interpreted and compared with those from other investigations. Details of how methods have been tailored to meet the needs of the study should be included. If survey methods vary from accepted good practice this should be explained and justified, and reliability of the results discussed.
- 3.12. Any limitations of surveys, such as information, access or seasonal constraints, should be outlined (see BS 42020<sup>36</sup>, clause 6.7). However these limitations should be avoided wherever possible, for example by undertaking additional surveys. All surveys should be carried out by suitably skilled and experienced staff. Certain protected species surveys must be carried out under the appropriate licence. If surveys are undertaken out of the optimal survey season, or there are other substantive limitations to the data collected, further information may be needed to ensure that the EclA is robust.
- 3.13. If it is not feasible to gain access to land beyond the project site, it may be possible to undertake a basic survey<sup>37</sup>



from public highways or other accessible public spaces<sup>38</sup>. The considerable limitations of this type of survey and the influence on confidence in the conclusions should be assessed and reported. Where feasible, survey limitations should be addressed at a later date: for example if access to private land can be gained, survey findings should be updated.

- 3.14. Desk study information can be obtained from a range of sources, including the local biodiversity records centre, local nature conservation groups and individuals, previous survey reports for the site or other sites in the surrounding area, and various web-based sources. Aerial photographs or satellite images can provide insight into spatial and temporal relationships and supplement data gathered in the field.

## 4. IMPORTANT ECOLOGICAL FEATURES

### Introduction

- 4.1. One of the key challenges in EclA is to decide which ecological features (habitats, species, ecosystems and their functions/processes) are important and should be subject to detailed assessment. Such ecological features will be those that are considered to be important and potentially affected by the project. It is not necessary to carry out detailed assessment of features that are sufficiently widespread, unthreatened and resilient to project impacts and will remain viable and sustainable. This does not mean that efforts should not be made to safeguard biodiversity in its entirety, as emphasised in the EU Biodiversity Strategy 2020<sup>39</sup>. The EU Strategy and national policy documents emphasise the need to achieve no net loss of biodiversity and enhancement of biodiversity.
- 4.2. Ecological features can be important for a variety of reasons and the rationale used should be explained to demonstrate a robust selection process. Importance may relate, for example, to the quality or extent of designated sites or habitats, to habitat/species rarity, to the extent to which they are threatened throughout their range, or to their rate of decline.

### Determining Importance

- 4.3. The EclA should demonstrate how a proposal will comply with statutory requirements and policy objectives for biodiversity. European, national and local governments and specialist organisations have identified a large number of sites, habitats and species that provide the key focus for biodiversity conservation in the UK and Ireland, supported by policy and legislation. These provide an objective starting point for identifying the important ecological features that need to be considered in EclA (Box 13).

#### **Box 13: Key sites, habitats and species for nature conservation in the UK and Ireland**

##### **Designated Sites**

- Statutory sites designated or classified under international conventions or European legislation, for example
  - World Heritage Sites, Biosphere Reserves, Wetlands of International Importance (Ramsar sites), Special Areas of Conservation, Special Protection Areas\*
- Statutory sites designated under national legislation, for example
  - Sites of Special Scientific Interest (England, Wales, Scotland)
  - Areas of Special Scientific Interest (Northern Ireland)
  - Natural Heritage Areas (Ireland)
  - National Nature Reserves (UK)
  - Nature Reserves (Ireland)
  - Refuges for Fauna (Ireland)
  - Wildfowl Sanctuaries (Ireland)
  - Local Nature Reserves (UK)
- Locally designated wildlife sites.

##### **Country Biodiversity Lists**

- Habitats and species of principal importance for the conservation of biodiversity: England<sup>40</sup> and Wales;<sup>41</sup>
- Scottish Biodiversity List;<sup>42</sup>
- Northern Ireland priority habitats<sup>43</sup> and species;<sup>44</sup> and
- Protected and rare species in Ireland.<sup>\*\*45</sup>

##### **Biodiversity Action Plan lists**

- UK BAP\*\*\* priority habitats<sup>46</sup> and priority species.<sup>47</sup>
- Local BAP priority species and habitats.<sup>48</sup>

##### **Red Listed, Rare, Legally Protected Species**

- Species of conservation concern, Red Data Book (RDB) species – UK<sup>49</sup>; Ireland.<sup>50</sup>
- Birds of Conservation Concern – UK<sup>55</sup>; Ireland.<sup>54</sup>
- Nationally rare and nationally scarce species – UK<sup>53</sup>; Ireland.<sup>54</sup>
- Legally protected species – UK<sup>55</sup>; Ireland.<sup>56</sup>

Note: there is overlap in these lists and many habitats and species appear on several.

\*Including candidate SACs and proposed SPAs, SACs and Ramsar sites

\*\* Ireland: Local authority BAPs or Heritage Plans also identify locally important species and habitats.

\*\*\*The UK BAP lists of priority habitats and species have been superseded by the country biodiversity lists, but they are a useful reference source.

- 4.22. Lists of legally protected species may require careful interpretation. For example, in England and Wales birds listed in Schedule 1 of the Wildlife and Countryside Act 1981 (as amended) have special legal protection during the breeding season in addition to the general protections afforded to birds throughout the year. Caution should also be applied when referring to the lists of animal and plant species of Community interest in Annex II of the EC Habitats Directive lists and Annex 1 the EC Birds Directive<sup>75</sup>. These species have no specific legal protection under these Annexes except insofar that SACs and SPAs may be designated because of the presence of these species and that they should be conserved on these sites as defined.
- 4.23. Where protected species are present and there is the potential for a breach of the legislation, those species should be considered as 'important' features. It will always be necessary for the EclA to determine whether there could be a breach of the legislation as a result of the project, and the scheme being assessed needs to be designed/mitigated in such a way that the law will not be contravened.

#### **Legally controlled species**

- 4.24. Consideration should also be given to ensuring that land use changes do not result in contravention of laws relating to legally controlled plant and animal species<sup>76</sup> under Schedule 9 of the Wildlife and Countryside Act 1981 in Britain (e.g. Japanese knotweed, Himalayan balsam, giant hogweed), under the Wildlife (Northern Ireland) Order 1985 (as amended), under the Wildlife and Natural Environment (Scotland) Act 2011, under the Wildlife Acts 1976 to 2012 in Ireland, and under the Third Schedule of the European Communities (Birds and Natural Habitats) Regulations 2011 (SI 477 of 2011). See also Invasive Species Ireland (Ireland North & South)<sup>77</sup>. In addition, five plants (common ragwort, broad-leaved dock, curled dock, creeping thistle, spear thistle) are identified as injurious in the Weeds Act 1959 (as amended by The Ragwort Control Act 2003 (England and Wales))<sup>78</sup>. The relevant agricultural weed control legislation for Ireland is the Noxious Weeds Act 1936, and weed species to which the Act applies have been added by ministerial orders. EclA should, where appropriate, identify how such species will be controlled. It is important to be aware that the new EU Regulation<sup>79</sup> on invasive alien species came into force on 1 January 2015.

#### **Ecosystem services and natural capital**

- 4.25. Ecosystem services are the benefits that people derive from the natural environment. The natural environment can be considered as a stock of 'natural capital' from which many benefits – social, health-related, cultural or economic – flow. Box 14 includes policy guidance on ecosystem services and a summary of types of ecosystem services is provided in Box 15.

##### **Box 14: Ecosystem services in policy**

*UK National Ecosystem Assessment (UKNEA) (2011) and UKNEA Follow-on (2014)*<sup>80</sup>

The UK Government conducted a full national ecosystem assessment to enable effective policy responses to degradation of ecosystem services. Consistent with the Millennium Ecosystem Assessment (2005), it identifies four broad categories of ecosystem services. It provides a starting point for identifying links between ecological features (e.g. broad habitats) and ecosystem services and assessing how land use change might affect the value that ecosystems provide. The UKNEA Follow-on further developed the assessment and its applicability to decision and policy making.

*Natural Environment White Paper (2011) – The natural choice: securing the value of nature*<sup>81</sup>

This sets out a broad 50-year vision for the natural environment and how Government in England intends to put natural capital at the heart of economic thinking and decision making. The White Paper outlines a number of initiatives to restore the natural environment, new programmes for connecting people and nature, and several proposals for capturing the economic value of nature and measuring green growth.

*Towards the Sustainable Management of Wales' Natural Resources (2013) – Environment Bill White Paper consultation*<sup>82</sup>

This White Paper sets out the Welsh Government's proposals to provide a modern statutory framework for the sustainable management of natural resources by legislating for a more joined-up and proactive process to deliver lasting economic, social and environmental benefit.

*Applying an ecosystems approach to land use: Information Note (2011)*<sup>83</sup>

This publication by The Scottish Government encourages the application of an ecosystems approach in decision-making processes affecting land use. It gives examples of the application of this approach in Scotland and elsewhere in the UK.

*2020 Challenge for Scotland's Biodiversity (2013)*<sup>84</sup>

This is Scotland's response to international biodiversity targets. The chapter on natural capital reflects the TEEB (The Economics of Ecosystems and Biodiversity) and UKNEA reports and includes principles for sustaining the value of Scotland's natural capital.

*Sectoral Impacts on Biodiversity and Ecosystem Services (SIMBIOSYS) (2013)<sup>85</sup>*

This project funded by the Irish Government examined the impacts of human activity on biodiversity and the benefits of biodiversity to society. It quantifies impacts of particular activities in Ireland (e.g. cultivation of bioenergy crops, road landscaping and aquaculture) on genetic, species and landscape biodiversity and the ecosystem services they provide, including pollination, biological pest control, carbon sequestration and resistance to alien species.

*Actions for Biodiversity 2011-2016 Ireland's National Biodiversity Action Plan<sup>86</sup>*

This Action Plan includes a commitment that the conservation of ecosystem structure and functioning, to maintain ecosystem services, should be a priority target of the ecosystem approach.

**Box 15: Types of Ecosystem services**

**Supporting services** – services necessary for the production of all other ecosystem services including soil formation, photosynthesis, primary production, nutrient cycling and water cycling.

**Provisioning services** – products obtained from ecosystems, including food, fibre, fuel, genetic resources, biochemicals, natural medicines, pharmaceuticals and fresh water.

**Regulating services** – benefits obtained from the regulation of ecosystem processes, including air quality regulation, climate regulation, water regulation, erosion regulation, water purification, disease regulation, pest regulation, pollination, natural hazard regulation.

**Cultural services** – non-material benefits people obtain from ecosystems through spiritual enrichment, cognitive development, reflection, recreation and aesthetic experiences – thereby taking account of landscape values.

- 4.26. EclA can provide ecological information to support the assessment of ecosystem services. It is important to recognise cases where ecosystem service provision might be affected as a result of a project's ecological effects. However, assessment of ecosystem services relies on separate specialist assessments of social and economic value. Ecologists can work together with other specialists to ensure that relevant data is collected during the EclA process to inform these separate assessments. This can enable the social and economic implications of ecological changes to be taken into account.

## 5. IMPACT ASSESSMENT

### Introduction

5.1. The impact assessment process involves:

- identifying and characterising impacts;
- incorporating measures to avoid and mitigate (reduce) these impacts;
- assessing the significance of any residual effects after mitigation;
- identifying appropriate compensation measures to offset significant residual effects; and
- identifying opportunities for ecological enhancement.

The hierarchical process of avoiding, mitigating and compensating ecological impacts is explained further in 1.19 and Chapter 6.

5.2. In EclA it is only essential to assess and report significant residual effects (those that remain after mitigation measures have been taken into account - see 5.25). However it is good practice for the EclA to make clear both the potential significant effects without mitigation and the residual significant effects following mitigation, particularly:

- a) where the mitigation proposed is experimental, unproven or controversial; or
- b) to demonstrate the importance of securing the measures proposed through planning conditions or obligations - see 6.23.

5.3. Assessment of ecological impacts is required at the following stages:

- during initial scoping – to provide the basis for selecting ecological features within the zone(s) of influence that require systematic assessment;
- during the evolution of the project – to identify the need for avoidance and mitigation and opportunities for enhancement; and
- after mitigation strategies have been devised and their likely success considered – to assess residual effects and whether these are significant and require compensation.

5.4. The assessment should include potential impacts on each ecological feature determined as 'important' (Chapter 4) from all phases of the project, e.g. construction, operation and decommissioning. It should consider direct, indirect, secondary and cumulative impacts and whether the impacts and their effects are short, medium, long-term, permanent, temporary, reversible, irreversible, positive and/or negative.

5.5. The assessment of impacts takes into account the baseline conditions to describe:

- how the baseline conditions will change as a result of the project and associated activities; and
- cumulative impacts of the proposal and those arising from other developments.

5.6. The significant effects must be assessed in the context of the predicted baseline conditions within the zone(s) of influence during the lifetime of the development (Chapter 3). Information may be required from other specialists as impacts may relate to noise, air quality, hydrology, water quality etc. Liaison with other disciplines will enable more robust predictions for project-related bio-physical changes and assessment of their ecological implications. Cross-reference should be made to other assessments submitted with the proposal.

### Predicting Ecological Impacts and Effects

5.7. The process of predicting ecological impacts should take account of relevant aspects of ecosystem structure and function – see Box 16.

#### **Box 16: Aspects of ecological structure and function to consider when predicting impacts and effects**

##### **Available resources**

- territory – hunting/foraging grounds, shelter and roost sites, breeding sites, corridors for migration and dispersal, stop-over sites;
- food and water (quantity and quality);
- soil minerals and nutrients; and
- solar radiation and gaseous resources.

##### **Environmental processes**

- flooding, drought, wind blow and storm damage, disease, eutrophication, erosion, deposition and other geomorphological processes, fire and climate change.

##### **Ecological processes**

- population dynamics – population cycles, survival / reproduction rates, competition, predation, seasonal behaviour, dispersal / genetic exchange; and
- vegetation dynamics – colonisation, succession, competition, and nutrient-cycling.

### **Human influences**

- animal husbandry; cutting, burning, mowing, draining, irrigation, culling, hunting;
- excavations, dredging, ground profiling;
- ploughing, seeding, planting, cropping, fertilising, pesticides, herbicides;
- pollution; introduction of exotics, weeds and genetically modified organisms;
- disturbance from public access, pets.

### **Historical context**

- natural range of variation over recorded historical period and
- irregular perturbations beyond normal range (e.g. very infrequent storm events).

### **Ecological relationships**

- food webs, predator-prey relationships, herbivore-plant relationships, herbivore-carnivore relationships, adaptation, and dynamism.

### **Ecological role or function**

- decomposer, primary producer, herbivore, parasite, predator, keystone species.

### **Ecosystem properties**

- fragility and stability, carrying capacity, productivity, community dynamics;
- connectivity;
- source/sink;
- numbers in a population or meta-population, minimum viable populations;
- sex and age ratios;
- patchiness and degree of fragmentation; and
- ecological coherence.

### **Other environmental influences**

- air quality;
- hydrology and water quality; and
- nutrient status and salinity.

*Adapted from: Developing Naturally. A handbook for incorporating the natural environment into planning and development* <sup>87</sup>

- 5.8. There could be any number of possible impacts on important ecological features arising from a development. However it is only necessary to describe in detail the impacts that are likely to be significant (see 5.25). Impacts that are either unlikely to occur, or if they did occur are unlikely to be significant, can be scoped out. For transparency, justification for scoping out any ecological impact should be provided. If in doubt the potential impact should be assessed.

### **Characterising Ecological Impacts**

- 5.9. When describing ecological impacts reference should be made to the following characteristics:

- positive or negative;
- extent;
- magnitude;
- duration;
- timing;
- frequency; and
- reversibility.

- 5.10. The assessment only needs to describe those characteristics relevant to understanding the ecological effect and determining the significance. For example, timing of the removal of a hedgerow is unlikely to be of particular relevance to the assessment of the effect on hedgerows, although it may be relevant in assessing the effect on a species using the hedgerow, such as nesting birds. It should be noted, however, that the clearance of vegetation in Ireland (including hedgerows) is subject to restrictions under the Wildlife Acts 1976 to 2012.

### **Positive or negative**

- 5.11. Positive and negative impacts/effects should be determined according to whether the change is in accordance with nature conservation objectives and policy:
- Positive impact – a change that improves the quality of the environment e.g. by increasing species diversity, extending habitat or improving water quality. Positive impacts may also include halting or slowing an existing decline in the quality of the environment.
  - Negative impact – a change which reduces the quality of the environment e.g. destruction of habitat, removal



of species foraging habitat, habitat fragmentation, pollution.

### **Extent**

5.12. The extent is the spatial or geographical area over which the impact/effect may occur.

### **Magnitude**

5.13. Magnitude refers to size, amount, intensity and volume. It should be quantified if possible and expressed in absolute or relative terms e.g. the amount of habitat lost, percentage change to habitat area, percentage decline in a species population.

### **Duration**

5.14. Duration should be defined in relation to ecological characteristics (such as a species' lifecycle) as well as human timeframes. For example, five years, which might seem short-term in the human context or that of other long-lived species, would span at least five generations of some invertebrate species.

5.15. The duration of an activity may differ from the duration of the resulting effect caused by the activity. For example, if short-term construction activities cause disturbance to birds during their breeding period, there may be long-term implications from failure to reproduce that season. Effects may be described as short, medium or long-term and permanent or temporary. Short, medium, long-term and temporary will need to be defined in months/years.

### **Frequency and timing**

5.16. The number of times an activity occurs will influence the resulting effect. For example, a single person walking a dog will have very limited impact on nearby waders using wetland habitat, but numerous walkers will subject the waders to frequent disturbance and could affect feeding success, leading to displacement of the birds and knock-on effects on their ability to survive.

5.17. The timing of an activity or change may result in an impact if it coincides with critical life-stages or seasons e.g. bird nesting season.

### **Reversibility**

5.18. An irreversible effect is one from which recovery is not possible within a reasonable timescale or there is no reasonable chance of action being taken to reverse it. A reversible effect is one from which spontaneous recovery is possible or which may be counteracted by mitigation.

5.19. In some cases, the same activity can cause both reversible and irreversible effects. For example placement of a temporary access through an ancient wood could cause the loss of food and shelter for common woodland birds that may be reversible, but the compaction of fragile woodland soils and damage to ancient woodland ground flora along the access route is effectively irreversible.

### **Assessment of Cumulative Impacts and Effects**

5.20. Cumulative effects can result from individually insignificant but collectively significant actions taking place over a period of time or concentrated in a location. Cumulative effects are particularly important in EclA as many ecological features are already exposed to background levels of threat or pressure and may be close to critical thresholds where further impact could cause irreversible decline. Effects can also make habitats and species more vulnerable or sensitive to change.

5.21. Different types of actions can cause cumulative impacts and effects:

- Additive/incremental – multiple activities/projects (each with potentially insignificant effects) added together to give rise to a significant effect due to their proximity in time and space. The effect may be additive ( $1+1 = 2$ ) or synergistic ( $1+1 = 3$ ).
- Associated/connected – a development activity 'enables' another development activity e.g. phased development as part of separate planning applications. Associated developments may include different aspects of the project which may be authorised under different consent processes. It is important to assess impacts of the 'project' as a whole and not ignore impacts that fall under a separate consent process.

5.22. Developments to be included in the cumulative impact assessment should be in accordance with national guidance and, if possible, agreed with the competent authority during scoping. In most cases other projects to be considered would include the following types of future development within the same zone of influence:

- proposals for which consent has been applied which are awaiting determination in any regulatory process (not necessarily limited to planning permission);
- projects which have been granted consent (not limited to planning permissions) but which have not yet been started or which have been started but are not yet completed (i.e. under construction);
- proposals which have been refused permission but which are subject to appeal and the appeal is undetermined; or
- to the extent that their details are in the public domain, proposed projects that will be implemented by a public body but for which no consent is needed from a competent authority.

In some situations it may be necessary to also consider:

- constructed developments whose full environmental effects are not yet felt and therefore cannot be accounted for in the baseline
- developments specifically referenced in a National Policy Statement, a National Plan or a Local Plan.

5.23. Information about developments within the zone(s) of influence may be available in other EclAs, Local Plan documents, Strategic Environmental Assessments (SEAs), Sustainability Appraisals (SAs), Water Framework Directive Assessments (WFDAs), and Habitats Regulations Assessments/Appraisals (HRAs), including 'Natura Impact Statements' (NISs) / 'Natura Impact Reports' (NIRs), 'Information / 'Reports to Inform an Appropriate Assessment', 'Shadow Habitats Regulations Assessments' and, for Nationally Significant Infrastructure Projects, 'Reports on the Implications for European Sites' (RIES). The local planning authority, Wildlife Trust and SNCO may also be able to advise on appropriate development projects to consider.

### **Assessment of Residual Impacts**

5.24. After assessing the impacts of the proposal all attempts should be made to avoid and mitigate ecological impacts (Chapter 6). Once measures to avoid and mitigate ecological impacts have been finalised, assessment of the residual impacts should be undertaken to determine the significance of their effects on ecological features. Any residual impacts that will result in effects that are significant, and proposed compensatory measures, will be the factors considered against ecological objectives (legislation and policy) in determining the outcome of the application (Chapter 7).

### **Significant Effects**

- 5.25. Significance is a concept related to the weight that should be attached to effects when decisions are made. For the purpose of EclA, 'significant effect' is an effect that either supports or undermines biodiversity conservation objectives for 'important ecological features' (explained in Chapter 4) or for biodiversity in general. Conservation objectives may be specific (e.g. for a designated site) or broad (e.g. national/local nature conservation policy) or more wide-ranging (enhancement of biodiversity). Effects can be considered significant at a wide range of scales from international to local.
- 5.26. A significant effect is simply an effect that is sufficiently important to require assessment and reporting so that the decision maker is adequately informed of the environmental consequences of permitting a project. A significant effect is a positive or negative ecological effect that should be given weight in judging whether to authorise a project: it can influence whether permission is given or refused and, if given, whether the effect is important enough to warrant conditions, restrictions or further requirements such as monitoring. A significant effect does not necessarily equate to an effect so severe that consent for the project should be refused planning permission. For example, many projects with significant negative ecological effects can be lawfully permitted following EIA procedures as long as the mitigation hierarchy has been applied effectively as part of the decision-making process.
- 5.27. In broad terms, significant effects encompass impacts on structure and function of defined sites, habitats or ecosystems and the conservation status of habitats and species (including extent, abundance and distribution).
- 5.28. Significant effects should be qualified with reference to an appropriate geographic scale. For example, a significant effect on a Site of Special Scientific Interest or Natural Heritage Area (Ireland) is likely to be of national significance. European case law is specific regarding significance in relation to European sites and Annexed habitats<sup>88</sup>. However, the scale of significance of an effect may not be the same as the geographic context in which the feature is considered important (Chapter 4). For example, an effect on a species which is on a national list of species of principal importance for biodiversity may not have a significant effect on its national population. Examples of other relevant scales include regional and county. It should be noted that effects may be significant at the local scale, particularly in view of policies for no net loss of biodiversity.
- 5.29. When seeking mitigation or compensation solutions, efforts should be consistent with the geographical scale at which an effect is significant. For example, mitigation and compensation for effects on a species population significant at a county scale should ensure no net loss of the population at a county scale. The relative geographical scale at which the effect is significant will have a bearing on the required outcome which must be achieved.

### **Determining Ecologically Significant Effects**

#### ***Designated/defined sites and ecosystems***

- 5.30. Significant effects encompass impacts on structure and function of defined sites and ecosystems. The following need to be determined:
- For designated sites – is the project and associated activities likely to undermine the site's conservation objectives, or positively or negatively affect the conservation status of species or habitats for which the site is designated, or may it have positive or negative effects on the condition of the site or its interest/qualifying features?
  - For ecosystems – is the project likely to result in a change in ecosystem structure and function?

Consideration should be given to whether:

- any processes or key characteristics will be removed or changed
  - there will be an effect on the nature, extent, structure and function of component habitats; or
  - there is an effect on the average population size and viability of component species.
- 5.31. Consideration of functions and processes acting outside the formal boundary of a designated site is required, particularly where a site falls within a wider ecosystem e.g. wetland sites. Predictions should always consider wider ecosystem processes.
- 5.32. Many ecosystems have a degree of resilience to perturbation that allows them to tolerate some biophysical change. Ecological effects should be considered in the light of any information available or reasonably obtainable about the capacity of ecosystems to accommodate change.

### **Habitats and species**

- 5.33. Consideration of conservation status is important for evaluating the effects of impacts on individual habitats and species and assessing their significance:
- Habitats – conservation status is determined by the sum of the influences acting on the habitat that may affect its extent, structure and functions as well as its distribution and its typical species within a given geographical area.
  - Species – conservation status is determined by the sum of influences acting on the species concerned that may affect its abundance and distribution within a given geographical area.
- 5.34. In many cases (e.g. for species and habitats of principal importance for biodiversity), there may be an existing statement of the conservation status of a feature and objectives and targets against which the effect can be judged. However, not all species or habitats will be described in this way and the conservation status of each feature being assessed may need to be agreed with the relevant SNCO and set out in the EclA. The conservation status of a habitat or species will vary depending on the geographical frame of reference.
- 5.35. When assessing potential effects on conservation status, the known or likely background trends and variations in status should be taken into account. The level of ecological resilience or likely level of ecological conditions that would allow the population of a species or area of habitat to continue to exist at a given level, or continue to increase along an existing trend or reduce a decreasing trend, should also be estimated.

### **Precautionary Principle**

- 5.36. The evaluation of significant effects should always be based on the best available scientific evidence. If sufficient information is not available further survey or additional research may be required. In cases of reasonable doubt, where it is not possible to robustly justify a conclusion of no significant effect, a significant effect should be assumed. Where uncertainty exists, it must be acknowledged in the EclA.

### **Alternative Approaches**

- 5.37. There are a number of approaches for determining the significance of effects on ecological features. This includes methods for scoring and ranking impacts on the basis of subjective criteria. Results are often presented in the form of a matrix, for example in which ecological value/importance and magnitude of impact are combined into a significance score. If using this approach, it is very important to make a clear distinction between evidence-based and value-based judgements so that decision-makers and other stakeholders are aware of the level of subjective evaluation that has been used. Spurious quantification should be avoided in which numerical scores or significance rankings are used without a clear definition of the criteria and thresholds that underpin them.
- 5.38. This guidance avoids and discourages use of the matrix approach. In circumstances where ecologists are required to fit an assessment into a different format than that outlined in these Guidelines, it is recommended that the approach set out here is applied as far as possible to enable decision-makers to understand the evidence base.

### **Example Assessment of the Significance of Effects**

- 5.39. The example assessment in Appendix 1 considers the likely effects of a road-widening scheme on a Cetti's warbler population. These changes are described and their effects on the population are characterised by reference to the ecosystem on which the birds rely. The likely effect on the conservation status of the population is considered with reference to current status and conservation objectives to determine whether the effects are significant or not. A summary of impacts is given in a separate table at the end of Appendix 1.
- 5.40. The example assessment documents both the significance of the effects without mitigation, and the significance of the effects of the residual impacts taking mitigation into account. Some EclAs only document the significant effects of the residual impacts. Both methods are acceptable. However, documenting the effects of impacts without mitigation can help to make the EclA more transparent and can be useful to the competent authority when assessing the adequacy of proposed mitigation.

## 6. AVOIDANCE, MITIGATION, COMPENSATION AND ENHANCEMENT

### Introduction

- 6.1. A sequential process should be adopted to avoid, mitigate and compensate ecological impacts. This is often referred to as the 'mitigation hierarchy' (see 1.19 and 5.1). For most projects, avoidance, mitigation, compensation and enhancement measures should be identified as part of the EclA process.

### Avoidance and Mitigation

- 6.2. Impacts should always be avoided where possible, for example by deciding not to locate a project in a particular area or making a change to scheme layout to ensure no negative impacts. Avoidance can also be part of mitigation. Mitigation includes measures to avoid or reduce the negative impacts of a project, for example careful timing of an activity to prevent an impact occurring.
- 6.3. Avoiding and/or minimising impacts is best achieved through consideration of potential impacts of a project from the earliest stages of scheme design and throughout its development. Many impacts can be avoided or reduced by consideration of alternatives.
- 6.4. Measures incorporated into the scheme design are often described as 'embedded mitigation' or 'mitigation by design'. This can include the re-design of the layout of the scheme, or adjusting the location of certain activities. Mitigation by design is particularly beneficial as there is greater certainty that it will be delivered. Wherever possible mitigation should be by design rather than left to a request by the competent authority. In Ireland, NPWS has produced guidance for developers in the construction and extractive sectors<sup>89</sup>. The efficacy and any potential knock-on effects of both embedded and non-embedded mitigation should always be assessed.

### Compensation

- 6.5. Compensation describes measures taken to make up for residual effects resulting in the loss of, or permanent damage to, ecological features despite mitigation. For example, it may take the form of replacement habitat or improvements to existing habitats. Compensation can be provided either within or outside the project site (defined by the red line of a planning application).
- 6.6. As a general rule, compensation should be focused on the same type of ecological features as those affected and equivalent levels of ecological 'functionality' sought. There will be cases when it is not possible to achieve ecological equivalence through compensation. Any replacement area should be similar in terms of ecological features and ecological functions that have been lost or damaged, or with appropriate management have the ability to reproduce the functions and conditions of those ecological features. Compensation should be provided as close as possible to the location where effects have occurred and benefit the same habitats and species as those affected.
- 6.7. Due to the uncertainty inherent in compensation, particularly in cases which require ecological restoration or habitat creation, replacement ratios greater than one-to-one may be appropriate for delivery of compensatory habitats or ecosystems. The scientific basis for deriving appropriate ratios is not exact and will vary depending on the habitat or species concerned. Increased replacement ratios can also help take account of the time lag in delivering compensation and regaining the same maturity, complexity and diversity of habitats and the full complement of associated species.
- 6.8. Biodiversity offsets is a concept that can provide a comprehensive approach to compensation and ensuring 'no net loss'<sup>90</sup>. Box 17 summarises biodiversity offsets.

#### Box 17: Biodiversity offsets

Biodiversity offsets are a form of compensation which may be considered when a development is expected to have significant residual impacts on biodiversity despite planned mitigation measures. Biodiversity offsets have a formal requirement for measurable outcomes. The main requirement is to quantify losses (through effects) and gains (through offsets) using the same 'metric', for example hectares of habitat of a particular quality<sup>91</sup>. Using an offset metric in this way provides for transparency of outcome and enables explicit demonstration of 'no net loss'.

'Biodiversity' or 'habitat' banks are a useful component of an offset system, holding stocks of land where biodiversity improvements are/have been made and can be made available for compensatory provision. They are particularly useful where there are high levels of uncertainty about restoration success or where there could be a long delay between an impact occurring and successful restoration/creation. An offset metric should be used to determine the equivalence of the compensatory provision in comparison with the impacts and effects.

- 6.9. The delivery of compensation measures, including biodiversity offsets, is likely to involve access to land, or land purchase, outside a scheme footprint and a commitment to long-term management through legal agreements. They therefore require early consideration in project design. The principles of offsetting should be agreed with the competent authority at an early stage, particularly where this is not clearly set out in a policy or biodiversity offsetting strategy.
- 6.10. The distinction between mitigation and compensation can be difficult to determine. Where ecological equivalence can be delivered within the project site this is sometimes incorrectly considered mitigation rather than compensation. However, the correct distinction between mitigation and compensation is that mitigation reduces the extent of effects occurring and compensation addresses effects which are residual, after avoidance and mitigation have been considered. Measures to address impacts and effects that will occur should therefore be referred to as compensation whether the compensation is located within or outside of the project site.

### **Enhancement**

- 6.11. It is important that development is sustainable and that projects produce a net gain for biodiversity and nature conservation. National policy promotes the inclusion of measures to enhance biodiversity within development proposals. Enhancement of biodiversity should be an objective of all projects.
- 6.12. Enhancement is the provision of new benefits for biodiversity that are additional to those provided as part of mitigation or compensation measures, though they can be complementary. For example, mitigation for bats may involve erecting bat boxes in a woodland to replace suitable bat roosting features that have been removed, and the woodland habitat itself may be enhanced for foraging bats by increased woodland planting and the creation of glades. Enhancement could be linked to the delivery of wider socio-economic benefits such as wetland restoration and flood risk management. Enhancement measures should be described in the EclA.
- 6.13. Enhancement measures should be designed to deliver biodiversity objectives that are specified in relevant policy documents, and evidence should be provided to support the likelihood of delivering the predicted benefit. They should be incorporated into scheme design and assessed within the EclA. To ensure that enhancements are enduring, their delivery and management should normally be guaranteed through a legal obligation, such as, in England and Wales, a planning obligation under section 106 of the Town and Country Planning Act 1990<sup>92</sup>, or its equivalent provision elsewhere, as well as other permits and consents.

### **Designing Mitigation and Compensation**

- 6.14. The design of mitigation and compensation measures is an iterative process. It needs to consider what is realistically achievable and the likely extent to which success can be guaranteed, based on good practice guidance and evidence<sup>93</sup>. Measures need to be agreed and a commitment made by the developer before a planning application is submitted to the competent authority. Such commitments must then also be agreed with the competent authority and secured through appropriate planning conditions, consents, permits and/or legal agreements. The aim should be to provide the competent authority with as much certainty as possible over the likely effectiveness and deliverability of the proposed measures (see BS 42020 clauses 6.6 and 8.1<sup>94</sup>).
- 6.15. Mitigation and compensation measures should address specific effects. For example, where a development will result in an effect on the conservation status of a population of great crested newts (or, for example, common frog and smooth newts in Ireland) through the loss of terrestrial foraging habitat, compensation should involve the provision of new foraging habitat rather than new breeding ponds. Mitigation and compensation measures should achieve long-term results. Their duration should match the duration of the impact.
- 6.16. Mitigation, compensation and enhancement measures should have defined criteria for success, which allows success or failure to be measured by monitoring. It is not appropriate to propose measures that cannot be delivered within a reasonable time frame, or simply present a wish-list of measures.
- 6.17. However, mitigation measures can include 'contingency measures' where there is uncertainty as to whether or not an effect will occur. For example, this may be relevant to effects that only occur if activities take place at particular times of year (such as site clearance during the bird nesting season), or as a result of unpredictable changes (such as where a badger sett, absent at the time of the EclA, has been established prior to construction). In such cases the contingency measures should identify how such issues will be resolved and consider the possible effects on the project programme.
- 6.18. For many species, particularly those with legal protection, there is published guidance that describes appropriate approaches to mitigation. In some cases it will be necessary to design new approaches to mitigate an effect, and the advice of relevant experts and statutory and non-statutory consultees should be sought. If standard methods are not being used, this will need to be explained and justified.
- 6.19. In some cases compensation measures will need to be in place and 'functioning' before the significant harm occurs. This is particularly likely where the effect is on designated sites or legally protected species. Lead-in times to deliver the measures will need to be carefully considered and explicitly stated in the EclA.
- 6.20. The design of mitigation and compensation measures should be revisited with other members of the design team as there may be constraining factors or knock-on effects that need to be considered by other specialists: an integrated approach will increase successful delivery of the design. Should mitigation for one habitat or species

have an adverse effect on another, it may still be appropriate to implement the mitigation, although the adverse effects will need to be considered in the assessment.

## **Delivery**

- 6.21. Mitigation and compensation measures often carry a degree of uncertainty. Uncertainty associated with a design will vary according to a number of factors, and where necessary these should be discussed in the relevant section of the EcIA. Factors to be considered include:
- Technical feasibility of what is proposed – using experience from projects where a similar measure has been carried out.
  - Overall quantity of what is proposed – Is it large enough to be viable? Is it of equivalent function to any habitat lost?
  - Overall quality of what is proposed – Does it compare favourably with features lost or damaged?
  - Level of commitment – Is there a realistic understanding of the resources and effort required to achieve predicted outcomes?
  - Provision of long-term management.
  - Timescale for predicted benefits.

## **Reporting Mitigation, Compensation and Enhancement**

- 6.22. The description of mitigation, compensation and enhancement measures within the EcIA must be sufficient to allow the competent authority and relevant stakeholders to see clearly how effects will be addressed. The level of detail needed will vary between schemes, between different measures within a scheme and should include quantity, location, timing, techniques and resources.
- 6.23. It is helpful to set out how a project has evolved in response to ecological considerations and to indicate how mitigation that has been incorporated into the scheme design has avoided or minimised adverse impacts. Presenting the results of the assessment 'with' and 'without' mitigation allows the need for mitigation and/or compensation to be clearly identified. Where mitigation is fully integrated into the scheme and there is high confidence that it will be implemented, it may be appropriate simply to assess the significance of effects of the mitigated project, with this assessment reflecting the likelihood of the incorporated measures being successful. Where there is any uncertainty, then the with/without mitigation approach to assessment described above should be used to ensure transparency.
- 6.24. Ideally, details of mitigation, compensation and enhancement measures will be incorporated into an Ecological Design Strategy (EDS) or Environmental Management Plan (EMP)<sup>95</sup> which sets out methods and responsibilities for delivery. The plan should detail timescales for delivery and key criteria for judging success.

## **Monitoring**

- 6.25. The EcIA should identify where monitoring is required for mitigation, compensation and enhancement measures, setting out the methods to be used, the criteria for determining success/failure, appropriate timing, mechanisms for implementation, frequency and duration of monitoring, and frequency of reporting.
- 6.26. Monitoring should be secured through a planning condition or obligation built into legal agreements, which the proponent must implement fully (Chapter 7). Monitoring may be used to determine:
- whether the measures have been implemented as agreed;
  - the success/effectiveness of the measures;
  - early warning of proposed measures which are not proving effective; and
  - how to remedy the situation should any of the implemented measures fail e.g. due to lack of management.
- 6.27. Where measures are routinely applied and can be relied upon to deliver well tried and tested mitigation, monitoring is unlikely to be necessary, so long as the competent authority is able to enforce the measures. However, where there are uncertainties in predicting the effectiveness of measures, or mitigation packages are novel, monitoring will be required to determine whether the predicted efficacy of the mitigation meets expectations.
- 6.28. It is vital that monitoring has clear indicators of success or failure, set against a suitable baseline. Monitoring needs to have clear aims and objectives to specifically determine the success of the measures, both in the short-term and longer-term. Longer-term monitoring is appropriate where:
- the success or failure of the measures will take longer to assess – such as for some habitat creation/management measures; or
  - the mitigation is relevant to a feature upon which the effects may vary during the life of the project.
- 6.29. It is important that there is an agreed robust feedback mechanism to ensure that where objectives have not been met, provision is made for remedial measures and these are implemented.
- 6.30. Ideally the results of monitoring should be widely shared, to inform the design of mitigation, compensation and enhancement measures of other projects.



## 7. CONSEQUENCES FOR DECISION-MAKING

### Introduction

- 7.1. The competent authority determines whether the mitigated project:
  - complies with legal requirements e.g. for protected species;
  - meets national and local policy goals and objectives; and
  - requires conditions and legal obligations attached to the consent concerning detailed design, implementation and monitoring of the project.
- 7.2. The scoping stage presents the first opportunity to make explicit the legal and policy context. Everyone engaged in the process should be fully aware of, and constantly referring back to, the legal and policy context that applies to the area and issues being studied, and the context of the case. Failure to take account of the legal and policy context, and to provide sufficient information to comply with this, may lead to delay and can result in an application being refused or a decision challenged.
- 7.3. The consequences, in terms of development control/management, will depend on the importance of the ecological features and the significance of effects upon them and the relevant legislation, policy, and guidance.

### Legal Implications

- 7.4. The legal implications arising out of an EclA should be made explicit and legal advice sought as necessary. Where an EclA is undertaken to inform an EIA it is subject to the relevant EIA Regulations.
- 7.5. The findings of an EclA are a material consideration in the planning process and other consent regimes. The competent authority must be provided with all the information needed to assess and evaluate the likely significant environmental effects of a project. The competent authority has the duty to consider the environmental information before it reaches a decision regarding the granting of consent. Key aspects of the EclA report that the competent authority should take into account when determining an application include<sup>96</sup>:
  - The soundness of technical content of ecological information including
    - adequate and up-to-date data
    - ecological methods in accordance with good practice
    - departures from good practice made clear.
  - Whether ecological features are likely to be affected and all potential impacts are described adequately.
  - Whether effects are significant and, if so, are capable of being mitigated.
  - Whether the mitigation hierarchy has been applied.
  - Whether it is adequately demonstrated that the proposal will deliver stated outcomes, with regard to likely effectiveness and certainty over deliverability.
  - Whether the measures are capable of being secured through appropriate planning conditions and/or obligations, and/or are likely to be permitted through other consent regimes e.g. licences for European Protected Species.
  - Whether the proposals are compliant with statutory obligations and policy.
  - Whether there is clear indication of likely significant losses and gains for biodiversity.
  - Whether any material considerations have been identified that might require changes to the application.
- 7.6. When determining a planning application, the competent authority should not adopt a 'wait and see' approach. It **should** not impose a condition requiring further work to identify the likely environmental effects after permission has been granted. It is a well-established principle that the planning authority should ensure it takes account of **all** material considerations before making its decision (and does not take account of immaterial considerations not **relevant** to planning). It is therefore crucial that all information about the potentially significant ecological effects of the proposal is available to the planning authority before it grants permission.
- 7.7. Where the competent authority considers that the information is insufficient it can request further information or evidence to verify the information already provided. Working closely with the decision-maker, statutory bodies and other consultees during the assessment process should help reduce the likelihood of the competent authority needing to do this.

### Policy Implications

- 7.8. All parties engaged in EclA should be familiar with the national and local policies that are relevant to a project. Key national policy documents that should be considered during EclA can be found on government websites and local policy documents are usually available on local authority websites.
- 7.9. If the project being assessed has emerged from the process of preparing a development plan for which a SA or SEA has been undertaken, the results of the SA/SEA may be relevant to the EclA: SA/SEA requires the explicit consideration of alternatives to the project, biodiversity objectives and outcomes. These results should be taken into account along with any mitigation measures, recommendations and monitoring.

## Implications for Detailed Design and Implementation

- 7.10. Conditions, planning obligations and legal agreements are often needed to secure and enforce the implementation of mitigation, compensation and enhancement measures outlined in an EclA. These obligations can be enforced by the competent authority. This can be particularly challenging when the obligations were developed with one organisation but a different organisation implements the consent.
- 7.11. All parties should understand the actions they need to take during the implementation stages of a project. This will mean identifying and designing in detail the measures necessary to avoid, mitigate and compensate negative effects, and any measures necessary to achieve enhancements. Details of these measures will be set out in the EclA and may be presented in an Environmental Management Plan (EMP) or similar document.
- 7.12. The project proposer should demonstrate commitment to the package of mitigation, compensation and enhancement measures. This is most effectively done by proposing to enter into a legally enforceable agreement, such as, in England and Wales, a planning obligation under section 106 of the Town and Country Planning Act 1990, consent /permit conditions in Ireland and/or its equivalent provision elsewhere. It would normally be between the proposer / developer / landowner and the planning authority, with input from the professional ecologist working on the project. The relevant instrument can include specific obligations which may be set out in detail in a schedule, and may take the form of a Mitigation, Compensation and Monitoring Agreement (MCMA) in the UK or a Monitoring Programme/Plan in Ireland. This should include a detailed explanation of what is to be done, how it will be achieved, where and when it is to be carried out, and who is responsible for ensuring that works are undertaken as proposed. The information provided should include:
- summary of the impacts to be addressed, with clear description of whether they will be dealt with by mitigation measures or compensation measures, and explicit reference to supporting data to ensure an audit trail;
  - details of how the proposed measures will be funded;
  - location and extent of the proposed measures on scale plans;
  - a timetable for implementation of design options and integration with phases of development e.g. construction, operation, habitation, decommissioning, restoration;
  - expertise of persons responsible for implementing design options;
  - availability and security of land to implement the design options;
  - a description of all other resources required to implement the design options;
  - a statement of how design options will be secured within the planning process or consent process;
  - details of proposed liaison with local experts and how local people can contribute ideas;
  - supervision during works by an Ecological Clerk of Works or Project Ecologist;
  - a monitoring scheme to evaluate the success of mitigation measures and/or compensation measures;
  - remedial measures in the event that mitigation measures and/or compensation measures are unsuccessful or there are unforeseen effects; and
  - proposed auditing/reporting and publication procedures.
- 7.13. A clear audit trail should be maintained by both the project proposer and the competent authority to explain the rationale behind the adoption of particular conditions, offsetting measures and monitoring. This is particularly important where the final project is completed by a successor body inheriting these responsibilities.

## APPENDIX 1: Example Assessment of the Significance of Effects: Impacts of road widening on a population of Cetti's warblers

**Note:** The worked example provided below, whilst intended to be as realistic as possible, is fictitious and for illustrative purposes only. Its aim is to show the general principles of how the approach to EclA recommended in these Guidelines might be applied in practice. The actual values of various parameters and the conclusions reached could differ in a real situation; other parameters could be relevant and other research findings brought to bear.

### The scheme proposals and key biophysical changes

The hypothetical road scheme involves widening a 3 km stretch of two-lane road (c. 9.3 m wide) into a dual carriageway with hard strips (final hard surface increase to c. 19.1 m). This scheme is being implemented largely to take traffic out of the centre of a country town. The widening will require the removal of improved grassland in this location. The scheme is located within the county of Cymrent in the west of Britain and is aligned north-south. Once commissioned, the scheme would permit an almost three-fold increase in traffic volume from 9,500 to an estimated 28,000 vehicles per day and an increase in average speed from 80 kph to 100 kph (c. 50 mph to 60 mph). Site clearance would occur over a six week period, and it is intended to complete the construction works within eight months.

### Description of ecological features

- The feature being assessed is a local population of five breeding pairs of Cetti's warblers *Cettia cetti*.
- Approximately 50 m to the east of the A road is a 25.5 ha County Wildlife Site (CWS) called 'The Cuts', which runs parallel to the A road for some 400 m and some 640 m away from it to the east. 'The Cuts' supports five pairs of Cetti's warblers (as well as a diverse range of other species including whitethroat, willow warbler in notable numbers and occasional uncommon migrants, which are not considered further here but which might experience similar impacts to the Cetti's warblers). 'The Cuts' comprises six marshy grassland fields, demarcated by ditches and hedgerows on low bunds. These hedges consist of dense stands of blackthorn, bramble, common alder and grey and goat willow. Common nettle and great hairy willow-herb occur densely adjacent to the bunds. There is a 0.5 ha area of open water and a 1.5 ha reedbed at the centre of one field, but due to natural succession this zone is rapidly being invaded by scrub. The territories of the Cetti's warblers are localised along the bunds, extending typically for lengths of up to 400 – 500 m (in four of the five cases along two or three sides of a field) the birds defending areas of hedgerow, ditch and tall marshland up to c. 20 m either side of the mid-point of the bunds. This average territory size is in keeping with that found in other sites in Britain, though there is high variability (see Snow and Perrins 2000). According to the local Wildlife Trust, territories extend neither into the easternmost c. 150 m of 'The Cuts', where the ditches are dry due to the over-abstraction from local watercourses and boreholes for agriculture, nor into the westernmost 100 m or so (nearest the existing road).
- The Cetti's warbler was unknown in Britain until 1961. Breeding was first recorded in Kent in the early 1970s. This is a species on the northern edge of its European range that is expanding fairly rapidly in population size and geographical extent (northwards) in response to the recent series of relatively mild winters. It is thought susceptible to very cold winter weather and its population in the mid-eastern counties of England was eradicated by some of the cold winters in the 1980s. The current population size is estimated at over 850 breeding pairs (based on numbers of singing males in 2002), two thirds of this population being in the south-eastern counties of England. Wales was colonised from 1980. The population in Cymrent has been estimated at 50 pairs (singing males).
- Male Cetti's warblers advertise territory with loud song sung from deep cover. Recent research has shown that these songs are highly individual and that recognition of specific neighbours occurs.
- 'The Cuts' is accessed by a footpath usable by the landowner and permit-holding members of the local Wildlife Trust and there is a bird watching hide near the reedbed.
- Habitat throughout 'The Cuts' is still largely in overall 'good' condition for the species, but water supply to the marshy grassland has been steadily diminishing, mainly as a result of increasing agricultural abstraction to the east combined with a climatic pattern of dry summers. Associated with this change, some willow encroachment is occurring and beginning to shade out the reedbed and open water habitat. This steady reduction in water table has also been associated with reports of diminished insect abundance by the local Wildlife Trust which monitors the site, especially in the eastern parts of the site where the ditches have in places dried up.
- On the other side of the road to 'The Cuts', but 500 m from it to the west, is a larger area of similar wetland, which supports a further three pairs of Cetti's warblers; this is on private land with no public access.

#### Legal and policy framework

- Cetti's warbler is a species listed on Annex II of the Berne Convention and Schedule 1 of the Wildlife and Countryside Act 1981 (as amended). Legal protection in Britain prohibits killing, injury, damage/destruction of nests, and disturbance of adults/young while a nest is in use or being built. Cetti's warbler is not listed on Annex 1 of the Birds Directive and is considered a 'green list' species (status secure) by the RSPB.
- Cetti's warbler is on the statutory nature conservation organisations' 'sensitive species trigger list'.
- Despite this 'secure status' nationally, the Cymrent Local BAP requires the maintenance at favourable conservation status of all existing viable areas of habitat for Cetti's warbler. The Local BAP also prescribes the creation of a further 50 ha of habitat for Cetti's warbler in the County. The Local Development Framework requires that care is taken not to adversely affect wetlands of ecological value.
- Sections 238(1) and 246(1) of the Highways Act 1980 gives a Highway Authority the power to:  
*'Acquire land, compulsorily or by agreement, for the purpose of mitigating any adverse effect which the existence or use of a highway constructed or improved by a Highway Authority has or will have on the surroundings of the highway.'*

Mitigation under these powers, however, does not include compulsory land purchase for the purposes of net ecological enhancement. Highways Authorities also have the duties of ensuring the wise spending of public money and that roads are safe.

#### Factors on which the Cetti's warbler population depends

- Continuity of physical habitat: many areas of suitable habitat have been lost through conversion to intensive agriculture, infill for development, and dumping.
- Appropriate water supply: many areas of suitable habitat have been lost indirectly through changes in water status, including reduced water supply and water quality. Eutrophication through leaching and run-off from fertiliser applied to agricultural land can lead to increased growth and dominance of vigorous plant species that can then lead to a loss of biodiversity and may also cause reed death.
- Appropriate management: lack of, or inappropriate management of fens and reedbeds, can lead to drying, scrub encroachment and succession to woodland.
- Control of disturbance: Cetti's warbler is a songbird and hence likely to be affected by traffic noise. In the absence of species-specific data it is assumed that Cetti's warbler response to road noise is an average for passerines (see below).
- Genetic interchange with other populations: this is necessary to avoid extinction through inbreeding depression in a small population.

#### Importance of Cetti's warbler population

- At the time of study the British population is estimated at over 850 pairs and the Cymrent population at over 50 pairs. Thus, five pairs represent 10% of the county population in this example. The recent series of mild winters has facilitated a great increase in population of this species as well as an expansion of its range northwards and westwards into Wales. However, this is still an uncommon breeding bird species, dependent on a vulnerable wetland habitat type and a species that is very susceptible to the effects of any potential cold winters. Taken together, these factors suggest that the local population of Cetti's warblers in 'The Cuts' is at least of County Importance for biodiversity.
- 'The Cuts' is deemed by members of the local Wildlife Trust to be one of the best sites in Cymrent to hear and see Cetti's warblers, and the site also attracts a number of other interesting species on passage migration. The site is therefore considered to be of County importance for social/community value.

#### Ecological Impact Assessment

- It has been shown in this case (for simplicity) that the hydrology of 'The Cuts' would not be directly or indirectly affected by the dualling of the road. There would be no direct physical impact on the marshy fields or habitat of the Cetti's warblers through the works or any associated ancillary works. The potential negative effects on the Cetti's warblers to be considered then are those that would result from increased disturbance levels during construction and operation and the increased risk of killing birds and isolation of birds during operation.

### **Construction impacts: site clearance during the breeding season**

#### *Proposed activity, duration of activity, biophysical change and relevance to the feature in terms of ecosystem structure and function*

Site clearance and construction activities would result in increased noise over eight months. Ambient noise level increases would be variable, but at times there could be considerable increases in noise levels. This would change the noise environment within and near bird territories, creating the potential for impact on the audibility of territorial song and an increase in general stress levels, and hence negative effects on the ability of birds to hold territories and breed successfully.

#### *Characterisation of unmitigated impact on the feature*

If works were to take place within the breeding season, there would be a negative impact, probably extending c. 500 m from the road and affecting the whole Cetti's warbler population of 'The Cuts'. It is not possible to quantify the magnitude of effect from the available literature. The effect of the construction noise would last longer than the duration of the noise and should be considered effectively permanent through the construction period. The duration of effect would be just one breeding season, but abandonment could be permanent for some individuals. Nevertheless, the effect would be likely to be reversible in time, once construction was over.

#### *Rationale for prediction of effect*

The effects of such variable noise disturbance on breeding of both Cetti's warblers in particular, and birds in general, at different distances from the source of disturbance, are very little understood. Even though the Cetti's warbler song is particularly loud, clarity or individual recognition ability might be lost against background noise. It is also possible that construction noise might cause increased general stress (Reijnen et al. 2002), if not site abandonment. Cetti's warbler is very susceptible to cold weather and a small population could be wiped out in a severe winter especially if already 'stressed'. On a precautionary basis, it is considered likely that this temporary impact could negatively affect the conservation status of the local population.

#### *Effect without mitigation*

A significant negative effect at the County level is concluded. The Cetti's warbler is listed on Schedule 1 of the Wildlife and Countryside Act 1981 and hence protected from disturbance whilst breeding. The potential therefore exists for a breach of relevant legislation.

#### *Mitigation*

Construction works in the stretch should avoid the breeding season as far as possible. If this were not possible, then the only practicable means of reducing the noise would be the installation of a permanent sound barrier in advance of construction works.

#### *Significance of effects of residual impacts after mitigation*

Any effect of construction outside the breeding season would not be significant. With the sound barrier, any effect of construction noise would be unlikely to be significant.

### **Operational impacts 1: increased background noise due to increased traffic volume and speed**

#### *Proposed activity, duration of activity, biophysical change and relevance to the feature in terms of ecosystem structure and function*

Increased traffic volume and speeds in perpetuity would lead to a permanent increase in ambient noise levels, which would penetrate further into the Cetti's warbler habitat. This would have a potential impact on audibility of territorial song and hence ability of birds to hold territories and breed successfully. This impact, combined with increased background visual sources of potential disturbance (car lights and movement), could increase general stress levels. Such impacts can extend for several hundreds of metres from a road (see Reijnen et al. 1995).

#### *Characterisation of unmitigated impact on the feature*

The result of such changes, if unmitigated, would be a negative effect on the Cetti's warbler population in 'The Cuts'. Its extent would encompass all currently viable breeding habitat for the Cetti's warbler in 'The Cuts' (see 1.3 below). The effect would be effectively permanent and not reversible, as noise would always be affecting the population.

#### *Rationale for prediction of effect*

Although not specifically developed in relation to Cetti's warblers in Britain, the best available model for predicting impacts in this case is the guidance developed to predict the effects of road noise on song-birds in Holland including warbler species (Reijnen et al. 1995). The tables in this publication have been used to inform the present example. This Dutch model

is considered to be applicable as the road in question meets all of the criteria set by the model. The distance from the road at which no impact on songbirds in fairly open habitat (<30% woodland) generally would be expected to occur with mean traffic speeds of 80 kph (50 mph) and 9,500 vehicles per day, would be around 185 m (Reijnen et al. 1995 Table 2). The local population of Cetti's warblers in 'The Cuts' should accordingly be assumed (on a precautionary basis) to be already somewhat compromised and/or limited by the availability of habitat that is free from road-related disturbance. Such disturbance applies to at least the first 135 or so metres of 'The Cuts' (20%) from the western edge (nearest the road) and might explain the relative lack of sightings of Cetti's warblers reported by the local Wildlife Trust from this band of 'The Cuts'. With the increase in traffic volume to 28,000 vehicles per day and speed to 100 kph (60 mph), this impact distance could increase by over 300%, to at least 565 m (Reijnen et al. 1995 Table 5), that is, 580 m from original A road edge, as the dual carriageway is c. 15 m wider. This predicted impact zone would, therefore, encompass the whole area of 'The Cuts' containing habitat currently suitable for Cetti's warbler. These biophysical changes would decrease the quality of the breeding habitat. The Cetti's warblers might relocate their breeding locations to other parts of 'The Cuts', in which case territories would be smaller and possibly extend into less suitable habitats, negatively affecting fitness. It is likely that it would lead to site abandonment by several pairs (based on the average reductions noted by Reijnen et al. 1995, p.33, loss of at least 2 to 3 pairs is likely). Accordingly, it is considered that the conservation status of Cetti's warbler in 'The Cuts' would be negatively affected.

#### *Effect without mitigation*

There will be a significant negative effect at the County scale.

#### *Mitigation*

Policy and the legal requirement to avoid intentional or reckless disturbance to a Schedule 1 bird clearly indicate a need to mitigate fully for this impact. Two measures are proposed to achieve this:

- (a) The purchase of the land between the road and the wetland and its planting with both a native woodland (willow, poplar and alder) belt c. 50 m in width with dense understorey scrub, extending this some 150 m north and south of 'The Cuts' and in addition, by agreement with the local Wildlife Trust (or by purchase if necessary), the extension of the same planting into the first 50 m of 'The Cuts' from the west. It is likely that this measure would reduce the impact distance on Cetti's warbler compared with an unmitigated scheme (based on an increase in 'wood fraction' to 0.5 to 0.9, see Reijnen et al. 1995 Table 4) to just 230 m from the old A road edge. Design of this woodland belt would need to consider potential impacts on other species e.g. barn owls. Whilst the impact distance after this mitigation would still extend some 95 m further into 'The Cuts' than it did before construction of the dual carriageway, the area of breeding territory away from the road (out of the impact zone) would be greater than this, and the net area of good habitat for Cetti's Warbler should remain the same or increase slightly.
- (b) The re-establishment of hydrological conditions that are favoured by Cetti's warbler in the part of 'The Cuts' that is currently too dry and lacking territories. This would be achieved with the agreement of the landowner through the amendment of the provision of a new water supply to the land for the farmer; via legal agreement in perpetuity. This should allow the Cetti's warblers to extend their breeding activity in the 140 m farthest from the road, outside of the predicted noise 'impact distance'. Accordingly, it is considered that these measures, taken together, would mitigate the loss of quality of much of the Cetti's warbler habitat in 'The Cuts' and hence maintain the conservation status of the population. Note that if agreement could not be obtained from the local Wildlife Trust to plant up the western edge of 'The Cuts', then a similar level of noise reduction would need to be obtained via the installation of an expensive, proprietary, noise barrier along the whole length of 'The Cuts' and 150 m beyond on either side, instead of woodland planting (Reijnen et al. 1995, Table 5.2). Such an installation could well be controversial in landscape terms and would require detailed assessment in this regard as well as ecologically.

#### *Significance of residual effects after mitigation*

There would be a short-term, (c. 5 years) negative effect on the Cetti's warbler population, significant at the County level until maturation of the mitigation measures with respect to habitat. However, in the long-term, it is likely that full mitigation would be achieved and the importance of the feature be returned to County level and there would be no residual effect of significance on the Cetti's warbler population in 'The Cuts'.

#### **Operational impacts 2: increased barrier effect and collision risk**

##### *Proposed activity, duration of activity, biophysical change and relevance to the feature in terms of ecosystem structure and function*

The scheme would result in > 50% physical increase in any barrier effect that the road might already be exerting on dispersal of adults and/or post-breeding dispersal of juveniles. This is especially the case given the presence of another known population of Cetti's warblers 500 m west of the A road out with the CWS. There would also be an increase in collision risk due to



increased traffic speeds, and perhaps volumes (though increased traffic volumes can actually increase the deterrent for crossing the road and hence actually reduce collision risk).

#### *Characterisation of unmitigated impact on the feature*

The biophysical change would exert a permanent negative impact on the whole local population of Cetti's warblers in 'The Cuts' and would be in practical terms irreversible (though compensation would be feasible).

#### *Rationale for prediction of effect*

It is considered that the existing A road is already acting to an extent as a deterrent to post-breeding or post-fledging dispersal of some individuals, and this effect might increase with the > 50% increase in width of the barrier and higher vehicular speeds. There are no means of quantifying this possible impact based on existing scientific knowledge. Any reduced dispersal could result in reduced genetic interchange between populations and increase the risk of genetic isolation and inbreeding depression. It is also the case that any individuals dispersing across the road would be exposed to a higher risk of collision with vehicles. This additional risk is also currently unquantifiable, but any adult mortality (or substantial juvenile mortality) in such a small population could notably increase local extinction risk. It is concluded that both the increased barrier effect of the nearby road and the increased collision hazard would negatively affect the conservation status of the Cetti's warblers in 'The Cuts'.

#### *Effect without mitigation*

It is considered that there would be a negative effect, significant at the County scale.

#### *Mitigation*

The potential impact cannot be confidently mitigated because 'green crossings' over roads are expensive and their likely success in attracting Cetti's warblers to cross safely rather than through the traffic stream is not possible to quantify from previous studies.

#### *Significance of residual effects after mitigation*

It is considered that the population of Cetti's warblers in 'The Cuts' will experience a permanent loss of conservation status, which would constitute a significant negative effect at the County scale.

#### *Compensation*

Compensation should be feasible by increasing the potential for population growth in other places in Cymreant. The County BAP has identified a strategy to achieve this, which includes the provision of a grant for land-owners to encourage them to manage existing habitats, or create new habitats for Cetti's warblers. An appropriate long term contribution to this grant fund will be made by the Highway Authority. It is likely that the proposed compensation would, in the longer term, increase the chances of success of a county-wide population enhancement strategy, resulting in no significant effect on Cetti's warblers in the county as a whole.

#### **Monitoring**

Linked to these mitigation proposals there would be a requirement for monitoring of the success of the mitigation in keeping with legal requirements. It is likely that the Highways Authority in this instance would monitor the growth and maturation of the proposed tree belt and arrange separate monitoring of the Cetti's warbler population, in this case almost certainly through the local Wildlife Trust.

**Note that a summary of impacts is given below on page 49**

#### **References for case study**

Reijnen, M.J.S.M., Veenbaas, G. and Foppen, R.P.B. (1995). Predicting the Effects of Motorway Traffic on Breeding Bird Populations. Ministry of Transport and Public Works, Directorate General for Public Works and Water Management, Road and Hydraulic Engineering Division; DLO - Institute for Forestry and Nature Research, Rijkswaterstaat.

Reijnen, R., Foppen, R.F., Veenbaas, G. & Bussink, H. (2002). Disturbance by Traffic as a Threat to Breeding Birds: Valuation of the Effect and Considerations in Planning and Managing Road Corridors. In: B. Sherwood, D. Cutler and J. Burton (Eds.) Wildlife and Roads: The Ecological Impact. Imperial College Press, London.

Snow, D. and Perrins, C. (2000) The Complete Birds of the Western Palaearctic on CD-rom. Oxford University Press.

**APPENDIX 1 cont'd: Summary of impacts of road widening on a population of Cetti's warblers (a population important at a county scale)**

Impacts	Characterisation of unmitigated impact on the feature	Effect without mitigation	Mitigation	Significance of effects of residual impacts (after mitigation)
<b>Construction Impacts – site clearance and construction</b>				
Increased noise disturbance	Increased noise disturbance affecting the ability of birds to hold territory if construction took place in the breeding season. There would be a negative impact (variable over the day/night cycle, but effectively constant) extending up to 500 m from the road and affecting c. 80% of the local population to varying extents over one breeding season.	Negative effect on breeding success in one season. Possible reduction in population size. Significant negative effect at the County scale. Possibly reversible as construction is only for one season.	<i>Option 1:</i> Avoidance of construction in the breeding season.  <i>Option 2:</i> Construction of permanent sound barrier in advance (see below).	<i>Option 1:</i> Negative effect on breeding success is avoided. There is no negative effect on the population or its conservation status  <i>Option 2:</i> Tried and tested engineering technique. Negative effect on breeding success is avoided. There is no effect on the population or its conservation status
<b>Operational Impacts – increased traffic volume and speed</b>				
Increased noise disturbance	Increased noise disturbance affecting the ability of birds to hold territory. Although there would be some year-round and night to day variation in levels of noise, the overall negative effect would be permanent. The extent would be at least 400 m beyond the current limit of effect of the existing road. This would not be reversible as noise will always be affecting the population without mitigation.	Permanent negative effect on breeding success. Reduction in population size. Significant negative effect at the County scale.	Combination of woodland buffer planting (or planting plus sound barrier), plus restoration of eastern part of the CWS to support Cetti's warblers.	Negative effect on breeding success. Significant negative effect on regional/ County population in the short-term (c. 5 years), Insignificant effect at in the long-term.

Increased barrier to bird movement	Increased barrier to bird movement and collision risk. Permanent impact on dispersal ability due to increased road width, higher vehicular speeds and collisions.	Permanent negative effect on breeding success and bird mortality. Reduction in population size. Significant negative effect at the County scale.	Cannot be readily mitigated.	Negative effect on breeding success and bird mortality at the County scale. Permanent negative effect on the local population. Compensation proposed by long term financial contribution to the provision of grants to land owners for the improvement of habitat for the species within the County. With compensation effects are not likely to be significant in the long-term at a County scale.
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## APPENDIX 2: Template for Ecological Impact Assessment (EclA)

This template, which is taken from CIEEM's Guidelines for Ecological Report Writing, should be used in accordance with the recommendations presented in those Guidelines. The template is intended to provide a logical and reasonable structure for those preparing Ecological Impact Assessment reports that will be submitted in support of a planning application. The template should be used to guide the topics and content to be included in such a report.

For assessments which clearly relate to a single species or species group (such as assessments relating to bats in a proposed barn conversion) it will be appropriate to simplify the report structure by combining sections or deleting headings for sections which are not needed (for example, cumulative effects or compensation may not be required in some cases, particularly for very small scale projects). However, whilst it may be appropriate to simplify the structure of the report, it is likely that the contents set out below will be relevant for schemes of any scale, and any major departures from this approach should therefore be clearly justified.

Section	Content
B1. Cover page	Report title. Date of report. Name and contact details of principal author. Name of individual/organisation who commissioned the report. Unique reference number so that the report can be referred to, including version number.
B2. Quality Assurance	Details of QA protocol
B3. Contents table	Provide page numbers for each section (and possibly also sub-sections), as well as figures, tables and appendices.
B4. Summary	A one page summary of: <ul style="list-style-type: none"><li>• Purpose of the report</li><li>• Description of the scheme</li><li>• Methodology</li><li>• Key impacts and mitigation measures</li><li>• Conclusions</li></ul> Consider also use of a finalised Ecological Constraints and Opportunities Plan (ECOP) as specified in BS42020 clause 5.4 as a graphical means of presenting key information.

Section	Content
B5. Introduction	<p>Name and qualifications of principal author.</p> <p>Name of individual/organisation who commissioned the report.</p> <p>Purpose of the report.</p> <p>Site name.</p> <p>Brief description of the site.</p> <p>Reference to a plan showing the site boundaries with an OS base.</p> <p>A brief description of the project, e.g. an outline planning application for residential development of the site.</p> <p>Reference to any previous reports provided for the site (e.g. a Preliminary Ecological Appraisal).</p> <p>Clear statement of the purpose of the report e.g.:</p> <ul style="list-style-type: none"> <li>• To identify and describe all potentially significant ecological effects associated with the proposed development</li> <li>• To set out the mitigation measures required to ensure compliance with nature conservation legislation and to address any potentially significant ecological effects</li> <li>• To identify how mitigation measures will/could be secured</li> <li>• To provide an assessment of the significance of any residual effects</li> <li>• To identify appropriate enhancement measures</li> <li>• To set out the requirements for post-construction monitoring</li> </ul>
B6. Planning policy and legislation	<p>Provide all key relevant planning policies (national and local).</p> <p>List all relevant legislation.</p> <p>It is important that this section is scheme-specific. Where a piece of legislation is relevant, explain why (i.e. which protected species are present).</p>
B7. Methodology B7.1 Scope of the assessment	<p>Describe the scope of the assessment, including:</p> <ul style="list-style-type: none"> <li>• A description of the Zone of Influence</li> <li>• List the types of ecological features considered, e.g. designated sites, habitats and species of principal importance for conservation of biodiversity, protected species, etc.</li> <li>• Describe any consultation that has taken place in relation to determining the scope of the assessment</li> </ul>
B7. Methodology B7.2 Desk study	<p>List the individuals or organisations that have been contacted.</p> <p>List the websites that have been used to search for relevant data.</p> <p>Describe the information that has been requested/searched for.</p> <p>Describe the study area (likely to vary in relation to different resources).</p> <p>State when data searches were carried out.</p> <p>List any ecological reports that have been reviewed, such as previous reports for the same site, or reports for adjacent sites (appropriately referenced).</p>

Section	Content
B7. Methodology B7.3 Field survey	<p>For each field survey undertaken provide:</p> <ul style="list-style-type: none"> <li>• Brief description of methodology</li> <li>• Names and qualifications of surveyors</li> <li>• Date(s) of surveys</li> <li>• Study area</li> <li>• Weather conditions at time of survey(s) and time of day (if relevant)</li> <li>• Reference to relevant guidance document (where appropriate)</li> <li>• Explanation of any departures from recommended guidance</li> <li>• Limitations</li> </ul> <p>Note: Where multiple survey visits have been undertaken, dates, times and weather conditions of surveys can be provided in a table in an appendix.  Note: Detailed descriptions of survey methodologies can be provided in an appendix.  Note: Where the field survey was an 'extended Phase 1 habitat survey' (or the equivalent in Ireland<sup>37</sup>), it is important to explain what was done in addition to the standard habitat survey, such as an assessment of the likely value of the hedgerows for dormice, or identification of any buildings or trees suitable for use by roosting bats, etc.</p>
B7. Methodology B7.4 Assessment	<p>Describe the assessment methodology used. In particular:</p> <ul style="list-style-type: none"> <li>• How has significance been determined.</li> <li>• What geographical contexts are used, and how have these been determined.</li> <li>• State which years have been assumed for the assessment of impacts (and for which baseline conditions have been described).</li> </ul>
B8. Baseline ecological conditions (General)	<p>Provide a clear description of the baseline conditions for all ecological features. This should be based on the conditions at the time that the activity giving rise to an impact occurs, assuming the absence of the development. In some cases this may require consideration of the baseline conditions in multiple years (for example, to account for operational phase impacts).  Include a statement of the geographical context within which each ecological feature is considered to be important. Provide a summary table listing all of the relevant ecological features and the geographical context within which each is considered to be important.</p>
B8. Baseline ecological conditions B8.1 Designated sites	<p>Provide details of all designated sites of relevance (or possible relevance) to the assessment, including name, level of designation, location relative to the site, and reasons for designation. In some cases it will be relevant to include a plan showing the location of designated sites.</p>



Section	Content
<b>B8. Baseline ecological conditions</b> <b>B8.2 Habitats</b>	<p>Provide a description of the habitat types present within the site and on immediately adjacent land. Focus should be given to habitat types identified as being of national or local importance for the conservation of biodiversity. This should make reference to a habitat map of the site, normally drawn in accordance with Phase 1 habitat survey methodology (or equivalent in Ireland). However, it should be noted that the habitat categories used by the Phase 1 habitat survey methodology do not mirror the habitat types considered to be conservation priorities, and further details will therefore need to be provided in some cases.</p> <p>The description should include all relevant information, such as dominant plant species present, notable plant species, and current management.</p>
<b>B8. Baseline ecological conditions</b> <b>B8.3 Species and species groups</b> <b>Note</b> This can be sub-headed as follows, for example: <ul style="list-style-type: none"> <li>i. Plants</li> <li>ii. Invertebrates</li> <li>iii. Amphibians</li> <li>iv. Reptiles</li> <li>v. Cirl buntings</li> <li>vi. Other birds</li> <li>vii. Bats</li> <li>viii. Badgers</li> <li>ix. Other mammals</li> </ul>	<p>Provide a description of the use of the site (or likely use of the site) by important species (national or local conservation priorities, or protected species). This should be based on a combination of desk study information, field survey data, and an assessment of the likely value of the habitats for each species present. The description for each species/group should combine the information provided from the various data sources, rather than including desk study and field survey information for the same species/group in different parts of the report.</p> <p>The detailed results of field surveys should be presented on plans (for some sites they can be included on the Phase 1 habitat map, or the equivalent in Ireland) and/or in appendices.</p> <p>In some cases it will be appropriate to group species together into species groups to avoid repetition.</p> <p>It will be appropriate to include the following species/species groups as a minimum for all sites:</p> <ul style="list-style-type: none"> <li>• Plants</li> <li>• Invertebrates</li> <li>• Amphibians</li> <li>• Reptiles</li> <li>• Birds</li> <li>• Bats</li> <li>• Badgers</li> <li>• Other mammals</li> </ul> <p>Additional species or species groups may also be appropriate, and it may be appropriate to further sub-divide the groups to provide a detailed description of certain species for example, such as marsh fritillary butterflies, great crested newts, cirl buntings, barbastelle bats, etc.</p>
<b>B9. Description of the proposed development</b>	<p>Provide a detailed description of the proposals with reference to appropriate drawings.</p> <p>Include a description of how the scheme has been designed to avoid/minimise ecological effects, if relevant.</p>

Section	Content
<p><b>B10. Assessment of effects and mitigation measures</b>  Note: This can be sub-headed as follows, for example:  B.10.1 Reptiles</p> <ul style="list-style-type: none"> <li>• Potential impacts</li> <li>• Mitigation measures</li> <li>• Significance of residual effects</li> </ul> <p>Potential impacts can be divided into different phases, but the significance of residual effects should relate to the project as a whole (i.e. all phases combined)</p>	<p>Identify and describe all of the potential impacts of the proposed development on each ecological feature identified in the 'Baseline Conditions' section, including impacts associated with all phases (construction, operation, restoration, de-commissioning, etc).</p> <ul style="list-style-type: none"> <li>• Where no impact on a particular ecological feature is predicted a clear statement to this effect should be provided with appropriate justification.</li> <li>• It is important that this section follows the same sub-headings as the Baseline Conditions section to enable the reader to see how the impacts on each ecological feature present has been assessed</li> </ul> <p>Identify and describe the mitigation measures required and a clear statement of how these can be secured.</p> <p>Provide an assessment of the significance of any residual effects. This should comprise a description of the effect and a statement of the geographic level at which the effect is likely to be significant (e.g. Significant at the national level, Significant at the county level, Not significant, etc). The assessment must include a robust justification for the assessment, based on information clearly presented in the report. In many cases, this is likely to require reference to be made to appropriate publications.</p> <p>Provide a summary table listing the significance of residual effects for each ecological feature, the mitigation measures required and the means by which mitigation measures can be secured to allow the local planning authority to ensure that appropriate planning conditions / obligations are included with any consent.</p>
<p><b>B.11 Cumulative effects</b>  Note: This can be included within the 'Assessment of effects and mitigation measures' or dealt with as a separate section</p>	<p>Identify any other projects which could give rise to a significant cumulative effect.</p> <p>Describe and assess any potential cumulative effects and determine whether they would be significant or not (and in which geographical context). Provide a robust justification for the conclusions reached.</p>
<b>B12. Compensation (if relevant)</b>	Where compensation measures are considered necessary to off-set significant residual effects these should be described and assessed.
<b>B13. Enhancement</b>	Provide a description of the enhancement measures proposed, over and above any mitigation required, and how these will be secured.
<b>B14. Monitoring</b>	Identify and describe any monitoring surveys required, including details of methods and timing, where appropriate.

Section	Content
B15. Conclusions	Draw conclusions on the overall ecological effects of the scheme, justifying how the project accords with relevant legislation and planning policy. Demonstrate compliance with or deviation from relevant development plan policies and statutory obligations. Identify mechanisms to secure commitment to and delivery of recommended measures e.g. through planning conditions and/or through EPS licences. Explain clearly what the likely outcomes are for biodiversity if the proposed development is granted planning permission. Such implications may be presented as a table and/or as a statement of 'net losses and gains' and should provide the decision-maker with a clear understanding of the likely consequence for habitats and species likely to be affected significantly by the proposals.
B16. References	All documents referred to in the text should be listed and appropriately referenced.
B17. Figures	Provide a plan showing the ecological features referred to in the report (normally based on a Phase 1 habitat map or equivalent in Ireland <sup>37</sup> ). It may be appropriate to provide other plans/figures to show the locations of specific ecological features referred to in the report. It can be helpful to overlay the scheme layout or parameter plans with the ecological features.
B18. Appendices	Provide detailed survey methodologies and results in appendices. Site photographs can also be provided in an appendix.

### **APPENDIX 3: Sources of Contextual Information**

The following list provides some sources of information that may be useful when undertaking an Ecological Impact Assessment.

ALERC Association of Local Environmental Record Centres (UK)<sup>97</sup>  
Ancient Woodland Inventory (UK)<sup>98</sup>  
Biodiversity Planning Toolkit (UK)<sup>99</sup>  
Biodiversity Strategies/Action Plans – national<sup>100</sup>  
Biodiversity Strategies/Action Plans – local<sup>101</sup>  
British Trust for Ornithology<sup>102</sup>, BirdWatch Ireland<sup>103</sup> (Wetland Bird Survey (WeBS) or I-WeBS data)  
Centre for Environmental Data and Recording (CEDaR) (Northern Ireland)<sup>104</sup>  
CORINE LandCover 2006 raster data (UK and Ireland)<sup>105</sup>  
Department of the Environment, Community and Local Government (DECLG) Ireland<sup>106</sup>  
Environmental Protection Agency (EPA), including Geoportal Site (Ireland)<sup>107</sup>  
Joint Nature Conservation Committee (JNCC) Protected Sites (UK)<sup>108</sup>  
Land Cover Map 2000 (LCM2000) (UK)<sup>109</sup>  
LANDMAP (Wales)<sup>110</sup>  
Living Landscape (UK)<sup>111</sup>  
Local Records Centres Wales<sup>112</sup>  
Multi-Agency Geographical Information for the Countryside (MAGIC) (Great Britain)<sup>113</sup>  
National Biodiversity Data Centre (Ireland)<sup>114</sup>  
National Biodiversity Network (NBN) (UK)<sup>115</sup>  
National Museums Northern Ireland Habitats<sup>116</sup>  
National Parks and Wildlife Service (Ireland)<sup>117</sup>  
National Planning Policy and Planning Guidance<sup>118</sup>  
National Spatial Strategy 2002-2020 (Ireland)<sup>119</sup>  
Natural Areas (England)<sup>120</sup>  
Natural Heritage Futures (Scotland)<sup>121</sup>  
Northern Ireland Environment Agency<sup>122</sup>  
Northern Ireland Landscape Character Areas<sup>123</sup>  
Ordnance Survey Ireland map viewer (Ireland)<sup>124</sup>  
RSPB Futurescapes (UK)<sup>125</sup>  
Sitelink (Scotland)<sup>126</sup>

## GLOSSARY

Appropriate Assessment	Appropriate Assessment In the UK - an assessment required by the Habitats Directive and Regulations where a project (or plan) would be likely to have a significant effect on a European site, either alone or in combination with other plans or projects (part of the Habitats Regulations Assessment process) . In Ireland the term Appropriate Assessment is more widely used for the full process known as Habitat Regulations Assessment in the UK.
Assemblage	A group of species found in the same location.
Avoidance	Prevention of impacts occurring, having regard to predictions about potentially negative environmental effects (e.g. project decisions about site location or design).
Baseline conditions	The conditions that would pertain in the absence of the proposed project at the time that the project would be constructed / operated / decommissioned. The definition of these baseline conditions should be informed by changes arising from other causes (e.g. other consented developments).
Biodiversity	The biological diversity of the earth's living resources. The total variability among organisms and ecosystems. In common usage, and within these Guidelines, biodiversity is used to describe the conservation of the natural environment, rather than describing the variation within it.
Biodiversity offsets	Measurable conservation outcomes resulting from actions designed to compensate for unavoidable significant negative effects on biodiversity. The goal of biodiversity offsets is to achieve no net loss, or preferably a net gain, of biodiversity.
Biophysical change	Alteration in biological and/or physical conditions of the environment (e.g. changes in the atmospheric concentration of carbon dioxide, altered soil pH or change in the frequency of a plant species in an area).
Carrying capacity	The maximum number of organisms or amount of biomass that can be supported in a given area or by an ecosystem.
Compensation	Measures taken to make up for the loss of, or permanent damage to, ecological features despite mitigation. Any replacement area should be similar in terms of biological features and ecological functions that have been lost or damaged, or with appropriate management have the ability to reproduce the ecological functions and conditions of those biological features.
Competent authority	An organisation or individual who is responsible for determining an application for consent for a project. In the context of the UK Habitats Regulations, 'competent authority' has a wider meaning, which includes any Minister, government department, public or statutory undertaker, public body of any description or person holding a public office. Competent authorities in relation to Appropriate Assessment in Ireland are set out in SI 477 of 2011.
Connectivity	A measure of the functional availability of the habitats needed for a particular species to move through a given area. Examples include the flight lines used by bats to travel between roosts and foraging areas or the corridors of appropriate habitat needed by some slow colonising species if they are to spread.
Conservation objective	Objective for the conservation of biodiversity (e.g. specific objective within a management plan or broad objectives of policy).
Conservation status	The state of a species or habitat including for example, extent, abundance, distribution and their trends.
Cumulative impact / effect	Additional changes caused by a proposed development in conjunction with other developments or the combined effect of a set of developments taken together.
Distribution	The geographical presence of a feature. This can depend on factors such as climate and altitude.
Ecological feature	Habitats, species or ecosystems.
Ecological network	An interconnected system of ecological corridors.

Ecosystem	A dynamic complex of plant, animal and micro-organism communities and their non-living environment interacting as a functional unit.
Ecosystem services	Ecosystem services are the benefits that people derive from the natural environment. The natural environment can be considered as a stock of 'natural capital' from which many benefits flow – social, health-related, cultural or economic.
Effect	Outcome to an ecological feature from an impact. For example, the effects on a dormouse population from loss of a hedgerow. See also 'Impact'.
Enhancement	Improved management of ecological features or provision of new ecological features, resulting in a net benefit to biodiversity, which is unrelated to a negative impact or is 'over and above' that required to mitigate/compensate for an impact.
Environmental Impact Assessment (EIA)	Assessment of projects carried out under the EIA Directive and Regulations.
Environmental (Impact) Statement	A document describing the effects of a project on the environment prepared during EIA. Referred to as 'Environmental Statement' in the UK and 'Environmental Impact Statement' in Ireland.
Favourable condition	Satisfactory condition of an ecological feature. In some cases favourable condition is specifically defined (e.g. for some designated sites).
Fragility	The degree of sensitivity of habitats, communities and species to environmental change.
Fragmentation	The breaking up of a habitat, ecosystem or land-use type into smaller parcels with a consequent impairment of ecological function.
Geographic scale	The geographic context for evaluation.
Habitat	The place or type of site where an organism or population naturally occurs. Often used in the wider sense referring to major assemblages of plants and animals found together.
Habitat Bank	A biodiversity compensation mechanism that is based on the concept of biodiversity offsets.
Habitats Regulations Assessment	An assessment of projects (or plans) potentially affecting European sites in the UK, required under the Habitats Directive and Regulations.
Impact	Actions resulting in changes to an ecological feature. For example, the construction activities of a development removing a hedgerow. See also 'Effect'.
Important ecological features	Ecological features requiring specific assessment within EclA. Ecological features can be important for a variety of reasons (e.g. quality and extent of designated sites or habitats, habitat / species rarity).
Local sites	'Non-statutory' sites of nature conservation value that have been identified 'locally' (i.e. excluding SSSIs, ASSIs, NHAs, SPAs, SACs, and Ramsar sites). Local Nature Reserves are included as they are a designation made by the Local Authority rather than statutory country conservation agencies. These are often called Wildlife Sites, Local Nature Conservation Sites, Sites of Importance for Nature Conservation or other, similar names.
Mitigation	Measures taken to avoid or reduce negative impacts. Measures may include: locating the development and its working areas and access routes away from areas of high ecological interest, fencing off sensitive areas during the construction period, or timing works to avoid sensitive periods. An example of a reduction measure is a reed bed silt trap that is designed to minimise the amount of polluted water running directly into an ecologically important watercourse. See also compensation (which is separate from mitigation).
Natura Impact Statement / Natura Impact Report	Under the [Irish] European Communities (Birds and Natural Habitats) Regulations 2011 (SI 477 of 2011), an EclA report including the scientific assessment of a plan (NIR) or project (NIS) in relation to relevant Natura 2000 sites and other information required to enable a competent authority to carry out a Stage 1 Appropriate Assessment.
Net ecological gain	The point at which the quality and quantity of habitats or species improves compared to their original condition i.e. improvements over and above those required for mitigation/compensation.



Population	A collection of individuals (plants or animals), all of the same species and in a defined geographical area.
Precautionary Principle	The principle that the absence of complete information should not preclude precautionary action to mitigate the risk of significant harm to the environment.
Project	In these guidelines 'project' is used to refer to all types of proposals to which EclA might be applied (e.g. development proposal/scheme or other land use change).
Rarity	A measure of relative abundance.
Replacement	The creation of a habitat that is an acceptable substitute for the habitat which has been lost.
Restoration	The re-establishment of a damaged or degraded system or habitat to a close approximation of its pre-degraded condition.
Scoping	The determination of the extent of an assessment (for an EclA or full EIA).
Screening	Determination of whether or not an EIA is necessary.
Screening Report	Report containing information to inform Stage 1 of the Appropriate Assessment process (Ireland)
Significant effect	An effect that either supports or undermines biodiversity conservation objectives for 'important ecological features'
Synergistic effect	Occurs when the sum of two effects together is greater than the sum of the effects separately.
Zone(s) of Influence	The area(s) over which ecological features may be affected by the biophysical changes caused by the proposed project and associated activities.

## LIST OF ABBREVIATIONS

AA	Appropriate Assessment
CEDaR	Centre for Environmental Data and Recording
CIEEM	Chartered Institute of Ecology and Environmental Management
CWS	County Wildlife Site
EcIA	Ecological Impact Assessment
ECOP	Ecological Constraints and Opportunities Plan
EDS	Ecological Design Strategy
EIA	Environmental Impact Assessment
EMP	Environmental Management Plan
EPA	Environmental Protection Agency
EPS	European Protected Species
HRA	Habitat Regulations Assessment
IEEM	Institute of Ecology and Environmental Management
JNCC	Joint Nature Conservation Committee
LRC	Local Records Centre
MCMA	Mitigation, Compensation and Monitoring Agreement
NGO	Non-Governmental Organisation
NHA	Natural Heritage Area
NIR	Natura Impact Report
NIS	Natura Impact Statement
NPWS	National Parks and Wildlife Service
NRW	Natural Resources Wales
NSIP	Nationally Significant Infrastructure Project
PEA	Preliminary Ecological Appraisal
RDB	Red Data Book
RIES	Reports on the Implications for European Sites
SA	Sustainability Appraisal
SAC	Special Area of Conservation
SEA	Strategic Environmental Assessment
SNCO	Statutory Nature Conservation Organisation
SNH	Scottish Natural Heritage
SPA	Special Protection Area
SSSI	Site of Special Scientific Interest
SA	Sustainability Appraisal
TEEB	The Economics of Ecosystems and Biodiversity
UKNEA	United Kingdom National Ecosystem Assessment
WFD	Water Framework Directive
WFDA	Water Framework Directive Assessment

## ENDNOTES

<sup>1</sup>Guidelines for Ecological Impact Assessment in Britain and Ireland: Marine and Coastal (2010) <http://www.cieem.net/ecia-guidelines-marine->

<sup>2</sup>Biodiversity: Code of practice for planning and development (2013) BS 42020:2013 <http://shop.bsigroup.com/en/ProductDetail/?pid=000000000030258704>

<sup>3</sup>Adapted from the definition of Ecological Impact Assessment originally published in Treweek, J (1999) Ecological Impact Assessment, Blackwell

<sup>4</sup>The terms 'impact' and 'effect' are explained in the Introduction and Glossary

<sup>5</sup>Our life insurance, our natural capital: an EU biodiversity strategy to 2020 (2011) <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>

<sup>6</sup>The biodiversity strategies and updates for England, Scotland, Wales and Northern Ireland are available from the Joint Nature Conservation Committee (JNCC) website <http://jncc.defra.gov.uk/default.aspx?page=5701>  
The biodiversity strategy for Ireland – Actions for Biodiversity 2011-2016 (2011) <http://www.npws.ie/legislationandconventions/nationalbiodiversityplan/>

<sup>7</sup>UK National Ecosystem Assessment and 'Follow-on Phase' <http://uknea.unep-wcmc.org/>

<sup>8</sup>The Economic and Social Aspects of Biodiversity (2008) [http://www.npws.ie/publications/archive/Bullock\\_et\\_al\\_2008\\_Economic\\_&\\_Social\\_Benefits\\_of\\_Biodiversity.pdf](http://www.npws.ie/publications/archive/Bullock_et_al_2008_Economic_&_Social_Benefits_of_Biodiversity.pdf)

<sup>9</sup>The natural choice: securing the value of nature (2011) <https://www.gov.uk/government/publications/the-natural-choice-securing-the-value-of-nature>

<sup>10</sup>Towards the Sustainable Management of Wales' Natural Resources (2013) <http://wales.gov.uk/docs/desh/consultation/131029environment-bill-white-paper-consultation-en.pdf>

<sup>11</sup>Land Use Strategy for Scotland (2011) <http://www.scotland.gov.uk/Topics/Environment/Countryside/Landusestrategy>

<sup>12</sup>Actions for Biodiversity – Ireland's National Biodiversity Plan 2011-2016 (2011) <http://www.ahg.gov.ie/en/Publications/HeritagePublications/NatureConservationPublications/Actions%20for%20Biodiversity%202011%20-%202016.pdf>.  
See also A Draft National Landscape Strategy for Ireland 2014-2024 (2014) <http://www.ahg.gov.ie/en/Publications/HeritagePublications/ArchitecturalPolicyPublications/NLSJuly2014v2.pdf>

<sup>13</sup>The EIA Directive, amendments, codified version and 2014 review are available from <http://ec.europa.eu/environment/eia/eia-legalcontext.htm>

<sup>14</sup>England – The Town and Country Planning (EIA) Regulations 2011 <http://www.legislation.gov.uk/uksi/2011/1824/made>

Wales – The Town and Country Planning (EIA) (England and Wales) Regulations 1999 <http://www.legislation.gov.uk/uksi/1999/293/made>

Scotland – The Town and Country Planning (EIA) (Scotland) Regulations 2011 <http://www.legislation.gov.uk/ssi/2011/139/made>

Northern Ireland – The Planning (EIA) Regulations (Northern Ireland) 2012  
<http://www.legislation.gov.uk/nisr/2012/59/made>

<sup>15</sup>Republic of Ireland – S181 of the Planning and Development Act 2000 <http://www.irishstatutebook.ie/2000/en/act/pub/0030/sec0181.html#sec181>  
and Statutory Instrument No. 403/2013 European Union (EIA and Habitats) <http://www.irishstatutebook.ie/2013/en/si/0403.html>

<sup>16</sup>Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora [http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index\\_en.htm](http://ec.europa.eu/environment/nature/legislation/habitatsdirective/index_en.htm)

<sup>17</sup>The Conservation of Habitats and Species Regulations for England, Scotland, Wales and Northern Ireland are available

- <sup>38</sup>CIEEM Professional Guidance Series: Access to Land (2011) (Available to CIEEM members) <http://www.cieem.net/publications/19/access-to-land>
- <sup>39</sup>Our life insurance, our natural capital: an EU biodiversity strategy to 2020 (2011) <http://ec.europa.eu/environment/nature/biodiversity/comm2006/2020.htm>
- <sup>40</sup>Listed under S41 of the Natural Environment and Rural Communities Act 2006 <http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspeciesimportance.aspx>
- <sup>41</sup>Listed under S42 of the Natural Environment and Rural Communities Act 2006 <http://www.biodiversitywales.org.uk/49/en-GB/Section-42-Lists>
- <sup>42</sup>Listed under S2(4) of The Nature Conservation (Scotland) Act 2004 <http://www.biodiversityscotland.gov.uk/advice-and-resources/scottish-biodiversity-list/how/>
- <sup>43</sup>Refer to: <http://www.doeni.gov.uk/niea/biodiversity/habitats-2.htm>
- <sup>44</sup>Refer to: [http://www.doeni.gov.uk/niea/biodiversity/sap\\_uk.htm](http://www.doeni.gov.uk/niea/biodiversity/sap_uk.htm)
- <sup>45</sup>Refer to: [http://www.npws.ie/media/npwsie/content/files/publications/Listed\\_species\\_checklist\\_Dec12.pdf](http://www.npws.ie/media/npwsie/content/files/publications/Listed_species_checklist_Dec12.pdf)
- <sup>46</sup>Refer to: <http://jncc.defra.gov.uk/page-5718>
- <sup>47</sup>Refer to: <http://jncc.defra.gov.uk/page-5717>
- <sup>48</sup>England – many Local Biodiversity Action Plans are now overseen by Local Nature Partnerships <https://www.gov.uk/government/policies/protecting-biodiversity-and-ecosystems-at-home-and-abroad/supporting-pages/local-nature-partnerships>  
Wales <http://www.biodiversitywales.org.uk/53/en-GB/Local-Biodiversity-Contacts>  
Scotland <http://www.biodiversityscotland.gov.uk/area/lbaps/>  
Northern Ireland <http://www.biodiversityni.com.gridhosted.co.uk/>  
Ireland – Local Authority Biodiversity Action Plans may be found on the LA websites and others on the Heritage Council's website, for example <http://www.corkcoco.ie/co/pdf/734358998.pdf> and [http://www.heritagecouncil.ie/fileadmin/user\\_upload/Publications/County\\_Heritage\\_Services/Wicklow/County\\_Wicklow\\_Biodiversity\\_Action\\_Plan.pdf](http://www.heritagecouncil.ie/fileadmin/user_upload/Publications/County_Heritage_Services/Wicklow/County_Wicklow_Biodiversity_Action_Plan.pdf)
- <sup>49</sup>Species of conservation concern UK <http://jncc.defra.gov.uk/page-5335>
- <sup>50</sup>Irish Red Lists <http://www.npws.ie/publications/redlists/>
- <sup>51</sup>Birds of Conservation Concern UK [http://www.rspb.org.uk/wildlife/birdguide/status\\_explained.aspx](http://www.rspb.org.uk/wildlife/birdguide/status_explained.aspx)
- <sup>52</sup>Birds of Conservation Concern Ireland  
<http://www.birdwatchireland.ie/OurWork/SpeciesHabitatConservationinIreland/BirdsofConservationConcern/tabid/178/Default.aspx>
- <sup>53</sup>Nationally rare and nationally scarce species UK <http://jncc.defra.gov.uk/page-3425>
- <sup>54</sup>Nationally rare and nationally scarce species Ireland [http://www.npws.ie/media/npwsie/content/files/publications/Listed\\_species\\_checklist\\_Dec12.pdf](http://www.npws.ie/media/npwsie/content/files/publications/Listed_species_checklist_Dec12.pdf)
- <sup>55</sup>Legally protected species UK <http://jncc.defra.gov.uk/page-3415>
- <sup>56</sup>Legally protected species Ireland <http://www.npws.ie/legislationandconventions/irishlaw/>
- <sup>57</sup>See Article 10 of the Habitats Directive  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>
- <sup>58</sup>JNCC protected areas designations directory for the UK <http://jncc.defra.gov.uk/page-1527>
- <sup>59</sup>NPWS protected sites in Ireland <http://www.npws.ie/protectedsites/>

- <sup>60</sup>Scottish Natural Heritage Sitelink <http://gateway.snh.gov.uk/sitelink/>
- <sup>61</sup>NIEA protected sites webpages for Northern Ireland [http://www.doeni.gov.uk/niea/protected\\_areas\\_home](http://www.doeni.gov.uk/niea/protected_areas_home)
- <sup>62</sup>England <http://www.naturalengland.org.uk/ourwork/conservation/biodiversity/protectandmanage/habsandspecies-importance.aspx>  
Wales <http://www.biodiversitywales.org.uk/49/en-GB/Section-42-Lists>
- <sup>63</sup>Scotland <http://www.biodiversityscotland.gov.uk/advice-and-resources/scottish-biodiversity-list/>
- <sup>64</sup>Northern Ireland <http://www.doeni.gov.uk/niea/biodiversity/habitats-2.htm>
- <sup>65</sup>Ireland: Wildlife Acts 1976 to 2012 <http://www.npws.ie/legislation> and Actions for Biodiversity – Ireland’s National Biodiversity Plan 2011-2016 (2011) <http://www.ahg.gov.ie/en/Publications/HeritagePublications/NatureConservation-Publications/Actions%20for%20Biodiversity%202011%20-%202016.pdf>.
- <sup>66</sup>Local biodiversity strategies – refer to individual websites e.g. local authorities, local BAP partnerships, local nature partnerships
- <sup>67</sup>Northern Ireland protected species [http://www.doeni.gov.uk/niea/northern\\_ireland\\_priority\\_species\\_list.pdf](http://www.doeni.gov.uk/niea/northern_ireland_priority_species_list.pdf)
- <sup>68</sup>Wildlife Acts 1976 to 2012 <http://www.npws.ie/legislation>
- <sup>69</sup>Red lists <http://www.npws.ie/publications/red-lists>
- <sup>70</sup>BoCCI List (for Ireland and NI):  
<http://www.birdwatchireland.ie/LinkClick.aspx?fileticket=EjODk32LNcU%3D&tabid=178>
- <sup>71</sup>Habitats Directive available at <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:31992L0043:EN:HTML>
- <sup>72</sup>The Wildlife and Natural Environment Act (2011) amended the Wildlife (Northern Ireland) Order 1985 <http://www.legislation.gov.uk/nia/2011/15/contents>
- <sup>73</sup>Legislation for UK protected species <http://jncc.defra.gov.uk/page-3415>
- <sup>74</sup>Legislation for Irish protected species <http://www.npws.ie/legislationandconventions/irishlaw/>
- <sup>75</sup>Designations associated with international listings <http://jncc.defra.gov.uk/page-3424>
- <sup>76</sup>Guidance on invasive plants is available at <https://www.gov.uk/japanese-knotweed-giant-hogweed-and-other-invasive-plants>.
- <sup>77</sup>Guidance for Ireland and Northern Ireland at <http://invasivespeciesireland.com/>
- <sup>78</sup>Refer to: <http://www.naturalengland.org.uk/ourwork/regulation/wildlife/enforcement/injuriousweeds.aspx>
- <sup>79</sup>See <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1417443504720&uri=CELEX:32014R1143>
- <sup>80</sup>UK National Ecosystem Assessment <http://uknea.unep-wcmc.org/Resources/tabid/82/Default.aspx>
- <sup>81</sup>Natural Environment White Paper (2011) <https://www.gov.uk/government/publications/the-natural-choice-securing-the-value-of-nature>
- <sup>82</sup>Environment Bill White Paper consultation (2013) <http://wales.gov.uk/consultations/environmentandcountryside/environment-bill-white-paper/?lang=en>
- <sup>83</sup>*Applying an ecosystems approach to land use: Information Note (2011)* <http://www.scotland.gov.uk/Publications/2011/03/16083740/1>
- <sup>84</sup>*2020 Challenge for Scotland’s Biodiversity (2013)* <http://www.scotland.gov.uk/Publications/2013/06/5538>

<sup>85</sup>*Sectoral Impacts on Biodiversity and Ecosystem Services (SIMBIOSYS) (2013)* [http://www.epa.ie/pubs/reports/research/biodiversity/strive115simbiosys.html#U\\_dvyGB0zml](http://www.epa.ie/pubs/reports/research/biodiversity/strive115simbiosys.html#U_dvyGB0zml)

<sup>86</sup>*Actions for Biodiversity 2011-2016 Ireland's National Biodiversity Action Plan (2011)* <http://www.ahg.gov.ie/en/Publications/HeritagePublications/NatureConservationPublications/Actions%20for%20Biodiversity%202011%20-%202016.pdf>

<sup>87</sup>Oxford, M (2001) *Developing Naturally. A handbook for incorporating the natural environment into planning and development*. Association of Local Government Ecologists (out of print).

<sup>88</sup>See <http://curia.europa.eu/juris/document/document.jsf?jsessionid=9ea7d0f130de92a650d40b0a4d9ba731825c203c5de0.e34KaxiLc3eQc40LaxqMbN4ObxiNe0?text=&docid=136145&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=420683>

<sup>89</sup>Refer to [http://www.noticenature.ie/files/Construction\\_v12.pdf](http://www.noticenature.ie/files/Construction_v12.pdf) and [http://www.noticenature.ie/files/Notice%20Nature%20quarry%20brochure%20web\\_1.pdf](http://www.noticenature.ie/files/Notice%20Nature%20quarry%20brochure%20web_1.pdf)

<sup>90</sup>Biodiversity Offsetting <https://www.gov.uk/biodiversity-offsetting>

<sup>91</sup>See for example the Business and Biodiversity Offsets Program (BBOP) [bbop.forest-trends.org/](http://bbop.forest-trends.org/)

<sup>92</sup>Town and Country Planning Act 1990 <http://www.legislation.gov.uk/ukpga/1990/8/contents>

<sup>93</sup>Evidence-based conservation  
[www.cebc.bangor.ac.uk/ebconservation.php?menu=6&catid=6365&subid=0](http://www.cebc.bangor.ac.uk/ebconservation.php?menu=6&catid=6365&subid=0)

<sup>94</sup>Biodiversity: Code of practice for planning and development (2013) BS 42020:2013 <http://shop.bsigroup.com/en/ProductDetail/?pid=000000000030258704>

<sup>95</sup>See Practitioner: Environmental Management Plans. Institute of Environmental Management and Assessment, Best Practice Series, Volume 12 (2008) [http://www.iema.net/shop/product\\_info.php?cPath=27\\_29&products\\_id=9472](http://www.iema.net/shop/product_info.php?cPath=27_29&products_id=9472)

<sup>96</sup>Adapted from clause 8.1 in Biodiversity: Code of practice for planning and development (2013) BS 42020:2013 <http://shop.bsigroup.com/en/ProductDetail/?pid=000000000030258704>

<sup>97</sup>Association of Local Environmental Record Centres <http://www.alerc.org.uk/>

<sup>98</sup>UK Woodland Habitats including Ancient Woodland Inventory <http://jncc.defra.gov.uk/page-1437>

<sup>99</sup>Biodiversity Planning Toolkit [www.biodiversityplanningtoolkit.com/](http://www.biodiversityplanningtoolkit.com/)

<sup>100</sup>UK country biodiversity strategies – refer to: <http://jncc.defra.gov.uk/page-5701>  
Irish Biodiversity strategy <http://www.npws.ie/legislationandconventions/nationalbiodiversityplan/>  
UK Biodiversity Action Plan – refer to: <http://jncc.defra.gov.uk/ukbap>

<sup>101</sup>Local biodiversity strategies – refer to individual websites e.g. local authorities, local BAP partnerships, local nature partnerships

<sup>102</sup>British Trust for Ornithology [www.bto.org/volunteer-surveys/webs](http://www.bto.org/volunteer-surveys/webs)

<sup>103</sup>BirdWatch Ireland [www.birdwatchireland.ie/Ourwork/SurveysProjects/IrishWetlandBirdSurvey/tabid/111/ Default.aspx](http://www.birdwatchireland.ie/Ourwork/SurveysProjects/IrishWetlandBirdSurvey/tabid/111/Default.aspx)

<sup>104</sup>Centre for Environmental Data and Recording (CEDaR) [www.nmni.com/cedar](http://www.nmni.com/cedar)

<sup>105</sup>CORINE LandCover 2006 raster data <http://www.eea.europa.eu/data-and-maps/data/corine-land-cover-2006-raster-3>

<sup>106</sup>See <http://www.environ.ie/en/Publications/>

<sup>107</sup>EPA Geoportal Site <http://gis.epa.ie/>



- <sup>108</sup>JNCC UK Protected Sites <http://jncc.defra.gov.uk/page-4>
- <sup>109</sup>Land Cover Map 2000 (LCM2000) (Centre for Ecology and Hydrology) [www.ceh.ac.uk/sections/seo/lcm2000\\_home.html](http://www.ceh.ac.uk/sections/seo/lcm2000_home.html)
- <sup>110</sup>LANDMAP Information system for Wales <http://www.ccw.gov.uk/landmap>
- <sup>111</sup>The Wildlife Trust's Living Landscape programme <http://www.wildlifetrusts.org/living-landscape>
- <sup>112</sup>Local Records Centres Wales [www.lrcwales.org.uk](http://www.lrcwales.org.uk)
- <sup>113</sup>Multi-Agency Geographical Information for the Countryside (MAGIC) <http://www.natureonthemap.naturalengland.org.uk/>
- <sup>114</sup>National Biodiversity Data Centre (Ireland) [www.biodiversityireland.ie/](http://www.biodiversityireland.ie/)
- <sup>115</sup>National Biodiversity Network [www.nbn.org.uk](http://www.nbn.org.uk)
- <sup>116</sup>National Museums Northern Ireland: Habitats <http://www.habitas.org.uk>
- <sup>117</sup>National Parks and Wildlife Service <http://www.npws.ie/> – includes protected sites information, habitats and species datasets (including national survey of native woodlands), licensing, links to legislation and map-viewer <http://www.npws.ie/mapsanddata/>
- <sup>118</sup>England – National Planning Policy Framework (NPPF) (2012) <https://www.gov.uk/government/publications/national-planning-policy-framework--2>  
 Wales – Planning Policy Wales (2014) <http://wales.gov.uk/topics/planning/policy/ppw/?lang=en>  
 Wales – Technical Advice Note 5: Nature Conservation and Planning (2009) <http://wales.gov.uk/topics/planning/policy/tans/tan5/?lang=en>  
 Scotland – Scottish Planning Policy (2014) <http://www.scotland.gov.uk/Topics/Built-Environment/planning/Policy>  
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**Mr. Renton:** I am listening carefully to my hon. Friend. He should recognise that one reason for higher employment growth in the United States has been its consistently lower interest rates than most European countries. As we move towards greater stability in the single market, possibly through economic and monetary union, we hope for lower interest rates, which will generate lower unemployment.

**Mr. Davis:** It is a little off my European brief, but as an ex-business man I can tell my right hon. Friend that the primary concern in interest rates is the nominal interest rate. The best method of dealing with that is low inflation, which happens to be a primary policy of this Government--Europe or not.

The UK, uniquely within the EU, has a good record on creating jobs--moreover, jobs in the private, not the public, sector. Since 1979, the UK has created as many jobs in the private sector as have been created in the whole of the rest of the EU. That is the answer to my right hon. Friend the Member for Old Bexley and Sidcup (Sir E. Heath), who offered the thesis that, in order to compete with the far east, we had to offer the wages of the far east. We have demonstrated that that is not the case.

All that is no accident. It comes from an approach based on free trade and competition, reform of inflexible labour market regulations, reduction of non-wage costs, investment in skills and sound macro-economic policies--points all made by my hon. Friend the Member for Lewes in his excellent speech. That is why we opted out of the social chapter and why we continue to believe that our policies are the best for the British people.

That is also one reason why Britain is so successful at attracting overseas investment. Britain accounts for more than 30 per cent. of non-EU investment in the EU. Last year we attracted 22 per cent. of all German overseas investment--we are its number one destination. Despite what the hon. Member for Gateshead, East said, that should not be news to the Labour party. After all, two days ago its leader got the message direct from the president of the German equivalent of the Confederation of British Industry. Mr. Henkel drew attention to the British Government's record--our success in dealing with unemployment, in reducing state interference, in privatisation, in reducing the state share of national income and in the low taxation of profits. Mr. Henkel concluded:

"Great Britain has become the most attractive location for investment in Europe. Although the German market is twice as large as the British, since 1985 foreigners have invested 10 times as much in Britain as in Germany."

The Labour party never believes that fact when it hears it from us, so I hope that its leader will have been more receptive when he heard it from an impartial

overseas observer--however galling it must be for the Leader of the Opposition to travel abroad only to have to listen to foreigners praising the British Conservative Government's approach.

In Florence, we will reinforce member states' efforts to create a sound, stable macro-economic framework in which business can create jobs. We agree with the emphasis on tackling unemployment in Mr. Santer's confidence pact and President Chirac's memorandum. But we will not agree to an increased role for trade unions, a single European social model or the abolition of the UK's social protocol opt-out. We will not agree to measures that destroy jobs rather than create them--to increased rigidity in the labour market, too much regulation, high non-wage labour costs and the sort of corporate approach which failed this country so badly under the last Labour Government.

I have very little time left, but I promised the right hon. Member for Livingston that I would answer his specific and important questions about Bosnia. First, he referred to the feasibility of free and fair elections. It is vital for the international community that elections are held on 14 September. It is the best hope for making a new start in Bosnia. We expect the Organisation for Security and Co-operation in Europe chairman in office, Swiss Foreign Minister Cotti, shortly to certify that elections can go ahead. That will focus the efforts of all concerned on improving the conditions for free and fair elections.

In particular, we need improvements in freedom of movement, freedom of expression during the election campaign, as the hon. Gentleman said, and freedom of the media. It is not true that only Government candidates will have access to the media during the election campaign. The international community, in the form of the high representative, Carl Bildt, and the OSCE, which is responsible for supervising the elections, has secured an agreement on fair access to prime time television. We shall ensure that all parties stick to the agreement.

The return of refugees has begun: tens of thousands have returned since the end of the war, but it will be a long process. Hundreds of thousands will not have returned by the time of the elections, so we have ensured that there will be ways in which they can all vote. They will vote either where they are registered in the 1991 census, in which case they may vote in absentia, or where they plan to return to, in which case they may go there to vote.

The right hon. Member for Livingston raised the question of Karadzic and Mladic. Obviously, we agree that indicted war criminals must be brought to justice. It is not acceptable that they continue to be free and it is worse if they exercise power and influence--

It being Ten o'clock, the motion for the Adjournment of the House lapsed, without Question put.

## TRIBUNALS OF INQUIRY (EVIDENCE)

### ACT 1921

Resolved,

That it is expedient that a Tribunal be established for inquiring into a definite matter of urgent public importance, that is to say, the abuse of children in care in the former County Council areas of Gwynedd and Clwyd.--[Mr. McLoughlin.]

### 20 Jun 1996 : Column 1100

New Age Travellers (Tayside)

Motion made, and Question proposed, That this House do now adjourn.--[Mr. McLoughlin.]

10 pm

**Mr. Bill Walker (North Tayside):** I thank Madam Speaker for giving me the opportunity to raise the subject of so-called new age travellers on the Adjournment debate tonight. I say so-called because, in a letter to me--one of many--the writer says:

"There are, of course, no such things as New Age Travellers".

It is a term the press invented. The letter says:

"These people are vagrants.

They have not opted out of society as may be claimed, but choose to 'cherry-pick' the rules in order to select the best ones and observing no duties and responsibilities, nor do they have any respect for anyone but themselves.

They roam in gangs and make nothing but trouble and expense to the mainly law abiding citizens everywhere."

Be that as it may, the so-called new age travellers had a sizeable encampment in my constituency during April and May. They gathered ostensibly to celebrate a Pictish festival at Dunnichen hill near the village of Letham. The event has taken place for several years. In earlier years, Robbie the Pict

and his followers had attended for a weekend. The local people enjoyed much of what took place then.

Sadly, this year, the event was an unlicensed rock music festival of around two weeks' duration. At the height of the event, about 2,500 people were involved. By the second weekend, the number had dropped to about 300 travellers, most of whom appeared to be of English origin--odd people, I suggest, to be celebrating a Pictish festival.

The major problem experienced during the event was excessive noise caused by amplified rock music played almost incessantly over several days. It was clearly audible in the village of Letham some two miles away. Not surprisingly, law-abiding, tax-paying constituents complained to me and to Tayside police.

In addition, dogs accompanying the travellers were allowed to run wild, and they caused considerable distress, injury and death to sheep. Some 2,000 pheasant chicks were destroyed. A number of sheep were killed, and several of the travellers' dogs were shot by estate staff.

There were also problems of rubbish and litter, there was damage to walls and fences, and obstruction was caused by the travellers' vehicles, many of which were without road fund licences, MOTs or insurance. There were no sanitary or toilet facilities. About 2,500 people were on the site, and raw sewage drained into the main water supply for the estate's home farm and cottages, and thereafter into Rescobie loch and on to Forfar.

The anti-social and at times abusive stance adopted by the travellers made difficulties for the local farmers and estate staff. It also made police negotiations virtually impossible, and led to a confrontational approach which, was unhelpful in fostering good relations. All that occurred despite a high degree of tolerance exercised by local residents and the Tayside police. It was also apparent that the unlicensed sale of alcohol was taking place on the site, and there were stories about soft drugs being used.

20 Jun 1996 : Column 1101

Tayside police confirm that the officers on duty were of the opinion that many of the travellers were obviously under the influence of alcohol or drugs for much of the period.

Following continued complaints, a police operation was undertaken to disable and seize the most prominent sound system being operated on the site. While that was being carried out, the officers came under sustained attack from the travellers, who threw stones and brandished sticks and other implements. Fortunately, no injuries of any consequence were caused, but it is worrying that the travellers had prepared a cache of weaponry in readiness for the police action.

Seizure of the sound equipment and the charging of the operator were dealt with as a common law breach of the peace. In addition, 16 individuals were charged under section 61 of the Criminal Justice and Public Order Act 1994 in respect of the camp at Dunnichen hill and a prior encampment near Forfar.

My concern is for future years. We do not want Dunnichen hill to become the Stonehenge of Scotland. Robbie the Pict and his friends will return next year. We do not want the new age travellers joining them and a repeat of what happened this year.

I am reminded that the Opposition opposed the aggravated trespass clause in the Criminal Justice and Public Order Act being applied to Scotland, yet the police used their powers under that Act in this case and in an earlier case involving the removal of hawkers, when a direction to leave land was made under section 61 and the hawkers agreed to move without further objection.

The police would not have been able to operate without those powers, yet they were opposed by the Opposition. I remind the House of that because, as is so often the case with law and order legislation, the Opposition oppose the introduction of powers and then are delighted when they are used in the interests of law-abiding citizens.

I accept that decisions about the appropriate course of action to take with new age travellers must be made by the chief constable, but I submit that chief constables should be directed to use section 61 as early as possible.

I also agree that affected landowners should request the removal of new age travellers. In the case of Dunnichen, only one of the two landowners made such a request. That hampered police operations, as it placed the police in a difficult position and required an operational judgment based on the level of the nuisance and the disruption. I wish to place on record my thanks for the way in which the police acted, and the fact that they managed to take the necessary action.

I recognise that, in legal terms, the powers under section 61 are adequate, but they can be hampered by practical difficulties. If the travellers refuse to leave, the only option left to the police is to arrest the offenders. Such action will probably lead to confrontation and may leave family groups stranded while the head of the household is detained.

Another problem may arise from a failure to define the extent of land to which a section 61 direction is intended to apply, and on which further trespass is forbidden. Will my right hon. Friend consider issuing guidelines to clarify the position and to assist the police? I understand that, for the police, dealing with new age travellers essentially involves enforcing the law and is a matter of practicality.

20 Jun 1996 : Column 1102

The number involved and their reluctance to accept regulation of their life-style can make police intervention a matter of considerable difficulty. That is why the Conservative party was determined to put those powers on the statute book.

Consequently, the practice differs considerably from the theory and from the Act. Sections 61 and 62, which give certain powers to the police, may, if exercised, risk causing further problems. I recognise that, but even so I believe that, without those powers, the police could not have acted as they did so effectively at Dunnichen.

Even if we do not use the powers, we cannot accept lawlessness. I make it perfectly clear that my constituents will not accept lawlessness.

We also need a definition of the extent of the land to which a section 61 direction is intended to apply, on which further trespass is forbidden. That is important, because we are trying to deal with a possible repeat next year. If a section 61 direction is intended to apply, will it apply to the whole estate? In Scotland, if we do apply it not to the entire estate, but to the precise site that the travellers occupied this year, they could simply move a couple of fields away, and we would have a problem.

Finally, we must address the ghastly fact that the travellers are to a considerable extent supported in their life style by the social security regime, which pays out benefits irrespective of their place of residence. As those individuals are reluctant to contribute to society or to seek employment, why should the taxpayer subsidise their way of life? Why should the taxpayers in Letham have those people forced upon them? Why should taxpayers have to see that, if those people go to an office to pick up their money and find that it is not there, the police have another incident on their hands?

Faced with such intrusions into their lives, why should my constituents not say to my right hon. Friend, "Thank you for putting those necessary powers on to the statute book, but can you use your persuasive powers to get the Department for Social Security to reconsider how it makes payments to travellers, and perhaps to cease that form of mobile support?"

I, too, say to my right hon. Friend, "Thank you for the powers that you have given the police and the fact that we can move the travellers on." I trust that sections 61 and 62 will mean that they cannot come back, and that we can do what was done at Stonehenge. In plain language, I conclude by saying that we do not want them back. We are happy to have Robbie the Pict, but we do not want the new age travellers.

I have told the hon. Member for Angus, East (Mr. Welsh) whose constituency abuts mine and was affected by the same new age travellers--they went into his constituency and caused considerable trouble--that he can have a couple of minutes to speak before the winding-up speech.

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# Is Tayside becoming a Scottish hotspot for Lyme borreliosis?

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**ABSTRACT** The epidemiology of Lyme borreliosis (LB) in Tayside was studied and compared with Highland (an area of high endemicity) and the rest of Scotland. From April 2001 to March 2008 the incidence of LB in Tayside rose from an estimated 2.57 to 5.84 per 100,000 population. In 2008/09 the incidence of LB in Tayside increased further to an estimated 13.85 per 100,000 population. This rise was significant and, although numerically less than that in Highland (37.24 to 49.69 per 100,000 population), it was proportionally much larger (137% vs 33%) and confirmed that LB in Tayside has diverged from that in non-endemic Scottish regions. The dramatic rise of LB in Tayside cannot be accounted for by changes in laboratory protocol or changes in the number or demographics of patients tested. However, changes in climatic conditions and alterations in clinical presentations may have contributed to this significant rise.

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**DECLARATION OF INTERESTS** No conflict of interests declared.

## INTRODUCTION

Lyme borreliosis (LB) is the most common vector-borne disease in Europe and the USA.<sup>1</sup> The causative agent, spirochaete *Borrelia burgdorferi* sensu lato, can be differentiated into at least 15 genospecies, seven of which are known to cause human disease.<sup>2</sup> The spirochaete is transmitted between vertebrate hosts by ixodid ticks as they take a blood meal. In Scotland the vector for LB is *Ixodes ricinus*, or sheep tick, which feeds on a range of mammals including birds, deer and sheep.<sup>3</sup> The majority of human cases occur in the summer months as human behaviour increases the risk of exposure and tick nymphs are questing.<sup>4</sup> Nymphs are much smaller than their adult counterparts and often go unnoticed, facilitating the transmission of the organism which requires the tick to have fed for 24–48 hours before transmission can occur.

The incidence of LB has been rising across the world, with foci of infection in the USA, Asia and Europe.<sup>1</sup> Rises in LB have been linked with improved diagnostics, raised awareness, changes in land use, increased tick density and burden of tick disease.<sup>5</sup> In Scotland the incidence of LB is highest in the Highlands, an area of high endemicity.<sup>6</sup> Scottish studies have therefore focused on this region and there is little information on the incidence and epidemiology of LB in other regions. There have been anecdotal reports that Tayside has experienced an increase in test requests for LB, and that an increased number of samples have been referred to the National LB Testing Laboratory (NLBTL) in recent years. This study was therefore carried out to identify any significant changes in the incidence of LB in Tayside.

## MATERIALS AND METHODS

### Patients' details

Samples submitted to the Medical Microbiology Department at Ninewells Hospital & Medical School in Dundee, representing infection in Tayside, and samples submitted to the NLBTL, Raigmore Hospital, Inverness, representing infection in Highland and the rest of Scotland, were studied. Archived data on patients' age, sex, month of sample submission, test request details and test results were collected and analysed for samples submitted from Tayside for *B. burgdorferi* testing from April 2001 to March 2010. Data were extracted from the local laboratory's computing system, LabCentre, and analysed in Excel. Archived data on samples submitted from Highland and the rest of Scotland for *B. burgdorferi* testing from April 2004 to March 2010 were extracted from the NLBTL computing system, Medipath, and analysed in Excel.

Tayside and Highland refer to health boards in Scotland. Tayside covers the city of Dundee and the counties of Angus and Perth & Kinross. Highland extends from Argyll & Bute in the south to Caithness and Sutherland in the north. The rest of Scotland refers to all other health boards in Scotland with the exception of Grampian.

### Laboratory tests

Throughout the study period, the two-step approach to laboratory testing was adopted in both centres.<sup>7</sup> Samples were screened locally using a *B. burgdorferi* immunoglobulin (IgM/IgG) enzyme-linked immunoassay (EIA) (Zeus Scientific) according to the manufacturer's instructions. Confirmatory testing of EIA equivocal/reactive samples was carried out by the NLBTL with an



**TABLE 1** Number of patients tested and new cases of Lyme borreliosis for Tayside and Highland from April 2001 to March 2010

Year (Apr–Mar)	Patients tested	New cases
<b>Tayside</b>		
2001/02	505	10 (1.98%)
2002/03	547	8 (1.46%)
2003/04	691	9 (1.30%)
2004/05	630	5 (0.79%)
2005/06	606	9 (1.49%)
2006/07	736	24 (3.26%)
2007/08	749	23 (3.07%)
2008/09	780	55 (7.05%)
2009/10	881	67 (7.60%)
<b>Highland</b>		
2004/05	n/a	56
2005/06	1,072	61 (5.69%)
2006/07	1,165	78 (6.70%)
2007/08	1,052	115 (10.93%)
2008/09	1,069	154 (14.41%)
2009/10	1,202	175 (14.56%)

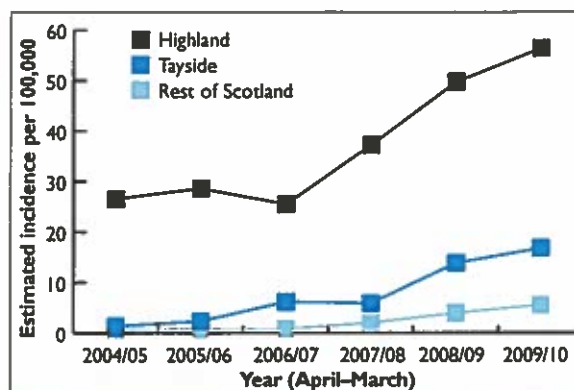
in-house IgG Western blot. Enzyme-linked immunoassay-negative samples with strong clinical suspicion of LB were also submitted for Western blot testing. The Western blot was performed as previously described.<sup>8</sup> However, the antigen used and interpretation criteria were revised in April 2004,<sup>9</sup> June 2007<sup>10</sup> and October 2008.<sup>5</sup> In this study, all patients with a weak positive or positive Western blot result were classed as seropositive.

To further investigate LB in Tayside, patient demographics and test request details for samples submitted between March 2006 and April 2010 were studied. To improve sample size, data from 2006/07 were combined with 2007/08, and data from 2008/09 combined with 2009/10. There was good correlation in the age/sex structure of patients tested and no significant differences in the number of new cases in the combined study years.

Meteorological Office data on monthly rainfall for the north of Scotland (Highland) and east of Scotland (Grampian, Tayside, Perthshire, Fife, Lothian and Borders) were sourced from the Meteorological Office website.<sup>11</sup> Data were analysed for differences between areas and years and significance determined using the chi-squared ( $\chi^2$ ) test. Mid-year population estimates were gathered from the General Register Office for Scotland.<sup>12</sup>

## RESULTS

In Tayside there has been a significant rise in the number of patients tested for LB rising from 505 in 2001/02 to 881 in 2009/10 ( $\chi^2=168.6$ ,  $p<0.001$ ) (Table 1). The incidence of LB in Tayside has also significantly risen in this

**FIGURE 1** Incidence of Lyme borreliosis for Tayside, Highland and rest of Scotland from April 2004 to March 2010.

time, from an estimated 2.57/100,000 population in 2001/02 to 16.76/100,000 population in 2009/10 ( $\chi^2=42.1$ ,  $p<0.001$ ) (Figure 1). This rise can be attributed to significant increases in the number of cases of LB in 2006/07 ( $\chi^2=6.8$ ,  $p<0.01$ ) and 2008/09 ( $\chi^2=13.1$ ,  $p<0.001$ ) (Table 1). Despite fluctuations in the number of patients tested in recent years (Table 1), the estimated incidence of LB in Highland has risen significantly each year since 2006/07, rising from 25.43/100,000 population in 2006/07 to 56.35/100,000 population in 2009/10 ( $\chi^2=36.0$ ,  $p<0.001$ ) (Figure 1). In comparison, incidence for the rest of Scotland remained very low at 0.78 and 0.75/100,000 population in 2005/06 and 2006/07, rising steadily to 5.53/100,000 population in 2009/10 (Figure 1).

### Tayside patient demographics

There were no significant differences in the proportion of male and female patients tested in Tayside in 2006/08 (49.2% male, 50.8% female) and 2008/10 (47.5% male, 52.5% female). Moreover, there was good correlation between the age/sex structure of patients tested in Tayside in 2006/08 with those tested in 2008/10 ( $r^2=0.95/0.83$  for males/females respectively). Additionally, the ratio of male to female LB cases in Tayside did not change significantly, with 27 male (57.4%) and 20 female (42.6%) cases in 2006/08 and 61 male (50.0%) and 61 female (50.0%) cases in 2008/10. There were also no significant differences in the proportion of cases in patients aged less than 40 years, 40–64 years or over 64 years in 2006/08 versus 2008/10, with the majority of cases in those of working age.

### Clinical category

In 2008/10, a significantly reduced proportion of LB cases in Tayside had clinical details suggestive of early LB ( $\chi^2=11.7$ ,  $p<0.001$ ) (Table 2). There was also a significant rise in the proportion of cases with neurological or joint symptoms, from five (10.6%) in 2006/08 to 37 (30.3%) in 2008/10 ( $\chi^2=7.0$ ,  $p<0.01$ ). A rise in the proportion of cases with clinical details classified as 'other' in 2008/10 was not significant.

**TABLE 2** Clinical classification of test request details for Tayside cases of Lyme borreliosis

Test request details	2006/08	2008/10
Early Lyme borreliosis*	39 (83.0%)	70 (57.4%)
Neurological	5 (10.6%)	31 (25.4%)
Joint symptoms	0	6 (4.9%)
Other	2 (4.3%)	6 (4.9%)
Not stated	1 (2.1%)	9 (7.4%)
Total	47	122

\*Includes erythema migrans/rash/tick bite/flu-like illness.

### Weather data

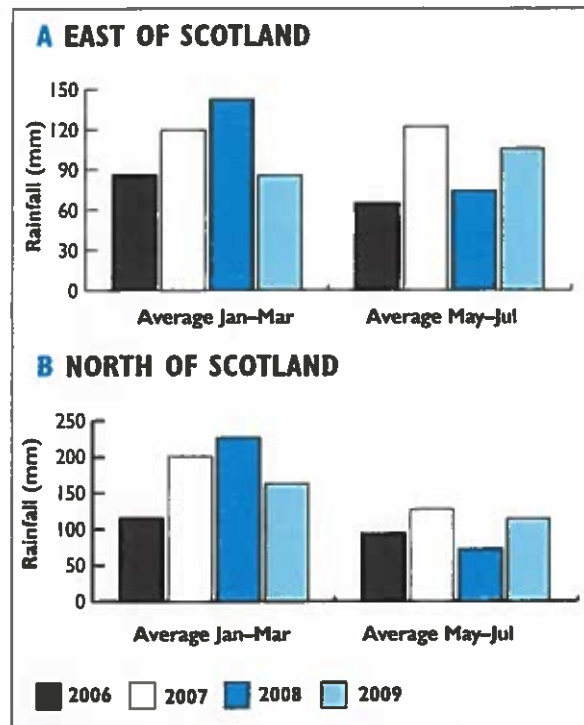
Weather data for the north and east of Scotland from 2006 to 2009 were analysed. The east of Scotland had a significant rise in average monthly rainfall in January–March 2007 ( $\chi^2=5.4$ ,  $p<0.025$ ). This was followed by a smaller rise in 2008 and a significant fall in 2009 ( $\chi^2=14.2$ ,  $p<0.001$ ) (Figure 2A). This pattern was mirrored in the north of Scotland, which also had a significant rise in average monthly rainfall in January–March 2007 ( $\chi^2=23.02$ ,  $p<0.001$ ), followed by a smaller rise in 2008 and a significant fall in 2009 ( $\chi^2=10.4$ ,  $p<0.002$ ) (Figure 2B).

In the east of Scotland May–July 2007 and 2009 were significantly wetter than the same period in 2006 ( $\chi^2=17.39$ ,  $p<0.001$  and  $\chi^2=9.70$ ,  $p<0.002$ , respectively) or 2008 ( $\chi^2=11.73$ ,  $p<0.001$  and  $\chi^2=5.56$ ,  $p<0.02$ , respectively) (Figure 2A). May–July 2007 was also significantly wetter in the north of Scotland than in 2006 or 2008 ( $\chi^2=4.63$ ,  $p<0.05$ ;  $\chi^2=14.79$ ,  $p<0.001$ ; and  $\chi^2=9.48$ ,  $p<0.003$  respectively). In 2009 May–July was significantly wetter than 2008 but not 2006 (Figure 2B).

### DISCUSSION

There has been an increasing rise in LB in Tayside. From April 2001 to March 2006 there were up to ten new cases of LB confirmed in Tayside each year (Table 1). However, in 2006/07 this rose significantly to 24 ( $\chi^2=6.8$ ,  $p<0.01$ ) and the estimated incidence of LB in Tayside was significantly higher than that for the rest of Scotland, excluding Highland (6.12 vs 0.75/100,000,  $\chi^2=83.2$ ,  $p<0.001$ ) (Figure 1). This rise was maintained and in 2008/09 the incidence of LB in Tayside increased significantly to 13.85/100,000 population ( $\chi^2=36.13$ ,  $p<0.001$ ). Although this rise was numerically lower than that seen in the endemic region of Highland, it was proportionally much greater (137% vs 33.4%) and confirmed that the incidence of LB in Tayside is diverging from the rest of Scotland, excluding Highland (Figure 1).

There has also been a significant increase in testing in Tayside (Table 1), demonstrating the increased awareness of the general and medical population of Tayside. However, as there was a significant increase in the proportion of



**FIGURE 2** Average monthly rainfall for January–March and May–July in the east (A) and north (B) of Scotland.

patients that were positive in 2006/07 (9/606 vs 24/736,  $p=0.0499$ , Fisher's exact test) and again in 2008/09 (23/749 vs 55/780  $p=0.0004$ , Fisher's exact test), this suggests that the rise of LB in Tayside cannot be accounted for by increased testing. There were also no significant changes in the demographics of patients tested or of LB cases, despite the proportion of male LB cases declining from 57.4% in 2006/08 to 50% in 2008/10.

Scotland appears unusual in having more male than female cases as a large number of European countries, including Germany and Portugal, report a female preponderance.<sup>13,14</sup> Age distribution of LB can also vary between studies. Some show a bimodal distribution with a peak of cases in five–15 year-olds and a peak in the older age group.<sup>13,15,16</sup> However, reports from Scotland show a broad peak in those of working age.<sup>6,17</sup> This corresponds to that seen in this study, where the majority of cases occurred in 30–64 year-olds, with very few cases in patients aged less than 25 or over 70 years.

Although there were no significant changes in the demographics of LB cases in Tayside, there was a significant rise in the proportion of LB cases with neurological or joint symptoms recorded on test request forms in 2008/10 compared with 2006/08 (Table 2).

There was also a rise in the number of cases with test request details classified as 'other', indicating that the clinical pattern of LB in Tayside is changing, with a more diverse spectrum of symptoms than previously seen. We

speculate this may be linked to a change in *B. burgdorferi* genospecies within the local tick population as certain genospecies are associated with differing clinical presentations. For example, *B. afzelii* has been associated with acrodermatitis chronica atrophicans, while *B. burgdorferi* sensu stricto is strongly associated with arthritic symptoms and *B. garinii* with neurological presentations.<sup>18,19</sup> However, there is little information on the prevalence and distribution of *B. burgdorferi* genospecies in the UK. A small study sampling two sites in the Scottish Highlands isolated *B. afzelii* and *B. burgdorferi* sensu stricto, while other UK studies have isolated *B. garinii* and *B. valaisiana*.<sup>20–22</sup> Changes in the distribution of *B. burgdorferi* genospecies may therefore have led to a change in the clinical presentation of LB in Tayside, but this may not explain the dramatic and sustained rise of LB in 2008/10.

Tick population densities are influenced by a number of interconnected factors, including host availability, habitat and climate conditions. It has been reported that a wet January–March may aid tick survival and that there is an association between tick establishment and LB endemicity in ticks.<sup>4,23</sup> Moreover, it has been reported that infection rates in ticks correlate with disease frequency in humans.<sup>23</sup> In the east of Scotland, January–March rainfall peaked in 2008, coinciding with the dramatic rise of LB

in Tayside (Figure 2A). That year also had a dry summer, potentially leading to increased human exposure. However, winter rainfall fell in 2009, which also had a wet summer; yet the incidence of LB in Tayside remained high in 2009/10. Moreover, a similar rainfall pattern was observed in the north of Scotland (Figure 2B) and, although a significant rise of LB was detected in Highland in 2008/09, this rise was of a similar size to the previous year, suggesting rainfall pattern alone cannot account for the rise of LB in Tayside (Table 1).

When LB in Scotland has been examined, Highland has consistently been shown to be an endemic region. However, this study has shown that the incidence of LB in Tayside is also rising. Medical practitioners should therefore be aware of the increased risk to patients who visit or reside in these areas and the wide spectrum of clinical symptoms associated with LB. It appears that Tayside is in the early stages of becoming a 'hot spot' for LB, diverging from the pattern seen in the rest of Scotland and developing into an area of endemicity similar to Highland.

**Acknowledgements** We would like to thank the users of our service for their helpful co-operation, NHS Education for Scotland for supporting the Trainee Clinical Scientist scheme, the medical microbiology staff in Highland and Tayside for their support and Ross Martin for his IT assistance.

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Home Office

Rt Hon Lynne Featherstone MP  
Minister for Crime Prevention

2 Marsham Street  
London SW1P 4DF  
[www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

11 March 2015

Dear Festival Organiser

Like my predecessors, I am writing to you to draw attention to the Government's continuing concerns about the availability of traditional illegal drugs and new psychoactive substances (NPS), often inaccurately called 'legal highs', at music and dance festivals across the UK.

Historically, the majority of drugs encountered by the Home Office's Forensic Early Warning System (FEWS) at festivals have been the more established illegal drugs – such as MDMA, mephedrone and ketamine. Nevertheless, a number of 'white powders' and pills seized at these events have been found to contain NPS. NPS are often marketed as "legal", when in fact over 500 have been banned since 2010. These substances increasingly appear to have similar risks to illegal drugs including overdose and severe mental health problems.

This year, I wanted to bring to your attention two drugs, where concerns have been raised by the Government's independent advisers on drug matters, the Advisory Council on the Misuse of Drugs (ACMD).

There has been a recent upsurge in the recreational use of nitrous oxide (also referred to as 'laughing gas') which appears to be tolerated and increasingly used at festivals. The ACMD has recently issued advice to highlight the harms of nitrous oxide misuse. Nitrous oxide can slow down both brain and body responses and poses a risk of death from a lack of oxygen especially if the substance is consumed in a confined space or a substantial amount is rapidly used.

In December 2013, the ACMD also published further advice on ketamine, which is now a Class B drug. The ACMD's report highlighted a range of health issues including chronic bladder, central nervous system and kidney damage as well as toxicity associated with ketamine misuse. Both the ACMD's nitrous oxide and ketamine advice can be found at [www.gov.uk](http://www.gov.uk).

As you make your arrangements for this year, I strongly encourage you once again to review measures to discharge your responsibility to provide a safe environment for the public, especially young people, and to work with the police and other agencies to achieve this. You may want to consider:

- In addition to stipulating that illicit drug use will not be tolerated, adding or maintaining (as appropriate) a 'no legal high' policy towards NPS to include nitrous oxide as a condition of entry to the festival site.
- Consider providing onsite information and treatment services for both traditional illicit drugs and NPS.

- Refer anyone seeking information on the risks of taking traditional illicit drugs or NPS to the FRANK website ([www.talktofrank.com](http://www.talktofrank.com)) or the confidential helpline (0800 77 66 00).
- The Home Office FEWS project has worked with a number of festivals over the years. Your co-operation with these initiatives is extremely helpful in understanding the patterns of use and risk. If you would be interested in participating in further FEWS projects, please contact my officials on 020 7035 5338.

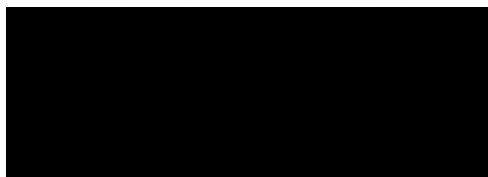
It is important of course to recognise all the activity that has been put in place by many of you in previous years and the close working relationship that many organisers have had with the police and other agencies. I ask that you continue to collaborate with the police and other partners.

Finally, you may be aware that the Government is developing proposals for a general ban on the distribution of NPS across the UK, similar to that introduced in Ireland. This will give law enforcement greater powers to tackle the availability of NPS. This decision followed an expert-led review whose report, together with the Government's response, is available to view and download at [www.gov.uk](http://www.gov.uk). In the meantime, the Government and its agencies continue to support frontline action on NPS. We have recently published updated guidance to local authorities on taking action against 'head shops' selling NPS as well as a NPS resource pack for educators and practitioners to challenge drug taking amongst young people. Last year, Public Health England issued a NPS toolkit to help local authorities prevent and respond to the use of NPS in their local areas.

I appreciate your efforts and continued support in ensuring that the summer festival season is held with public safety at its heart.

I am copying this letter to your local authority and police force.

Yours sincerely



**Rt Hon Lynne Featherstone MP**  
**Minister of State**

# **CATCHMENT POLLUTION REDUCTION PROGRAMME UNDER DIRECTIVE 78/659/EEC ON THE QUALITY OF FRESH WATERS NEEDING PROTECTION OR IMPROVEMENT IN ORDER TO SUPPORT FISH LIFE**

Improvement programme to achieve Guideline values under Article 5 of the Directive

## **ANGUS COASTAL CATCHMENTS**

Monitoring Years: 2005-2007

### **1. CATCHMENT DETAILS**

The Angus Coastal catchments cover an area of 360km<sup>2</sup> and the majority of waters within this area are designated under the Directive. Table 1 shows details of the sampling points covered by this programme.

**Table 1 Details of sampling points**

<b>SOEnvD Ref No</b>	<b>Sampling point NGR</b>	<b>SEPA Location Code</b>	<b>Site Name</b>	<b>Waterbody Name</b>	<b>SEPA Waterbody ID</b>	<b>SEPA Catchment No</b>	<b>Fish Class</b>
301	NO642407	7888	Brothock Bridge GS	Brothock Water	5603	38	Salmonid
302	NO619394	7906	A92 Road Bridge	Elliot Water	5950	43	Salmonid
303	NO580353	7927	Panbride	Monikie Burn	5952	43	Salmonid
304	NO552338	7941	Carnoustie	Barry Burn	5953	43	Salmonid
307	NO654494	7844	Kirkton Mill GS	Lunan Water	5900	42	Salmonid

### **2. CATCHMENT DESCRIPTION**

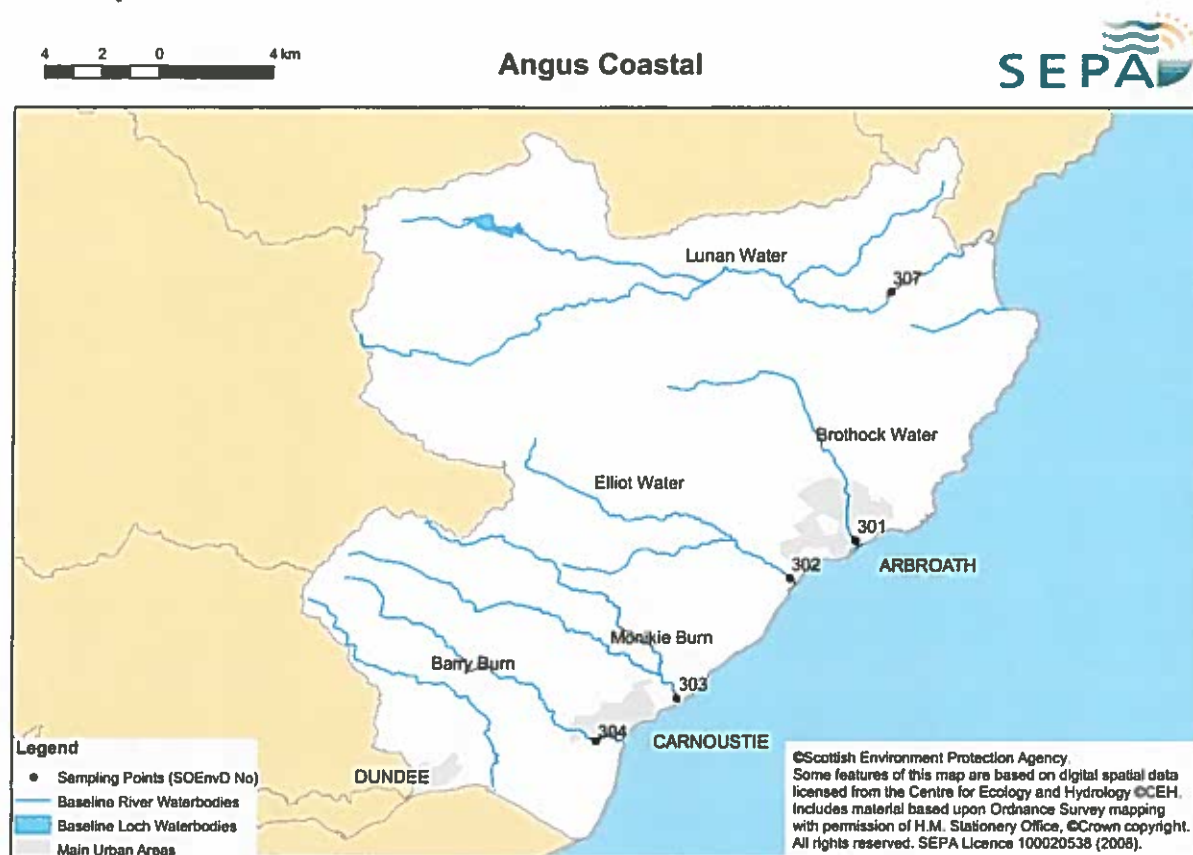
The Angus coastal region comprises of the rivers Lunan Water, Brothock Water, Elliot Water, Monikie Burn and the Barry Burn, as shown in Figure 1. These rivers rise in the Angus Hills, which have an elevation of less than 260 metres and flow south-eastwards through the lowlands towards the North Sea. This area has some of the best agricultural land in Scotland and as such, the majority of land use is classed as agricultural. The whole area is designated under the Nitrates Directive for both groundwater and surface water as a Nitrate Vulnerable Zone (NVZ).

The most significant designation in the area is Barry Links Special Area of Conservation (SAC) to the south of the Barry Burn catchment, protected for its shifting and fixed dunes and associated habitats. There are also small Sites of Special Scientific Interest (SSSIs) at Rescobie and Balgavies Lochs, Restenneth Moss and Turin Hill designated for geological interest, all in the upper catchment of the Lunan Water. There are designated Bathing Waters at Arbroath, just east of where the Elliot Water meets the sea and also at Carnoustie, east of the Barry Burn.

The catchment's solid geology is predominantly sandstone, interbedded with conglomerate, siltstone and mudstone. There are also some bands of igneous rock scattered throughout the area. The most useful aquifers are the sandstones and mudstones, both of which are well jointed. The other rock types such as conglomerates are poorly permeable. Till drift deposits cover the whole catchment whilst glacial sands and gravels and alluvium can be found in the valley corridors. In the lower



catchment there are raised marine deposits and blown sand. Generally speaking, the waters are moderately hard.



**Figure 1 Angus Coastal Catchments**

Water quality on average is good to fair, with the greatest threat coming from diffuse agricultural pollution. There are a number of sewage treatment works (STWs) scattered throughout the area that may contribute to a reduction in quality occasionally, and agricultural abstractions during dry weather periods can enhance low river flow situations which can exacerbate pollution problems.

### 3. COMPLIANCE

Waters throughout the catchment are identified as salmonid waters as described in the Directive. Many discharge improvements have been carried out in the catchment, and during 2005-2007 all monitoring sites met the imperative standards as specified in the Directive. Table 2 shows those sites in the catchment that fail to comply fully with the Directive guideline values. The North and South Esk catchments to the northeast of the Angus Coastal area have been detailed in a separate plan.

**Table 2 Sites not respecting guideline values 2005-2007**

SOEnD Ref.	Site Name	Watercourse	Parameter(s)	Year Failed
301	Brothock Bridge Gauging Station	Brothock Water	Nitrites Total ammonium	2005-2007 2005-2007
302	A92 Road Bridge	Elliot Water	Nitrites Non-ionised ammonia Total ammonium	2005-2007 2007 2005-2007
303	Panbride	Monikie Burn	Nitrites Total ammonium	2005-2007 2006-2007
304	Carnoustie	Barry Burn	Nitrites Total ammonium	2005-2007 2005-2007
307	Kirkton Mill Gauging Station	Lunan Water	BOD5 Nitrites Total ammonium	2007 2005-2007 2006-2007

#### 4. CAUSATIVE FACTORS

As land use in the Angus coastal catchments is predominantly agriculture, diffuse pollution is the greatest threat to meeting the Directive's guideline standards, particularly from arable land. Angus is also seen as the abstraction capital of Scotland due to the large volume of water used for irrigation, of potatoes in particular, but also vegetable and soft fruit growing. This puts watercourses in the area under severe pressure during the growing season, especially as the east coast has a drier climate than the rest of Scotland.

Low, slow flows can cause reduced aeration and dissolved oxygen levels, enhancing the susceptibility of the water to temperature rises when in direct sunlight. These conditions are known to cause excessive algal growth in this area, which leads to sharp increases in pH and an increase in toxicity of non-ionised ammonia. This can happen naturally as well as being exacerbated by diffuse pollution. In addition, despite SEPA's best efforts, land is continually cropped to the edge of burns, reducing protection from direct sunlight and decreasing the distance for buffering against fertiliser-enriched run-off. Watercourses can also be canalised to increase the area of land utilised, resulting in very little shading in places. The full impact of direct sunlight assists in providing ideal conditions for algal growth. Many of the sampling sites exhibit clear dissolved oxygen trends reflecting the eutrophic status of the watercourse.

Although diffuse pollution is the main threat to water quality, the sewage treatment works scattered throughout the catchment can add to problems, particularly at stressful times of year such as dry periods. The Barry Burn has a discharge from the Monikie STW and the Monikie Burn from Muirdrum STW. The Lunan Water is impacted by three STWs at Inverkeilor, Friockheim and Letham. Letham discharges into the Vinny Water; a tributary of the Lunan.

#### 5. RECENT IMPROVEMENT ACTIONS

The STWs on the Lunan Water and Barry Burn are subject to investment plans by Scottish Water under the Quality and Standards (Q&S) investment review. Monikie STW on the Barry Burn had £0.5m investment in the 2004/05 financial year to meet compliance with the Urban Waste Water Treatment Directive (UWWTD) Regulations, which should also assist compliance with FWF standards.

Other smaller STWs in the catchment have had upgrades in flow structures and/or Combined Sewer Outfall (CSO) screening which were completed in 2005.

A SEPA Action Plan starting in 2003 investigated the causes of reduced water quality at designated Bathing Waters in Angus. As a consequence, work was undertaken in Carnoustie to remove sewage from surface water drains and replace an unsatisfactory emergency overflow, and in Arbroath, maintenance procedures were improved both for septic tank owners discharging to the Elliot Water and for Scottish Water.

All waters within the catchment were reviewed under SEPA's 'South-East Area Umbrella Directives' Action Plan, which included not only the FWF Directive but also Shellfish and Bathing Waters Directives. Long term data analysis was used to assist in the identification of trends or specific problems which were then targeted for action.

The Lochty Burn was the subject of a SEPA Action Plan in 2005, looking at faecal contamination that can impact the designated Bathing Water. Problems identified with the sewer system in Carnoustie are being rectified by Scottish Water and a local housing developer, and householders with septic tanks on the burn are planning on discharging to a new sewer. SEPA's investigative and monitoring work is ongoing to ensure the problems are fully resolved.

In 2006, a SEPA Action Plan was instigated to measure the nutrient loadings entering the Lunan Lochs and to determine any reductions following the introduction of Best Management Practice on local farms. This ongoing work is in conjunction with SNH's Natural Care Scheme for the area and is expected to result in benefits to water quality and habitat.

## **6. PLANNED IMPROVEMENT ACTIONS**

SEPA will continue to monitor the Angus coastal catchments and undertake long-term data analysis to ensure downward trends in pollutants continue and to flag up any specific problems.

Following on from the SEPA Action Plan in 2006, in 2007 the Lunan Catchment was selected by SEPA as representative of a catchment dominated by horticulture and arable farming and will be used as a Monitored Priority Catchment (MPC) to characterize diffuse pollution pressures associated with various land uses. This 5 year action plan aims to establish the loads of pollutants entering the lochs and measure the effectiveness of diffuse pollution mitigation measures being undertaken within the catchment. The MPC project is a multi faceted, cross-institute initiative involving SEPA, the MacAulay Institute, the Scottish Agricultural College and local landowners via a farmers' focus group. Although, not driven by the FWF directive, this project should result in improved water quality at site 307.

To enable implementation of the EU Water Framework Directive (WFD), the Water Environment and Water Services (Scotland) Act 2003 (WEWS) was passed by the Scottish Executive. This Act gave Scottish ministers powers to introduce regulatory controls over activities to protect and improve the water environment. These regulatory controls, the Water Environment (Controlled Activities) (Scotland) Regulations 2005 (CAR) came into force in April 2006. They encompass discharges of polluting matter to wetlands, surface waters and groundwaters, disposal of waste sheep dip and waste pesticides, abstractions from all wetlands, surface waters and groundwaters, impoundments of rivers, lochs, wetlands and transitional waters, and engineering works in inland waters and wetlands.

These allow SEPA to regulate all abstractions over a set threshold to ensure river flows sustain aquatic ecosystems whilst allowing continued use for essential anthropogenic purposes. This is particularly important in the Angus Coastal catchment, where low flows during the summer can exacerbate temperature and dissolved oxygen problems, subsequently affecting pH and non-ionised ammonia. Controls for new engineering works should also minimise any further degradation of habitat

quality. However, whereas abstraction controls are retrospective, applying to abstractions already in place, engineering controls do not apply to pre-existing structures. Significant new in-stream works, channel and bed modifications have been regulated, helping to prevent further loss or damage to physical habitats and their associated species.

The most significant issue in this catchment is tackling land management and reducing agricultural diffuse pollution inputs. SEPA has worked with farming interests and the Scottish Executive to produce and promote 'Codes of Good Practice' to minimise diffuse pollution. The Prevention of Environmental Pollution From Agricultural Activities (PEPFAA) Code outlines the 'dos and don'ts' of farming practices. It focuses on planning tools, in field measures, river margins and the built environment. The 'Four Point Plan' outlines dirty water management around steadings, better nutrient use, a risk assessment for manure and slurry, and managing water margins. The 'Forests and Water' guidelines provide advice on catchment planning, site planning and the conduct of all forest operations. The 'Farm Soils Plan' provides guidance on recognising and rectifying poor soil conditions, targeted nutrient application, preventing soil loss and protecting water quality and soils. To supplement and compliment this existing advice, guidance on Best Management Practices (BMPs) were produced by SEPA in partnership with Scottish Executive, CEH, The Macaulay Institute, Farming and Wildlife Advisory Group, National Farmers Union Scotland, Forestry Commission, Scottish Agricultural College, and Soil and Water Scotland. This guidance facilitates selection of sites and suitable BMPs to help mitigate diffuse pollution from agriculture in this catchment.

Common Agricultural Policy (CAP) reforms in 2005 decoupled subsidies to farmers from production. This means farmers receive direct support in the form of a Single Farm Payment (SFP) instead of having to produce crops or livestock to obtain subsidies. This further encourages and rewards Best Management Practices and thus should lead to future improvements in water quality.

Also, the CAR regulations were amended and expanded by the Water Environment (Diffuse Pollution) (Scotland) Regulations 2008, which came into force in April 2008. Seven new General Binding Rules (GBRs) for diffuse pollution were added based on standards of good practice such as the PEPFAA Code; providing a statutory baseline of good practice. The activities covered include management of fertilisers, livestock, pesticides, sheep dips, cultivation of land, construction and maintenance of roads and tracks and discharges of surface water run-off. These new regulations should assist in reducing agricultural diffuse pollution and improve water quality throughout this catchment.

The Scottish Rural Development Programme (SRDP) is a £1.6 billion programme of economic, environmental and social measures designed to develop rural Scotland over the 2007-13 period. To deliver environmental aspects of these measures, funding will be available through Rural Development Contracts (RDCs). RDC – Land Management Options (LMOs) provide funding for some measures that can reduce diffuse pollution risk. LMOs entail a 5-year commitment but are non competitive, with each participant limited to a maximum allowance. RDC – Rural Priorities is an integrated funding mechanism that will deliver targeted measures based on regional priorities. Regional priorities will be identified and agreed with local stakeholders through Regional Proposal Assessment Committees (RPACs), which will take account of local conditions and existing regional strategies. Rural Priorities is a competitive mechanism to ensure contracts are awarded to proposals best able to deliver them: as such there is no maximum allowance. Both these funding mechanisms should facilitate the ability of farmers to meet the new GBRs and implement BMPs. This should help mitigate agricultural diffuse pollution, improving water quality in this catchment and helping ensure compliance with FWF standards.

The WFD also requires the production of River Basin Management Plans by December 2009. These will bring together water and land management using an integrated catchment approach, working closely with stakeholders, the public and other organisations. Programmes of measures will be defined to reduce the impact of identified pressures and to ensure environmental objectives are met in

the required timescales. The planned improvement actions outlined above will be incorporated into these programmes of measures. This should lead to further water quality improvements and increased compliance with FWF standards.

## 7. SUMMARY OF ACTIONS

Action	Deadline
SEPA Action Plan investigating the causes of failure of designated Bathing Waters in Angus.	Completed April 2004
CAP Reform regulations commence.	January 2005
SEPA Action Plan to assess bacterial contamination and sewage discharges impacting Angus Bathing Waters.	Completed April 2005
SEPA 'South-East Area Umbrella Directives' Action Plan which includes data and trend analysis.	Completed April 2005
Upgrade of Monikie STW.	Completed December 2005
Addition of flow structures and/or CSO screening on small STWs.	Completed December 2005
Q&S III investment programme begins.	March 2006
SEPA Action Plan on the Lochty Burn, Carnoustie	Completed April 2006
Regulation of abstractions and engineering works under the WFD begins.	April 2006
i) Develop SEPA internal Action Plan proposals where necessary to address problem areas that are highlighted from data analysis. ii) Undertake required Action Plans.	i) November 2007 ii) April 2008
SEPA Action Plan investigating diffuse pollution in the Lunan Lochs.	April 2007
Regulation of diffuse pollution under the WFD begins.	April 2008
Production of the first River Basin Management Plans.	December 2009
Lunan Water Monitored Priority Catchment and SEPA Action Plan	April 2012



# Don't pee on the land

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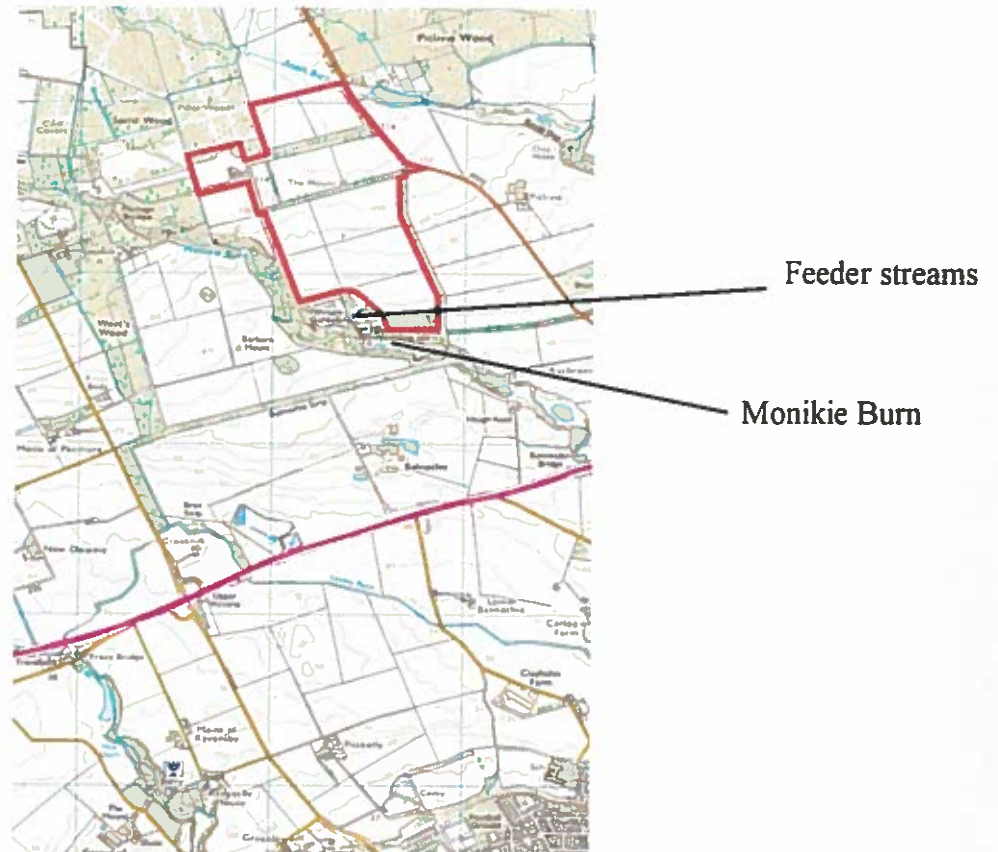


Gaia's Guardians



## DOCUMENT 9.

### Plan of Proposed Festival Site Panmure Estate (Note Incline)





## E. COLI O157

### RECREATIONAL USE OF ANIMAL PASTURE

#### INTRODUCTION

Prior to the forthcoming "outdoor season" those planning recreational use of animal pasture (fields used for grazing animals) should be aware of the potential risks associated with *E. coli* O157:

- Those walking and cycling, etc. on pasture land face least risk.
- Adults playing sport or camping get closer to sources of infection, but are less commonly affected.
- Children are especially at risk.

The following guidance is intended in particular for organisations that arrange camping or picnicking for children, and for farmers and landowners who permit animal pasture to be used for such purposes.

#### BACKGROUND

Research shows that almost a quarter of cattle herds in Scotland and many sheep and goats carry and excrete *E. coli* O157. The animals do not become ill but can spread the organism to people by direct contact and indirectly via droppings and manure spread on land. The farmer or landowner will not be aware of animals excreting O157 because the animals show no symptoms and there is no way of knowing when animals are infected.

**Animal droppings on pasture are the greatest worry**, especially where there are concentrations of animals in a given area, and in wet conditions. You may well be able to see the droppings: you will not see the contamination that they cause. The organism is known to survive in soil and animal droppings for weeks, but the levels generally decline over time. You will find it almost impossible to avoid getting animal droppings on boots or shoes in these circumstances. **Footwear can easily spread droppings into buildings, tents and vehicles.**



Fences, gates, stiles, seating and play areas can also become contaminated with animal droppings which may contain *E. coli* O157. **To be a risk, the *E. coli* O157 has to be swallowed from contact with hands, contaminated food or contaminated water. Even tiny amounts of *E. coli* O157 can be a severe risk.** Surface water run-off from fields containing animal droppings can lead to contamination of streams, burns, etc., particularly during wet conditions. In wet conditions, contamination can spread more easily onto hands, footwear, tents, etc., with the increased possibility that the organism can pass into the mouth or contaminate food and water. Normally such contact with *E. coli* O157 will be unlikely for most of the population, even those walking and cycling in the country, but:

**Those camping, picnicking and playing on farm land used for grazing animals are most at risk.** In dry conditions, the risk should be less.

### THE FOLLOWING STEPS SHOULD BE TAKEN

Ideally, to completely avoid risk of infection by *E. coli* O157 from this source, fields used for grazing or stockholding of animals should not be used for camping, picnicking and play areas, especially where these involve children.

These risks can be greatly reduced by adopting the following sensible precautions:

- Keep farm animals off the fields for 3 weeks prior to use.
  - Remove any visible droppings, ideally at the beginning of the 3-week period.
  - Mow the grass, keep it short and remove the clippings before the fields are used for recreation.
  - Keep farm animals off fields during use.
- 
- Always wash hands before eating, drinking and smoking, i.e. use soap, clean towels and, preferably, hot and running water.
  - Ensure that water from burns and streams is treated before drinking.
  - Ensure adequate supervision of children, particularly those under 5 years of age.

These precautions, taken together, will greatly reduce the risk of *E. coli* O157 and other infections from this source, and allow your camping or sports to continue in greater safety.



## Overview of Costs and Benefits Associated with Regulation in Scottish Agriculture

[Previous](#) | [Contents](#) | [Next](#)[Listen](#)**7. Statutory Instrument 1989 No. 1263 The Sludge (Use in Agriculture) Regulations 1989***Abstract*

The Sludge (Use in Agriculture) Regulations 1989 and The Sludge (Use in Agriculture) (Amendment) Regulations 1990 establish maximum annual applications for metals contained in sludge and set maximum permitted metal concentrations in agricultural soil treated with sludge. They implement the EU Sludge Directive (86/278/ EEC) ( OJ No. L181/6). The European Union regulates use of sewage sludge in agriculture to prevent harmful effects on soil, vegetation, animals and humans.

At present there are statutory regulations, non-statutory codes of practice and a voluntary agreement (i.e. the safe sludge matrix) governing the application of sewage sludge to agricultural land. The water industry, food industry and other major stakeholders are pressing for the standards to be made statutory in order to increase confidence and to allow them to be brought within the enforcement regime operated by SEPA. Making the standards statutory would also reduce the risk of having to use other, more expensive, and potentially less environmentally sustainable disposal systems (e.g. incineration and landfill). Importantly for farmers in the current environment of rising fertiliser prices, sewage sludge represents a cheap alternative source of phosphorus, potash and nitrogen. Sewage sludge also improves soil structure.

*Background*

In 2006 nearly one billion litres of wastewater was treated daily, this would produce approximately 150,000 tonnes of sewage sludge annually. It is estimated that there will be a 17 per cent increase in the amount of sewage sludge produced in Scotland over the next 20 years due to tightening waste water treatment standards. Currently, significant outlets for sludge include recycling to agricultural and non-agricultural land, and the co-firing of sludge pellets with coal for electricity. 23 per cent (33,773t dry solids) of recycled treated sludge was used on agricultural land in 2005. Less than 1 percent (2002) of Scotland's land has sludge applied

*Agricultural benefits*

Sewage sludge can provide a significant proportion of the fertiliser requirements for industrial crops such as oilseed rape, the preferred crop source for biodiesel. The high nutrient and organic matter content of sludge, when applied to agricultural land in suitable concentrations, is known to improve soil structure, drainage and available water capacity.

However, application under unsuitable conditions or at inappropriate rates can give rise to pollution and contamination of soil, water or air. Although there are a number of science-based procedures and controls in place, concern remains around this practice. The main public concerns are odour, and the perceived risks to human health of raw sludge

All applications of imported wastes spread on farmland should be included in the calculations within the Manure Management Plan (Farm Waste Management Plan). This is mandatory for Fertiliser and Manure Plans in Nitrate Vulnerable Zones.

*Regulation of sewage sludge*

Use of sewage sludge on farmland is controlled by the Sludge (Use in Agriculture) Regulations 1989 (as amended), which control the build-up of potentially toxic elements in soil and restrict the planting, grazing and harvesting of certain crops following the application of sludge.

Sludge producers (in Scotland this generally means Scottish Water or their contractors) are required to analyse field soils and sludge prior to application, and to maintain detailed records of applications of all sludge to farmland. However, it is the farmer, rather than the sludge producer who is ultimately responsible for complying with the regulations in terms of crop planting and harvesting following sludge application.

Further guidance and requirements are given in the UK-wide Code of Practice for Agricultural Use of Sewage Sludge, the code of good practice for the prevention of environmental pollution from agricultural activity ( PEPFFA code), and also in the safe sludge matrix (an agreement between the UK water industry and the British Retail Consortium on sludge use).

*Proposal to revise the regulations*

In 1998 the UK Government announced its intention to revise the regulations to provide further safeguards against the transfer of pathogens from sewage sludge to the food chain. The Scottish Executive and DEFRA consulted on changes to the regulation of the use of sludge in agriculture in 2002.

The Scottish Government is considering revising the 1989 regulations, so that the higher standards currently set out by the safe sludge matrix are given statutory force. Amongst other things, the matrix does not allow raw or untreated sewage sludge to be used on agricultural land for food production.

The revised regulations are designed to address concerns about the potential risks from pathogens to human and animal health when recycling sewage sludge on agricultural land. This would be achieved by strengthening the treatment requirements for sewage sludge processes to ensure that potential pathogens cannot be transmitted into the food chain by using sewage sludge to fertilise land used for food crops. A qualitative assessment of the risks associated with land application of wastes, including sewage sludge was carried out in 1998 and the recommendations for revising the regulations were based on this assessment.

The revised regulations go beyond the requirements of the EU directive in that they define sludge treatment standards. These standards were agreed by major stakeholders and the extra costs were accounted for in Scottish Water's quality and standards strategic review 2002 - 2006.

Regulations have not been made as yet, partly because the consultation showed that the voluntary agreement was being respected. In the meantime, the matrix is being observed voluntarily. Scottish Water is in favour of strengthening the statutory requirements, however SEPA would accrue enforcement costs and Scottish Water is unable to pay under the current regulatory funding mechanism.

Members of the food industry and other major stakeholders are also pressing for the standards to be made statutory in order to increase confidence and to allow them to be brought within the enforcement regime operated by SEPA.

#### Other legislation

There are a number of other significant pieces of Scottish and European legislation with relevance to sludge management. Legislation often addresses organic wastes as a whole, in such a way as to include sewage sludge. The Waste Management Licensing Amendment (Scotland) Regulations 2003 tightened up the use of sludge on agricultural land and in land restoration. The Waste Management Licensing Amendment (Scotland) Regulations 2004 relate to the use of organic wastes, including sewage sludge, on non-agricultural crops such as forestry.

SEPA has used its powers under the 2003 and 2004 regulations to restrict the tonnage of sewage sludge allowed to be spread on non-agricultural crops (primarily forestry), or for land restoration to an ordinary maximum application rate of about 400 tonnes per hectare. This figure represents a considerable reduction on volumes which, in the past, may have been thousands of tonnes per hectare.

#### Analysis

##### Effectiveness of the regulation

The regulation appears to be working effectively, however by making current industry standards statutory enforcement could be improved if necessary. It may also help improve the confidence of stakeholders that the sewage sludge, when used according to the regulations and standards, is safe for humans, plants, animals and the environment.

As there are a number of other significant pieces of Scottish and European legislation with relevance to sludge management, the effectiveness of this regulation can be complemented by changes in other pieces of legislation.

##### Financial Implications

The Scottish RIA completed in 2002 set out the costs and benefits of maintaining the current system, revising the code of practise, or revising the regulations.

##### Costs

The suggested revisions to the regulations would impose more stringent requirements on Scottish Water. However, Scottish Water is committed to the matrix and the additional costs have already been allowed for in the quality and standards period 2002-2006. The agreed recurring costs associated with revised regulations are estimated to be £2m per year. This is a least cost option when compared with the costs of alternative disposal methods. The initial capital investment in improved treatment for Scottish Water is estimated at £14m.

There would be an additional cost to owners of a septic tank, mostly in rural areas, as the spreading of untreated sludge would be banned. The cost of treatment is estimated to be fairly low at £10 on average. The total extra cost of disposal of septic tank sludge in Scotland was estimated in the RIA (2002) to be £0.2m per year.

Farmers would also have to comply with any changes to the regulation including grazing and cropping restrictions. As less than 1 percent (2002) of Scotland's land has sludge recycled in this way applied, the effects of any change are targeted.

The cost to enforce existing regulations was estimated at £14,000 per year. A tighter regulatory system will lead to increased enforcement costs. However, the suggested changes allow SEPA to recover these costs and they may be passed on to sludge producers.

##### Total costs for maintaining and revising the regulations (2002)

Option		Estimated recurring costs (yearly)	Estimated non-recurring costs
Current regulations maintained as is	Public confidence holds	£0	£0
	Sludge to agriculture unacceptable	Incineration £16m	Landfill £0
		Landfill £7m £0.6m per (for inorganic fertilisers)	Incineration £46m
Revise the regulations (most likely to maintain public confidence)		£2m Scottish water £10 per farmer £10 per septic tank de-sludging	Scottish water £14m

Figures are approximate

The recurring cost to Scottish water is approximately 0.2 per cent of 2002 income

Source: Revision of the sludge (use in agriculture) regulations 1989, Scotland, RIA

#### Benefits

The RIA does not quantify the benefits of the current regulation. The benefits of revising the regulations however include increased security that costs of finding alternative disposal methods would be avoided. The benefit of avoiding incinerating sewage sludge in Scotland is valued at £1.33m per year at 2006 prices in the Environmental Accounts for Agriculture report of April 2008.

Use of sewage sludge on agricultural land is preferred according to the criteria in the national waste strategy. Although difficult to quantify, there are economic and environmental benefits from recycling sewage sludge to agricultural land. The resulting improvement in fertility, structure, workability, water holding capacity and yield have been established. In the current climate of increasing input costs, alternatives to bagged fertiliser are becoming increasingly attractive. Recent reporting from England suggests that growers benefited from about £450/ha worth of nutrients in years one and two. Typical figures for nutrients required were given as 35kg nitrogen, 100kg phosphate, 7kg potash, 30kg SO<sub>3</sub> and 12kg magnesium a hectare in year one

The Environmental Accounts for Agriculture report (2008) introduced a valuation of agriculture's waste sink services for sewage sludge as a positive flow estimated to be worth around £35m.

The proposals for revision would not result in significant change in farm working practices. While they would allow enforcement measures to be taken if necessary, the key benefit is intended to be the confidence of farmers, the food industry and the public in the recycling of sewage sludge to agricultural land.

Should this outlet become unsustainable, water treatment companies would face significantly increased costs in establishing alternative disposal systems (landfill, incineration) for the major proportion of their sludge.

#### *The main costs of the Sludge (Use in Agriculture) Regulations 1989*

	Action	Scale of cost
Admin	On farm records	Low
	Treatment	Medium
Policy	Reduced waste disposal to agricultural land	Low

#### *The main benefits of the Sludge (Use in Agriculture) Regulations 1989*

	Action	Scale of benefit
Private	Low cost alternative nutrient source	High
Social	Avoiding alternative disposal - cost	High
	Avoiding alternative disposal - environmental impact	High

#### *Industry views*

The changes suggested in the 2002 RIA were discussed extensively with both the water and food industries, who were generally content with the proposals. Public consultation on the proposal to make the matrix compulsory was also carried out. As this work was undertaken around the time for the Foot and Mouth outbreak, farmers were not consulted directly.

As part of the consultation, NFU Scotland noted that it was conscious of the importance of commercial interests in determining the future of sludge spreading and did not take a definite view on the proposals.

There are reportedly ongoing problems with some grain merchants specifying that sewage sludge not be applied on malting crop paddocks. From a marketing perspective, the whiskey industry are concerned about problems with consumer perception if sludge is applied. NFUS are continuing to meet with members of the whiskey industry to talk through the issues and note that more research has been done since the whiskey industry's initial views were expressed. While some claim that the malting industry might reconsider its stance on using the product within the rotation, the NFU and NFUS is less convinced, believing that there is still a long way to go to settle the issue with certain supply chains. While legislating the matrix might allay some concerns and lead to a change in approach, a bigger driver might prove to be the changing economics of grain production. If distillers wish to source more grain in order to increase production, they may need to relax their current specifications to allow farmers to use sludge as a cheap alternative to bagged fertilisers.

The Scottish Landowners' Federation and Highland Council were pleased about the relatively small impact there would be on farmers.

The Tenant Farmers Association of Scotland (STFA) noted that the regulation applies to the contractors used to spread such materials, who appear well-versed in the regulations.

Spreading sewage sludge on agricultural land is supported by the Scottish Executive, SEPA, European Commission, Royal Society for the Protection of Birds (RSPB), the Soil Association, and Surfers Against Sewage. SEPA noted that most studies on this matter have concluded that gold-plating is not a feature of regulation in this area.

#### *Ability of the Scottish Government to influence*

The current regulations implement the EC directive, and go further in terms of industry best practice guidelines and standards. The European Commission had proposed to revise the Directive in 2007 with a view to tightening the quality standards under which sludge is allowed to be used in agriculture. Any changes that are proposed would need to be reflected in Scottish legislation as appropriate. Currently however, some members of the industry are pushing for greater regulation in terms of making current standards statutory.

#### *Conclusions*

##### 1. Does the regulation originate from an EU Directive?

1. Yes - EU Sludge Directive (86/278/EEC)

##### 2. Has a Scottish RIA been completed?

1. Yes - an RIA was completed in 2002 looking at revising the amended 1989 regulations.
  1. Are the benefits adequately quantified?
  2. The benefits have not been quantified. Further work may be possible in this area if necessary. The benefits include economic, social and environmental aspects. For farmers, cost savings in using sewage sludge is the key benefit.
  3. Are the administrative costs adequately quantified?
  4. Yes, however, during consultation, some commented that the regulatory costs to SEPA would be higher than the £14,000 stated in the draft.
  5. Are the policy costs adequately quantified?

Yes. There is a relatively small impact on farmers, and it was generally felt that Scottish Water should bear most of the costs.

##### 3. What are the problems with the regulation?



1. Currently industry is operating under best practice guidelines that, if made statutory, could improve the confidence of those along the supply chain that the practice of applying sewage sludge to agricultural land is safe, economical, environmentally sustainable and effectively enforced.
4. What is the overall balance - cost or benefit?
  1. Benefits of the regulation are significant in terms of allowing confidence that the application of sewage sludge is safe and environmentally sustainable. Giving more weight to current industry codes would enhance the level of confidence associated with this regulation and its enforcement. Although there would be significant costs for Scottish Water, costs associated with a shift to alternative disposal methods are much higher. The regulations also allow farmers to utilise a cheap alternative form of nutrients.

#### 5. Suggestions for improvements

1. As set out above, an RIA looking at revising the 1989 regulation was completed in 2002. However, at this point in time there are no urgent problems to be remedied and thus it is more a question of priority in the legislative timetable.

The European Commission (2005b) had proposed to revise the Directive in 2007 with a view to tightening the quality standards under which sludge is allowed to be used in agriculture. Developments will need to be followed to ensure consistency with the Scottish regulations and current industry practice where possible.

#### 6. Does it meet the Better Regulation guidelines?

**Transparency:** High. The information provided as to what is and isn't allowed is clear and easy to follow (eg, the concise version of the PEPFAA code - the dos and don'ts guide - set out easy to understand practical guidance). Should the regulations be revised, SEPA would need to issue guidelines to officers and arrange suitable training.

**Accountability:** High. The regulations, which implement the EU Sludge Directive (86/278/ EEC), are enforced by the Scottish SEPA. It is the farmer, rather than the sludge producer who is ultimately responsible for complying with the regulations in terms of crop planting and harvesting following sludge application. However responsibility rests with the producer for compliance with the sludge regulations in regard to the analytical testing of the sludge and soil. Farmers should not allow spreading without this having been done.

**Proportionality:** High. The measures adequately reflect the importance of ensuring that the practice is carried out in a way that is not detrimental to the environment or human, plant or animal health. The regulations and other relevant guidance appear to be well accepted by the farming community and the majority of other stakeholders. Industry is pushing for revised regulations even though they go beyond the requirements of the EU directive in that they, amongst other things, define sludge treatment standards.

**Consistency:** High. The regulation provides clear guidelines for the use of sewage sludge that are consistent for all users.

**Targeted:** High. As less than 1 percent (2002) of Scotland's land has sludge recycled in this way applied, the effects of any change are targeted towards those directly affected.

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# Hearing loss due to recreational exposure to loud sounds

A review



**World Health  
Organization**

# Hearing loss due to recreational exposure to loud sounds

A review



**World Health  
Organization**

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## ***Introduction***

Excessive noise is increasingly encountered in many aspects of day-to-day life. Among the many people exposed to noise at their place of work, occupational hearing loss is common, and the cost of compensation is extremely high (1). Environmental noise from non-occupational sources such as traffic is also increasing and is responsible for an estimated 1–1.6 million DALYs (disability-adjusted life years) in western European countries, implying an annual loss of 1 million life years in that part of the world (2).

Additionally, concern is growing about the ever-greater exposure to noise in recreational settings: unsafe levels of sound are frequently experienced in a variety of non-occupational settings such as nightclubs, discotheques, pubs, bars, cinemas, concerts, live sporting events and even fitness classes (3–7). Moreover, recreational devices such as personal music players and video game consoles that emit sounds are commonly operated at unsafe volumes. Hearing can be damaged by regular participation in these loud activities (8–11).

## ***Cause for concern***

WHO estimates that 1.1 billion young people worldwide could be at risk of hearing loss due to unsafe listening practices. Nearly half of all teenagers and young adults (12–35 years old) in middle- and high-income countries are exposed to unsafe levels of sound from the use of personal audio devices and some 40% of them are exposed to potentially damaging sound levels at clubs, discotheques and bars.

Analysis of data from the National Health and Nutrition Examination Survey in the United States suggests that, between 1994 and 2006, the prevalence of hearing loss<sup>1</sup> among teenagers (12–19 years old) rose from 3.5% to 5.3% (12). Another study from the USA indicates that the number of individuals listening to music through headphones and earphones increased by 75% between 1990 and 2005 (13). A 2008 European Commission report noted that personal audio devices are being used by an increasing proportion of the population; from 2004 to 2007, unit sales within the European Union are estimated to have been between 184 and 246 million (14). In recent years, music players have been increasingly replaced by smartphones. Worldwide sales of smartphones in 2011 amounted to 470 million units, and this figure is rising (15).

With the increased availability and use of personal audio devices for listening to music and the risky behaviour pattern of their use at high volume over long periods (16–18), the threat of hearing loss due to recreational exposure to noise is a real one.

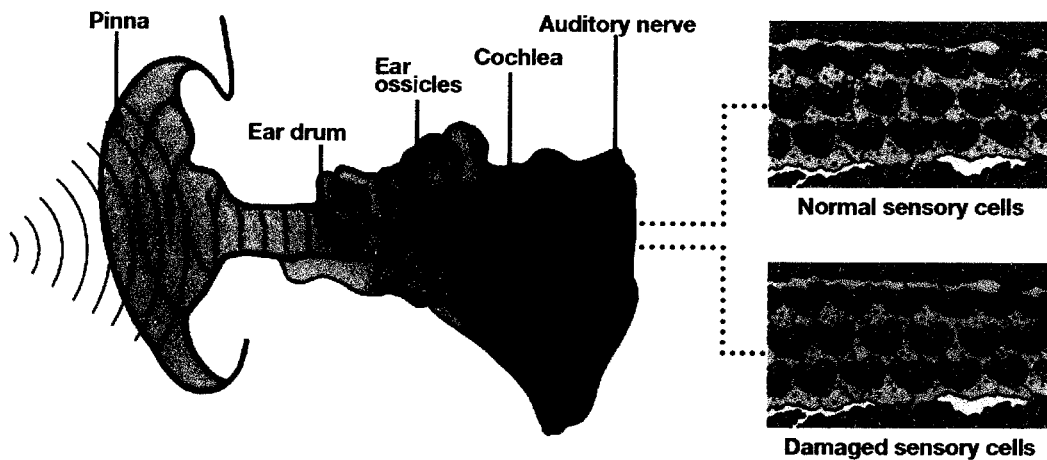
## ***How we hear***

Ears are the organs that process sounds, enabling the brain to interpret what the individual is hearing. The ear is divided into three parts – outer ear, middle ear, inner ear – each of which has a unique function in the process of hearing. In simple terms, the outer and middle ears amplify the sound signal (vibration) and the inner ear converts this sound signal into an

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<sup>1</sup> A person who is not able to hear as well as someone with normal hearing (hearing thresholds of 25dB or better in both ears) is said to have hearing loss.

electrical impulse that is transmitted to the brain. This process also produces a frequency (or pitch) and intensity (or loudness) analysis of the sound signal.



Sounds are complex mixtures of pressure variations and travel in invisible waves through air. When these sound waves reach the ear, the pinna (ear flap) funnels the sound waves into the ear canal. Sound waves travel down the canal to the eardrum, causing it to vibrate. The vibrations are transmitted by the ossicles (three small bones) within the ear to the cochlea, causing movement of the fluid and the sensory cells (hair cells) within the cochlea. The sensory cells convert the vibrations into electrical nerve signals that travel along the auditory nerve to the brain. The brain then interprets these signals as sounds that can be recognized and understood.

There are two types of sensory cells within the cochlea: inner and outer hair cells. The inner hair cells generate the electrical signals that are sent to the brain, while the outer hair cells act as amplifiers, increasing the stimulus delivered to the inner hair cells (19). It is important to note that a fixed number of these cochlea sensory cells is present at birth: in humans and other mammalian species, these sensory cells do not regenerate once they have been damaged (20).

### ***How noise affects our ears***

Excessive exposure to noise – both long-term, repeated exposure to noise and a single exposure to an extremely intense sound – causes damage to the auditory system and results in hearing loss, termed noise-induced hearing loss (21–24). The hearing loss is usually slow in onset but progresses relentlessly for as long as the exposure continues (25). Indeed, the harmful effects may continue long after noise exposure has ceased (26); they are irreversible (20, 23).

The damage caused to the cochlea by loud sounds occurs by two means:

- Mechanical destruction (20, 27, 28). Regular exposure to loud sounds causes the hair cells to lose their rigidity and thus their ability to work effectively. This change occurs

over time until the sensory cells are eventually destroyed and are no longer able to carry out their function (14, 20, 29).

- Intense metabolic activity at cellular level (20, 27, 28, 30, 31). A higher level of energy is required by hair cells during periods of intense exposure to loud sounds. The consequent increased consumption of oxygen generates raised levels of free radicals in the cochlea. The ear's antioxidant defence mechanism is unable to cope with these levels and the free radicals cause cell death.

The physiological changes to the ear are reflected in a change in hearing sensitivity and/or the development of tinnitus (2, 14, 29, 32). Hearing loss can be temporary or permanent (29) and is usually bilateral (33).

### **Temporary or permanent threshold shift**

Exposure to loud sounds for any length of time causes fatigue of the ear's sensory cells, resulting in temporary hearing loss or tinnitus (a ringing sensation in the ear). This is termed a temporary threshold shift (temporary loss of hearing). For example, a person who attends a loud concert may come out feeling slightly deaf or experiencing tinnitus (20). Hearing usually recovers within a few hours or a day (34). Temporary threshold shifts have been reported and measured following attendance at discotheques, rock concerts and sporting events (35–40).

Regular or prolonged noise exposure can cause gradual, irreversible damage to the sensory cells and other structures, leading to a permanent threshold shift (permanent hearing loss) (7, 9, 20, 41, 42). Noise-induced hearing loss initially involves the sensory cells that respond to high-frequency (high-pitched) sounds, specifically 4 kHz (10, 19, 32, 34, 39, 40, 43). This initial hearing loss may remain unnoticed by the affected individual, since speech comprehension is largely unaffected (11). However, continued exposure leads to increasing damage in other frequencies and progression of hearing loss, which begins to interfere with the individual's day-to-day activities (19, 20, 29, 32, 42, 44). Noise-induced hearing loss adversely affects conversation and communication, especially in the presence of background noise (14, 20, 32). It also creates difficulty in distinguishing between speech consonant sounds, such as "fish" and "fist" (32).

While temporary threshold shift gives no indication of the magnitude of permanent threshold shift, it is a good predictor of the early development of irreversible hearing loss (41). For individuals who consistently listen to personal audio devices at high intensities with earbuds, the risk of developing a temporary or permanent threshold shift is a significant concern, particularly when such listening habits persist for a number of years (45, 46). It has been demonstrated that persistent use of personal audio devices for more than five years can lead to changes in high-frequency hearing (4 kHz) (46). This hearing loss can be detected on audiological testing through pure tone audiometry (32). The audiogram displays a sharp reduction in hearing at frequencies between 3 and 6 kHz. With continued exposure the hearing loss extends to higher and lower frequencies; it is generally bilateral and symmetrical.

## **Tinnitus**

The sensation of sound (e.g. roaring, hissing, or ringing) in the absence of an external sound source is known as tinnitus (2, 23, 47–49). Often the result of acute or chronic noise exposure, tinnitus can also be the result of other underlying pathologies or be associated with a variety of illnesses (47).

Researchers have demonstrated a strong correlation between recreational noise exposure and tinnitus (50, 51). In general, noise-induced tinnitus, like other forms of tinnitus, can be acute or chronic. Acute or temporary tinnitus lasts for relatively short periods (a few seconds to a few days) and usually occurs immediately following exposure to loud sounds. Chronic tinnitus can last for months to years and suggests cochlear injury (20). It can be unilateral or bilateral (47) and can occur concurrently with hearing loss or in the absence of measureable hearing loss (2).

Noise-induced tinnitus due to recreational exposure usually occurs immediately, is transient and can be an indication of early hearing damage (52, 53). Attendance at recreational activities, such as discotheques, clubs, sporting events or music concerts, has been known to result in temporary tinnitus (6, 35–38, 53). Temporary tinnitus has also been shown to occur in regular users of personal audio devices, although this is less prevalent (37, 50).

Chronic tinnitus following recreational noise exposure is comparatively less frequent than acute tinnitus (55). Like hearing loss, chronic tinnitus can lead to sleep disturbance, anxiety, depression, and impaired concentration and communication and thus has a significant impact on quality of life (2, 23, 52).

### **Effect of noise-induced hearing loss on presbycusis (age-related hearing loss)**

Inadequate hearing protection during activities like shooting firearms and listening to loud music in adolescence may significantly contribute to communication difficulties in later life. Presbycusis refers to the progressive and irreversible hearing loss that is common among individuals aged 60–65 years or more (11, 56, 57). The process of age-related hearing loss in an ear that has not been exposed to noise differs from the pattern of loss that follows regular exposure to noise (26, 58, 59). Research suggests that exposure to noise, particularly loud noise, is more harmful to the cochlea than the natural process of ageing (60). The effect of noise is cumulative and can increase susceptibility and accelerate hearing deterioration in later life, even after the exposure has ceased (23, 59, 61–63). Hence, cochlear degeneration from early noise exposure can render the ears more vulnerable to the effects of ageing (58, 60, 62, 64). However, this association is a complex one as noise-induced hearing loss and presbycusis frequently co-exist and it is difficult to distinguish between them (59, 65).

### **Predisposing factors**

Certain people may be more susceptible to noise-induced hearing loss than others, meaning that individuals who experience identical noise exposure may develop different degrees of hearing damage (32). Genetic predisposition, age, chronic conditions such as diabetes and hypertension, and exposure to cigarette smoke can increase the risk of acquiring noise-induced hearing loss. Pre-existing sensorineural hearing loss, use of ototoxic medications

and exposure to solvents also predispose to the development of hearing loss (32, 59, 66). However, since it is impossible to identify the most susceptible individuals, and since noise-induced hearing loss is irreversible, prevention is the most effective strategy.

### ***How can noise-induced hearing loss be treated?***

There is no medical or surgical cure for noise-induced hearing loss: damaged hair cells cannot regenerate (20, 32, 67). Once hearing loss begins, however, its progression can be halted by avoiding further exposure to loud sounds (19).

Current treatment methods for noise-induced hearing loss focus on people in severely noisy environments such as the military. Approaches such as placement in a quiet room or hyperbaric oxygen therapy immediately following exposure to the loud sound aim to prevent further damage (67, 68). Post-exposure antioxidant and pharmacological therapy have also been shown to be partially effective and to prevent further sensory cell damage (27, 68–72).

Currently, no pharmacological agents are available for prevention or reversal of noise-induced hearing loss. Nevertheless, there have been recent advances in this area and it is claimed that preventive medications are likely to be available in the near future (73). Other areas of scientific research are focusing on gene and stem-cell therapies (74, 75). At present, there are only limited management options – such as hearing aids and counselling – for individuals with even a low degree of noise-induced hearing loss (19, 49, 76).

### ***Other negative impacts of loud sounds***

Noise-induced hearing loss can affect many aspects of life. In young children, it impairs language acquisition (20, 30, 77, 78). Learning disabilities, anxiety and attention-seeking behaviours are also common in children exposed to loud sounds (11). The impact of chronic noise exposure in children is reflected in lowered academic performance and outcomes as well as reduced motivation and concentration (23, 38, 79–89).

The use of personal audio devices is becoming commonplace in educational institutions in developed and developing countries alike. These portable devices often make distribution of educational material easier, particularly to students in remote locations (90–92). They offer flexibility, allowing students to access information (e.g. lecture material) at any time and while participating in other activities, such as commuting, exercising or doing housework (93–96). They have been particularly beneficial in learning languages and music (94, 97–100).

Using personal audio devices in the educational setting also appeals to students, who are familiar and comfortable with the technology. Students benefit from being able to record lectures, listen to podcasts and download books (98, 101, 102). However, some schools and universities prohibit the use of personal audio devices because of concerns about reduced communication and social isolation (103, 104). Studies suggest that misuse or overuse of these devices will lead to cognitive overload and result in impaired performance (86, 105).

## ***Road safety***

Exposure to loud sound is also of concern with respect to road safety for pedestrians, motorists and cyclists. The number of people using media players while driving, cycling or walking has risen, resulting in less safe road-use behaviour (106–108). These devices are a source of distraction and can affect the individual's responses and compromise road safety (106, 107, 109). It is reported that listening to music, particularly when earbuds are used, worsens auditory perception (107, 110–112). College students also do often listen to personal audio devices with earbuds while engaged in activities that require auditory attention in order to avoid danger, such as walking, jogging, cycling and driving (45). Use of noise-cancelling headphones can also pose a risk to safety (113).

Cyclists who listen to music on a portable music device are more likely to exhibit unsafe behaviours than those who do not use such devices (114). A study focused on teenage cyclists revealed that they tend to listen to music while cycling and are more likely than younger or older individuals to be involved in crashes when using personal audio devices (115). Listening to music does not appear to have an influence on cyclists' speed but it does impair their ability to respond to other auditory stimuli (107, 110, 116).

Pedestrians using personal audio devices receive less auditory information from their surroundings and are thus less aware of important alerting signals, e.g. car horns (106, 117–119). Young pedestrians who are distracted by music from personal audio devices while crossing the street have a higher risk of being hit by a vehicle (112). Some authors indicate mixed results, with some pedestrians exhibiting over-cautious behaviour and others unsafe behaviour (118–120). The risk is greater for elderly pedestrians who are more vulnerable than younger people to the hazards of crossing roads while listening to music (105, 121).

As portable audio technologies become ever more commonplace and widely used, it is likely that safety problems related to inattention and distraction will increase (122).

## ***What is safe listening?***

Ears are designed to process the moderate levels of sound that exist in our normal environment (e.g. quiet conversation). Common recreational activities (e.g. rock concerts, listening to personal music players), however, often involve exposure to much higher sound levels for extended periods (8), and scientific evidence is accumulating to demonstrate that these recreational noise activities are potentially harmful to hearing (4, 123). The factors that determine the level of risk are the intensity and duration of noise exposure.

The human ear is capable of detecting a large range of sound intensities (loudness levels) from extremely soft to extremely loud. The unit of measurement used to express the intensity of a sound is the decibel (dB). Measurement of sound intensity in decibels is based on a logarithmic scale, which allows the extreme range of sound intensities audible to humans to be quantified in manageable numbers. Thus, 10 dB is 10 times more intense than 1 dB and 20 dB is 100 times more intense than 1 dB.



The healthy hearing threshold is generally taken as 0 dB (11); a whisper is around 30 dB and normal conversation approximately 60 dB (124). Some common sounds and their intensities (dB) are indicated below.<sup>1</sup>

Device/situation	dB (approximate)
Ticking watch	20
Soft whisper	30
Refrigerator hum	40
Normal conversation	60
Air-conditioner hum	65
Washing machine	70
Vacuum cleaner	75
Alarm clock 60 cm away	80
Heavy city traffic (inside the car)	85
Lawn mower (gasoline)	90
Motorcycle (average)	95
Hairdryer, subway train, car horn at 5 m	100
MP3 player at maximum volume, chainsaw	105
Shouting into the ear	110
Loud rock concerts	115
Spectator trumpet ( <i>vuvuzela</i> ) 1 m from trumpet opening, sirens	120
Jackhammer, jet plane 30 m away	130
Firecrackers, firearms	150

Safe listening levels depend on the intensity (loudness) and duration of exposure (19, 32). These two factors are interrelated (19, 32, 128) and contribute to the overall sound energy level to which the individual is exposed. Effectively, the total amount of sound energy to which an individual can safely be exposed remains constant: the sound energy of lower volumes listened to over long periods of time is the same as that louder sounds heard for over a short period. Permissible levels of daily exposure to noise have been defined on this basis, taking into account the daily permissible dose of sound; they have been calculated for occupational settings and are extrapolated for application in recreational settings.

<sup>1</sup> Sources: references 24, 125–127.

Daily permissible noise level exposure <sup>a</sup>	
Time per day	Sound level ( $L_{Aeq}$ ), dB
25 hours	80
8 hours	85
2 hours 30 minutes	90
47 minutes	95
15 minutes	100
4 minutes	105
1 minute 30 seconds	110
28 seconds	115
9 seconds	120

<sup>a</sup> <http://www.cdc.gov/niosh/docs/98-126/pdfs/98-126.pdf> : p. 2.

The highest safe exposure level is considered to be 85 dB for up to a maximum of 8 hours (33, 129–132). The permissible time for safe listening decreases as sound levels increase. Thus, the safe duration of exposure to a sound level of 100 dB — the level produced by a subway train — is only 15 minutes a day. The output of personal audio devices may range from 75 dB to as much as 136 dB (11); maximum output levels vary with the regulations and legislation in different parts of the world. Typically, users of personal audio devices set the volume between 75 and 105 dB (34).

At discotheques, bars and clubs, mean sound levels can range from 104 to 112 dB. Noise levels at pop concerts may be even higher (34), and 15 minutes of music at 100 dB may represent the same noise level exposure as that experienced by an industrial worker in an 8-hour day at 85 dB (11).

High sound levels are also encountered at popular sporting events, which are frequented by adolescents and young adults (54, 127, 133–136). Noise levels at sporting venues have been found to range from 80 to 117 dB (40, 54, 127, 136, 137). The average noise exposure for spectators during the FIFA World Cup in 2010 was as high as 100.5 dB (127).

Adults and adolescents are not the only age groups exposed to louder sounds. Some common children's toys, such as rattles, toy phones and guns, are capable of generating unsafe intensities ranging from 110 to 150 dB (30, 138). Moreover, the danger is probably underestimated as children have a tendency to hold such toys closer to their ears, which increases the intensity (30).

The sound intensity levels involved in various common pastimes and activities have been reported as summarized below:

Recreational activity	Intensity of sound (dB)	Average time of activity	Reference
Rattles and squeaky toys	110 (max.)		30
Musical toys, drums and horns	120 (max.)		30
Toy phones	Range 123–129		30
Toy guns	150 (max.)		30
Ice hockey game	Range 103.1–110.7	>3 hours	54
Ice hockey game	Range 81–97, peak 105–117		136
Soccer match	92.7	90 minutes	137
Soccer match	100.5		127
Basketball game	84.64	2 hours	40
Sporting event	Range 85–100		3
Sporting event	Mean 93	2.5 hours	139
Aerobics class	89.6		140
Fitness class	Range 73–96		141
Fitness class	Mean 87.1, range 83.4–90.7		142
Fitness class	Range 78–106	60 minutes	143
Fitness class	Mean 98.8	52.8 minutes	144
Fitness class	Range 74–97		3
Fitness class	Mean 86	Mean 1.4 hours	139
Nightclub	Average 110.2, range 107.8–112.2	4 hours a week	9
Entertainment venue	Mean exceeded 95	5 hours per session	145
Concert, live music venue	Range 82–105		3
Concert, live music venue	Mean 92	Mean 3 hours	139
Nightclub	Mean estimated sound pressure level is 101, range 85–105	Mean 4.3 hours/week	37
Clubs	Average 97.9	5 hours per week	5
Discotheque	Ranged 104.3–112.4		34

Club	Range 94.9–106.7		7
Nightclub	Exceeded 87		146
Nightclub	Range 89–106		3
Nightclub	Mean 97	3.3 hours	139
Pub bar, registered club	Range 71–96		3
Pub or registered club	Mean 84	2.7 hours/visit	139

Even a brief exposure to high decibel levels can be harmful. For young people particularly, noise exposure is often not from a single recreational source (18). Environmental and occupational noise exposure also contributes to the overall risk of an individual.

While habitual exposure can certainly lead to hearing loss over time, noise-induced hearing loss can be *prevented* by following safe listening practices.

### ***Preventing noise-induced hearing loss***

The effect on the auditory system of exposure to loud sounds or noise is cumulative and irreversible, and effective treatment is limited (11, 32, 61). However, noise-induced hearing loss is completely avoidable: prevention is thus paramount, and efforts to preserve hearing and prevent tinnitus should be made wherever hazardous noise is present (7, 23, 32, 49, 67, 147–151). Special mention should be made of developing countries, where preventive programmes and access to health services are limited and legislation may be inadequately enforced, even in occupational settings (152), .

A number of prevention strategies can be employed to preserve hearing. The chosen approach will depend on the source of loud sound (e.g. personal audio device or rock concert) and the motivation of the individual. Motivation, in turn, often depends on the individual's perception of the health threat; understanding this is important for the development of effective prevention strategies (153).

In general, people are less tolerant of noise and more motivated to take protective action if they have experienced symptoms such as tinnitus or have a positive attitude towards hearing health (44, 154–158). If noise-induced hearing loss is perceived as of lesser priority than other health issues, the level of motivation is likely to be lower (36, 159, 160). The attitude that noise is enjoyable and that its enjoyment is a part of the individual's "image" is likely to hinder the practice of safe listening (35, 154, 161).

### **Prevention**

The impact of loud sounds on hearing depends on three main factors: sound intensity (volume), duration of exposure and distance from the sound source. By regulating all or one of these variables, it is possible to protect the ears (11, 29, 30, 35, 61, 162–171).

Knowing which loud sounds have the potential to cause harm to the auditory system is the first step towards prevention (172). Avoiding these loud sounds is one of the easiest ways to prevent damage. In recreational settings this is not always achievable or practical (11, 19, 30,

162): individuals usually seek out these sound sources for pleasure, and so practical strategies, other than avoidance, need to be implemented.

Strategies for prevention of harm from exposure to loud sounds are the responsibility of individuals, communities and governments. Preventive action at each of these levels is imperative. Individuals can take responsibility for their own hearing health by following a number of basic and practical steps as suggested by experts in the field. These are outlined below.

### Strategies

- **Keeping the volume down.** The recommended safe volume level is below 85 dB. Sounds could be too loud if:
  - other people must raise their voice to make themselves understood;
  - it is difficult to understand someone an arm's length away;
  - listeners develop pain or a ringing sensation in the ear.

Even a small reduction in volume can offer significant protection.

- **Using carefully fitted earbuds,** which allow music to be heard clearly at lower volumes.
- **Using noise-cancelling earphones or headphones, which can reduce the need to raise the volume on listening devices.** Personal audio devices can be turned up to harmful levels (164, 173) although the majority of listeners do not always listen to these devices at such high volumes (174–177). Preferred volumes for listening often depend on the level of background noise: in places with high ambient noise levels (e.g. subways, trains, aircraft), there is a tendency to increase the volume. Use of noise-cancelling earphones or headphones can reduce the need to raise the volume in such surroundings. By cutting down background noise, these headphones/earphones allow personal audio devices to be used at lower volumes than would otherwise be needed (147, 167, 168, 170).
- **Monitoring noise exposure.** Smartphone technology can be used to measure noise exposure levels and inform users about their risk for noise-induced hearing loss. Independently-developed applications ("apps") are currently available for many devices. Many of these apps display noise intensity in decibels and can inform the user of whether the level of exposure is a risk for hearing loss, often using a colour-coded scale or reference to activities that involve similar risk. Any individual who wishes to estimate his or her noise exposure levels could easily download one of these apps to a smartphone and use it to collect information about their environment and risk for hearing loss (30, 178–181).

It should be noted, however, that the accuracy of these apps is not completely reliable and caution is needed when using them to evaluate and assess potential risk. An analysis of 50 different apps indicated that only one was accurate to within 5 dB. Nevertheless, this type of app can act as a complementary educational tool, raising awareness among young people of the risk of noise-induced hearing loss (181, 182).

- **Limiting the time spent engaged in noisy activities**
  - Small listening breaks can help to reduce exposure.
  - Limiting headphones/earphones use to less than one hour a day is ideal.

- The time spent in noisy environments should be limited.
- **Moving away from loud sounds.** At a noisy venue, it is better to stay as far away as possible from sources such as loudspeakers (30). If the individual has to raise his or her voice to be heard above the noise by someone at arm's length (1 m away), this is a good indicator that the sound is too loud (147, 183). Moving to quieter locations within venues can reduce the level of exposure.
- **Wearing earplugs.** When visiting discotheques, bars, sporting events and other noisy places or participating in rifle shooting, use of hearing protection helps to avoid damage to hearing (29, 35, 144, 165, 166). Many countries have legislated, to a varying degree, on the use of personal hearing protection in the occupational setting. However, there is little in the way of legislation, guidelines or recommendations for use of hearing protection for recreational noise exposure (184).

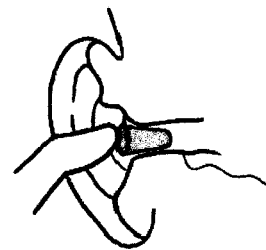
1. Roll



2. Pull



3. Hold



Hearing protection devices can be broadly classified as either earplugs, which are inserted at the entrance of the ear canal, or earmuffs, which cover the outside of ear (185). Although neither will completely block out all sound (147), measurements of efficacy suggest that such devices can reduce exposure to loud sound by 5–45 dB if they are correctly used (147, 165, 186, 187). There is no significant difference between earplugs and earmuffs: both block sounds similarly and have the same long-term effects on the auditory system (185, 186, 188).

The effectiveness of hearing protection depends on its correct and consistent use. Consistent use of properly inserted earplugs, throughout the entire period of exposure can significantly reduce the level of exposure and is important to preserving hearing and reducing the risk of tinnitus (11, 29, 30, 35, 41, 49, 53, 144, 147, 163, 165, 166, 186, 189–192). Using a lower attenuating earplug or earmuff correctly and consistently can be more effective than using a higher-rated product incorrectly and sporadically (147).

- **Respecting safe listening levels.** All users of personal audio devices should identify the safe listening level for their particular equipment and not exceed that level (6, 11, 30, 174, 193):



- Set the volume to a comfortable level in a quiet environment and avoid raising it in noisy environments; the volume should be no more than 60% of maximum.
- Smartphone apps can be used to monitor the output levels of personal audio devices and ensure that they are below 85 dB.

It is important to be alert to the following warning signs of hearing loss and seek help from a hearing health care professional if the signs appear (23, 49, 76):

- ringing in the ears (tinnitus);
  - difficulty in hearing high-pitched sounds (birds singing, doorbell, telephone, alarm clock);
  - difficulty understanding speech, especially over the telephone;
  - difficulty in following conversations in noisy environments, such as in restaurants or at social gatherings.
- **Regular hearing check-ups.** Regular check-ups can help to identify the onset of hearing loss. High-risk populations (secondary school pupils or college students) should be encouraged to have regular hearing checks. Schools, offices and communities should be encouraged to organize hearing screening.
  - **Being aware.** Correct information about safe listening levels and times is empowering and should be available to all. It is important for users of MP3 players, ear- and headphones, etc. to learn more about these products and their safety features. If earbuds are used with these devices they should fit well and be worn correctly. Use of noise-cancelling earphones or headphones should be considered if music devices are used frequently in noisy environments, such as on trains or aircraft, .

Because noise-induced hearing loss is irreversible, prevention is the most effective strategy. If tinnitus or some loss of hearing loss is already apparent, caution should be exercised and exposure to loud sounds limited.

### ***What is being done?***

Awareness is growing of the risk associated with recreational noise exposure as a contributing factor to hearing loss. Several strategies have been implemented at community and government levels around the world, but their scope varies by country.

### **Legislation**

A number of legislative measures relating to environmental noise and occupational exposure are in place in many countries although they vary in scope and sophistication (194). Fewer countries have legislative measures pertaining specifically to recreational noise exposure.

For instance countries of the European Union, China and New Zealand have legislation in place to protect employees who work in the entertainment/recreational sector (bars, concerts, discotheques, nightclubs) from exposure to unsafe noise (33, 195–199). Legislation addresses the criteria for acceptable noise levels, acceptable control procedures and monitoring procedures to ensure that legislative requirements are met (33).

From the available data and a review of English-language legislation, it is evident that most countries of the world still have no legislation to control recreational noise exposure, either for recreational venues or with respect to the maximum output levels of personal audio devices.

There are a few examples of legislation that targets recreational noise exposures. In 2009, the European Commission issued a directive that output levels of new audio devices should be set to a standard of 85 dBA, allowing users to increase the volume to a maximum of 100 dBA. According to the directive, raising the volume to maximum level must prompt a warning message stating that hearing loss can occur at this level (200).

In April 2014, the Minneapolis City Council passed an ordinance making it compulsory for bars and clubs to offer free earplugs to patrons. Such a directive can have far-reaching impact, reducing the risk of noise exposure for those who frequent these entertainment venues (201).

Legal interventions have proved effective for many sentinel public health achievements (202, 203). Hence, it is important for legislation to address public health issues such as exposure to noise, in order to bring about a sustained behavioural change.

Other interventions are also possible. For example, a leading manufacturer of personal audio devices has developed software that allows customers easily to set their own customized maximum volume limit. It also gives parents the ability to set a maximum volume limit on a child's device, locking it with a combination code (204). Another device displays an on-screen message warning that the user has reached dangerous listening levels and may want to turn the volume down (205). Such measures help raise awareness of the harmful effects of loud sounds.

Messages about the potential harm from recreational noise exposure can also be transmitted through education conservation programmes or campaigns. This approach has been widely used in a number of countries to raise awareness about safe listening practices, even in the absence of legislation.

Key target populations for prevention campaigns at the community level are children, teenagers and their parents (6, 10, 13, 44, 53, 55, 206–210). Children and teenagers appear to be most at risk from exposure to loud sounds associated with recreational activities (158). The effectiveness of such programmes and campaigns in improving knowledge, establishing attitudes to loud sounds and encouraging appropriate behaviours has been demonstrated, particularly among young people (11, 123, 151, 211–218).

The following are examples of preventive campaigns:

- Listen To Your Buds (219) – a public education campaign launched by the American Speech and Hearing Association (ASHA) to educate children and parents about practising safe listening habits when using personal audio devices. It does this through a variety of bilingual media and public outreach tactics, partnerships with companies and organizations, “safe listening concerts” in schools, and dissemination of information throughout the school system.
- Dangerous Decibels (220) – a public health campaign that aims to reduce the incidence and prevalence of noise-induced hearing loss by changing knowledge, attitudes and behaviours of school-aged children. Through education and the use of exhibits, the

programme has been successful in producing long-term improvements in students' knowledge of noise and its effects.

- It's a Noisy Planet: Protect their Hearing (221) – a programme of the National Institute on Deafness and Other Communication Disorders (NIDCD) that uses social media, school presentations, awareness materials, conferences and exhibits to promote healthy hearing habits among parents and pre-teens.
- Don't Lose the Music (222) – a campaign by Action on Hearing Loss, a nongovernmental organization based in the United Kingdom, that aims to increase awareness and promote safe listening habits among music lovers through innovative messages.
- Cheers for Ears campaign – a school health programme designed by the Ear Science Institute of Australia to educate young people and encourage healthy behaviours to prevent noise-induced hearing loss.
- NOISE (Non-occupational Incidents, Situations and Events) database (Beach, 2013b): – the National Acoustic Laboratories in Australia maintains a detailed and standardized record of sound levels at non-occupational leisure events. It provides researchers and health professionals with realistic estimates of the noise exposure involved in various non-work activities.

## **What can be done**

### **What can parents do?**

Parents need to play an active role in educating their children about safe listening and monitoring their exposure to loud noise; they also need to be role models of safe listening for their children (6, 11, 123, 139, 151, 153, 193, 206, 223, 224).

### **What can teachers do?**

Children and adolescents must be educated about the possible dangers of exposure to loud sounds from the misuse of personal audio devices and encouraged to develop safe listening habits. Such information should be part of the health education curriculum and also be taught as part of music and dance classes (6, 11, 23, 139, 151, 153, 193, 206, 224, 225, 226, 227).

### **What can physicians do?**

Physicians have a significant opportunity to educate and counsel adolescents and young adults regarding hearing protection (36, 159). Physicians, nurses, audiologists and speech-language pathologists can convey appropriate messages about the risks and promote healthy listening habits among users (226).

### **What can managers do?**

Managers of venues in which noise levels are high – nightclubs, discotheques, bars, pubs, cinemas, concerts, sporting events and even fitness classes – have an important role to play in ensuring the personal safety of people who frequent such venues. To make listening safe, they can: monitor and apply the safe noise limit set by the establishment itself ; make use of sound limiters to control noise levels in such settings ; provide free earplugs to all patrons along with information about their proper use as well as “chill out” rooms, where volume levels are monitored and safe; and prominently display messages about the risk of hearing loss during moments when the volume goes beyond safe levels (3, 139, 154, 215, 228, 229, 230).

#### **What can manufacturers do?**

Manufacturers of personal audio devices possess the technical knowhow to design these devices with appropriate safety features, and a number have already taken steps to put in place these features. For example, software developed by a leading manufacturer of personal audio devices allows customers to easily set their own customized maximum volume limit. It also gives parents the ability to set a maximum volume limit on their child’s device and lock it with a combination code. Another device displays an on-screen message displaying the average dB level at different volume settings, along with a warning to keep the output below 85 dB (3, 231). Such measures offer protection and help raise awareness about the harmful effects of loud music and other noise. Manufacturers can also provide prominent warning labels on the products themselves, as well as on the external packaging and accompanying information materials (231).

#### **What can governments do?**

For their part, governments are encouraged to develop stricter laws and rigorously enforce already existing legislation regarding non-occupational noise (38, 112, 159). Governments can raise awareness about the issue through targeted public information campaigns highlighting the potential consequences of hearing loss (45, 112, 115, 119, 232). Creative use of those means of communication which are most often used by teenagers and young adults, including various social media platforms, would help to disseminate messages on the importance of safe listening (36, 38, 44, 139).



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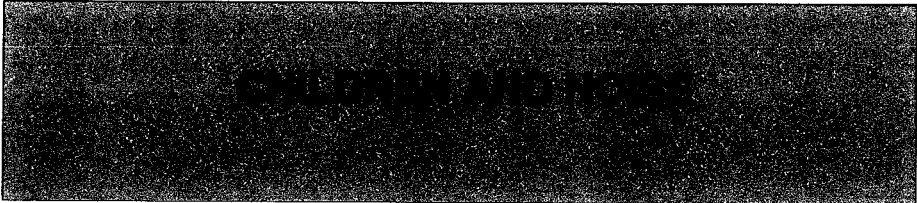
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**TRAINING FOR HEALTH CARE PROVIDERS**  
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**Children's Health and the Environment**  
WHO Training Package for the Health Sector  
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1

<<NOTE TO USER: Please add details of the date, time, place and sponsorship of the meeting for which you are using this presentation in the space indicated.>>

This presentation on Children and Noise is part of a comprehensive set of training materials for health care providers on children, the environment and health.

<<NOTE TO USER: This is a large set of slides from which the presenter should select the most relevant ones to use in a specific presentation. These slides cover many facets of the problem. Present only those slides that apply most directly to the local situation in the region. It is also very useful if you present regional/local examples of noise prevention programs, if available, and choose local relevant pictures.>>

## CONTENTS

- 1. Introduction**
- 2. Vulnerability of children**
- 3. Adverse health effects**
- 4. Effects by age-group**
- 5. Taking action**
- 6. Discussion**

## **Children and noise**

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### **LEARNING OBJECTIVES**

To **understand, recognize** and **know**

1. Definition and characteristics of sound and noise
2. Sources and settings of noise exposure
3. Adverse effects of noise exposure
  - On physical health
  - On psychological health
  - On cognition
4.
  - 
  -
5. Interventions and preventive strategies

3

These are the learning objectives for this module. After the presentation, the audience should understand, recognize and know

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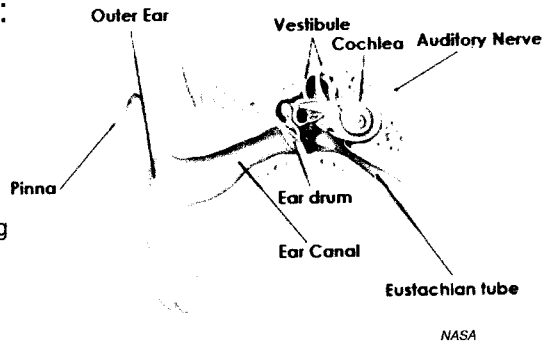
**CONTENTS**

## Children and noise

### DEFINITION: SOUND AND NOISE

Sound is characterized by:

- ❖ **Vibration**
  - Frequency (Hz)
  - Intensity (Pa or dB)
    - Decibel scale logarithmic
    - Begins at threshold of hearing
- ❖ **Periodicity**
- ❖ **Duration**



“Noise is an unwanted or objectionable sound”

5

**What is sound?** Sound is a mechanic vibration propagated by elastic media (as air and water) which alters the pressure displacing the particles, and can be recognized by a person or an instrument.

Vibration and noise can never be separated but vibration can exist without audible noise.

Sound is characterized by its intrinsic characteristics:

- **Vibration:** Sound is a mechanic vibration, expressed as a combination of pressure (Pascals, Pa) and frequency (Hertz, Hz)
  - **Frequency** or pitch is the number of cycles per second (Hertz, Hz or kilo Hertz, KHz).
  - **Intensity** or loudness is the “level of sonorous pressure” and is measured in Pascals (Pa) or decibels (dB). The audible spectrum of the human ear is between 0.00002 Pa (corresponds to 0 dB) and 20 Pa (corresponds to 120 dB). The intensity of human speech is approximately 50 dB. Decibels are used for convenience to express sound on a compressed, logarithmic scale in the human audible spectrum.
- **Periodicity:** describes the pattern of repetition of a sound within a period of time: short sounds that are repeated.
- **Duration:** is the acoustic sense developed by the continuity of a sound in a period of time, for example music, voice or machinery.

**What is noise?** Noise is an unwanted or objectionable sound. Generally, the acoustic signals that produce a pleasant sense (music, bells) are recognized as “sound” and the unpleasant sounds as “noise” (for example: produced by a machine or airplane). It can be a pollutant and environmental stressor, and the meaning of sound is important in determining reaction of different individuals to the same sound. One person’s music is another’s noise.

The human ear is an instrument that detects vibration within a set range of frequencies. Air, liquid or solid propagates vibration; without them, sound does not exist. Sound does not exist in the vacuum. The higher the level of pressure of the sonorous wave, the shorter the period of time needed to be perceived by the ear.

#### Why are not all vibrations audible?

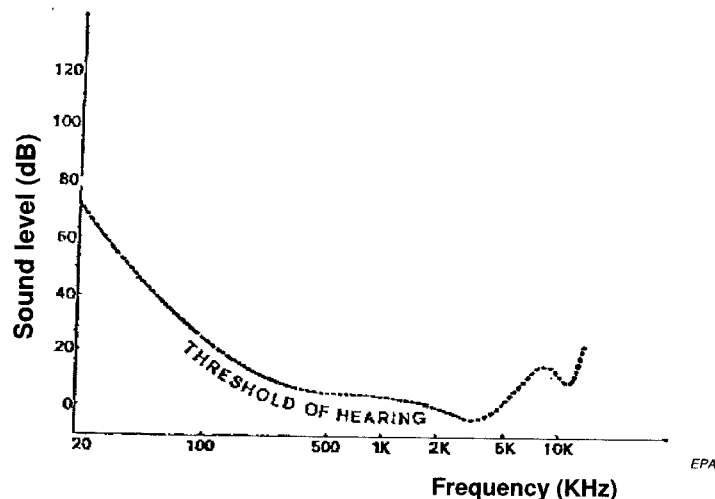
The ear is a frequency analyzer. The eardrum separates tone and conduction in two different ways: by the nervous system and by the bones. The nervous system connects the cochlea to the temporal region of both hemispheres of the brain. The cochlea perceives vibration transmitted directly from the bones of the head.

Picture:

• NASA

## Children and noise

### THRESHOLDS OF HUMAN HEARING



#### Why is noise sometimes inaudible?

Threshold of hearing is defined as the minimum efficient sonorous pressure (Pa or dB) that can be heard without background noise of a pure tone at a specific frequency (Hz or KHz, cycles per second).

The human audible frequency range is from 20 to 20,000 Hertz (Hz). Frequencies out of this range are not detected by the human ear. The ear is not equally sensitive to all the frequencies.\* The most audible frequencies are between 2000 and 3000 Hz (range within which the least pressure is needed to provoke the conscious recognition of a sound). This range can be easily identified where the curve is at its minimum and corresponds to human speaking frequencies.

For this reason, sound meters are usually fitted with a filter whose response to frequency is a bit like that of the human ear. The most widely used sound level filter is the A scale, which roughly corresponds to the inverse of the 40 dB (at 1 kHz) equal-loudness curve. Using this filter, the sound level meter is thus less sensitive to very high and very low frequencies. Measurements made on this scale are expressed as **dBA**.

The "normal threshold" of hearing is defined in "young people with a healthy auditory system".

The "pain threshold" is the high level (high dB) audible sound where the level of pressure of the sound produces discomfort or pain. The pressures of the sounds are over the curve: "ultrasounds". Very powerful levels of sound can be perceived by the human ear but cause discomfort and pain.

\*Pressures below the audible level are called "infra-sounds": the pressure is detected but our hearing mechanism is not adapted to making the sound evident to the human ear (under the curve in the graphic). These frequencies (less than 20 Hz, not audible for the human ear) can be produced by machines or "ultrasonic" motors of planes. Out of the limits of the human threshold of hearing exists sound that can be perceived by special equipment or animals such as dolphins and bats that are equipped to perceive sound that humans can not perceive. The human being hears a very short portion of the existing sounds, the very weak and the ones above and below of the thresholds are not perceived or they are accompanied by pain, and can produce damage to a system that is not prepared to perceive them as the person may not be able to protect her/himself from this deleterious exposure. There is individual variation within these general parameters.

#### Reference:

•Noise effects handbook, National Association of Noise Control Officials. *Office of the Scientific Assistant, Office of Noise Abatement and Control, U.S. Environmental Protection Agency*, 1979, revised 1981 ([www.nonoise.org/library/handbook/handbook.htm](http://www.nonoise.org/library/handbook/handbook.htm)).

#### Picture:

•EPA (U.S. Environmental Protection Agency)

## Children and noise

### MAGNITUDE AND EFFECTS OF SOUND

COMMON EXAMPLE	dBA	EFFECT
Breathing	0-10	Hearing threshold
Conversation at home	50	Quiet
Freeway traffic (15 m), vacuum cleaner, noisy party	70	<b>Annoying</b> , intrusive, interferes with phone use
Average factory, train (at 15 m)	80	<b>Possible</b> hearing damage
Jet take-off (at 305 m), motorcycle	100	<b>Damage</b> if over 1 minute
Thunderclap, textile loom, chain saw, siren, rock concert	120	Human <b>pain</b> threshold
Toy cap pistol, Jet takeoff (at 25 m), firecracker	150	<b>Eardrum rupture</b>

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This abbreviated table correlates common sounds with effects on hearing.

Additional examples for discussion are listed below:

-Quiet suburb or quiet conversation	50 dB A	No significant effect
-Conversation in a busy place, background music or traffic	60 dB A	Intrusive
-Freeway traffic at 15 metres	70 dB A	Annoying
-Average factory, train at 15 metres	80 dB A	Possible hearing damage
-Busy urban street, diesel truck	90 dB A	Chronic hearing damage if exposure over 8 hours
-Subway noise	90 dB A	Chronic hearing damage, speech interfering
-Jet take-off 300 metres	100 dB A	More severe than above
-Stereo held close ear	110 dB A	More severe than above
-Live rock music, jet take off 160 mts	120 dB A	As above, human pain threshold
-Earphones at loud level	130 dB A	More severe than above
-Toy cap pistol, firecracker close ear	150 dB A	Acute damage (eardrum rupture)

**dBA** weighting curve: response of a filter that is applied to sound level meters to mimic (roughly) the response of human hearing. So a typical human equal loudness curve is somewhat similar to the dBA curve, but inverted.

#### Reference:

•Children's health and the environment: A review of evidence. Tamburlini G et al., eds. *EEA-WHO*, 2002 ([www.eea.europa.eu/publications/environmental\\_issue\\_report\\_2002\\_29](http://www.eea.europa.eu/publications/environmental_issue_report_2002_29))

## Children and noise

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### SOURCES OF NOISE

#### Outdoor sources

- ❖ Transport
  - Aircraft
  - Road
  - Rail
- ❖ Occupational
  - Machinery
- ❖ Neighbours
  - Machinery
  - Loud music

#### Indoor sources

- ❖ Ambient noise outside
- ❖ Building design and location
- ❖ Room acoustics
- ❖ Activities of occupants
  - Children

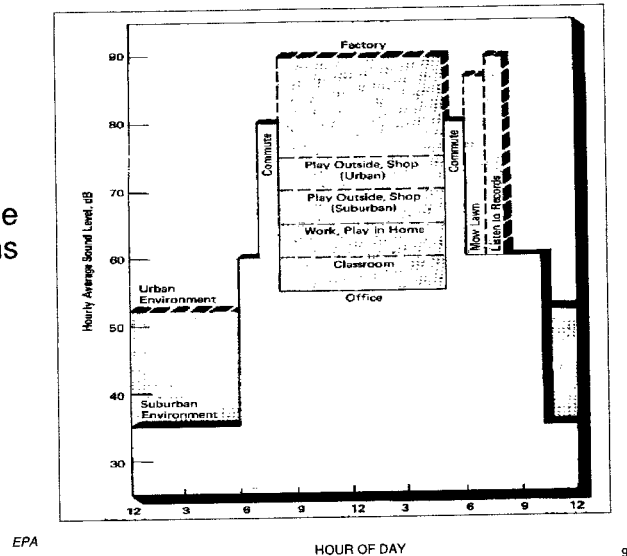
8

Common sources of outdoor noise arise from transportation (aircraft, car and truck traffic, and trains), occupations (construction machinery, assembly lines), and even from neighbours (yard equipment, loud music). Indoor noise is affected by outdoor noise, and indoor sources such as TV, radio, music and children at play. The level is modified by building design and location as well as room acoustics.

## Children and noise

### SETTINGS OF NOISE EXPOSURE: "NOISE-SCAPE"

Hypothesized lifestyle  
noise exposure patterns



The concept of a "noise-scape" can be useful in thinking about noise exposures. That is, obvious loud noises are imposed upon a background of noises that will vary according to general location (urban vs. rural), time of day (day vs. night) and activity (school vs. play). This image is a schematic representation which illustrates these different aspects of the "noise-scape".

#### Reference:

•Noise effects handbook, National Association of Noise Control Officials. *Office of the Scientific Assistant, Office of Noise Abatement and Control, U.S. Environmental Protection Agency*, 1979, revised 1981 ([www.nonoise.org/library/handbook/handbook.htm](http://www.nonoise.org/library/handbook/handbook.htm)).

#### Picture:

•EPA (U.S. Environmental Protection Agency)



## Children and noise

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### NOISE EXPOSURE IN EU

- ❖ 40% of population exposed to  $L_{eq} > 55$  dBA during the day
- ❖ 20% of population exposed to  $L_{eq} > 65$  dBA during the day
- ❖ 30% of population exposed to  $L_{max} > 55$  dBA during the night
- ❖ Hazard is increasing

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$L_{eq}$ : average sound level over the period of the measurement, usually measured A-weighted

$L_{max}$ : maximum A-weighted noise level

dBA weighting curve: response of a filter that is applied to sound level meters to mimic (roughly) the response of human hearing. So a typical human equal loudness curve is somewhat similar to the dBA curve, but inverted.

#### *Reference:*

•Berglund B et al., eds. Guidelines for Community Noise. Geneva, *WHO*, 1999.

## Children and noise

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### NOISE CONTAMINATION

❖ Noise exceeding safety threshold is widespread:

- In neighbourhoods
- Schools, hospitals and care centres
- Urban and suburban areas
- Activities inside the buildings (elevators, water tubs, music in discotheque)
- From children themselves (toys, equipment, children playing or practicing sports in a close yard)
- Traffic: heavy road, railways, highways, subways, airports
- Industrial activities
- Building and road construction, renovation

❖ Increased environmental noise levels - more noise sources

❖ Also linked to population growth

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Noise contamination or noise pollution is a concept which implies harmful levels of excess noise. Noise intense enough to cause harm is widely spread.

<<READ SLIDE>>

**CONTENTS**

## Children and noise

### VULNERABLE GROUPS OF CHILDREN

- ❖ The fetus and babies
- ❖ Preterm, low birth weight and small for gestational age babies
- ❖ Children with dyslexia and hyperactivity
- ❖ Children on ototoxic medication

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It is logical to consider certain subgroups of children (since conception) to be particularly at risk for harm from excess noise exposure. These include the fetus, babies and very young infants born preterm, with low birth weight or small for gestational age. Also, children who have learning disabilities or attention difficulties may be more likely to develop early problems with mild hearing loss compared to children without these challenges, and children on ototoxic medications may have higher likelihood of developing problems from exposure to excess noise.

#### Reference:

•Carvalho WB, et al. Noise level in a pediatric intensive care unit. *J Pediatr*, 2005, 81:495-8.

**OBJECTIVES:** The purpose of this study was to verify the noise level at a PICU. **METHODS:** This prospective observational study was performed in a 10 bed PICU at a teaching hospital located in a densely populated district within the city of São Paulo, Brazil. Sound pressure levels (dBA) were measured 24 hours during a 6-day period. Noise recording equipment was placed in the PICU access corridor, nursing station, two open wards with three and five beds, and in isolation rooms. The resulting curves were analyzed. **RESULTS:** A basal noise level variation between 60 and 70 dBA was identified, with a maximum level of 120 dBA. The most significant noise levels were recorded during the day and were produced by the staff. **CONCLUSION:** The basal noise level identified exceeds International Noise Council recommendations. Education regarding the effects of noise on human hearing and its relation to stress is the essential basis for the development of a noise reduction program.

## Children and noise

### VULNERABILITY OF CHILDREN

- ❖ Different perception of dangers of noise
  - Can not recognize the dangerous exposures
- ❖ Lack of ability to control the environment
  - Are not able to identify and avoid the source of noxious noise
  - Exposure *intra utero*
- ❖ Noise can interfere with communication of danger
- ❖ May be more exposed due to their behaviour
  - Exploratory or risk behaviour (in children and teenagers)

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Special vulnerability of children to noise. The known increased risk is due to  
**<<READ SLIDE>>**

#### **Noise effects in children**

*"Children may be more prone to the adverse effects of noise because they may be more frequently exposed....and they are more susceptible to the impact of noise". (Tamburlini, 2002)*

#### **Reference:**

•Children's health and the environment: A review of evidence. Tamburlini G et al., eds. *EEA-WHO*, 2002 ([www.eea.europa.eu/publications/environmental\\_issue\\_report\\_2002\\_29](http://www.eea.europa.eu/publications/environmental_issue_report_2002_29))

## Children and noise

### VULNERABILITY OF CHILDREN

Why might children be more susceptible to noise effects?

- ❖ Possible increased risk due to immaturity
  - Increased cochlear susceptibility?
    - *In utero*
    - Animal data studies
- ❖ Critical periods in relation to learning
- ❖ Lack of developed coping repertoires
- ❖ Vulnerable tasks \ Vulnerable settings (schools, home, streets)

What might be the implications of noise effects?

- ❖ Lifelong impairment of learning and education
- ❖ Short-term deficit followed by adaptation
- ❖ Non intentional lesions

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#### <<READ SLIDE>>

Exposure to excessive noise and vibration during pregnancy may result in high frequency hearing loss in the newborn, may be associated with prematurity and growth retardation, although the scientific evidence remains inconclusive.

The role of the amniotic fluid is not yet defined, nor when and which noises or vibrations can damage the fetal development of the auditory system (e.g. cochlea). Concern about synergism between exposure to noise and ototoxic drugs remains incompletely defined. There are studies on fetal audition dating from 1932 that explore the reaction of the fetus to external noises but even today this remains incompletely characterized.

#### References:

- Children's health and the environment: A review of evidence, Ed. Tamburlini G. et al, *EEA-WHO, 2002* ([www.eea.europa.eu/publications/environmental\\_issue\\_report\\_2002\\_29](http://www.eea.europa.eu/publications/environmental_issue_report_2002_29)).
- National Institute of Public Health Denmark. Health Effects of Noise on Children and Perception of the Risk of Noise. Bistrup ML, ed. *Copenhagen, Denmark: National Institute of Public Health Denmark, 2001*, 29.

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## Children and noise

### ADVERSE EFFECTS FROM EXCESS NOISE EXPOSURE

- ❖ Direct ear damage
  - Noise induced hearing loss
  - Noise induced threshold shift
- ❖ Indirect adverse effects
  - Physiological effects
  - Psychological effects
- ❖ Impaired cognition

***Characteristics of the sound can modify effect***

17

Adverse effects can be divided into direct damage, indirect adverse effects and impaired cognition. Many effects of noise exposure are more thoroughly studied in adults than in children.

The degree of adverse effect is modified by the sound characteristics.

•**Vibration:** can be acute or chronic, audible or inaudible. Vibration can be transmitted to all the body directly through the skin or bones.

•**Frequencies:** lower and higher (ultra and infra sounds) can also damage the human hearing system, despite being imperceptible, and have important consequences for life (loss of hearing). These consequences can also be present after chronic exposure to low frequency non audible sounds (chronic back noise exposure). Incubators are an example of this exposure.

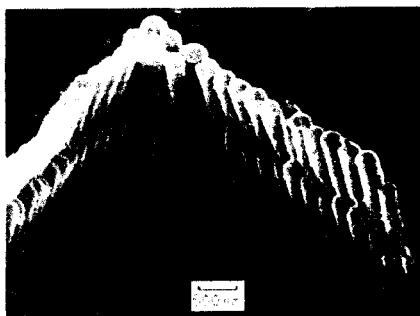
•**Intensity:** Direct blows to the ears, very loud noise (pneumatic hammer or drill, fire arms, rocket), and sudden but intense sounds can destroy the eardrum and damage the hair cells of the cochlea by bypassing the protective reflexes. Acute trauma can cause a lifelong lesion.

•**Periodicity and Duration:** Impulse noise is more harmful than continuous because it bypass the natural protective reaction, the damping-out of the ossicles mediated by the facial nerve. Loud noise may result in temporary decrease in the sensitivity of hearing and tinnitus, but repeated exposure may cause these temporary conditions to become permanent.

## Children and noise

### ORGAN DAMAGE NOISE INDUCED HEARING LOSS

Normal hair cell



VIMM

Noise damaged hair cell



VIMM

18

Normal healthy "hair cells" transform vibration into nerve impulses sending messages to the brain. Trauma to the hair cells of the cochlea results in hearing loss. Prolonged exposure to sounds louder than 85 dBA is potentially injurious (85 dBA is tolerable for an occupational exposure). Continuous exposure to hazardous levels of noise tend to affect high frequencies regions of the cochlea first. Noise induces hearing loss gradually, imperceptibly, and often painlessly. Often, the problem is not recognized early enough to provide protection. Further, it may not be recognized as a problem, but merely considered a normal consequence of ordinary exposure, and part of the environment and daily life.

#### References:

- Moeller, Environmental health, *Harvard University Press*, 1992
- VIMM (Veterinarian Institute of Molecular Medicine, Italy):  
[www.vimm.it/cochlea/cochleapages/theory/hcells/hcells.htm](http://www.vimm.it/cochlea/cochleapages/theory/hcells/hcells.htm)

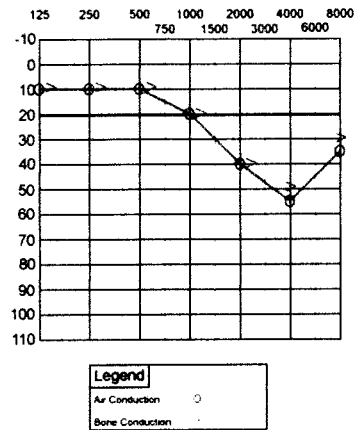
#### Pictures:

- VIMM (Veterinarian Institute of Molecular Medicine, Italy):  
[www.vimm.it/cochlea/cochleapages/theory/hcells/hcells.htm](http://www.vimm.it/cochlea/cochleapages/theory/hcells/hcells.htm) - used with copyright permission.

## Children and noise

### AUDIOGRAM

Noise-induced  
hearing loss



OSHA

19

<< NOTE TO USER: If possible place an audiogram of a child living in your local environment here to illustrate either normal hearing, or hearing damaged by environmental noise. >>

Noise-induced hearing loss is insidious, but increases with time, usually beginning in adolescent years. As shown here, it affects the high frequencies first. The speech window is between 500 and 4000 Hz, so it is not surprising that high frequency loss of large magnitude could go undetected for long periods of time without formal testing.

Picture:

• OSHA (U.S. Department of Labor Occupational Safety & Health Administration)  
[www.osha.gov/dts/osta/otm/noise/images/sensorineural\\_loss\\_audiogram.gif](http://www.osha.gov/dts/osta/otm/noise/images/sensorineural_loss_audiogram.gif)

## Children and noise

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### CHILDREN AND NOISE: SETTINGS

Noise at home	50 - 80 dB A
Home appliances	78 - 102 dB A
Noise in incubators	60 - 75 dB A, peak sounds 120 dB A
Noise in hospitals	> 70 dB A
Day-care institutions	75 – 81 dB A
Noise from toys peak sounds	79 - 140 dB A
Background noise in schools	46.5 – 77.3 dB A

20

These ranges represent excessive everyday exposures of children to sound.

#### *References:*

- Committee on Environmental Health. Noise: A Hazard for the Fetus and Newborn. *Pediatrics*, 1997, 100:724-27.
- Etzel RA, ed. Pediatric Environmental Health. 2nd ed. American Academy of Pediatrics Committee on Environmental Health.; *Elk Grove Village, IL: American Academy of Pediatrics*, 2003.

## Children and noise

---

### NOISE INDUCED THRESHOLD SHIFT (NITS)

- ❖ Initially - a temporary condition
  - Decrease in sensitivity to noise
  - Tinnitus
- ❖ Caused by exposure to loud noises
- ❖ May be reversible or irreversible
  - Severity and duration of exposure
  - Continuous and recurrent exposure

21

Exposure to loud noise may result in a temporary decrease in the sensitivity of hearing and tinnitus. This condition, called temporary noise-induced threshold shift (NITS), lasts for several hours depending on the degree of exposure, and may become permanent depending on the severity and duration of noise exposure. Noise induced threshold shifts may be reversible; however, continued excessive noise exposure could lead to progression of NITS to include other frequencies and lead to increase severity and permanent hearing loss. The consequences of these measured NITS may be enormous if they progress to a persistent minimal sensorineural hearing loss. In school-aged children, minimal sensorineural hearing loss has been associated with poor school performance and social and emotional dysfunction.

## Children and noise

### PREVALENCE NOISE INDUCED THRESHOLD SHIFTS

National survey US children (n=5249)

Characteristics	%	(95% CI)
Age: 6-11 years old	8.5	(6.9-10.0)
12-19 years old	15.5	(13.3-17.6)
Sex:		
Male	14.8	(12.3-17.3)
Female	10.1	(8.3-11.8)
Urban status:		
Metropolitan	11.9	(9.8-14.0)
Non-metropolitan	13.0	(11.3-14.6)

Niskar AS, *Pediatrics*, 2001, 108(1):40-3

22

This is evidence that children are experiencing changes in hearing which are consistent with excess noise exposure. These data show the prevalence of Noise Induced Threshold Shift (NITS) in children which increases with age. The prevalence of NITS in one or both ears among children 6-19 year of age in the USA was recently found to be 12.5% (or 5.2 million) children affected. Most children with NITS have an early phase of NITS in only one ear and involving only a single frequency, however among children with NITS, 4.9% had moderate to profound NITS. This table demonstrates several points. First, older children have a higher prevalence of NITS compared to younger children suggesting that ongoing exposure to excess noise in the environment may be causing cumulative hearing damage. Boys in this survey were more likely to have evidence of excess noise exposure measured as NITS compared to girls, but there was little difference between urban and non-urban status.

#### Reference:

•Niskar AS. Estimated prevalence of noise-induced hearing threshold shifts among children 6 to 19 years of age: the Third National Health and Nutrition Examination Survey, 1988-1994, United States. *Pediatrics*, 2001, 108(1):40-3

*This analysis estimates the first nationally representative prevalence of noise-induced hearing threshold shifts (NITS) among US children. Historically, NITS has not been considered a common cause of childhood hearing problems. Among children, NITS can be a progressive problem with continued exposure to excessive noise, which can lead to high-frequency sound discrimination difficulties (eg, speech consonants and whistles). The Third National Health and Nutrition Examination Survey (NHANES III) was conducted from 1988 to 1994. NHANES III is a national population-based cross-sectional survey with a household interview, audiometric testing at 0.5 to 8 kHz, and compliance testing. A total of 5249 children aged 6 to 19 years completed audiometry and compliance testing for both ears in NHANES III. The criteria used to assess NITS included audiometry indicating a noise notch in at least 1 ear. RESULTS: Of US children 6 to 19 years old, 12.5% (approximately 5.2 million) are estimated to have NITS in 1 or both ears. In the majority of the children meeting NITS criteria, only 1 ear and only 1 frequency are affected. In this analysis, all children identified with NITS passed compliance testing, which essentially rules out middle ear disorders such as conductive hearing loss. The prevalence estimate of NITS differed by sociodemographics, including age and sex.*

*CONCLUSIONS: These findings suggest that children are being exposed to excessive amounts of hazardous levels of noise, and children's hearing is vulnerable to these exposures. These data support the need for research on appropriate hearing conservation methods and for NITS screening programs among school-aged children. Public health interventions such as education, training, audiometric testing, exposure assessment, hearing protection, and noise control when feasible are all components of occupational hearing conservation that could be adapted to children's needs with children-specific research.*

## **Children and noise**

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### **INDIRECT ADVERSE EFFECTS**

#### **❖ Stress-related somatic effects**

- Stress hormone
- Blood pressure
- Muscle spasm

#### **❖ Psychological effects**

- Annoyance / Isolation
- Sleep disturbance
- Mental health

#### **❖ Cognitive effects**

- Reading, concentration, memory, attention

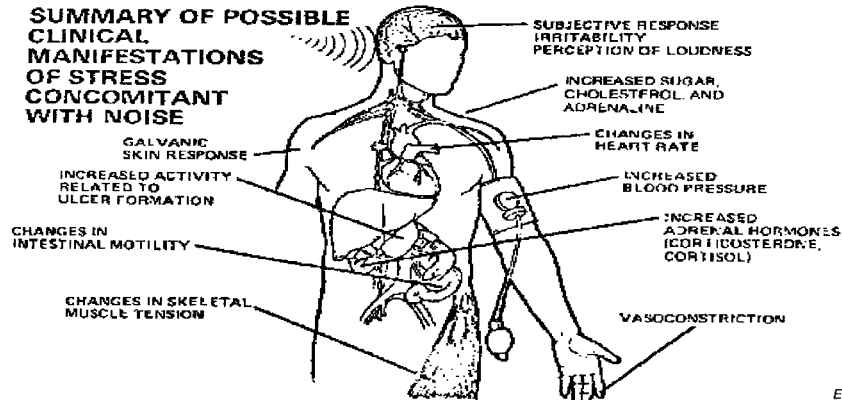
23

The next section will review the indirect adverse effects of noise listed here.



## Children and noise

### PHYSIOLOGICAL EFFECTS OF NOISE



EPA

There might be harmful consequences to health during the state of alertness as well as when the body is unaware or asleep.

24

There are a variety of physiological effects that have been documented or postulated as a result of excess noise exposure.

<<READ SLIDE>>

#### References:

##### Stress response:

•Frankenhaeuser M. Immediate and delayed effects of noise on performance and arousal. *Biol Psychol*, 1974, 2:127-33

*Increased excretion of adrenaline and noradrenaline demonstrated in humans exposed to noise at 90 dBA for 30 minutes.*

•Henkin RI. Effect of sound on the hypothalamic-pituitary-adrenal axis. *Am J. Physiol*, 1963, 204:710-14

*Hypothalamic- pituitary- adrenal axis is sensitive to noise as low as 65 dBA (53% increase in plasma 17 HO corticosteroid levels).*

•Rosenberg J. Jets over Labrador and Quebec: noise effects on human health. *Can. Med. Assoc. J.*, 1991, 144(7):869-75.

*Biochemical evidence of the stress response was found in elevated urinary cortisol and hypertension accompanied a 30 minute exposure to 100dBA in 60 children aged 11 to 16 years.*

##### Sleep derivation:

*Noise levels at 40-50 dBA result in 10-20% increase in awakening or EEG changes*

•Falk SA. Hospital noise levels and potential health hazards. *Engl. J Med.*, 1973, 289(15):774-81

•Hilton BA. Quantity and quality of patient's sleep and sleep-disturbing factors in respiratory intensive care unit, *J Adv Nurs*, 1976, 1(6):453-68

•Thiessen GJ. Disturbance of sleep by noise. *J. Acoustic Soc. Am.*, 1978, 64(1):216-22

##### Cardiovascular effects:

•Etzel RA, ed. *Pediatric Environmental Health*. 2nd ed. American Academy of Pediatrics Committee on Environmental Health. Elk Grove Village, IL: American Academy of Pediatrics; 2003.

*Exposure to noise levels greater than 70 dBA causes increases in vasoconstriction, heart rate and blood pressure*

#### Picture:

•EPA (U.S. Environmental Protection Agency)

## Children and noise

### STRESS HORMONES - CHILDREN

Noise type (leq)	Noise exposure	N°	Adrenaline	Noradrenaline	Cortisol	Author
Aircraft	53, 62	217	+	+	+	Evans, 1998
Aircraft	56, 70	40	0	0	0	Ising, 1999
Road, Rail	<50, >60	115	0	0	+	Evans, 2001
Road	30-54, 55-78	56			+	Ising, 2001
Aircraft	<57, >66	238			0	Stansfeld, 2001
Aircraft	53, 62	204	0	0	0	Haines, 2001

+ increase with noise, - decrease with noise, 0 no effect

Adapted from Babisch W, Noise Health, 2003, 5(18):1-11

25

In experimental studies with humans carried out in the laboratory, unequivocal findings of noise exposure on the endocrine system have been sometimes observed. However, exposure conditions vary considerably between experiments. Furthermore, secretory patterns of hormone excretion vary between individuals. It is not clear as to what extent findings from experimental studies on endocrine responses of noise reflect a potential health hazard. To more completely characterize these indirect adverse effects of excess noise, there is a need to 1) develop a consensus on measurement techniques, 2) replicate results of adult studies in children, and 3) link hormone levels to health impairment. When it is done, stress hormone responses may identify risk groups.

Leq: average sound level over the period of the measurement, usually measured A-weighted

N°: number of subjects

#### Reference:

•Babisch W. Stress hormones in the research on cardiovascular effects of noise. *Noise Health*, 2003, 5(18):1-11

*In recent years, the measurement of stress hormones including adrenaline, noradrenaline and cortisol has been widely used to study the possible increase in cardiovascular risk of noise exposed subjects. Since endocrine changes manifesting in physiological disorders come first in the chain of cause-effect for perceived noise stress, noise effects in stress hormones may therefore be detected in populations after relatively short periods of noise exposure. This makes stress hormones a useful stress indicator, but regarding a risk assessment, the interpretation of endocrine noise effects is often a qualitative one rather than a quantitative one. Stress hormones can be used in noise studies to study mechanisms of physiological reactions to noise and to identify vulnerable groups. A review is given about findings in stress hormones from laboratory, occupational and environmental studies.*

## Children and noise

### BLOOD PRESSURE - AIRCRAFT NOISE

Study	Psys (mmHg)	Pdia (mmHg)	Sound level (Leq)
Karagodina, 1969	abnormalities	abnormalities	distance from airport
Cohen, 1980	3-7	3-4	<70 dBA (indoors)
Cohen, 1981	no effect	no effect	70 dBA (indoors)
Evans, 1995	2	0	68 dBA (outdoors)
Evans, 1998	3	3	64 dBA (outdoors)
Morrell, 1998	negative	negative	ANE I 45 (outdoors)
Morrell, 2000	no effect	negative	ANE I 45 (outdoors)

- ❖ Inconsistent picture: 3 positive, 4 negative studies
- ❖ Prospective studies: 1 positive, 1 negative study
- ❖ Magnitude of effect found in positive studies may be relevant

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Studies on elevated blood pressure and noise exposure (from aircraft) are also inconsistent. Only the cross-sectional study of Cohen shows that aircraft noise exposure (specifically at school) is statistically significantly associated with increases in systolic and diastolic blood pressure.

Leq: average sound level over the period of the measurement, usually measured A-weighted

Psys: systolic pressure

Pdia: diastolic pressure

dBA weighting curve: response of a filter that is applied to sound level meters to mimic (roughly) the response of human hearing.

So a typical human equal loudness curve is somewhat similar to the dBA curve, but inverted.

ANEI: Australian Noise Exposure Index.

#### References:

##### Aircraft Noise:

- Cohen S. Physiological, motivational and cognitive effects of aircraft noise on children: moving from the laboratory to the field. *Am Psychol.*, 1980, 35:231-43.
- Cohen S. Aircraft noise and children: longitudinal and cross-sectional evidence on adaptation to noise and the effectiveness of noise abatement. *J. Pers Soc Psychol.*, 1981, 40:331-45
- Evans G. Chronic noise and psychological stress. *Psychological Science*, 1995, 6:333-38
- Evans G. Chronic noise exposure and physiological response: a prospective study of children living under environmental stress. *Psychological Science*, 1998, 9:75-77
- Karagodina IL. Effect of aircraft noise on the population near airports. *Hygiene and Sanitation*, 1969, 34:182-187
- Morrell S. Cross-sectional relationship between blood pressure of school children and aircraft noise. In N.L. Carter, & R.F.S Job (Eds.), *Noise Effects. Proceedings of the 7th International on Noise as a Public Health Problem. Sydney, Australia: Noise Effects Inc.*, 1998, 275-79.
- Morrell S. Cross sectional and longitudinal results of a follow up examination of child blood pressure and aircraft noise. *The Inner Sydney Child Blood Pressure Study. Proceedings Internoise, SFA, Nice, France*, 2000, 4:2071.
- van Kempen E. et al. Noise exposure and children's blood pressure and heart rate: the RANCH project. *Occup Environ Med.*, 2006, 63:632-39

BACKGROUND: Conclusions that can be drawn from earlier studies on noise and children's blood pressure are limited due to inconsistent results, methodological problems, and the focus on school noise exposure. OBJECTIVES: To investigate the effects of aircraft and road traffic noise exposure on children's blood pressure and heart rate. METHODS: Participants were 1283 children (age 9-11 years) attending 62 primary schools around two European airports. Data were pooled and analysed using multilevel modelling. Adjustments were made for a range of socioeconomic and lifestyle factors. RESULTS: After pooling the data, aircraft noise exposure at school was related to a statistically non-significant increase in blood pressure and heart rate. Aircraft noise exposure at home was related to a statistically significant increase in blood pressure. Aircraft noise exposure during the night at home was positively and significantly associated with blood pressure. The findings differed between the Dutch and British samples. Negative associations were found between road traffic noise exposure and blood pressure, which cannot be explained. CONCLUSION: On the basis of this study and previous scientific literature, no unequivocal conclusions can be drawn about the relationship between community noise and children's blood pressure.

##### Traffic Noise:

- Babisch W. Blood pressure of 8-14 year old children in relation to traffic noise at home—results of the German Environmental Survey for Children (GerES IV). *The Science of the total environment*, 2009, 407(22):5839-43.
- Babisch W, Kamp I. Exposure-response relationship of the association between aircraft noise and the risk of hypertension. *Noise Health.* 2009 Jul-Sep, 11(44):161-8.
- Belojevic G et al. Urban road-traffic noise and blood pressure and heart rate in preschool children. *Environ Int.* 2008, 34(2):226-31. Epub 2007 Sep 14.

## Children and noise

### **HYPERTENSION AND EXPOSURE TO NOISE NEAR AIRPORTS *The HyENA study***

#### Results

- ❖ Significant exposure-response relationship
- ❖ Night time aircraft noise exposure: borderline significant relationship
- ❖ Risk of myocardial infarction in relation to noise exposure: analysis ongoing
- ❖ Effects of noise exposure on stress hormone level (cortisol): statistical analyses and epidemiological ongoing

#### Conclusion

- ❖ Prevalence of hypertension increased with increasing noise exposure
- ❖ Long-term road traffic noise exposure effects on BP
- ❖ Acute effect on hypertension of night-time aircraft noise
- ❖ Highly annoyed people are found at aircraft noise levels

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An increasing number of people live near airports with considerable noise and air pollution. The Hypertension and Exposure to Noise near Airports (HYENA) project aims to assess the impact of airport-related noise exposure on blood pressure (BP) and cardiovascular disease using a cross-sectional study design.

Although the study has been made in adults (men and women between 45-70 years old), it might be a good cardiovascular disease predictor in children.

#### *Reference:*

•Jarup L. Hypertension and Exposure to Noise near Airports (HYENA): Study Design and Noise Exposure Assessment. *Environ Health Perspect.*, 2005, 113(11):1473–1478.

## Children and noise

### PSYCHOLOGICAL DAMAGE

- ❖ Exposure to **moderate level of noise** can cause
  - Psychological stress
  - Annoyance, interference with activity, isolation
  - Headache, tiredness and irritability; may impair intellectual function and performance of complex tasks
- ❖ Exposure to **intense level of noise** can
  - Cause personality changes and aggressive/violent reactions
  - Reduce ability to cope
  - Alter work performance and intellectual function
  - May cause muscle spasm and also break a bone (when combined with strong vibration)
  - Sleep disturbance
  - Changes in mental health.
- ❖ Exposure to **sudden, unexpected noise** can cause
  - Startle reaction with stress responses
  - Cause non intentional injuries

28

Psychological effects correlate with intensity (or loudness) of the noise.

Exposure to **moderate levels of noise** can cause psychological stress.

Other effects can be:

- Annoyance (fear, anger, feeling bothered, feelings of being involuntarily and unavoidably harmed, and feelings of having privacy invaded), interference with activity.
- Headache, tiredness and irritability are also common reactions to noise.
- Possible impairment of intellectual function and performance of complex tasks. Depends on the nature of sound and individual tolerance.

Exposure to **intense level of noise** can:

- Cause personality changes and provoke aggressive and violent reactions.
- Reduce ability to cope.
- Alter work performance and intellectual function.
- Cause muscle spasm and also break a bone (when combined with strong vibration).
- Cause sleep disturbance.
- Provoke changes in mental health.

Exposure to **sudden, unexpected noise** can cause:

- Startle reaction with stress responses.
- Cause non intentional injuries.

Stress response consisting in acute terror and panic was described in children upon exposure to sonic booms.

#### References:

- Kam PC. Noise pollution in the anaesthetic and intensive care environment. *Anaesthesia*, 1994, 49(11):982-6
- Kujala T, Brattico E. Detrimental noise effects on brain's speech functions. *Biol Psychol.* 2009, 81(3):135-43. Epub 2009 Apr 8.
- Rosenberg J. Jets over Labrador and Quebec: noise effects on human health. *Can. Med. Assoc. J.*, 1991, 144(7):869-75

## Children and noise

### IMPAIRED COGNITIVE FUNCTION

- ❖ Chronic noise exposure impairs cognitive function
  - Reading comprehension
  - Long term memory
- ❖ Dose-response relationships
  - Supported by both laboratory and field studies
- ❖ Study of possible mechanisms and noise reduction interventions
  - Tuning out of attention / concentration
  - Impairment of auditory discrimination

29

The most robust area of study on noise and effects in children comes from studies which evaluate the effect of noise on learning and cognitive function; there are possible mechanisms, including noise-related changes in attention or distraction and impaired auditory discrimination.

<<READ SLIDE>>

## Children and noise

### ENVIRONMENTAL NOISE AND COGNITIVE DEVELOPMENT IN PRESCHOOL CHILDREN

- ❖ Children 6 months - 5 years
- ❖ Inverse associations between noise level at home and cognitive development

Wachs TD. *Early Experience and Human Development*. New York Plenum, 1982  
Evans GW. *Children's Environments*, 1993, 10(1):31-51

30

Effects of noise on cognitive development have been documented in preschool ages as well. Higher levels of noise at home are associated with decrements in cognitive development for age.

#### References:

- Evans GW. Non-auditory effects of noise on children: A critical review. *Children's Environments*, 1993, 10(1):31-51.
- Maxwell LE et al. The effects of noise on pre-school children's pre-reading skills. *Journal of Environmental Psychology*, 2000, 20(1):91-97.
- Wachs TD. *Early Experience and Human Development*. New York Plenum, 1982.
- Yang W, Bradley JS. Effects of room acoustics on the intelligibility of speech in classrooms for young children. *J Acoust Soc Am*. 2009, 125(2):922-33.



## Children and noise

### APARTMENT NOISE AND READING ABILITY

- ❖ 54 children living in apartments above interstate highway
  - 32<sup>nd</sup> floor: 55 dBA,
  - 20<sup>th</sup> floor: 60 dBA,
  - 8<sup>th</sup> floor: 66 dBA
- ❖ Measures of auditory discrimination and reading ability
- ❖ Correlations between floor level and auditory discrimination vary by duration of residence
- ❖ **Floor level correlates with reading-abolished by adjustment for auditory discrimination**
- ❖ Reading powerfully associated with mothers' education

Cohen S. *Journal of Experimental and Social Psychology*, 1973, 9:407-22.

31

This study shows that street traffic noise measured on different floors of a multilevel apartment correlates inversely with auditory discrimination and reading ability. The higher floors were quieter and children scored better on reading ability and auditory discrimination. Correlations varied with duration of residence, and when reading level scores were adjusted for auditory discrimination measures, the floor level effect disappeared. Reading is also powerfully associated with mother's education.

#### *Reference:*

- Cohen S. Apartment noise, auditory discrimination, and reading ability in children. *Journal of Experimental and Social Psychology*, 1973, 9:407-22.

## Children and noise

### RAILWAY NOISE AND READING SCORES

- ❖ Reading scores compared between classes in same school
- ❖ Exposed/not exposed to railway noise
- ❖ No selection of children into classes
- ❖ **Poorer performance on achievement test on noisy side**
- ❖ Measuring reading age 3-4 months behind on noisy side

Bronzaft AL. *Environment and Behavior*, 1975, 7:517-28

32

This study compared reading scores between classrooms in the same school that were exposed and not exposed to railway noise. Poorer performance was noted on the noisy side with a 3-4 month delay compared to the quieter side. There was no selection of the children in each class. This is supportive evidence that noise impaired reading learning.

#### *Reference:*

- Bronzaft AL. The effect of elevated train noise on reading ability. *Environment and Behavior*. 1975, 7:517-28.

## Children and noise

### IMPAIRED COGNITIVE FUNCTION

#### ❖ Los Angeles airport study

Cohen S. *Am Psychol.*, 1980, 35:231-43.

#### ❖ New York airport city

Evans G. *Environment and Behavior*, 1997, 29(5):638-656.

#### ❖ Munich airport study

Evans G. *Psychological Science*, 1998, 9:75-77; *Psychological Science*, 1995, 6:333-38

#### ❖ Heathrow studies

Haines MM. *Psychological Medicine*, 2001a,b,c; *J Epidemiol Community Health*, 2002, 56(2):139

Over 20 studies have reported that  
noise children's academic performance

33

Many studies have reported that noise can adversely affect children's academic performance. Transport noise is well-studied. Some of the most important studies are the Los Angeles airport study, the New York airport study, the Munich and Heathrow studies.

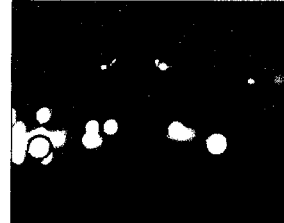
#### References:

- Cohen S. Physiological, motivational and cognitive effects of aircraft noise on children: moving from the laboratory to the field. *Am Psychol.*, 1980, 35:231-43.
  - Cohen S. Aircraft noise and children: longitudinal and cross-sectional evidence on adaptation to noise and the effectiveness of noise abatement. *J. Pers Soc Psychol.*, 1981, 40:331-45
  - Evans G. Chronic noise and psychological stress. *Psychological Science*, 1995, 6:333-38
  - Evans G. Chronic noise exposure and physiological response: a prospective study of children living under environmental stress. *Psychological Science*, 1998, 9:75-77
  - Evans G. Chronic noise exposure and reading deficits: The mediating effects of language acquisition. *Environment and Behavior*, 1997, 29(5):638-656.
  - Haines MM. Chronic aircraft noise exposure, stress responses, mental health and cognitive performance in school children. *Psychological Medicine*, 2001a, 31:265-77.
  - Haines MM. The West London Schools Study: the effects of chronic aircraft noise exposure on child health. *Psychological Medicine*, 2001b, 31:1385-96.
  - Haines MM. A follow-up study of effects of chronic noise exposure on child stress responses and cognition. *International Journal of Epidemiology*, 2001c, 30:839-45.
  - Haines MM. Multilevel modelling of aircraft noise on performance tests in schools around Heathrow Airport London. *J Epidemiol Community Health*, 2002, 56(2):139-44
  - Ristovska G. et al. Psychosocial effects of community noise: cross sectional study of school children in urban center of Skopje, Macedonia. *Croat Med J.* 2004, 45(4):473-6.
- AIM:** To assess noise exposure in school children in urban center in different residential areas and to examine psychosocial effects of chronic noise exposure in school children, taking into account their socioeconomic status. **METHODS:** We measured community noise on specific measurement points in residential-administrative-market area and suburban residential area. We determined the average energy-equivalent sound level for 8 hours (LAeq, 8 h) or 16 hours (LAeq, 16 h) and compared measured noise levels with World Health Organization (WHO) guidelines. Psychological effects were examined in two groups of children: children exposed to noise level LAeq, 8 h >55 dBA (n=266) and children exposed to noise level LAeq, 8 h <55 dBA (n=263). The examinees were schoolchildren of 10-11 years of age. We used a self-reported questionnaire for each child - Anxiety test (General Anxiety Scale) and Attention Deficit Disorder Questionnaire intended for teachers to rate children's behavior. We used Mann Whitney U test and multiple regression for identifying the significance of differences between the two study groups. **RESULTS:** School children who lived and studied in the residential-administrative-market area were exposed to noise levels above WHO guidelines (55 dBA), and school children who lived and studied in the suburban residential area were exposed to noise levels below WHO guidelines. Children exposed to LAeq, 8 h >55 dBA had significantly decreased attention (Z=-2.16; p=0.031), decreased social adaptability (Z=-2.16; p=0.029), and increased opposing behavior in their relations to other people (Z=-3; p=0.001). We did not find any correlation between socioeconomic characteristics and development of psychosocial effects. **CONCLUSION:** School children exposed to elevated noise level had significantly decreased attention, and social adaptability, and increased opposing behavior in comparison with school children who were not exposed to elevated noise levels. Chronic noise exposure is associated with psychosocial effects in school children and should be taken as an important factor in assessing the psychological welfare of the children.
- Stansfeld SA. Aircraft and road traffic noise and children's cognition and health: a cross-national study. *Lancet*, 2005, 365: 1942-49.
  - van Kempen EE et al. Children's annoyance reactions to aircraft and road traffic noise. *J Acoust Soc Am.* 2009, 125(2):895-904.

## Children and noise

### MUNICH AIRPORT SCHOOL PERFORMANCE

- ❖ Closure of old airport, opening of new airport
- ❖ Deficits in long-term memory and reading around old airport
- ❖ Impairments diminish within 2 years after airport closed
- ❖ Same impairments develop in new group of children within 2 years of new airport opening



US Transportation Security  
Administration

Hygge S, *Psychol Sci.* (2002)13(5):469

34

When an old airport was closed down in Munich, deficits in long term memory and reading in children exposed to the old airport improved within 2 years of the airport's closure and the associated decreased noise exposure. Interestingly, the children exposed to noise from the new airport replacing the old began to have the same deficits in long term memory and reading that were seen in the children exposed to the old airport—also within 2 years.

#### Reference:

•Hygge S. et al. A prospective study of some effects of aircraft noise on cognitive performance in schoolchildren, *Psychol Sci.*, 2002, 13(5):469.

*Before the opening of the new Munich International Airport and the termination of the old airport, children near both sites were recruited into aircraft-noise groups (aircraft noise at present or pending) and control groups with no aircraft noise (closely matched for socioeconomic status). A total of 326 children (mean age = 10.4 years) took part in three data-collection waves, one before and two after the switch-over of the airports. After the switch, long-term memory and reading were impaired in the noise group at the new airport, and improved in the formerly noise-exposed group at the old airport. Short-term memory also improved in the latter group after the old airport was closed. At the new airport, speech perception was impaired in the newly noise-exposed group. Meditational analyses suggest that poorer reading was not mediated by speech perception, and that impaired recall was in part mediated by reading.*

#### Picture:

•US Transportation Security Administration

## Children and noise

### STRENGTH OF EVIDENCE FOR EFFECTS OF AIRCRAFT NOISE ON CHILDREN

HEALTH OUTCOME	STRENGTH OF EVIDENCE
Annoyance	Sufficient
Hearing loss	Sufficient
Cognitive performance - <b>reading</b>	Sufficient
Cognitive performance - <b>memory</b>	Sufficient
Cognitive performance - <b>auditory discrimination</b>	Sufficient
Cognitive performance - <b>speech perception</b>	Sufficient
Cognitive performance - <b>academic performance</b>	Sufficient
Cognitive performance - <b>attention</b>	Inconclusive
Motivation	Sufficient / limited
Wellbeing/perceived stress	Sufficient / limited
Catecholamine secretion	Limited / inconclusive
Hypertension	Limited (weak associations)
Psychiatric disorder	Inconclusive / no effect
Sleep disturbance	Inadequate / no effect
Birth weight	Inadequate
Immune effects	Inadequate

35

Here is a brief summary slide examining the weight of the evidence for health outcomes in children from aircraft noise. We are indebted to Dr. Stephen Stansfeld (Queen Mary, University of London) for kindly lending us this and many of the previous slides for this project. This slide highlights the clear associations in children between annoyance, hearing loss and impaired cognitive performance and excess noise. The lower categories are still in need of investigation.

<<READ SLIDE>>

**CONTENTS**

## **Children and noise**

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### **EFFECTS OF NOISE BY AGE-GROUP**

- ❖ **Fetus**
- ❖ **Infant**
- ❖ **Pre-school, school-aged children**
- ❖ **Teenager**
- ❖ **Youth**



## Children and noise

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### EFFECTS OF NOISE ON THE

#### ❖ Growth retardation

- Occupational exposure of the mother to noise
- Environmental noise unlikely to cause effects, but exposure to chronic low-dose noise requires more study

#### ❖ Hearing impairment

- Possible effects

38

There are several paediatric populations which may be at increased risk of harm from noise. The fetus is one in which there is some evidence that occupational exposure to a pregnant woman may result in growth retardation and/or hearing impairment. Little is known about the effects of non-occupational noise on fetal development, and further studies are needed.

#### *Reference:*

•American Academy of Paediatrics, Committee on Environmental Health. Noise: a hazard to the fetus and newborn. *Pediatrics*. 1997, 100:724-727.

## Children and noise

### EFFECTS OF NOISE ON

#### Pre-term and full-term baby

- ❖ Exposed to "Neonatal Intensive Care Unit" (NICU) noise
  - Pre-term babies have immature hearing organs / systems
- ❖ Adverse noise-induced effects on the pre-term baby
  - **Hearing impairment:** possible effect
  - **Sleep disturbances:** awakening, sleep disruption
  - **Others:** crying

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Babies who are born pre-term or require intensive care in hospital are exposed to large amounts of noise from incubators and busy hospital settings. Furthermore, this noise may be continuous, 24 hours/day. They are exposed to "Neonatal Intensive Care Unit" (NICU) noise (60 - 90 dBA max. 120 dBA) and noise inside the incubators (60 - 75 dBA max. 100 dBA). Pre-term babies must cope with their environment with immature organ systems (auditory, visual and central nervous system). These last stages of maturation occur, in part, during the time the pre-term child is in an incubator or neonatal intensive care unit (NICU).

#### References:

- Brandon DH. Effect of Environmental Changes on Noise in the NICU. *Advances in Neonatal Care*, 2008, 8(5):S5-S10
- Milette IH, Carnevale FA. I'm trying to heal...noise levels in a pediatric intensive care unit. *Dynamics*, 2003, 14:14-21.

*The literature demonstrates clearly that most intensive care units exceed the standard recommendations for noise levels in hospitals, and that high noise levels have negative impacts on patients and staff. The purpose of this study was to evaluate the level of noise in a PICU and compare it to the recommendations of international bodies. We outline recommendations to promote the awareness of this problem and suggest strategies to decrease the level of noise in a PICU. The orientations of these strategies are threefold: 1) architectural-acoustic design, 2) equipment design and, most importantly, 3) staff education.*

## Children and noise

### IN EFFECTS OF NOISE AND

- ❖ Hearing impairment
  - In isolated cases by toys or equipment
- ❖ Sleep disturbances
  - Earlier responses than adults (EEG awakenings)
- ❖ Somatic effects
  - Blood pressure and stress hormones
- ❖ Psycho-social effects
  - No studies on behaviour with high environmental noise levels
  - Cognitive tasks are impaired, like reading, long term memory, attention and motivation
- ❖ Vocal nodule

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EEG: electroencephalogram

#### <<READ SLIDE>>

Children raise their voices and risk developing hoarseness and vocal nodules because of noise and relative overcrowding. The number of children screaming so much and so loudly that their voices are damaged and require treatment increased in Denmark during the 1990s. Noise in schools and day care institutions results in boys' voices getting hoarse and girls' voices squeaky. Children with vocal nodules can be difficult to understand and risk losing their voices altogether. Other children become so tired of screaming or of trying to make themselves heard that they give up saying anything at all and, for example, do not raise their hands in class. If children give up speaking, their voices do not develop properly and language learning is not reinforced.

#### References:

•Boman, E. The effects of noise and gender on children's episodic and semantic memory. *Scandinavian Journal of Psychology*, 2004, 45:407-416.

•Bowen C. *Vocal nodules and voice strain in pre-adolescents*. 1997 ([members.tripod.com/Caroline\\_Bowen/teen-nodules.htm](http://members.tripod.com/Caroline_Bowen/teen-nodules.htm), accessed November 2009).

•Clark C et al. Exposure-effect relations between aircraft and road traffic noise exposure at school and reading comprehension: the RANCH project. *Am J Epidemiol*. 2006, 163:27-37.

*Transport noise is an increasingly prominent feature of the urban environment, making noise pollution an important environmental public health issue. This paper reports on the 2001-2003 RANCH project, the first cross-national epidemiologic study known to examine exposure-effect relations between aircraft and road traffic noise exposure and reading comprehension. Participants were 2,010 children aged 9-10 years from 89 schools around Amsterdam Schiphol, Madrid Barajas, and London Heathrow airports. Data from The Netherlands, Spain, and the United Kingdom were pooled and analyzed using multilevel modeling. Aircraft noise exposure at school was linearly associated with impaired reading comprehension; the association was maintained after adjustment for socioeconomic variables (beta = -0.008, p = 0.012), aircraft noise annoyance, and other cognitive abilities (episodic memory, working memory, and sustained attention). Aircraft noise exposure at home was highly correlated with aircraft noise exposure at school and demonstrated a similar linear association with impaired reading comprehension. Road traffic noise exposure at school was not associated with reading comprehension in either the absence or the presence of aircraft noise (beta = 0.003, p = 0.509; beta = 0.002, p = 0.540, respectively). Findings were consistent across the three countries, which varied with respect to a range of socioeconomic and environmental variables, thus offering robust evidence of a direct exposure-effect relation between aircraft noise and reading comprehension.*

•Jessen B, Ruge G. Skolebørn skriger sig syge [Schoolchildren scream until they get sick]. *Berlingske Tidende*, 2000:26.

## Children and noise

### EFFECTS OF NOISE.... A WORD APART FOR

!!

- ❖ Potential sources of hearing impairment
  - Noisy toys, firecrackers, boom-cars, musical instruments, others
- ❖ Discotheques and pop concerts
  - Exposure similar to occupational exposures
  - Use of music headphones
- ❖ Loss of hearing may go undetected for many years after chronic exposure to high levels of noise
- ❖ Increased rates of adolescent hearing impairment in last 3 decades
- ❖ Protection needed from the start
  - Be instructed to use personal hearing protection
  - Not only at work but also at technical and polytechnic schools

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#### <<READ SLIDE>>

Noise is associated with youth. Often, teenagers' exposure is constant. Prolonged exposure can lead to a transitory loss of 10-30 dB for several minutes after the noise ceases. Frequency of exposure, personal variability, and age of exposure determine the pattern of the damage.

Music occurs outside of the major frequencies of the human voice and over exposure to loud music causes loss of discrimination at low frequencies which may not be detected without formal testing for years. "Walkman" equipment is designed for emissions not higher than 80 dB, but the combination of an immature hearing system and a prolonged use may cause cumulative damage. Technology can be modified to bypass factory-imposed limitations and result in very loud music/noise exposure. Loss of concentration because of the focus on the music, in the presence of a potentially dangerous situation, makes a young person more vulnerable to accidents.

Teenagers should be instructed to use personal hearing protection as soon as they start being exposed to high noise levels, not only at work, but also at technical and polytechnic schools. If noise-abatement measures are not taken, good hearing will not be preserved and noise-induced tinnitus will not be prevented. The extent of hearing impairment in teenagers, caused by occupational noise exposure, and exposure at technical and polytechnic schools is unknown.

There are insufficient numbers of studies on somatic, psycho-social and behavioural effects of noise in teenagers.

#### References:

- Axelsson A. et al. Early noise-induced hearing loss in teenage boys. *Scand Audiol*, 1981;10: 91-96.
- Baig LA. et al. Health and safety measures available for young labourers in the cottage industries of Karachi. *J Coll Physicians Surg Pak*, 2005, 15:380.
- Fontana AM. et al. Brazilian young adults and noise: Attitudes, habits, and audiological characteristics. *International Journal of Audiology*, 2009, 48(10):692-699
- Plontke SK et al. The incidence of acoustic trauma due to New Year's firecrackers. *Eur Arch Otorhinolaryngol*, 2002, 259:247-52.
- Ryberg JB. A national project to evaluate and reduce high sound pressure levels from music. *Noise Health*, 2009, 11(43):124-8.
- Segal S. et al. Inner ear damage in children due to noise exposure from toy cap pistols and firecrackers: a retrospective review of 53 cases. *Noise Health*, 2003, 5:13-8.
- Vogel I et.al. Young People's Exposure to Loud Music. A Summary of the Literature. *Am J Prev Med*, 2007, 33(2):124-133.

**CONTENTS**

## Children and noise

### AND

- ❖ More research needed, especially in vulnerable groups
- ❖ Preventive action
  - Noise has to be controlled at the source
  - Hearing protection devices are a last resort
- ❖ Child hearing conservation programs
- ❖ Education and dissemination

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#### Future research:

- Effects of noise on cognitive functions.
- Effects of noise on children's sleep.
- Magnitude/significance of noise annoyance.
- Children's perception and risk perception.
- Settings: home, schools, hospital, day care centres.
- Teenagers' attention when driving and listening to loud music.
- Effect of non-audible noise.
- Identification of more vulnerable groups!
- Intervention programs/best practices for preventing harmful effects.

#### Preventive actions

Noise has to be controlled at the source by:

- Reducing.
- Enclosing the vibrating surfaces.
- Placing sound absorbers and other protections.

Hearing protection devices are a last resort!

#### Child hearing conservation program

- Noise monitoring where children live, study and play.
- Hearing protection programs diffusion for teachers and parents.
- Vibration detection and protection.
- Protection of the pregnant woman.

#### Education and dissemination

#### References:

- Folmer RL, et al. Hearing conservation education programs for children: a review. *J Sch Health*. 2002;72:51-7.
- Prevalence of noise-induced hearing loss (NIHL) among children is increasing. Experts have recommended implementation of hearing conservation education programs in schools. Despite these recommendations made over the past three decades, basic hearing conservation information that could prevent countless cases of NIHL remains absent from most school curricula. This paper reviews existing hearing conservation education programs and materials designed for children or that could be adapted for classroom use. This information will be useful as a resource for educators and school administrators and should encourage further development, implementation, and dissemination of hearing conservation curricula. The overall, and admittedly ambitious, goal of this review is to facilitate implementation of hearing conservation curricula into all US schools on a continuing basis. Ultimately, implementation of such programs should reduce the prevalence of noise-induced hearing loss among children and adults.*
- Moeller. Environmental Health, *Harvard University Press*, 1992.

## TO INTERVENE?

## ❖ Techniques for reducing or eliminating noise

- At the source
- By installing a barrier between the source and the recipient
- At the point of reception / At the human recipient

## ❖ Potential settings for intervention

- NICU
- Child care settings
- Primary schools
- Discotheques and rock festivals

## ❖ Address external and internal noise sources

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## &lt;&lt;READ SLIDE&gt;&gt;

## Identified potential settings for intervention

## 1. NICU

2. Child care settings : more and more children stay in various child care settings. These play an important role in the initial stages of children beginning to establish their basic education.

3. Primary schools : primary school children often spend long periods of time in one classroom, and a noisy room can adversely affect the occupants of that room.

4. Discotheques and rock festivals : the noise level can be very high in discotheques, often resulting in tinnitus or a temporary threshold shift among patrons. Many major cities have festivals, and many of the noisier attractions inevitably appeal to younger people.

## References:

•Bistrup M.L., Keiding L., ed. (2002). Children and noise - prevention of adverse effects. *Copenhagen, National Institute of Public Health* (also available at [www.niph.dk](http://www.niph.dk)).

•Byers JF, et al. Sound level exposure of high-risk infants in different environmental conditions. *Neonatal Netw.* 2006, 25(1):25-32.

**PURPOSES:** To provide descriptive information about the sound levels to which high-risk infants are exposed in various actual environmental conditions in the NICU, including the impact of physical renovation on sound levels, and to assess the contributions of various types of equipment, alarms, and activities to sound levels in simulated conditions in the NICU. **DESIGN:** Descriptive and comparative design. **SAMPLE:** Convenience sample of 134 infants at a southeastern quaternary children's hospital. **MAIN OUTCOME VARIABLE:** A-weighted decibel (dBA) sound levels under various actual and simulated environmental conditions. **RESULTS:** The renovated NICU was, on average, 4-6 dBA quieter across all environmental conditions than a comparable nonrenovated room, representing a significant sound level reduction. Sound levels remained above consensus recommendations despite physical redesign and staff training. Respiratory therapy equipment, alarms, staff talking, and infant fussiness contributed to higher sound levels. **CONCLUSION:** Evidence-based sound-reducing strategies are proposed. Findings were used to plan environment management as part of a developmental, family-centered care, performance improvement program and in new NICU planning.



## Children and noise

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### TO INTERVENE?

#### Technically

- ❖ Planning and designing outdoors and indoors “soundscapes”
- ❖ Improving road surfaces and developing green spaces and green barriers
- ❖ Developing noise barriers, building sound insulation
- ❖ Planning internal spaces according to activities (e.g. schools, sports-centres, others that involve noise), strategically using the space & location
- ❖ Reducing internal noise (eg. fans, ventilators)
- ❖ Using sound-absorbent materials
- ❖ Setting sound limits for concerts
- ❖ Increasing public and professional education to recognize noise pollution and reduction!

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<<READ SLIDE>>

## Children and noise

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### TO INTERVENE?

#### Organizationally and Educationally

- ❖ Educating children, adults, professionals
- ❖ Teaching methods/interventions
- ❖ Disseminating information
- ❖ Informing the media and decision-makers and health professionals!
- ❖ Creating silent areas ("silence islands") for resting
- ❖ Distributing earplugs at work and setting limits for the earphones
- ❖ Identifying and turning off noise at the source!

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<<READ SLIDE>>

## **Children and noise**

---

### **TO INTERVENE?**

#### **Planning**

- ❖ **Identifying noise sources and recognizing noise as a problem**
- ❖ **Recognizing health effects in children caused by noise**
- ❖ **Recognizing and diagnosing adults' health problems originated in childhood exposure**
- ❖ Raising awareness
- ❖ Setting-up noise control campaigns in hospitals and schools
- ❖ Applying the "Precautionary Principle"
- ❖ Thinking about noise exposure when planning the settings where children dwell
- ❖ Promoting sound landscape design
- ❖ Developing noise mapping, action plans, community involvement
- ❖ Standardizing noise measurements

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<<READ SLIDE>>

Children and noise

POINTS FOR

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<<NOTE TO USER: Add points for discussion according to the needs of your audience.>>

## Children and noise

### ACKNOWLEDGEMENTS

WHO is grateful to the US EPA Office of Children's Health Protection for the financial support that made this project possible and for the data, graphics and text used in preparing these materials.

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**Technical Assistance: Marie-Noel Bruné, MSc**

*Latest update: December 2009 (C. Espina, PhD)*

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We are indebted to Dr. Stephen Stansfeld (Queen Mary, University of London) for kindly lending us slides for this project.

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## Children and noise

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DOCUMENT 14.

## Images of Panmure Estate



- 1) Montague Bridge, is dangerously tall and provides support for the road to be used for emergency access. It cannot therefore, be secured completely. Both sides of the lengthy ravine it spans across are extremely steep and treacherous. There is no overhead lighting and dense foliage throughout.
- 2) The sides to the bridge are approximately four feet in height.
- 3) An image of the ravine in winter. In summer the undergrowth is such that it would be difficult to see anyone who had become lost or had fallen.
- 4) Image taken in the early afternoon (March) opposite the field and stable block (part of the festival site). Dense forest would prohibit effective security.
- 5) Image of woodland (early evening, March) behind West Gate Service Lodge (at the bottom of my garden). Securing private property in low light with poor visibility would be impossible.
- 6) A network of walls, ditches and streams run throughout the Panmure estate, providing addition hazards for people wandering in the woods. Especially in the absence of any street lighting. This image was taken near the stable block (close to festival site).
- 7) Rural roads surrounding the site will struggle to cope with festival traffic. They are narrow and winding and in areas, are in poor condition. This image was taken at the west side of the estate. Note deep run-off ditches to the side of the narrow roads. These are a common feature of roads in the vicinity.
- 8) There are a multitude of farm tracks and pathways leading into the estate area and the woodland is unfenced, making effective security for the site impossible. The large, dense, forest and expansive stony areas are bewildering and disorienting and many ditches, fallen trees and potholes exist throughout. In low light/darkness, these areas are a serious safety risk.  
Cutting across from the west entrance, down the ravine toward the camp site, there is the "old Gasworks" as it is locally known; a derelict, crumbling building, with a large pit, filled with rusting steel and stagnant water. This presents as a serious safety risk, especially in low light/darkness.

1)



2)









9

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5)

5)





9

6)





7) 7)



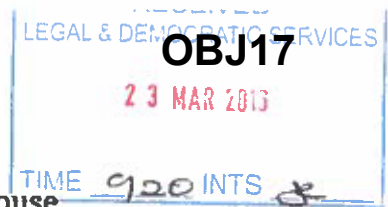


8)

8)







19<sup>th</sup> March, 2016

The Garden House,  
Panmure,  
Carnoustie,  
DD7 6LW.

Dear Sir/Madam,

Please find enclosed my objection to application for Public Entertainment License made by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitlivie Farm.

Regards,

Emma Brown

**Objection to application for Public Entrainment License made by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitilvie Farm**

I am writing to state my objection to the above PEL application.

The proposed event will have an overpowering impact on the life of my family due to its size and proximity to my family's home. The amenity of my property will be directly affected by the grant of this license.

**Objection 1: This event, if you allow it, will limit the access to our home to such an extent that it presents a real and recurring threat to our ability to quietly enjoy our home.**

Like all working families with small children we have many time commitments and being able to access our home freely is very important to us. The proposed event takes place during school term time including two school days/ two working days and potentially a period of time when I will be on call in my role as a Hospital Consultant at Ninewells.

Based on the limited information that the organisers of the event have presented to us it is clear that they will limit our ability to access our home. This is not fair and is very intimidating.

We have also been asked to define our planned movements during the event months prior to the event occurring. (Attachment 1) Whilst on the face of it that request was made cordially I find it very inappropriate that we are being asked to account for our whereabouts and movements during our normal day-to-day lives.

The organisers of this event, by controlling access to our home, will hold significant control over my family and our ability to live our normal lives. So far, their failure to engage effectively with us to address this issue gives me no confidence that they will exercise this control with due care.

**Objection 2: This event, if you allow it, may result in members of the public entering the area of land around our home in large numbers.**

No provision has been made to limit public access to, or to help secure, the land neighbouring this event. This may result in members of the public crossing our land and camping in proximity to our home in large numbers, potentially setting camp fires and being close to us without adequate appropriate provision of toilet facilities.

There are a number of Physical hazards on our property, specifically steep ravine, a water course and areas of standing water which may present a threat to public safety.



This could be a recurring and persistent threat to my family enjoying and feeling safe in our home.

The attitude of the organisers of the event when these concerns have been raised has reinforced the fact that they are unwilling and incapable of engaging effectively with us to take the necessary steps to ensure that this event will be undertaken safely or without harming those surrounding the event.

**Objection 3: This event, if you allow it, will result in a permanent change to the nature of the use of the Panmure area. This is inappropriate given the steps being taken to make the area a designated conservation area.**

This event will result in a permanent change to the nature of the Panmure estate. The estate has many historic features and, through time the special nature of this area is being lost.

Head of Law and  
Administration  
Angus Council  
Angus House  
Orchardbank  
Forfar

Mrs Sandra Wright  
East Haven  
Carnoustie  
Angus  
DD7 6LQ

22 March 2016

Dear Sir / Madam

**RE: Public Entertainment Licence application by Jigsaw Management for Festival on Panmure Estate**

**Introduction**

I write to object to the above application to hold a festival in the grounds of Panmure Estate. Whilst I would normally support any event which might boost the local economy and promote Angus as a place to visit the risks associated with this particular event in this location far outweigh any benefits to Angus. I understand that the organisers, Jigsaw Management have been offered safer locations nearer Carnoustie and East Haven but have chosen not to reconsider their plans. I therefore set out my objections to the proposed Festival as outlined below.

**Background**

Panmure Estate is one of the most important historical sites in Scotland dating back to the 12th Century. For those Councillors not familiar with the history, the Lords of Panmure came from the noble, ancient and Royal Families of France and Scotland. The three main roots are the de Valoniis, the de Maules and the Scottish Royal House of Dunkeld. The Estate brings our local history and heritage alive with its' fascinating monuments and the historical stories behind them. Many of the monuments are registered with Historic Environment Scotland as they are of both national and international importance. Carnoustie is twinned with Maule in France due to our historic connection and it is imperative that the site is preserved and protected. There are also unscheduled monuments and earthworks scattered over the estate. It is a stunning environment that also supports local wildlife such as red squirrels, badgers, bats and otters, which are all protected species.

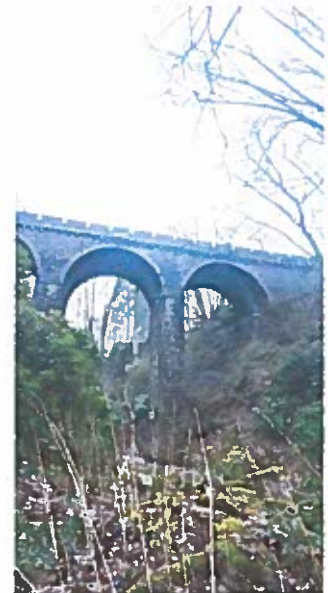
**The Civic Government (Scotland) Act 1982 states in SCHEDULE 1 5**

(3) A licensing authority shall refuse an application to grant or renew a licence if, in their opinion—

(c) where the licence applied for relates to an activity consisting of or including the use of premises (site) or a vehicle or vessel, those premises are not or, as the case may be, that vehicle or vessel is not suitable or convenient for the conduct of the activity having regard to—

- (i) the location, character or condition of the premises or the character or condition of the vehicle or vessel;
  - (ii) the nature and extent of the proposed activity;
  - (iii) the kind of persons likely to be in the premises, vehicle or vessel;
  - (iv) the possibility of undue public nuisance; or
  - (v) public order or public safety; or
- (d) there is other good reason for refusing the application;

Historic Environment Scotland (HES) find themselves in the bizarre position of not being able to express any concerns as they only have a remit for the A listed monuments of international importance. Although the Commemorative Column (Reference: LB18419 A Listed) sits precariously close to the event border HES can not intervene as it is their understanding that there will not be any people or vehicles near the monument. The organisers have continually promoted the festival as taking place 'in the woods' and I have not seen any Environmental Management Plan to reassure Councillors or the public about how they intend to prevent festival goers getting close to the monument. Any damage to this monument will cause international outrage and reflect badly on Angus Council.



The organisers stated at the consultation event in Carnoustie that they are able to change the event boundary lines as their event planning evolves and progresses. For example, since obtaining the decision that an 'Environmental Screening Opinion' is not required, the organisers have changed the event boundary line to include an emergency services exit route across the B listed Montague Bridge. The bridge is 80ft high and was built for horse and cart. It has been closed to motorised vehicles for a long period due to concerns about its load-bearing capacity. The risk to emergency services workers is totally unacceptable should the organisers consider it appropriate to take heavy fire engines and ambulances over the bridge. With a crowd of 15,000 daily and 5,000 campers overnight the likelihood of emergency vehicles being required is high. As Jigsaw Management, have not made their Environmental Management Plan publicly available I am unaware of exactly what plans they have in place to ensure that the Montague bridge is not damaged and that lives are not put at risk.

Any damage to the bridge or any other B listed scheduled monuments will be irreversible and irreplaceable. It is not possible to repair 18th century monuments of incalculable historic value. Although liability may be passed on to the Landowner, Angus Council must ensure that they do not knowingly put the monuments at risk by granting a Public Entertainment licence for an event in what is known to be such a sensitive and high risk environment.

***The Civic Government (Scotland) Act 1982 states that a licensing Authority shall refuse an application to grant a license if in their opinion; the applicant or, where the applicant is not a natural person, any director of it or partner in it or any other person responsible for its management is; not a fit and proper person to be the holder of the licence.***

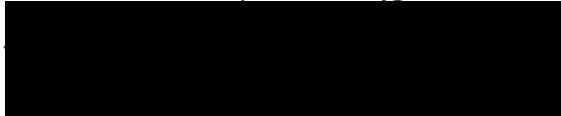
I have concerns about who will actually be brought to account if an incident or accident occurs if the Festival is granted a Public Entertainment Licence. Committee members will be aware that this is not a family festival as it is open to 18s only. Unfortunately, the organisers have widely promoted the event as being 'in the woods' and this is not accurate. However, children and young people locally will access the estate from its numerous entrance points around the perimeter risking their own safety and that of the heritage. It is not possible to decipher the signature on the 'notice for display' for the Public Entertainment Licence. However, the Council must ensure that the licence holder has the assets and the various liability insurances that will be required to fund the cost of damages in a location with so many high risks. When I asked about accountability at the consultation event in Carnoustie it seemed that everybody thought that somebody else would be responsible. It greatly concerns me that Jigsaw Management have been offered at least two alternative sites nearer to Carnoustie and East Haven but have declined them. These sites would be easier to manage from a security and traffic



management perspective. Even more importantly, the risks to public safety and the damage to the natural and historic heritage would be significantly reduced.

Finally, I am grateful to Council Officers and members of the Licensing Committee for giving my objections serious consideration. With the right protection and conservation, Panmure Estate could form part of a strong future for Angus.

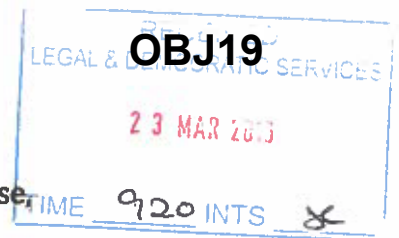
Yours faithfully

A large black rectangular box redacting the signature of Mrs Sandra Wright.

Mrs Sandra Wright

20 March, 2016

The Garden House,  
Panmure,  
Carnoustie,  
DD7 6LW.



Dear Sir/Madam,

Please find enclosed my objections to the application for a Public Entertainment License made by Jigsaw Events and Management Limited, trading as Festival of House, in respect of premises at Panmure Estate near Pitlivie Farm.

Regards

Mark Patterson

**Objection to application for Public Entainment License made by Jigsaw Events and Management Limited, trading as Festival of House, in respect of premises at Panmure Estate near Pitlivié Farm**

I am writing to state my objection to the above PEL application. I own and occupy a property in Panmure Estate. My home is landlocked by this event and our sole right of access for vehicles will be unreasonably constrained. The amenity of my property would be unfairly affected by the grant of this license due to overburdening scale of the event in proximity to us. I enclose a plan showing the boundary of my property. (Attachment 1)

**Objection 1: This event will prevent my family from entering and exiting our home without being unreasonably obstructed.**

The dates covered by the PEL include working days and weekdays during school term time. Our children go to school, my wife and I both work. We also need to be confident of our ability to exit our home in the event of an emergency.

I have been raising concerns about the access to my home being blocked from my first meeting with the organisers. Despite this I have not received a substantive response. This led me to write the letter in Attachment 2. The response that I have received (Attachment 3) in connection to my concerns does not constitute a practical way for me to enter and exit my home.

The last minute nature of the activities and reports associated with traffic planning leaves me lacking in confidence that the access route to enable me to enter my property during the event described in correspondence will actually be available.

Furthermore, the method of entry differs from the description given to my neighbour just weeks before, at the second consultation event.

Both of these facts lead me to be concerned that the practicalities of how I will enter my home are not clear, they have not been finalised and are by no means certain.

I am fearful that my family will not be able to safely enter and exit our home during this event.

I would clarify that in the title Deeds for my property there is a road tinted brown on the plan which leads to my property from the B9128. My Title Deeds state that I have a:

**"...right of access to and egress from the Subjects over the access road tinted brown on the said Plan for vehicular and pedestrian traffic for all necessary purposes..."**

Legally, this is a "real right" which my family and I are entitled to enjoy without unreasonable obstruction. It is clear that our access rights will be unreasonably obstructed by the Festival of House and the work associated with it.

My neighbours, Mr Martin and Dr Aggarwal are in a similar position to us. Mr Martin has made a reasonable request of Mr Ed Murdoch to define what might be considered a likely delay in him entering his home. See Attachment 4.

At the time of writing this letter no response has been received to the request for information about this delay. This reinforces the sense that resident's access, and indeed our rights are not considered important by the organisers.

I suspect that the residents that are 'landlocked' by this event and the organisers have very different views of what constitutes a reasonable delay. Being able to

access our homes is a fundamental right and we would like to know exactly what type of delay we might face.

We are conscious that if the event is approved, the organisers will have control over the area and the balance of power will lie firmly with them. Once they have control of the area and the event is underway, there will be very little that we can do to force them to give us access to our homes.

The organisers say that they have secured an additional route to the west of the estate to allow residents access. It is not clear that they have the capability to effectively deliver this as no plan has been made available to us. In addition, this access could be withdrawn from us at any time. It is critical therefore, that we maintain at all times our legal right of access from the east of the estate.

Elected councillors are being put in a position where they are being asked to sanction an unreasonable obstruction to the access to and from my family home. I would ask you not to do this.

**Objection 2: The site, by its nature, is not a suitable venue for the event that is planned, in terms of traffic management, safety and security.**

The Estate is porous with a network of roads and paths leading to the festival site and it will be very difficult to manage all routes in and out of the area effectively. The last minute nature of the traffic planning exercise is evidence of the difficulty of this task. There is a high risk that the measures put in place will not be sufficient to avoid traffic chaos.

The site has a great number of access points – this area will be impossible to police effectively and as such will face challenges with people entering the site area without tickets.

**Objection 3: The organisers have not taken any steps to address the significant risk of free-camping close to our home and the large numbers of people crossing our land to enter or exit the event in an uncontrolled fashion thereby putting themselves and my family at risk.**

There are physical hazards on the land surrounding the event in the form of steep ravines, water courses and volumes of standing water.

The letter from Mr Blyth suggests that such hazards would be for neighbouring landowners to deal with on their own. (Attachment 3)

Even if the organisers were now prepared to offer owners of the land neighbouring the event assistance, the porous nature of the site will make it impossible for the private security to effectively deal with the hazards posed.

Moreover, no provision has been made to deal with any waste left on my land in the aftermath of free camping. I am particularly concerned by the prospect of human waste. I have contacted the organisers to make them aware of my concerns in this regard; they know that I have small children that will potentially face exposure to faecal matter as they explore the outside space that we own. My understanding, again, is that such problems will be left for me to deal with on my own. I feel overwhelmed by this and helpless to prevent it.

**Objection 4: The Organizers of this event have not adequately considered public safety in their plans and their actions would suggest that they do not understand their responsibilities with respect to public safety.**

In this regard, I would in particular draw your attention to my correspondence with Mr Blyth. My letter (Attachment 2). Mr Blyth's letter (Attachment 3).

Mr Blyth's whole letter caused me anxiety on a number of levels: I was taken aback by both content and tone.

When I highlighted my public safety concerns I expected a response about accident prevention, not information about insurance to compensate individuals or their families in the event of an accident. Whilst insurance is undoubtedly important, I am most surprised that the emphasis is not on prevention. In his letter the organiser fails to acknowledge the risks associated with the land that neighbours the proposed event. It is clear that the event organiser does not see the safety of individuals out-with his direct event site as his concern. This lack of recognition of his accountabilities is clearly seen the following quote taken from section 11, Attachment 3:

***"As stated above, the event management team will have many steps in place to safeguard the wellbeing of our customers, staff and equipment on site. We would advise you to take relevant measures to ensure that you meet your legal obligations."***

This festival will bring an increased risk of people entering my property in large numbers and I expected a collaborative approach to dealing with this. However, Mr Blyth's tone with me from the outset has been adversarial.

Another factor reinforces the fact that public safety is not a concern to the organisers. The event organisers have indicated to my neighbour Morag Stewart that they plan to seek a suspension of the right to roam legislation. In doing this they have failed to seek this suspension over areas neighbouring their site that are likely to be used by free campers which, by their nature, would present significant hazards to them. Their plans appear to focus solely on ensuring the event on their site runs smoothly and people do not enter their site without tickets. They do not appear to be addressing the public safety issues on the land adjoining their site. If they were, they would aim to extend the suspension of the right to roam to include physical

hazards in the adjoining properties such as the long and steep ravine along the Monike Burn.

These factors make me very worried that someone will come to serious harm through the course of the event. Without the organiser's clear and unambiguous commitment to public safety both in and around the event site, there is a significant risk that someone will be seriously hurt.

**Objection 5: This event will stop my family from quietly enjoying our property without undue external noise. This noise will constitute a nuisance will severely impact the amenity of our home.**

The proposed event by reason of its size, scale, nature, and the noise it will produce will have an unacceptably adverse impact on the amenities of my family home by reason of overbearing impact.

The noise associated with, and created by, the Festival is likely to constitute a legal nuisance and will severely impact my family's ability to enjoy our home during the period of this event. The ongoing threat of this will create a significant and sustained level of personal anxiety for us. The organisers of this event have at no time sought to work with my family to indicate how this anxiety could be limited.

**Objection 6: This event will force me to incur costs and significant inconvenience to help to protect members of the public from harm.**

I anticipate that the festival will cause me additional expense and significant inconvenience. I may be forced to put in place new fencing to help to manage the risk of members of the public coming to harm due to the physical hazards on our land. This risk will be substantially increased due to the large number of people that could be expected at the event. As such, I would wish to state a formal objection about cost and inconvenience. However, I would like to point out that my ability to state that objection clearly has been compromised by the lack of information available in relation to the event. There is not even a final plan of the event layout. (See objection 7)



**Objection 7: The Organizers of this event have not adequately described their plans in a timely way such that they can be adequately reviewed by interested parties and any objections proposed.**

To meet my 'legal obligations' as referenced by Mr Blyth in Attachment 3, I require further information about the proposed event to enable me to specifically identify the risks it presents and be better able to guard against them. However, I have been unable to access the necessary information. In particular:

- None of those involved in the organisation of this event have proactively sought me out to work with me to ensure that public safety is well managed or even to discuss the impact it will have on my property.
- Even at this stage my request to receive an up-to-date schematic of the event has been ignored as seen in the correspondence detailed in Attachment 2 and Attachment 3.
- I have sought a place on the Steering Group and the sub-groups relevant to public safety but was advised by the Council this was not appropriate.
- I am aware that the Council have requested a number of reports from the organisers in connection with public safety but these have not been made public. Indeed at the time the application for the license was made, I understand that they had not yet been finished. They remain unavailable at the date of this letter and there is now insufficient time for me to review them to assess the risk posed by and to my property.
- I understand that the Police are aware of the location of my property but I have not been able to secure a meeting with them.

I would ask the Licensing Committee to refuse this PEL. However, if they were minded to approve it, I would ask that they delay the decision in relation to the PEL until members of the public such as myself could review reports in connection with the application. This would allow a proper opportunity to scrutinize reports, take advice, and where required submit any formal objections as they deem necessary. This would ensure that all those impacted by the event were given a fair opportunity to make relevant objections.

**Objection 8: This event is being enabled by a flawed process. The EIA screening process that had been completed to allow this event to be sanctioned solely through a licencing process contains significant differences to the event as described.**

- The proposed festival area differs;
- The dates of the event differs, 2 days were suggested in the EIA whereas the event is now 3+ days;
- The timing associated with the licencing has extended by 2 hours each day.

Therefore, what was assessed for the purposes of an EIA screening opinion is substantially different to the event that a PEL is being sought for. The determination that an EIA is not required is now questionable and the matter ought to be reviewed again.

Where a decision is to be made that may result in detriment or loss of amenity to an individual, then that individual has a right to a fair hearing and to make representations to a decision maker to influence any decision which has the potential to cause them harm - in this case owners and occupiers of land.

The planning and practicalities of this event seems fluid. In view of changes to the description of the event between the EIA screening process and the PEL application process, I am not confident that what is described in PEL application will actually be enacted during the event, or that the conditions of any licence will be met. I appreciate that there are sanctions that could be applied in the event of licence breaches but these are limited and they would be cold comfort for those, like me, who will have to live with the consequences of any licence breach.

**Objection 9: The organisers of this event have failed to adequately consult the community on the planning of this event.**

The organisers have only held two public meetings regarding the event. The initial public meeting was held with 3 days' notice given. This was clearly not appropriate and shows inexperience and a lack of regard on the part of the organisers for those impacted by this event.

Access to information regarding the event has relied on interested parties being available and able to attend these meetings which were held at short notice. No record of these meetings or event plans have been made available in the public domain.

Up-to-date schematics of the event have not been made available even when they have been formally requested. (Attachment 2 and Attachment 3)

Through the course of the last 6 months the organisers have systematically failed to engage with my neighbour, Mr Andrew Martin. On two occasions I have taken it upon myself to ask the event organisers to talk with him.

The organisers carried out a postal awareness mailing to residents in the postcode areas of DD6 and DD7. Monikie and Newbigging having the postcode DD5 were not included despite being geographically nearer to the Panmure Estate. Many residents will therefore not be aware of the proposed event and have consequently not been given the opportunity to voice their opinions or objections.

The consultation process for this event has been inadequate.

**Objection 10: The organisers have failed to present information fairly to those impacted by this event and they have not been reliable in their presentation of facts. Those impacted by this event are therefore left feeling uncertain of how the event will impact them or the extent to which adequate controls will be in place to protect them.**

Throughout this process and through my interaction with the organisers, I have become very concerned about the reliability of information provided by them.

They are clearly very keen to make this event happen and understandably they will say and do anything to tick the boxes to obtain the necessary permissions.

However, my impression of the organiser's approach is one of inexperience and over confidence coupled with a lack of attention to detail in ensuring that the information provided is accurate, or that undertakings given will be followed through. Here are some examples:

- In correspondence with Morag Stewart with respect to insurance Mr Blyth states that they have an extensive insurance programme in place which satisfies 'all legal, moral and contractual obligations' that has been accepted by all authorities'. When asked, the Safe Events Coordinator for Angus Council said that they had not yet had sight of this information. On this basis it is hard to see how Mr Blyth could state that this document had been 'accepted'. (Attachment 5.)
- In the EIA screening document, the organisers stated that they would follow the Code of Practice on Environmental Noise at Concerts. This was reiterated by Bell Ingram on the 4<sup>th</sup> December. (Attachment 6) As part of this there is a clear requirement to undertake a baseline noise survey. When my neighbour, Alan Cairns asked Mr Blyth to undertake this it was conceded as 'something that could be done'. Again, an example where a previous commitment is not considered a priority.

- The two original EIA screening applications were based on a two-day event, see also the confirmation from Bell Ingram. However, the music event being proposed is a 3 night / 4- day event according to the licence application.
- The two original EIA screening applications were based on 2300hrs being the end of the event. This was the stated finishing time from the Organisers at the outset, see also the confirmation from Bell Ingram. However, the application is for a 0100hrs finish according to the licence application.
- There was very limited information provided at the consultation event held by organisers and the information put on display was not reliable. The signage indicated that residents would have 24 hour security and this was reiterated verbally at the event by the representative from SecuriGroup at the consultation event. However, when asked about this Mr Blyth, the organiser denied any knowledge of such an arrangement. I enclose both a picture of the sign from the organisers (Attachment 7) and Mr Blyth's subsequent email to a resident. (Attachment 8)
- Visitors to the consultation event were discouraged from taking pictures of the information signs at the event and there was no information available to take away. Visitors were advised that the information would be published at a later date, but this did not occur.
- A nesting bird survey was recommended by the Scottish Wildlife trust. At the time of writing I have been told that this has not been done.
- I had been told by Mr Blyth that he had received 'personal assurances' from two landowners that, should I wish I could exit my home to the west over their land. At the time that he made that statement to me he had neither met with or spoken to these landowners.

### **Objection 11: Conservation Status**

I understand that a bid to secure Conservation status for the Panmure Estate is currently under consideration by Angus Council. Many of the historic features of the estate have been lost through lack care and attention over time. I assume that protection and management of the features that remain will be considered as part of this Bid. I would suggest, therefore that is inappropriate to allow an event of this scale and nature to take place whilst such an exercise is under way.

**Objection 12: The organisers have failed to present information to the council or members of the public in a timely way such that they would have sufficient time to fairly assess the impact of this event and as required construct objections to the event.**

It is my submission that the Council cannot competently make a decision in respect of this license on the grounds that inadequate information has been made available to those that might reasonably object. For example, the traffic management plan is not in available to the public.

A decision, if taken at this time, would be both unfair and contrary to Natural Justice because I am likely to be adversely affected by this event and am being denied the right to a fair hearing to state my case against the license.

## **Summary:**

Both the Council and the organisers have acknowledged verbally that given its close proximity to my property the music festival is likely to have a significant negative impact on my family and me and adversely affect the amenity of our property.

We will essentially be landlocked by this event and that is very intimidating. This intimidation is compounded by the organisers' attitude to my family and the fact that this event will present a recurring threat to us.

I would ask the council and the elected officials that have a part in the licencing decision to please help me to protect my family. Please put yourself in my position. Imagine having small children to protect, explaining to them why they cannot fully enjoy their home; imagine the fear associated with 15000 people being so close to us in a rural setting and having no mechanism to stop large numbers of people from crossing or camping on the land all around us; consider the anxiety associated with not knowing that we will be able to get in or out of our home; consider the potential cost of the clean-up exercise that we face after the event.

I have concerns about the ability of the organisers to effectively and safely manage a new event of this scale and nature on a virgin site. I understand that there are mechanisms for holding them to account should it be done wrong or badly, but again that is cold comfort to anyone who is hurt or suffers damage or loss because, at the end of the day and in all the circumstances, it was never possible to run this event at this location safely, effectively, or well.

A festival of this type may represent an opportunity for Angus, but the organisers have picked the wrong location.

I would ask you to refuse this licensing application on the basis of the overbearing impact this event has and will have on my family, and neighbouring families in a similar position.

I would also like to request an opportunity to speak to the Licensing Committee when it meets to consider this application.

**Attachment 1 – Plan showing The Garden House boundary**

**Attachment 2 – Letter to the Directors of Jigsaw and Red Pepper  
(Letter to Craig Blyth as an example.)**

**Attachment 3 –Letter from Craig Blyth**

**Attachment 4 – Access emails**

**Attachment 5 – Insurance response**

**Attachment 6 – Shifting commitments on EIA**

**Attachment 7 – Security Picture**

**Attachment 8 – Security Email**



## Attachment 1 – Garden House location



13 February, 2016

The Garden House,  
Panmure,  
Carnoustie,  
DD7 6LW.

Dear Mr Blyth

### **Impact of Festival on Garden House Panmure**

I am writing to you in your capacity as a director of Jigsaw Events & Management Limited and to highlight my concerns with respect to the proposed music festival in the Panmure estate. I have concerns regarding the impact on my family and the safety of those attending the event.

I have raised my concerns a number of times with you and have not received a substantive response and I find myself becoming increasingly concerned that those undertaking this event are failing to properly understand the significant effect this event will have. I have number of issues that I would like you to address.

### **Servitude Right of Access**

On the Title Deeds for my property there is a road tinted brown on the plan which leads to my property from the B9128.

My Title Deeds state that I have a:

“...right of access to and egress from the Subjects over the access road tinted brown on the said Plan for vehicular and pedestrian traffic for all necessary purposes...”

Legally, this is a “real right” which I am entitled to enjoy without unreasonable obstruction. I am now very concerned that access to my property via the road tinted brown on the plan will be unreasonably obstructed by your Festival of House and the work associated with it. I would prefer to resolve this issue without recourse to legal action and with that in mind, I would be most obliged if you would provide a written response to the following questions:

1. What arrangements will be put in place to ensure this road will not be unreasonably obstructed?
2. The festival will take place over four days, can you please provide a schedule detailing anticipated pedestrian and vehicular traffic on this road during the mornings, afternoons, evening, and nights of each of the days?
3. Can you please provide a schedule detailing all anticipated pedestrian and vehicular traffic throughout the set up of this event?

4. Can you please provide a scheduling detailing all anticipated pedestrian and vehicular traffic during the dismantling and clean up following the event?
5. Can you please detail any restrictions that you intend to put in place on this road at any point in connection with this event?
6. Can you please send me the latest version of your event schematic? The version that I saw in the 'Courier' newspaper differs from the version sent to me by yourself and the latest version shows changes that will further impede the access to my home.

### **Nuisance**

The noise associated with and created by the Festival is likely to constitute a legal nuisance actionable by me.

7. What remedial measures do you intend to put in place to mitigate the effects of this noise?

### **Occupiers Liability**

As you may know, an occupier of land may be liable for injuries sustained by persons who come on to his land and which arise as a result of the state of the land or through something done or omitted to be done in respect of it. Your Festival will attract a considerable number of people to the Estate and I am concerned that they will trespass onto my property. The topography of my property is such that there are a number of inherent dangers. I am concerned that those trespassing on the property may be injured. I have highlighted this concern on a number of occasions. The response that I have received to date has led me to believe that you do not see this as a valid concern.

8. Please explain what steps you will take to safeguard the safety of those in the event who choose to leave via the west and venture onto my land. I would urge you to consider the actions of large crowds in situations where they are hemmed in and have their planned access blocked.
9. Can you please explain the physical steps that you will take to ensure that no one travels across my property from the west to attend your event. It is foreseeable that both people with, and people without tickets will aim to do this and, as such they may put themselves in harm's way.
10. I have been told on several occasions that you do not plan to put a fence around the carparks. I would urge you to do this otherwise there will be no method of securing the safety of those that choose to return to their vehicles and subsequently venture onto other people's land.
11. Please explain what steps you will take to guard against me incurring liability in these circumstances.

I would be most grateful if you would provide a written response to each of my questions by 28 February 2016.

**In addition, I would ask you to promptly notify me of any changes to your plans that have the potential to further restrict the access to my home.**

**If I do not hear from you, then I will assume that you have not given proper consideration to any of the areas identified by me in this letter and will take appropriate steps to protect myself.**

**I have sent a copy of this letter to Simon Laird who owns the road tinted brown on the attached plan. I understand that it is necessary for me to make him aware of my concerns about infringement of my servitude right of access.**

**I look forward to hearing from you.**

**Yours sincerely,**

**Mark Patterson**

Dear Mark

**Servitude Right of Access**

As discussed previously, I write to confirm on behalf of Jigsaw Events & Management Ltd t/a Festival of House that we guarantee there will be no measures in place relating to the festival that will prevent or unreasonably obstruct your access/egress via the south drive at Panmure.

1. – 6.

We do not envisage a scenario where you are delayed longer than you might already be at times on this route. It is used by farm/agricultural vehicles, other vehicular estate traffic and to accommodate the movement of livestock, cattle and farm produce. In some such instances we would anticipate your delay to be shorter than normal and over the course of the event weekend there will be no agricultural movement on the drive to delay you. You will also have a route to the west unobstructed by any event traffic as written permission has been received from both Mr Simon Laird and Dr Alistair Emslie granting you access/egress via their roads west of the estate during the build/break periods and the weekend of the festival.

Traffic management and security will be implemented on the south drive to secure the site and allow the safe access/egress and flow of residents, pedestrian traffic and event traffic. Whilst these measures may result in short delays, to all movements, whilst vehicular/pedestrian traffic is managed to allow that safe movement at no point will your access/egress be prevented. Where possible, with safety of paramount importance of course, our measures will prioritise your movements on the south drive to allow you access/egress as quickly as possible. It is impossible to give you a specific number of minutes of possible delay as circumstances and volumes of flow will fluctuate.

Pedestrian flow of event ticket holders over the crossing point on the south drive will commence on Thursday afternoon, stop on Thursday night overnight, commence again on Friday morning, stop on Friday night overnight, commence again Saturday and then finally stop on Saturday night. Specific times for opening and closing of the campsites and arena will be subject to license conditions.

Vehicular traffic on the south drive during the event will consist of site traffic and event coaches for campsite pick up/drop off. Event coaches will be on a small section of the south drive at the access nearest the B9128 only. Weekend car parking will egress via this route also but the volume of this traffic is anticipated to be low on all days except Sunday.

It is impossible to give a specific number of vehicles movements for build/break or show days at a particular point within the event site at this stage.

With regards the specific measures on the south drive, subject to discussion with the relevant authorities and agencies, we are proposing the following management process:

**Egress:**

- Turn onto south drive
- Pass through 24 hr security checkpoint, open and unobstructed but staffed
- Staff at this point will be made aware of your vehicle details in order to facilitate clearance without the need to stop/engage
- Staff at this point radio staff ahead manning the pedestrian crossover point and traffic light system to activate a stop signal for other vehicular traffic and commence closure of the pedestrian crossing
- Once the route ahead is clear of pedestrians and other vehicles a green go light will activate for egress onto the B9128

**Ingress:**

- Turn onto south drive
- Stop at red light off the B9128 at the south drive entrance
- Staff at this point will activate a stop signal for other vehicular traffic and radio staff manning the pedestrian crossover point ahead to commence closure of the pedestrian crossing
- Once the route is clear of pedestrians and other vehicles a green go light will activate for onward travel on the south drive

These measures will be subject to discussion with the various agencies sitting on the Multi Agency Steering Group and Traffic & Transport Sub Group, which include the various departments within Angus Council, Police Scotland and Scottish Fire & Rescue. The next meeting of the overall Steering Group took place today and the Traffic & Transport Sub Group meets in early March. Any amendments to the measures described that are required as a result of input from those discussions will be communicated to you as quickly as possible thereafter.

## **Nuisance**

7. License conditions relating to noise control will be strictly adhered to as outlined in the appropriate management and operating plan. Noise monitoring will take place at various points within and outside of the festival perimeter to ensure license conditions and agreed noise levels are not breached.

Campsite noise will be strictly monitored and controlled by 24-hour security patrols based within the campsite areas.

## **Occupiers Liability**

Jigsaw Events and Management Limited will have relevant insurance cover for customers, staff and equipment that are under our management. We appreciate

that the event will attract more people to the area and have insurances in place to cover our liability however this does not excuse surrounding land and property owners from meeting their own legal obligations.

If we were deemed to be negligent in any way then the claim would be made against Jigsaw Events and Management limited.

8. & 10. The layout of the weekend car park and campsite has been redesigned to:

- a) Move the perimeter of weekend car parking further from your own boundary thus increasing the distance between your property and the festival boundary;
- b) Include the construction of a temporary observation tower in the corner of the campsite nearest your property;
- c) Create a 'no man's land' where anyone entering it can be easily spotted;
- d) Accommodate additional security personnel in rotation to staff the observation tower for the purpose of monitoring that section of land;
- e) Accommodate the additional power and welfare facilities required in staffing the observation tower.

The observation tower and no man's land zone will facilitate a clear line of site for security personnel to monitor a clear section of land between the festival boundary and your own. In the unlikely event someone does attempting to wander off in the direction of your property a security detail will also be operating within the car park and along the perimeter. They will also be in communication with the observation tower staff to facilitate the interception of any persons entering 'no man's land' prior to them reaching your property.

9. Event signage will be in place at different locations along The Marches and from the A92 advising that no event access is possible from that side of the estate. There will be signage, and we propose security personnel also, at the road entrance from The Marches advising that there is no festival access from this side. All signage will direct traffic towards the main access to the festival on the B9128.

10. – see 8.

11. As stated above, the event management team will have many steps in place to safeguard the wellbeing of our customers, staff and equipment on site. We would advise you to take relevant measures to ensure that you meet your legal obligations.

Kind regards

Craig Blyth



# ATTACHMENT 4 - DELAY EMAIL WITH NO RESPONSE

**From:** Andy Martin  
**Sent:** Wednesday, February 24, 2016 10:05 AM  
**To:** 'Ed FOH'  
**Cc:** 'Mark Patterson'  
**Subject:** RE: Festival of House - south drive access

Thanks for that Ed.

While I can appreciate the operational issues that can occur when implementing a traffic management plan in reality, I would like to know how many minutes that Jigsaw Events & Management Ltd perceive as a short delay. Both Mark & I, our families and visitors are going to have to make allowances in our travel plans when we gain entry & exit by the south drive and I want to know what you consider reasonable.

Regards

Andy

---

**From:** Ed FOH [mailto:[ed@festivalofhouse.co.uk](mailto:ed@festivalofhouse.co.uk)]  
**Sent:** 24 February 2016 04:21  
**To:** Andy Martin <[andymartin@clara.co.uk](mailto:andymartin@clara.co.uk)>  
**Cc:** Mark Patterson <[gardenhousepanmure@btinternet.com](mailto:gardenhousepanmure@btinternet.com)>; Craig Blyth <[craigblyth@festivalofhouse.co.uk](mailto:craigblyth@festivalofhouse.co.uk)>; Allan Carnegie <[allan@carnegiebaseservices.co.uk](mailto:allan@carnegiebaseservices.co.uk)>; Eleanor Whitby <[eleanor@redpepperevents.com](mailto:eleanor@redpepperevents.com)>  
**Subject:** Re: Festival of House - south drive access

Good morning gents

For clarity, I write on behalf of Jigsaw Events & Management Ltd t/a Festival of House.

There are different vehicular and pedestrian flows and rates at different times any combination of which would influence the duration with which ingress or egress will be achieved differently, including whether both you and Mark were accessing/exiting in opposing directions at the same time and in that scenario those particular flows would be prioritised in the safest possible manner.

Regards  
Ed

Ed Murdoch

**Festival of House**  
**07764 203 999**  
**[www.festivalofhouse.co.uk](http://www.festivalofhouse.co.uk)**

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On 23 Feb 2016, at 15:39, Andy Martin wrote:

Thanks for that Ed.

There are a couple of points that I would like clarification on.

1. You have written on behalf of 'Festival of House' which itself has no legal entity. Can you send the mail again clarifying in what capacity of what company you are representing here.
2. Can you clarify what you mean by "short delay"

Regards

Andy

---

**From:** Ed FOH [<mailto:ed@festivalofhouse.co.uk>]  
**Sent:** 19 February 2016 12:31  
**To:** Mark Patterson <[Gardenhousepanmure@btinternet.com](mailto:Gardenhousepanmure@btinternet.com)>; [andymartin@clara.co.uk](mailto:andymartin@clara.co.uk)  
**Cc:** Craig Blyth <[craigblyth@festivalofhouse.co.uk](mailto:craigblyth@festivalofhouse.co.uk)>; Allan Carnegie <[allan@carnegiebaseservices.co.uk](mailto:allan@carnegiebaseservices.co.uk)>; Eleanor Whitby <[eleanor@redpepperevents.com](mailto:eleanor@redpepperevents.com)>; Iain B. Cram <[iain.cram@bellingram.co.uk](mailto:iain.cram@bellingram.co.uk)>; Jerry Watson <[jerry@albatraffic.co.uk](mailto:jerry@albatraffic.co.uk)>  
**Subject:** Re: Festival of House - south drive access

Good morning Mark & Andy

I hope this finds you both well.

As discussed previously, I write to confirm on behalf of Festival of House that we guarantee there will be no measures in place relating to the festival which will prevent your access/egress via the south drive at Panmure.

We will have traffic management, security and marshalling points on the south drive to allow the safe access/egress and flow of yourselves, pedestrian traffic and event traffic.

These measures may result in short delays, to all movements, whilst vehicular/pedestrian traffic is managed to allow that safe movement however at no point will your access/egress be prevented. Where possible, taking safety into consideration of course, our measures will prioritise your movements on the south drive to allow you access/egress as quickly as possible.

I hope this sets your mind at ease with regards access/egress on the south drive and we will be in touch soon with more detailed information as to exactly what measures we intend to implement. These measures will be subject to discussion with the various agencies sitting on the Multi Agency Steering Group including the various departments within Angus Council, Police Scotland, Scottish Fire & Rescue and so on. The next meeting of the overall steering group takes place at the end of February and the Traffic & Transport Sub Group meets in early March. Any amendments to the measures which are required as a result of input from those discussions will be communicated to you as quickly as possible thereafter.

# ATTACHMENT 5 - INSURANCE COVER

"ACCEPTED BY ALL  
AUTHORITIES"

**From:** SempleJ  
**Sent:** Monday, March 14, 2016 7:13 PM  
**To:** Gardenhousepanmure  
**Subject:** Re: FOH - please verify

Hi Mark

Thanks for your email.

At this time the council has not seen the insurance information. This forms part of the suite of documentation that is being assessed and scrutinised as part of the licensing process. We have requested that all final documents must be with the council by the end March to ensure that timescales for scrutiny of documents are met. This will include provision of public liability insurance for the event.

I have a call planned for tomorrow with the event organiser and I will raise this.

Kind regards

Jacqui Semple  
Resilience Manager

Sent from my iPhone

On 14 Mar 2016, at 19:02, Gardenhousepanmure <[Gardenhousepanmure@btinternet.com](mailto:Gardenhousepanmure@btinternet.com)> wrote:

Jackie,

Can you help me. Craig Blyth has said the following to one of my neighbours:

"We have an extensive insurance programme in place which satisfies all legal, moral and contractual obligations that have been accepted by all authorities but the details of who our insurance providers are and the extensive details of this is not public information and as such will not be disclosed."

Perhaps you can attest to having signed off on their insurance? If you have not 'accepted' the cover in place then I would appreciate knowing that. What

scope do you consider their responsibility with respect to insurance? Are they covering people hurt on neighbouring land to the event.

How are you ensuring that the Council will not pick up the tab for a significant adverse event?

I am very worried by the organisers attitude to public safety and am very fearful of their approach generally.

Mark Patterson,  
Garden house Panmure.

Sent from my iPad

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# ATTACHMENT 6 - TIMING CHANGES

## REF TO CODE OF PRACTICE

ScottJ

---

**From:** Catherine Newton <catherine.newton@bellingram.co.uk>  
**Sent:** 04 December 2015 15:43  
**To:** ScottJ  
**Subject:** RE: EIA Screening Opinion: 15/01040/EIASCR - Panmure Estate, Carnoustie

Dear Jamie,  
Further to my email earlier, please find below a response to your question 4.

4. An indication of likely noise levels from activities related to the festival (musical performances and vehicular/aeronautical movements) and confirmation of hours of operation from sound checks and performances.

Sound checks would start the day before the musical performances and testing would continue for much of the day (approx. 10.00 to 22.00) on the main stage. On Day 1 of the festival event the headline acts would be sound checked in the morning (approx. 9.00 to 11.30). The music performances would be 12.00 to 23.00 on Day 1 and Day 2. The event would operate in accordance with the Code of Practice on Environmental Noise at Concerts

There would be noise generated by vehicles during the build and break of the event. Vehicles to convey 15,000 visitors to and from the festival would be expected over 4 days. Adverse effects from traffic noise may therefore reasonable be expected to occur, but these would be at a local level and they would only be temporary for a set periods.

There would be no noise from aeronautical movements associated with the event.

Please let me know if you require further clarification.

Kind regards  
Catherine

Catherine Newton  
BA (Hons) MSc MRTPI

Planning Consultant

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Attachment 7

-----Original Message-----

From: [craig.blyth@jigsawmedialtd.co.uk](mailto:craig.blyth@jigsawmedialtd.co.uk)

Date: 02/02/2016 17:13

To: [REDACTED] >

Subj: Re: panmure

Hi Morag

Thanks for your email.

**There is no entitlement as such to a home security provision that we are aware of. We would however be keen to find out who supplied you with this information?**

The concerns of the owners of properties nearest the event site are being assessed on an individual basis and, where possible, measures are being proactively considered to mitigate the impact of the festival on those owners and their properties.

Current traffic management plans will be available for viewing at the community consultation event tomorrow and will show ingress and egress flows to the event site. We are working closely with our Traffic Management Contractor, Angus Council and Police Scotland to produce a robust and effective traffic management plan. All agencies involved in the Traffic and Transport sub group will have the opportunity to comment on and contribute to the plan and this will remain a flexible, working document in order to take into account any factors which might affect the scope of it as we near the event. There is however no 'police report' on the traffic management plans thus far that we have been privy to so I'm afraid we cannot provide what we do not have.

The Public Entertainment License has not yet been applied for but again further details relating to the timeline for the license application will be available for viewing at the consultation event tomorrow. We would welcome the opportunity to further discuss plans openly and positively with you at the event and hope to see you there.

Regards,

**Craig Blyth**  
**Jigsaw Media Limited**  
**Director**  
**Tel: 07969569804**  
**Web: [www.jigsawmedialtd.co.uk](http://www.jigsawmedialtd.co.uk)**  
**Email: [craig.blyth@jigsawmedialtd.co.uk](mailto:craig.blyth@jigsawmedialtd.co.uk)**

On Tue, Feb 2, 2016 at 3:51 PM, [REDACTED] wrote:  
Dear Craig,

I have been informed that our situation entitles us to security guards for our homes. Hopefully we will not need them, however if that is our entitlement then I have to pass on my request to you.

I would also like an up to date plan of all vehicle access and egress, before, during and after the proposed event. For all roads around the whole estate within a 5 mile radius please. I would also like to see the police report for your transport arrangements. I am somewhat disappointed that I have not received this and other pertinent information without having to take responsibility for this situation, which is neither of our making or for our benefit.

I would also like to know if the licence has been applied for yet.

Regards

Morag



## FESTIVAL SECURITY

### Safety

Jigsaw Events and Management Ltd is committed to delivering a safe event in accordance with "The Purple Guide to Health, Safety and Welfare at Music and Other Events" which is endorsed by the Health and Safety Executive (HSE). The Guide's aim is to help those event organisers who are duty holders to manage health and safety at large-scale music and similar events.

In line with the Purple Guide, the Festival of House Steering Group set up a Safe Events Sub Group to promote a collaborative approach between Jigsaw, Angus Council and other partner agencies in relation to the risk, safety, security, and medical contingency planning aspects of the festival. The Safe Events Sub Group includes representatives from Angus Council, Police Scotland, the Scottish Fire and Rescue service, the Ambulance Service and the NHS.

### Security

Security and stewarding of the festival will be undertaken by SecurixGroup. With a resilient history in the security and safety sector, SecurixGroup began trading in 2003 and has developed into the largest security company based in Scotland today.

SecurixGroup is a Security Industry Authority (SIA) Approved Contractor for the provision of security services including security guarding, mobile patrols, key holding, events security, door supervision, CCTV and close protection. SecurixGroup quickly became an award-winning organisation, collecting a range of prestigious contracts and appointing a number of high-profile security professionals to its Board of Directors. SecurixGroup's cultural contribution spans an eclectic mix of popular music and sporting events, including the 2014 Ryder Cup, T in the Park, the 2014 Commonwealth Games in Glasgow, Walsworth Festival and the Royal Highland Show at Inverlasna.

### Proposed Measures

The organisers are extremely keen to get things right in year one with a view to securing a longer term future for Festival of House at Pannoch. The project team is working closely with SecurixGroup to develop a security strategy for the festival "events area" surrounding the proposed Festival of House site. Key elements will include:

- 24 hour residents' property protection
- Controlled area 24 hour mobile patrolling
- Stewarding of surrounding area roads (including the Montague Bridge)
- Promotion of a 24 hour residents' hotline to allow residents to report any concerns during the festival which can then be actioned by the security team.

### Community Feedback

Feedback from local residents is vital to the success of the safety and security strategy and the proposals have already evolved in response to initial consultations. Please take the time to complete our feedback questionnaire with any further comments you wish to share.

[WWW.FESTIVALOFHOUSE.CO.UK](http://WWW.FESTIVALOFHOUSE.CO.UK)  
[WWW.FACEBOOK.COM/FESTIVALOFHOUSE](https://WWW.FACEBOOK.COM/FESTIVALOFHOUSE)  
[WWW.TWITTER.COM/FESTIVALOFHOUSE](https://WWW.TWITTER.COM/FESTIVALOFHOUSE)

SEE  
DETAIL  
ON  
NEXT  
PAGE

## Proposed Measures

The organisers are extremely keen to get things right in year one with a view to securing a longer term future for Festival of House at Panmure. The project team is working closely with SecuriGroup to devise a security strategy for the external "events area" surrounding the proposed Festival of House site. Key elements will include:

- 24 hour residents' property protection
- External area 24 hour mobile patrolling
- Stewarding of surrounding area roads (including the Montague Bridge)
- Provision of a 24 hour residents' hotline to allow residents to report any concerns during the festival which can then be actioned by the security team.



Mairi Stewart

15 Gardyne street,

Friockheim

Angus

15/3/16

Head of Law and Administration

Angus Council

Angus House

Orchardbank Business Park

Forfar

DD8 1AN

To Whom it May Concern,

**Re-Public Entertainment Licence-Jigsaw Events and Management Ltd, Festival of House, Panmure Estate**

I am writing to formally lodge my objections to the above PEL application on the following grounds:

- Danger to wild campers and casual visitors without tickets. The estate will be totally dark at night. There is no lighting in the woods or residential areas. There is also little mobile phone signal.

The event will attract young local people who are under the age of entry. It is easy to enter the estate unseen and remain so for days; the woodland is very thick in places. The wider estate poses significant risk to them, as they will be without any supervision whatsoever.

Grave danger of serious injury from the landscape, including the Montague bridge, waterfall, the burn which can be high and fast flowing, the ravine which continues through the whole estate, water bodies and fallen trees with sharp branches.

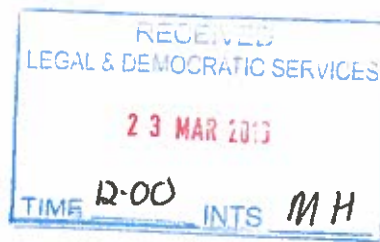
The estate is not a playground and it is impossible to secure. It is open round its whole boundary, through woodland and fields as well as forestry tracks and roads. With the best of intentions, the organisers cannot patrol or secure it.

The organisers also do not have any legal rights over the majority of the estate which is owned by other people.

- The organisers have failed in their obligation to engage with the local community. The residents have had minimum communication and the local communities of Monikie and Newbigging have had none whatsoever, despite their close proximity to Panmure Estate.

The organisers have made public claims that they have received favourable feedback from residents and the local community. This is untrue so far as the residents are concerned. They have used Carnoustie for the purposes of community engagement. Carnoustie residents will be unaffected by the negative impacts of this event.

In fact, many people have come to visit the estate to see for themselves. Almost without exception they have agreed that is the wrong site for a large public entertainment event. Many have changed their opinion quite vocally.



- Panmure Estate is fortunate in having protected species of mammal and birds living within the woodland. They are protected by law, as are the thousands of nesting birds which will be disturbed by this event. It would be tragic if the last remnant of badgers in this area were to be disturbed to the extent that they disappeared from here forever.

This is a grave responsibility, one which has to be taken very seriously.

Parts of the woodland are also classed as ancient and are subject to annual checks to ensure Dr Emslie's workers adhere to the regulations.

Who will regulate those who decide to enter the woodlands and may start fires or use bbqs?

Litter is a grave concern as many deaths of wild animals and birds are attributed to carelessly discarded rubbish.

The country code advises visitors to behave responsibly. Festival of House actively encourages people to come to a quiet country place to party. Their own advertising stated:

"we are taking over the Panmure Estate" and they called the event "festival in the woods".

This is totally misleading as the site is not in any woodland and visitors will expect to be able to roam through the whole estate, including the residential areas.

- Noise from the event will be intolerable to those who wish to sleep at night.

The organisers told residents the music would end at 10pm. Of course this was changed in their application to 1am. My father has to work during this time. He is 62 and may have to climb on roofs and up ladders. How can he manage without the rest he should be entitled to in his own home?

Ed Murdoch told my mother that

"we want to enjoy ourselves".

Wonderful for them, not so wonderful for my parents who will have to stay at home to protect their property and their rescued animals from harm and be alert 24 hours a day.

It is totally irresponsible to plan an event such as this in a quiet, undisturbed haven like Panmure Estate. The residents have no one to speak up for their rights.

Surely the fact that some people have decided to sell tickets and publicise their event before it even has a licence should not come before the normal human rights of those whose lives will be blighted during this time and for the next few years; I believe the organiser wishes to expand his festival.

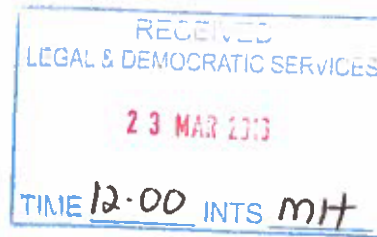
In short please refuse the PEL. Put the environment before the rave and preserve Panmure Estate as it should be.

Yours faithfully

Mairi Stewart



Paul Dines  
 15 Gardyne street,  
 Friockheim  
 Angus  
 15<sup>th</sup> March 2016



Head of Law and Administration  
 Angus Council  
 Angus House  
 Orchardbank Business Park  
 Forfar  
 DD8 1AN

**Re-Public Entertainment Licence-Jigsaw Events and Management Ltd, Festival of House, Panmure Estate**

I wish to formally lodge my objections to the above PEL application on the following grounds:

I have visited Panmure Estate frequently and love the peace and quiet it offers to walkers and families.

I believe it is the wrong site for a house music festival.

The impact on the environment will be damaging and the rights of locals are being ignored.

The grounds present dangers to anyone who wants to gate-crash the estate to hear the music without buying a ticket. They can camp and cause a fire risk as well as public disorder.

It will be impossible to secure the wider estate.

It will be difficult to help anyone who is hurt in the woods. There is no mobile signal there.

The mess that is left will be blown into the wild environment, I do not believe it will be cleared up with the time limit.

Other festivals have terrible problems with anti-social behaviour, drunkenness, crime, drug use and violence. There are loads of petitions to stop them. They are bad news unless you are making the profit from them.

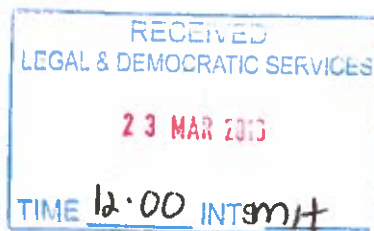
Please refuse this licence, it is a terrible use of farm land and the residents deserve to live in peace. They have rights too.

Yours faithfully

Paul Dines



John Stewart  
 Starforth East  
 Panmure Estate  
 Carnoustie  
 DD7 6LW  
 01241855100  
 19/3/16



Head of Law and Administration

Angus Council

Angus House

Orchardbank Business Park

Forfar

DD8 1AN

To Whom it May Concern,

**Re-Public Entertainment Licence-Jigsaw Events and Management Ltd, Festival of House, Panmure Estate**

I am writing to formally lodge my objections to the above PEL application on the following grounds:

I have lived here for 41 years. I was employed as the estate joiner for 28 years and know the estate very well. When it was sold in 2002 I lost my tied home and my job, however I now own my residence on Panmure Estate and I am fully employed. I am very concerned that at the age of 62 I will have my sleep disrupted for at least 3 nights (Thursday to Saturday). I will, like the other residents have to be alert for the period of the whole event to protect my property and animals from harm and /or damage. I will also have to go to work during this time, perhaps to climb on roofs and up ladders. I am dreading the prospect.

We have had this event foisted on us with the barest of communication and my wife has had to spend countless hours emailing and phoning to get any information at all. The other residents have shared their snippets of information as it has been discovered and we are all extremely frustrated and worried.

Jigsaw Events have changed their plans so many times that residents are unclear what the details of the event are to be. They also refuse requests to see any documents and indeed have lied about their insurance arrangements. At a residents request the council responded that they were not in receipt of any insurance details despite Craig Blyth's email to my wife stating that they had satisfied all authorities.

They have made claims about mitigation that do not hold up to scrutiny. For example, they proudly announced that residents' security was safeguarded by the provision of security guards at the



western entrance of the estate. They had to admit when questioned that these guards would have no authority over anyone wishing to enter. Their powers were restricted to dissuasion.

The estate itself is impossible to secure. People do not have to enter via any entrance. The open perimeter cannot possibly be secured and any number of people can remain unnoticed on this side of the festival site for days at a time.

We are effectively defenceless.

We were told that they could not prevent anyone from behaving in a nuisance fashion, only if the said nuisance was endangering themselves.

We were told by Craig Blyth that we will not be compensated for any damage done to our properties unless the damage is caused by a ticket holder. The greatest concern the residents have is the invasion of our side of the estate by unticketed people who may bring portable bbqs, who may play loud music, light fires, take illegal substances and excessive amounts of alcohol. This part of the estate is not owned by Mr Niven and Jigsaw have no rights over it whatsoever. I feel that holding an event such as this will of course attract wild campers and to refuse to accept any responsibility for the actions of those who would not be here otherwise is shabby behaviour and does not show Jigsaw in a very positive or trustworthy light.

Jigsaw have claimed that they do not expect any unticketed people to enter the estate and yet on their own advertising in November 2015 they stated that:

"We are taking over the Panmure Estate"

I consider this to be an invitation and misleading advertising which could result in visitors having the expectation to roam the whole estate.

Jigsaw have used manipulation in their press releases as well. They stated in the Courier that:

"the overwhelming majority of residents and the local community have offered far reaching and positive support"

This was intended to show that the event was already popular and would smoothly run through its licencing procedures. The residents are overwhelmingly opposed to this event and the local community referred to was Carnoustie which is, strictly speaking, not our local community at all. Monikie and Newbigging is our closest local community and they have not been consulted at all.

Panmure Estate is and always has been a quiet, undisturbed oasis for wildlife, many of whom are threatened and protected by law,

i.e. badgers, red squirrels, bats, barn owls, newts, kingfisher, red kites, otters.

The event is to be held during the breeding season, thousands of birds and animals will be adversely affected.

Much of the woodland is classified as ancient woodland and is subject to annual thorough checks to ensure regulations are adhered to by Dr Emslie's workers. The risk of wild campers damaging this is out with anyone's control and should be taken into consideration when debating the licence application.

The estate roads and surrounding roads are totally unsuitable for the amount of traffic expected over the period of four days and I believe that the traffic will back down onto the A92, impacting on



residents of Muirdrum. Many of the surrounding roads are narrow with twisty bends and have no lighting. There are recently cleared deep ditches very close to the road at many places which pose a real risk to drivers who are unused to driving on dark, narrow country roads.

Entering festival of house OR the postcode given into satnavs sends traffic up the Carnoustie to Craigton road which is called "the Marches" locally and will take motorists into our side of the estate where they will have to turn on the grass verges and return against the flow of other traffic on a single track road; our road.

Panmure Estate is of great historical and cultural importance in Angus. It contains many ancient monuments and it should be the responsibility of Angus council to protect it. The recent trend towards siting music festivals in unsuitable places has resulted in a plethora of campaigns and complaints due to anti-social behaviour, crime, damage and pollution of people's homes and environments.

<http://www.standard.co.uk/news/london/lone-police-officer-fights-off-crowd-of-gatecrashers-trying-to-storm-wireless-festival-10367815.html>

<http://metro.co.uk/2015/07/03/wireless-2015-heres-the-moment-a-bunch-of-gatecrashers-stormed-lethal-bizzles-performance-5279144/>

<http://www.crouchenders.co.uk/local-residents-call-for-ban-on-music-festival-in-finsbury-park/>

<http://www.independent.co.uk/arts-entertainment/music/festivals/glastonbury-2015-beware-your-wee-could-shut-down-the-festival-10335978.html>

The site of the proposed festival is prime farmland which is still being used for grazing and which grows food crops such as potatoes. I believe there is a very real risk of contamination of this land and the waterways that run through the estate. The risk of human waste entering these waters from legitimate campers or from wild campers or trespassers is very high, either through runoff or from drainage ditches carrying waste downhill and into either burn. I believe both burns are used as irrigation dams for watering potatoes and for watering soft fruits. This is an intolerable situation as pathogens can exist in the soil for many months. It has been documented that at T in the Park 9% of people used the toilets.

Do we really want the good name of Angus fruit and potatoes tarnished by threats to food quality from human waste?

The risk to visitors of entering the western end of the estate is very real. With the best will in the world this estate cannot be secured. It is impossible. Even with the proposed fencing off of the Montague bridge, which does not belong to Mr Niven, any person can easily climb down into the ravine that carries the burn and up the other side. Unfortunately, this is also extremely dangerous, especially in the dark.

I have grave fears of assault, sexual crime and drink and drug related criminal behaviour occurring on this side of the festival site. This is not prejudice; it is the simple fact that these types of festival are associated with this type of behaviour.

To sum up my objections:

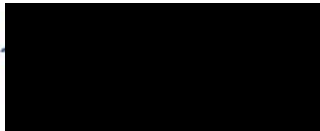
- We have had no sight of any completed plans, therefore our objections have to be based on supposition

- This is not a suitable site for a large event due to traffic and wildlife concerns
- Despite being instructed to do so by Angus Council, Jigsaw Events have failed to consult consistently or truthfully with the residents and failed to consult at all with the local communities of Monikie and Newbigging despite their claims.
- The parts of the estate not owned by Mr Niven are impossible to secure and present very real danger to anyone wishing to camp or party in the woodlands out with the event site
- The noise will cause intolerable disruption to local residents who are entitled to live in peace.
- Risk to food crops and the environment from human waste and other pollution
- Risk of criminal behaviour before, during and after the festival. This has already started. Drug users have come to see where the event is to be held, openly smoking joints and being extremely abusive to a worker.
- Drop in value of our properties, through no fault of our own.
- Lack of confidence in and trust of the organisers

As a resident and former worker of Panmure Estate I urge you to refuse the PEL. This is a beautiful, undisturbed environment that adds to the amenities of Angus and should never have been chosen for a huge public entertainment event. It is irresponsible to plan an event of this kind with a projected number of people in excess of 15000, not to mention the unknown visitors to the rest of the estate. It is interesting that all those who visit agree that this is an unsuitable site.

Yours faithfully

John Stewart



Capt Laura Fermor

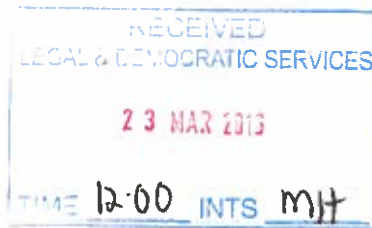
Bankhead

Spittalfield

Perthshire

PH1 4JU

16/3/16



Head of Law and Administration

Angus Council

Angus House

Orchardbank Business Park

Forfar

DD8 1AN

To Whom it May Concern,

**Re-Public Entertainment Licence-Jigsaw Events and Management Ltd, Festival of House, Panmure Estate**

I am writing to formally lodge my objections to the above PEL application on the following grounds:

- Panmure Estate is not a suitable site for a large music festival. The infrastructure of the surrounding area will not take the increased volume of traffic forecast.

The residents are unanimously opposed to it. It was advertised as "TAKING OVER THE PANMURE ESTATE" and as "FESTIVAL IN THE WOODS"

These statements are false advertising and misleading. The estate does not belong to one person and the festival goers will not be allowed to roam freely. The site is not in "the woods", the woods belong to a different landowner. The site is restricted to farmland, stating otherwise gives people the idea that they have the right to access the whole estate.

The estate is impossible to secure around its perimeter. Anyone can enter through woodland, fields or by one of the many tracks.

People without tickets will be attracted to the festival, they may camp in the woods, light fires and use bbqs, pollute the environment and use it as a toilet.

The residents may suffer nuisance, vandalism and will certainly have no peace of mind in their own homes for four days at least.

Noise from the actual event will cause terrible nuisance and sleep deprivation. My father is 62 and has lived on the estate for 41 years. He will have to go to work, involving climbing on roofs and on scaffolding while he is exhausted from lack of sleep.

- There are many species present on the estate, breeding birds and rare mammals. Their breeding season will be disrupted and the effects of incessant noise and thousands of people in their quiet, undisturbed environment is incalculable.

- There will be pollution of the site and its surroundings of the worst kind. Human waste could find its way into the burns, impacting on water quality and could destroy these aquatic ecosystems. Litter will blow about, endangering the wildlife and ruining the aesthetic appeal of the estate which is a welcome oasis for many people who travel here to dog walk or just to enjoy some peace and quiet.

Panmure Estate is a local amenity, loved and treasured by many.

- There are significant dangers to unwary trespassers in the rest of the estate. Much has been made of securing the site. The site is not the problem. It is the adjoining area that is dangerous to anyone unaccustomed to country environments in total darkness.

There is little mobile signal and thick cover which could shield violent attackers. I fear there will be accidents or worse and it could involve local youths who will be attracted to the area for their own "party in the woods".

It is impossible to patrol the whole estate and residents will be at the mercy of anyone inclined to criminality.

- As a native of Panmure Estate, I know the problems that the traffic increase will cause. Satnavs will direct people into the privately owned western end of the estate. It is a single track road which must be kept clear as it is the route chosen for emergency vehicles to use in emergency situations.

As this is private land the police have no powers to move abandoned vehicles and this could cause delays to the said emergency vehicles as well as inconveniencing residents who will be unable to leave.

This is totally unsatisfactory.

Compensation for any damage caused to residents' properties has been ruled out unless the perpetrator is proven to hold a festival ticket. If incidents occur, it will be because the festival is an attraction and Jigsaw must be held accountable for that.

- The human rights of residents, including my parents are being abused. A music event for 15000+ people foisted on a very quiet, undisturbed, crime free environment. Extremely loud music until 1am and the noise from revellers from which it is impossible to escape. Littering to their environment, possibility of trespassers invading their immediate surroundings. Possibility of being unable to leave the estate by car. Loss of value of properties and increases in home insurance.

They have no choice and will gain nothing and lose much. How can this be contemplated? How is this acceptable?

The people of the local community of Monikie and Newbigging have not even been consulted. They are unaware of the potential disturbance to their area. Jigsaw claims the local community is supportive. Some Carnoustie residents are supportive, some have commented that

"it is far enough away from us so it is a good thing" Really?

I would ask that the PEL licence be refused. Panmure Estate is not owned by the landowner of the festival site. It is unreasonable to expect the residents to take this level of disturbance and fear in order for a private individual to make money.

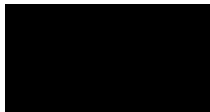
The question remains, if you lived here would you be in favour of this? Because they are a small community they will naturally be outnumbered but that is no reason to ruin their quality of life and subject them to the possibility of anti-social behaviour or worse in their own homes.

Tickets have been sold, yes. Money has been spent, yes. However, that is not reason enough to grant a licence for the disturbance of this wee quiet place and the endangerment of its wildlife.

This project has always been ill advised, the many great risks far outweigh the benefits so I ask again that the PEL licence be refused.

Yours faithfully

Capt. Laura Fermor



Morag Stewart

Starforth East

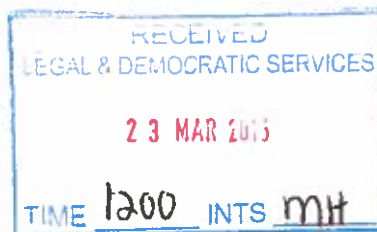
Panmure Estate

Carnoustie

DD7 6LW

01241855100

19/3/2016



Head of Law and Administration

Angus Council

Angus House

Orchardbank Business Park

Forfar

DD8 1AN

To Whom it May Concern,

**Re-Public Entertainment Licence-Jigsaw Events and Management Ltd, Festival of House, Panmure Estate**

I have lived on Panmure Estate for 41 years. My husband was the estate joiner and we brought up four children here. We are more able than most to understand the implications of holding a large music festival on the estate grounds.

I am writing to formally lodge my objections to the above PEL application on the following grounds:

• **Risk to public health**

There are no toilets in the woods. Visitors will defecate and urinate in the estate. Estate workers, dog walkers and residents including children will be exposed to human waste for a long period of time.

Figures from T in the Park, state that about 9% of festival goers used the toilets provided. There are food crops grown on the land surrounding the event site. I believe these fields will be used as emergency toilets by campers.

Run off into the burn from the many ditches and from ground flow will pollute these waters with human waste.

I believe both burns that run close to the site are used for irrigation dams from which potatoes and soft fruits are watered.

There is therefore a high risk of contamination to human food crops.

Fields to be used for the event have been used for grazing animals, as I write this there are sheep in the main arena. This increases the chances of visitors contracting e-coli as there will be limited washing facilities.

This area is a Lyme Disease Hotspot. Lyme disease is caused by tick bites. Official and unofficial visitors will be at risk from this.

Government advice regarding handwashing and food handling in rural forested and farmed land is unlikely to be adhered to by campers.

### • **The unsuitability of the site for a major entertainment event.**

Panmure Estate is an undisturbed haven for wildlife, many of whom are protected by law in an effort to increase numbers. These species include:

- Badgers - there are very few in the wider area and Panmure offers a chance for them to recover, given time and space. They are located very near to the proposed site and will be terrified by the unaccustomed noise, ground vibration and human presence. Their continued presence at this site is threatened by the proposals
- Red squirrels – the estate was once a haven for red squirrels however numbers have declined and only now are we seeing their slow recovery
- Bats – there are bats living in many buildings on the estate, my own house included
- Otters – otters have been sighted at the burn which runs right through the estate
- Kingfishers – they are also visitors to the burn
- Amphibians – these are present in increasing numbers, pollution of their habitat could severely impact on their success of recent years
- Barn owls - there are definite sightings of a barn owl, frequenting the woodlands surrounding the proposed site

The event is scheduled to take place during the breeding season. The environmental report has been withheld from concerned residents; we have reason to believe that it is incomplete and flawed, done over a few months instead of over the recommended 12 to 18 months.

As well as the species present on the estate, there are many important historical and cultural monuments which have survived untouched for hundreds of years.

The walls which have been destroyed in order to make room for new roads for thousands of vehicles and revellers were erected in the 11<sup>th</sup> century. This lack of concern for our history greatly troubles me.

Much of the woodland adjoining the proposed site is classified as ancient woodland and is subject to rigorous annual checks. Dr Emslie's workers are required to fulfil their forestry duties in accordance with the regulations imposed on their care of it.

The risk to all of these species, monuments and woodlands by a huge influx of legitimate festival goers, as well as those without tickets, greatly outweighs the perceived benefits to the more distant local economy.

### • **Safety of residents, festival goers and unofficial visitors**



The residents have been very vocal about the risks to people who may enter the parts of the estate outwith the festival site.

On Festival of House advertising they made a statement that:

**"TAKING OVER THE STUNNING PANMURE ESTATE IN ANGUS THIS SUMMER IS FESTIVAL OF HOUSE"**



Festival of House delivers a huge first line up announcement, with Underworld, Sasha, Danny Howard and Dave Seaman amongst the names revealed.



Last updated: 18th Dec 2015

Photo: Underworld

Taking over the stunning Panmure Estate in Angus this summer is Festival of House, which has delivered on its promise to bring some of the biggest names in house and techno to East Scotland this summer.



Held in association with the iconic Rhumba Club on the 10th - 11th June, Festival of House has just announced its first wave of acts, with Underworld and Sasha topping the bill.

They also advertise as **"festival in the woods"**

This is inaccurate and misleading. The event site is not in the woods.

Festival goers will expect to use the whole estate as their right, leaving us facing 4 days of guarding our properties and animals and with little prospect of sleep.

We know better than anyone that the estate is impossible to secure around its perimeter. Any number of people can easily enter and remain unseen for days.

People do not need to use any of the dozens of tracks, they can easily enter through woodlands and fields without challenge.

- We are concerned by the threat of fire from camp fires and bbqs.
- Criminal behaviour, before, during and after the event.

- Pollution by human waste and litter causing risk to children, dog walkers, estate workers and wildlife.
- These problems are all well documented consequences of music festivals.
- Even worse is the potential danger to local youngsters who will be attracted to the event locality. The event is for 18+.
- Montague bridge, the ravine and the burn running through the heart of the estate are obvious dangers.
- A fall from the bridge results in death. I have personally seen youths run across the bridge parapet as a dare.
- The ravine is very steep sided, littered with trip hazards and pointed branches. Add intoxication or drug misuse and you have a potential disaster.
- The folly is crumbling, the bricks are loose and it has been used for wild camping before.

There are numerous water filled ditches, the deep, water filled gas works and a ha-ha (a steep ditch) surrounding much of the estate.

There is no lighting; it will be absolutely dark, little mobile signal and a huge risk of falls and trips over uneven ground.

It is easy to become lost and disoriented in large tracts of woodland and scrub.

I fear a high risk of sexual assaults and other violence due to the cover afforded by thick vegetation.

The event organisers believe they can mitigate against these risks by imposing an exclusion zone around part of the estate.

- They have no legal rights to stop the movement of people through this area.
- They would be unable to see people crossing the burn via the ravine or moving through the woods in the dark
- They do not own the land on this side of the event site.
- They have already tried to attach some barriers to the Montague bridge which is a listed structure and is not owned by Mr Niven. Luckily they were seen and told to leave before they did any damage.
- The road through the estate is to be used as an exit only for emergency vehicles in blue light situations so the bridge cannot be fenced off.

### ● Road traffic plans

These are totally inadequate for this area. The organisers believe that motorists will follow their instructions to drive to Dundee from Forfar and Brechin to come back along the A92. This is naïve and irresponsible; people will come by the straightest routes that they know.

Entering festival of house OR the event postcode directs people up the western side of the estate and into our residential, single track road where there is no entry beyond the Montague bridge.

Trying to return against the flow of following traffic will lead to chaos and gridlock around our homes.

The surrounding communities of Monikie and Newbigging have not been consulted despite the impact the expected traffic will have on their areas.

The estate roads are unfit for the amount of traffic expected and the surrounding rural roads are unlit, narrow and twisty.

Many are sided closely by deep ditches that are difficult to see.

I expect the legitimate traffic to back down to the Muirdrum and onto the A92. This will cause chaos as local traffic will be prevented from going up the Forfar road through Muirdrum and will have to find alternative routes, probably up the Craigton road or through Monikie and Newbigging.

### • Anti-social behaviour and crime

There is a greatly increased risk of crime in a locality which has very low crime figures. This will impact on residents' insurance premiums.

We have been told by Craig Blyth that we will receive no compensation if our properties are damaged unless it is proven to be done by a ticket holder. It is extremely unlikely that any such damage would ever occur were it not for the attraction of a music festival in our immediate vicinity.

I fear a repeat of the high levels of criminality and anti-social behaviour that has been documented at many music festivals and which has resulted in recent petitions calling for festivals to be banned.

<http://www.standard.co.uk/news/london/lone-police-officer-fights-off-crowd-of-gatecrashers-trying-to-storm-wireless-festival-10367815.html>

<http://metro.co.uk/2015/07/03/wireless-2015-heres-the-moment-a-bunch-of-gatecrashers-stormed-lethal-bizzles-performance-5279144/>

<http://www.crouchenders.co.uk/local-residents-call-for-ban-on-music-festival-in-finsbury-park/>

<http://www.mirror.co.uk/news/uk-news/leeds-festival-goer-wakes-find-4105929>

<http://www.independent.co.uk/arts-entertainment/music/festivals/glastonbury-2015-beware-your-wee-could-shut-down-the-festival-10335978.html>

Jigsaw events team at the consultation event in Carnoustie informed us that no drugs were used at T in the Park. This is untrue. At least one death arose from drug taking. Their assurances that this event will be drug free are without foundation.

There have already been incidents involving people openly using drugs who are "wanting to see where the rave will be". These incidents have been accompanied by abuse.

This is an unwelcome and entirely new development.

The organisers have been very public in their claims that residents' fears have been allayed. This is absolutely untrue.

Much has been made of their consultation with the local community. They are referring to Carnoustie in this respect.

Our local community is Monikie and Newbigging and they have not been consulted at all despite their geographical proximity to Panmure Estate.

Residents have not received any finalised plans and communication has been extremely irregular. The residents have had to email and chase the organisers for every detail.

The fact that we have to state our objections without knowing the detail of what we are objecting to makes a mockery of the process.

I have personally found Craig Blyth to be evasive and untruthful. I have an email from Craig Blyth stating that all parties are satisfied with their insurance arrangements. The council confirmed that they had not seen never mind accepted the insurance details.

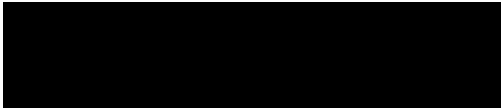
I have serious doubts as to the ability of Jigsaw events to deliver a safe event that abides by its own promises and the regulations it is required to adhere to.

Every visitor to the estate shares the same belief- that Panmure Estate is entirely unsuitable as a site for a major public entertainment event.

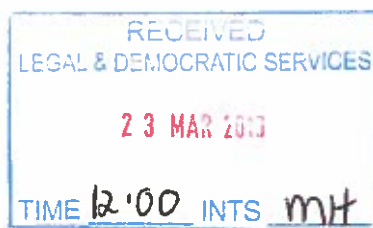
I urge you to please, please refuse the PEL. The estate and its human and wild inhabitants should be protected, not used for monetary gain by those who do not live here.

Yours faithfully

Morag Stewart



Peter Stewart  
 Starforth East  
 Panmure Estate  
 Carnoustie  
 DD7 6LW  
 01241855100  
 19/3/16



Head of Law and Administration  
 Angus Council  
 Angus House  
 Orchardbank Business Park  
 Forfar  
 DD8 1AN

To Whom it May Concern,

**Re-Public Entertainment Licence-Jigsaw Events and Management Ltd, Festival of House, Panmure Estate**

I am writing to formally lodge my objections to the above PEL application on the following grounds:

- The Panmure Estate is a historic and beautiful place, loved by walkers and home to many different species. Holding this house music festival here threatens their peace and will destroy habitats
- It is a dangerous place for people unused to country environments. There are many very dangerous places which could seriously injure or even kill someone who stumbles across them in the dark. The bridge and the ravine, the waterfall, the gas works and the woodland itself which is uneven and full of sharp branches.
- It is wrong to encourage people to come to a private place where they believe they will have the right to roam through the whole estate. I know that people will trespass to hold their own private parties in the woodlands rather than pay for tickets and also because they are underage. There will be dangers from drinking too much and from drugs and as there is no mobile signal help will not be easy to find. It will be dark too, no streetlights in the woods.
- Drug dealers come to these sites before events to stash their drugs beforehand. Security at T in the Park didn't stop people from taking drugs and there was more than one death there.
- Residents will be under siege from thousands of visitors, from intolerable noise, from litter blowing about for months afterwards threatening wild animals. There will also be risk from human waste and vomit. We did not ask for a music festival to come to our homes, we will receive nothing but nuisance, fear, devalued homes and lack of sleep. The organisers will make a profit from the misery of people who live in the place they have chosen to invade. They do not live here and neither do many of those who support this festival.

● Jigsaw Media was advised to consult with the residents and local communities. They have not consulted with our local community of Monikie and Newbigging. They have barely consulted with the residents. The plans keep changing and we are kept in the dark. They have told everyone that they have allayed the fears of residents. Their plans to have security guards at our entrance is toothless as they cannot legally stop anyone from entering the estate. They have admitted that they will have to dissuade people.

My parents are relying on persuasion as a measure to protect them?

● The surrounding farmland will be contaminated by human waste. Residues can stay in the soil for months. This is grade A farmland that is to be put out of commission for the next few years.

How can food crops safely be grown on contaminated land?

● Those who are in favour of this event are looking only at the benefits to local businesses. I do not believe that local businesses can possibly compete with those who follow events such as this and are accustomed to catering for this type of event.

No one seems to see that this estate should be protected as it is for its history, its wildlife and its appeal to many people around the world who have visited it. To bring an event like this to a beautiful place knowing that it will detrimentally change it forever is outrageous. I cannot believe it has been seriously considered.

What of the people who live locally and on the estate? What of the protected species? What of trying to rid Angus of legal highs and then bringing the type of event that is associated with drug taking right into a quiet crime free area?

There have already been people here sussing out the place before the event. They openly smoke drugs and have talked about the rave. Who takes responsibility for bringing these people into our area?

● The residents have been openly warning about the dangers to people who are wandering around here in the dark. This is the kind of place where people can remain completely hidden and do whatever they like without fear of discovery.

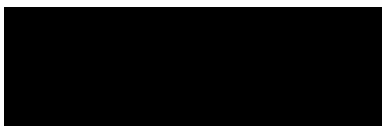
If they are ignored and people are hurt who bears the responsibility for that? Jigsaw Media have already tried to distance themselves from any form of liability.

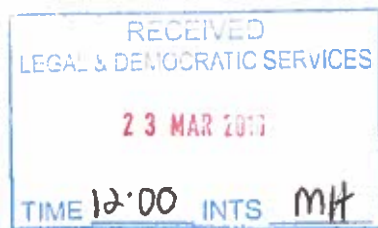
I was born on the estate, I know it well and I cannot believe that anyone could possibly think this idyllic place is the right spot for a house music festival. No one objects to a festival, it is the location that is totally wrong. It was "chosen" for its wow factor and beauty. That is akin to seeing a flower and picking it for its beauty. It withers!

Please refuse this PEL licence and let Panmure Estate continue to be a beautiful place that so many love to walk through without fear.

Yours faithfully

Peter Stewart





Starforth Cottage West  
Panmure  
Angus  
DD7 6 LW

22 March 2015

Head of Law and Administration  
Angus Council  
Angus House  
Orchardbank Business Park  
Forfar  
DD8 1AN

Dear Madam

Proposed House of Festival, Former Panmure Estate: Application for Public Entertainment Licence

I wish to lodge my objection to the granting of a Public Entertainment Licence to Jigsaw Events and Management Limited for the proposed Festival of House (FoH) event at the former Panmure Estate. My objection will cover two main points: advertising and security.

**The advertising is in places wrong, misleading and potentially inflammatory:**

FoH states or implies in several of its advertising media that the event is taking place in woodland; for example, the cover image on FoH Facebook page wrongly states – “Festival of House in the woods,” while the majority of images on FoH webpage, under site info, has views of woodland, many of which will be outwith the event site. Any festival-goer will assume that s/he, too, has access to these leafy woodlands and will be disappointed to find that they are not. The official site plan (latest) submitted by the organisers clearly marks the event boundary as enclosing four agricultural fields.

Another post on Facebook announces that the Festival of House is “taking over the stunning Panmure Estate,” misleading festival-goers again, both those with or without tickets, that the official event area encompasses the whole area between the Marches and Muirdrum/Forfar Road. Misleading, and wrong information may lead to confusion and disappointment at best, tension and conflict at worst and cause disruption that will be difficult to contain in dark and difficult terrain. A complaint has been submitted to the Advertising Standards Authority.



**The former Panmure Estate is porous and impossible to secure:**

FoH has applied to Angus Council for an exemption of the right of access over five days of the festival stating (in an email to one of Panmure's residents) that it is 'in the interests of the safety and security of the local residents'. Let me make my position quite clear. While I do worry about public disorder around my property, my main concern is for the safety of non-ticket holders, and the ticket holders who at 1am will wander in the woodlands, and take over the Panmure Estate - to use FoH's own wording.

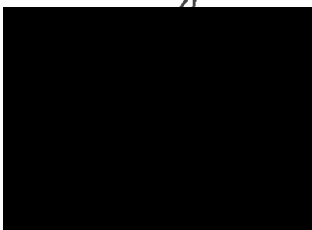
After having consulted with the landowner's agent, the area covered in the exemption of the right to access will be enclosed by locked barriers. This means that security will be required to walk the perimeter, which in my estimation will take approximately 30 minutes, time in which an individual can trip, fall, be attacked. The area is unlit and mobile signal patchy.

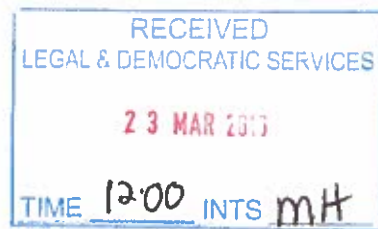
I also question whether exemption of the right of access, rather than ensuring the safety and security of residents, will not instead increase tensions as more people are forced into two smaller defined areas. One is the section where the majority of residents live, the second a remote woodland section, dark and distanced from houses and the actual event. In the first scenario, the risks of public disorder are increased, while in the second, people will be isolated and thus more vulnerable. There are several paths where vehicular access would be impossible, including one with an ancient bridge and a significant waterfall.

FoH is sending out a mixed message: on one hand inviting people to an event in the woods, and to enjoy an event which has taken over the Panmure Estate while on the other applying for an exemption of the right of access blocking access to any woodland. It is, I believe, irresponsible advertising by FoH who it appears have not through its potentially disastrous consequences, and this lack of vision must question their organisational skills and credibility.

As I write this letter, FoH have not (as far as I am aware) submitted security or other plans to Angus Council and, therefore, I do not know the fine-detail of their plans and strategies. The refusal of FoH to make these plans available to resident before the objection cut-off date, I find disappointing and worrying. One of the requirements for FoH was to engage with the local community and local Community Council, which they have not. I find that worrying because it is the people on the ground who can see the pitfalls and point out the risks, and offer input into final robust plans. Indeed FoH have been forced to amend many of their original plans because of local intervention.

I am, however, confident that however robust FoH's security plan may appear on paper, it will be impossible to execute. The FoH's Head of Security admitted to my husband at the Carnoustie Golf Hotel that it would be impossible to secure the whole of the Panmure Estate, and, thus, secure the safety of everyone within its boundaries. It is for this reason that I object to the granting of the Public Entertainment Licence.





Starforth Cottage West  
Panmure  
Angus DD7 6LW

20 March 2017

Head of Law and Administration  
Angus Council  
Angus House  
Orchardbank Business Park  
Forfar  
DD8 1AN

Dear Madam

I am writing to lodge my concerns over the proposed house musical festival at the former Panmure Estate. At the outset I should declare I am a resident so will be inconvenienced by the proposed festival on a number levels: noise nuisance, potential encroachment by guests wandering around the estate and entering private property, and expected difficulty in commuting to my work.

I have attended two presentations presented by Mr Blyth of Jigsaw Media Management Limited and his team; in addition, I have had sight of correspondence from Mr Blyth and other interested parties in relation to the proposed festival.

It is clear that Mr Blyth is very enthusiastic about this venture and he goes to great lengths to promote it in most positive terms. I remain, however, sceptical on some of the finer detail.

### **Traffic management**

Some of the route recommendations on the company web-site are unrealistic: for example, ticket-holders from areas around Forfar and Brechin are directed via Dundee. Clearly, people local to this area will follow a more direct route and approach from the north causing disruption on the main Carnoustie/Forfar road. Those depending on smart phones for navigation will find that 'Panmure Estate' routes them to the western side of the estate, locally known as The Marches and into the Sawmill. Rather than wasting time trying to drive around to Muirdrum, it is inevitable that vehicles will be abandoned causing serious obstructions that may block in residents or, the only other vehicles allowed on this road, blue-lit emergency vehicles. As this is a private road, the police have no jurisdiction to move vehicles.

### **Health and Safety**

The estate in places offers a rough and challenging terrain with a number of significant pitfalls, including a gorge. I appreciate Mr Blyth will be seeking a temporary suspension of the Right to Roam Act to afford a buffer zone beyond the designated festival area. This land is owned by a different person than the one

providing the fields for events, and permission has to be granted for security guards/stewards to patrol this area. Assuming a successful application, and subsequent landowner agreement, there still remains a significant amount of hazardous terrain out with the buffer zone which will be beyond the organiser's ability to control. This will remain an attractive route of entry for those wishing to attempt to get close to the event without paying, or because they are under age to attend.

This is, in my opinion, the most challenging and significant risk factor and one Mr Blyth and his team cannot ignore. People will attempt to gain a degree of free access and the volume will be such that the distances will not be overly-resistive to hearing the various acts. The risk of serious harm will be increased significantly if we have a dry period. The estate is strewn with dead wood which burns with a shocking degree of ease and rapidity; the consequences of an uncontrolled fire is a serious risk.

### **Ecological Impact**

The estate is home to a number of animals, including red squirrels, badgers and bats. To my knowledge a full impact assessment has not been carried out given these are normally conducted over a lengthy period to take into account seasonal variations. Other individuals with experience in this area will be writing in more detail but clearly consideration should be given to the impact the proposed festival will have on the local environment and wildlife.

### **Conclusion**

I do not wish to belittle Mr Blyth's efforts to assure residents of his team's commitment to limiting any adverse impact. But clearly, at best, it will have a significant nuisance and disturbance factor to our daily lives for the duration. I am also unconvinced of their ability to secure the external area to the proposed festival, and am uncomfortable at their laissez faire attitude to potential damage by or injury to anyone who is a non-ticket holder, refusing to take any responsibility, assuring us that they have 'ticked that box' by telling people not to attend without a ticket on their website. As these non-ticket holders would not be present without the festival, I find this lack of accountability quite disturbing, particularly given the location with its acres of full-leafed and dark woodland, rough terrain, ditches and patchy mobile signal.

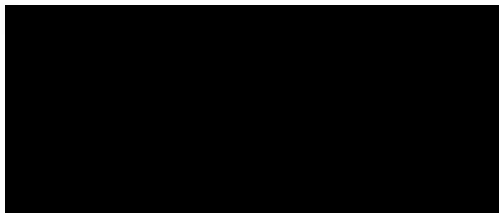
I genuinely feel there are a number of significant risk factors involved with this proposed festival. On the surface Mr Blyth enthusiasm and personal vision to bring an exciting festival to Angus appears attractive. However, I am left feeling that there are considerable obstacles to be addressed.

The Panmure Residents Committee has written to Scottish Ministers, senior Angus Council employee's and Local Community Council members. This constitutes a

record of our concerns and evidences the areas we have brought to the attention of the organisers and both national and local government bodies.

Thank you for your consideration of the above concerns.

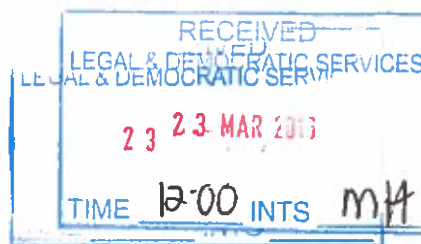
Yours faithfully

A large black rectangular box redacting the signature of Paul Bancroft.

Paul Bancroft

John Stewart  
5 Seafield Court  
Portessie  
Buckie

March 15<sup>th</sup> 2016



Head of Law and Administration  
Angus Council  
Angus House  
Orchardbank Business Park  
Forfar  
DD8 1AN

**Re-Public Entertainment Licence-Jigsaw Events and Management Ltd, Festival of House, Panmure**

Dear Sir/Madam

**Objection to festival of house music festival**

My objection to the above festival is on the following grounds

**1) Noise pollution**

I am concerned that people will have to endure the direct and incessant onslaught of sound – music, announcements, sound checks etc for the duration of the event. I also note that Angus council themselves acknowledge in writing that the detrimental effect on local residents of this event will be considerable. No mention has been made of sound curtains or anything else that might improve the situation for people who, like it or not, may have this event inflicted upon them and I do not find this acceptable.

**2) Public Order**

The policing and upholding of order will be made incredibly difficult due to the location of Panmure Estate and the nature of it - do the festival organisers even know how many entrances there are? It is extremely naïve to believe that people cannot enter the Estate unchecked and without tickets. I have grave concerns about damage to property and vandalism; my parents have lived on the estate for 41 years. In this setting people cannot be prevented from going anywhere they like and doing anything they like.

**3) Environmental Impact**

Panmure Estate provides a habitat for many species, some of which are officially classified as endangered. One of the most important criteria when deciding which species are to be protected by law is how rare that species is. Some of the species found on Panmure Estate are protected by specific laws. The hosting of a music festival has the potential for a significant and long lasting detrimental impact on these species.

The potential damage that will be caused to the environment, ecosystems (including woodlands that present a fire hazard from things like camp fires and disposable bbqs) and wildlife is disturbing to say the least. This scale of event is totally inappropriate for such a

setting. Panmure Estate IS a wonderful site but not for a music festival and how wonderful will it be afterwards? I note that an environmental impact assessment is not considered necessary as this event is temporary and this does not sit well with me. The potential damage to any natural environment should be taken seriously no matter what the cause or how often the damage may be caused. As an added insight into my life I have an honours degree from the University of St Andrews in Evolutionary and Environmental Biology.

#### 4) Traffic and Safety

There is not sufficient infrastructure in place to cope with a vastly increased traffic volume nor the projected numbers of visitors. If a long established event such as T in the park can have so many well published problems, (see below) caused only by moving the site, I can only begin to imagine what may happen in trying to host a festival in such a place as Panmure Estate.

Hi everyone

We want to apologise for the long delays exiting the site today. Due to the challenging ground conditions, there have been a number of vehicles in ditches this morning and this compounded with people not following directions and going to the wrong exits which has resulted in these delays.

If you want to go back to the campsite for food and to use toilets, speak to a steward who will assist you

Please remember that buses will be leaving from the North pick up point.

Once again, we are very sorry for these delays and are doing our best to get you moving as soon as possible

- T IN THE PARK STATEMENT

#### 5) The health and safety of festival goers

Panmure Estate has a large ravine running through it with a high bridge crossing it. The potential exists for fatal injury if someone is to fall from this. Alcohol and drug use widely associated with music festivals are widely acknowledged to increase the likelihood of risk taking behaviours in general (as referenced below)

<http://www.ncbi.nlm.nih.gov/pubmed/16350769>  
<https://www.drinkaware.co.uk/.../alcohol%20and%20risk%20taking.pdf>

When this is combined with the rural setting, lack of lighting or designated paths, dense woodland surrounding the site etc the possibility for injury to festival goers is increased.

#### 6) The organisers lack of local knowledge

As I lived on Panmure Estate for most of my life, and still frequently visit my parents who live there, I consider that I have an intimate knowledge of the local area that the festival organisers clearly do not have. Some of the answers they have provided to genuine concerns are totally inaccurate and in no way acceptable in addressing these concerns. As an example when Ed Murdoch (the site manager) was asked about the problems residents will face with noise pollution he actually replied that as the wind in Angus only ever blows in one direction (conveniently this is away from my parents' home towards the festival site) this will carry all of the noise with it, meaning they will not be disturbed.

yours faithfully





Hillhead Farmhouse  
North Mains of Kinnettles  
By Forfar  
Angus  
DD8 1XF

23<sup>rd</sup> March 2016

Head of Law  
Angus Council,  
Angus House  
Orchardbank  
Forfar

Dear Sir / Madam,

Re: Proposed music event at Panmure

I am writing in a personal capacity as a concerned resident of Angus. I have taken into account as much information as has been made available. I can furnish evidence in relation to the points I make below.

I object to the event as it has been marketed on grounds of the proposed siting. The reasons I am asking you to put forward this submission to your CLC and relevant parties are:-

1. Security and fire risks: Because of the extent and density of woodlands immediately adjacent and the way the event has been marketed (specifically as an event "in the woods") it has to be anticipated that some of the over 15,000 or more ticket-holders will exercise their perceived entitlement to use the woods to party in. Their right to roam being suspended could back-fire, by adding to the charged atmosphere. If the event follows the pattern of 100% of previous events it will attract people from outside who will use the woods for cover, and perhaps bring security risks with them. It would be impossible to reach the seat of a fire or other accident should it happen inside the woods – the extensive woodland stretches back 1-2 kms from the nearest road or track. A fire could start from a dropped match or a BBQ or etc inside these woods leaving it impossible to reach. If a steward could not persuade people to leave the woods, they are unlikely to persuade them to sit tight until the Police can arrive to assist. Extensive deep woodland is nigh on impossible for stewards, police officers or fire officers to operate in effectively. Police and Fire personnel could be put at risk.
2. Reliability to implement plans: The track record of the company has not convinced many people of their reliability so far. They have said they have experienced personnel but have so far fallen down on several key deadlines and tasks including
  - (a) They have poorly or not at all engaged and consulted with the local community of Monikie and Craigton of Monikie (both Communiity Council and residents). I



spoke with an acquaintance who lives near Monikie just 2 evenings ago and discovered they knew nothing about it.

- (b) They have not achieved advised targeted work on time e.g. environment survey work, and papers to support their Application for a PEL.

Even an experienced company seriously fell down with fundamental failures to implement site plans, and failures to correct mistakes even when prompted repeatedly – when TITP was moved to a countryside location in 2015 customers reported un-precedented levels of frightening incidents. The company had no such problems while on their previous site at Balado which was adjacent to trunk roads, and open fields.

3. On balance, the benefits of having the event at Panmure weighed against the damage that would be done to Angus' reputation should an accident / fire / incident occur, cannot realistically justify the choice of Panmure as the locus.
4. There is a way forward that is win-win - to choose a safer site and still mount the event in Angus.

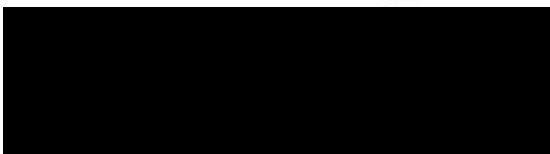
Several alternative locations have been suggested and/ or previously considered – but each one now gets rejected by the company for their own reasons whenever it has been put forward. May I suggest that the issue of alternative sites be pressed forward?

The company itself uses Edzell Base as their address; this already has security fencing, water and electricity, space for at least some of the crowd, shelter in case of need, and is in attractive countryside. The previous airfield at Hatton has brilliant views over the sea, is adjacent to a trunk road, and has a wide internal road and hard standing that could be extended / improved readily. There will be other options that I have not heard about. They should at least be weighed for their benefits, which may be significant once taken seriously.

In summary a safer site is needed i.e. one that can be more realistically and safely safeguarded from accident, fire or intrusion. Customers, local communities, our Police and Fire & Rescue Services personnel, and the reputation of Angus would all be protected by this. This WinWin option is good for the company and good for Angus.

I urge your Councillors to ask searching questions, and to consider the condition of a an approval if an alternative site is used to mount the event.

Yours Faithfully,



Elspeth A. Stirling



Sanday  
Panmure  
Carnoustie  
Angus  
DD7 6LW

Tel [REDACTED]

Email [REDACTED]

23rd March 2016

Public Entertainment Licence in respect of premises at Panmure Estate near Pitlivie Farm, Angus, for the proposed Festival of House.

I hereby make a formal objection to the application for a Public Entertainment Licence in respect of premises at Panmure Estate near Pitlivie Farm, Angus, for the proposed Festival of House.

The grounds for my objection come under the following headings.

- Crime, disorder and public nuisance
- Fears for public safety
- Concern for the safety of children
- Environmental concerns
- The validity of Bell Ingram's Screening Checklist

1. Crime, disorder and public nuisance

My first reaction when I heard about the proposed Festival of House was one of disbelief that Angus Council would be prepared to host an event that by its very nature will bring more drugs to the area. Dance music is closely linked to drugs culture and keeping the event drug free will be impossible. This, combined with alcohol consumption will inevitably lead to disorderly behaviour. The estate has many private residences and festival attendees will wander onto privately owned land under the influence of alcohol and drugs causing anxiety among residents. It has been proven that such events bring with them a rise in break-in, theft and vandalism which will have a lasting effect on residents long after the festival is over. Access to residents homes may become blocked by cars left outwith the designated parking area stopping residents getting to work or getting home. Loud music going on into the early hours of the morning will be unbearable for people who need to work the following day.

2. Fears for public safety

Panmure Estate a dangerous place for a festival of dance music. Areas of the estate are covered in woodland, inviting opportunity for sexual assault. The estate has no lighting so people will fall into ditches, not to mention a steep and deep ravine under Montague bridge. Mobile phone reception in the area is very poor so what do people do in the event of an emergency? Camping will not be restricted to the designated camp site. Alongside tents there will be barbecues and camp fires,

so the risk of woodland fires is high. It would be worth mentioning at this point that Bell Ingram's screening checklist made no mention of accidents happening to festival attendees. Do they believe that the whole event will go past with no injuries to the public? Another major risk to the public is the fact that the woodland will be used as a toilet by many festival goers. I dread to think what people will leave behind as they head home after the festival, leaving residents with a lasting reminder of the event.

### 3. Concern for the safety of children

As mentioned in the previous paragraph, human waste will be left behind in areas where resident children play. Who is going to clean that up? The volume of music will be detrimental to children's hearing. They have to live, play and sleep close to the festival arena. With music going on into the early hours of the morning, local children will be unable to sleep. Children like to play in woodland. Up to this point the estate has been a crime free area for them to enjoy. Assaults on children could happen in these woodland areas.

### 4. Environmental concerns

The estate is a haven for many species of birds and animals, some being protected species for example red squirrels, badgers and bats. June is right in the middle of the breeding season. The huge influx of people and cars, and the subsequent noise and destruction of habitat will have a lasting effect on our wildlife. Specific concerns revolve around protected species. The screening checklist acknowledges the presence of protected species such as badgers, otter, bats and red squirrels in the area. In the screening checklist it states 'the measures for specific setts/holts/roosts/dreys will be agreed with SNH in advance of the festival. I am concerned that the screening checklist with an assessment of the significance of any impact has been produced by the agents of the organisers. I think that they would be tempted to underplay any risks and say whatever they think is required to make the festival happen. However in this case I would ask, 'Have the measures for specific setts/holts/roosts/dreys been agreed with SNH? At the SNH web page

they mention the following

#### **Licensing during the badger breeding season**

The badger breeding season runs from 1 December to 30 June. During this period badgers are most sensitive to disturbance and licences are not normally granted for works in the vicinity of badger setts.

The Protection of Badgers Act 1992 suggests that a licence is required if there is to be an activity that could disturb, damage or destroy badger setts. Is a licence required for this festival? If so has it been applied for? Has it been granted? If not I think that this is a ground for refusal of the PEL.

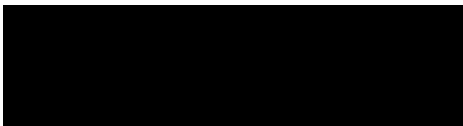
See Appendix I.

## 5. The validity of Bell Ingram's Screening Checklist

Angus Council's decision that no Environmental Impact Assessment and no planning permission were required was based on Bell Ingram's Screening Checklist. This checklist was based on a 2 day event finishing at 22.30. We now have a 3 day event finishing at 1.00 am. Such significant changes must surely render the original checklist invalid. What other changes have been made to the original description of events? I don't have access to the details but another checklist must be required. All through Bell Ingram's checklist we repeatedly read "based on information available". That information has now changed. Angus Council should take another look at the checklist in the light of changes made.

Concerns apart, is it really fair to subject residents to days of noise and potential damage to self and property? Is it fair to have residents feeling anxious for the duration of the festival and beyond? Festival organisers seem to believe that this is a done deal as they advertise the event and make their ticket sales. They have claimed that they will "take over the estate" without a thought for the people who have to put up with the noise and disruption. Making money is their aim of course but at what price to others? We'll be left with the mess at the end of it all, we'll have our properties "cased" for subsequent theft and break-in. The organisers' main reason for using the estate seems to be because it is "beautiful". It certainly won't be beautiful for much longer.

Because of the above mentioned concerns I formally object to the proposed Festival of House. I hope that the licensing committee will judge the application on its merits and not feel pressurised into granting the licence by the organiser's media campaign in which the festival has been presented as a fait accompli.

A black rectangular box redacting the signature of Susan Kennedy.

Susan Kennedy

Scottish Natural Heritage  
Dualchas Nàdair na h-Alba  
All of nature for all of Scotland  
Nàdair air fad airson Alba air fad

Licensing Section  
Scottish Natural Heritage  
Great Glen House  
Leachkin Road  
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IV3 8NW  
01463 725364

## **The Protection of Badgers Act 1992 (c.51) (as amended)**

### **Guidance notes for providing supporting information for badger licence applications**

This document has been prepared to help people submit licence applications to permit activities that could disturb, damage or destroy badger setts

Clear photographs and maps are extremely helpful to allow a licensing officer to understand exactly what is proposed under licence and what the impact of the licenced activity might be. They are also extremely useful as a reference point for any licence that is subsequently issued: they can clearly show what activities are permitted and where and they can help people demarcate these on the ground.

The pages below show examples of photographs and a map that provide clear and unambiguous information about badger setts, the proposed works and the location of these in relation the surrounding land and proposed works.

Applications missing this information, or presenting it in a vague manner, often result in delays in the amount of time taken to assess licence applications. By providing information of the quality below, the need to go back to the applicant is greatly reduced meaning where appropriate licences can be issued quicker avoiding delays to works.

More general guidance on surveying and monitoring protected species and also filling in licence application forms can be found on the licensing [page](#). To keep up to date on new guidance and changes the [page](#) should be checked frequently.

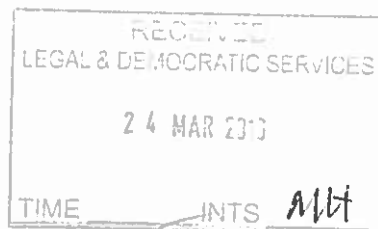
## Badgers and licensing

Badgers and their setts are protected by law in the [Protection of Badgers Act 1992](#) (as amended). Licences are available for certain purposes to permit actions that might otherwise constitute an offence in relation to badgers or their setts. Advice is provided below on licensing requirements for common scenarios in relation to badgers. Links to the appropriate forms and guidance are given for situations where a licence is required.

- [Badgers and development](#)
- [Kestrel surveys and research](#)
- [Badgers and pest management](#)
- [Badgers and trapping for disease](#)
- [Removal of badgers, skinning](#)

## Licensing during the badger breeding season

The badger breeding season runs from 1 December to 30 June. During this period badgers are most sensitive to disturbance and licences are not normally granted for works in the vicinity of badger setts.



Sanday  
Panmure  
Carnoustie  
Angus  
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Tel [REDACTED]

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22nd March 2016

Public Entertainment Licence in respect of premises at Panmure Estate near Pitlivie Farm, Angus, for the proposed Festival of House.

I hereby make a formal objection to the application for a Public Entertainment Licence in respect of premises at Panmure Estate near Pitlivie Farm, Angus, for the proposed Festival of House.

The grounds for my objection come under the following headings.

- The impact of the festival on the natural environment
- The nature of the festival and the extent of the proposed activity
- The kind of persons likely to come onto the land and the difficulty controlling people without tickets who nevertheless enter the estate.
- Public safety
- Concerns over the screening checklist.

1. The Natural Environment.

The Panmure Estate is home to a wide range of flora and fauna. Noise, litter, destruction of habitat, human waste etc. will all impact on the wildlife.

Specific concerns revolve around protected species. The screening checklist acknowledges the presence of protected species such as badgers, otter, bats and red squirrels in the area. In the screening checklist it states 'the measures for specific setts/holts/roosts/dreys will be agreed with SNH in advance of the festival. I am concerned that the screening checklist with an assessment of the significance of any impact has been produced by the agents of the organisers. I think that they would be tempted to underplay any risks and say whatever they think is required to make the festival happen. However in this case I would ask, 'Have the measures for specific setts/holts/roosts/dreys been agreed with SNH? At the SNH web page

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The Protection of Badgers Act 1992 suggests that a licence is required if there is to be an activity that could disturb, damage or destroy badger setts. Is a licence required for this festival? If so has it been applied for? Has it been granted? If not I think that this is a ground for refusal of the PEL.

See Appendix I.

## 2. The Nature of the Festival and the Extent of the Proposed Activity.

I object to the nature of the festival as I am deeply concerned by the link between dance music and the drug culture.

I refer you to two articles which highlight the link between dance music/clubbing/rave attendance and drug taking.

See Appendices II & III

The festival organisers make all the right noises about having a drug free event. After all, in my opinion they will say whatever they think the authorities want to hear to have the festival passed as a safe event, but again in my opinion the reality is that this festival will attract certain people who will take drugs. I fear that there will be significant criminal behaviour by some people attending the festival and licencing this event is in effect a tacit acceptance of crime as something to be put up with in order to promote economic activity. I doubt whether the inevitable victims of theft, sexual assault, physical assault or perhaps more serious crimes will share that view.

I also refer you to lyrics of a song by one of the proposed headline acts, Underworld. It is not the type of content that I'd expect Angus Council to promote. See Appendix IV

In terms of the extent of the proposed activity I object to the discrepancy between the information given in the screening checklist and at the public consultation meetings regarding the duration of the festival. The screening checklist states that the festival is to be over two days. This was also stated at the public meetings. In addition in the screening checklist it states that the amplified noise will take place from 12.00-22.30 yet in the PEL application Jigsaw Events & Management Ltd. is seeking a licence for 3 days until 1.00. This again encourages me to believe that the information provided in the screening checklist deliberately underplays the impact of the event in an attempt to alleviate concerns.

## 3. The kind of persons likely to come onto the land and the difficulty controlling people without tickets who nevertheless enter the estate.

I fear that there will be a considerable number of people under the influence of drugs and/or alcohol in the Panmure Estate. I fear that these people will cause a nuisance to other festival goers and to residents of the Panmure Community.

I fear that a significant number of people who do not have tickets for the event will succeed in entering the Panmure Estate and be a potential source of public disorder resulting in others becoming victims of crime.

#### 4. Public Safety

I have already highlighted my fears that innocent people will become victims of crime with assault and sexual assaults being particularly associated with events of this type.

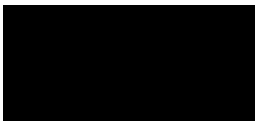
The Panmure Estate is a stunning location but it is also a potential death trap for the unwary. The Montague Bridge has a massive drop down to the Monikie Burn below and the gorge that is a feature of the Monikie Burn is extremely steep sided and dangerous. In addition the Estate has a network of ditches, woodland and rough ground which could easily cause injury to anyone whose senses may be impaired by the consumption of alcohol or drugs.

I think that the screening checklist has a serious omission in that there is a discussion of a risk of accidents during construction or operation of the development, but there is no mention of a risk of accidents to those who attend the festival or to those who enter the Estate attracted by the festival.

#### 5. Concerns over the screening checklist.

I have mentioned concerns that I have with information given or indeed not included in the screening checklist. I believe that the assessments of the significance of effect have been given by the organisers or their agents and as such represent an attempt to downplay the disruptive effect of the festival in order to convince the authority that an Environmental Impact Assessment was unnecessary.

Because of the above mentioned concerns I formally object to the proposed Festival of House. I hope that the licensing committee will judge the application on its merits and not feel pressurised into granting the licence by the organiser's media campaign in which the festival has been presented as a fait accompli.



Alan Kennedy

Scottish Natural Heritage  
Dualchas Nàdair na h-Alba  
All of nature for all of Scotland  
Nàdair air fad airson Alba air fad

Licensing Section  
Scottish Natural Heritage  
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More general guidance on surveying and monitoring protected species and also filling in licence application forms can be found on the licensing [page](#). To keep up to date on new guidance and changes the [page](#) should be checked frequently.

## Appendix II

# Dance drugs wreck young lives

by STEVE DOUGHTY, Daily Mail

Fashionable dance drugs are wrecking the health and threaten to ruin the lives of scores of thousands of bright young professionals, according to a report yesterday.

Two thirds of all young clubgoers - the majority of them university students or ambitious youngsters with well-paid jobs - take Ecstasy or other widely-available drugs, a study found.

Half of those who go to the clubs at the centre of the dance culture admit their drug habits are damaging their health.

More than one in ten have visited a hospital's accident and emergency department because of health problems linked to drug use, according to the report.

One in four had seen a doctor because of drug-related health problems while four out of ten said drugs were harming their performance at work or study.

For one in ten, heavy stimulant use was linked to mental health problems.

Strikingly, among the drug-users encountered by researchers, 'those in higher education and young professionals are particularly strongly represented'.

A majority of clubgoers also mix alcohol and drugs.

'Nearly all clubbers drink on their nights out and two thirds take dance drugs,' said the report.

'The mixing of alcohol, Ecstasy and

amphetamines is routine at dance clubs, with cannabis used after the event to "chill out" and help sleep.'

The report, *Dancing on Drugs*, was based on interviews with more than 2,000 17 to 30 year-olds and three dance clubs in the North-West over two years.

Dance drugs commonly used in the clubs included Ecstasy, amphetamines, cocaine, crack and LSD.

There is, the researchers said, 'a long list of reasons to say yes to recreational drug use'.

'The clubbers regarded "getting off" at weekends as a top leisure activity. They can get self-confidence, energy, sociability and romantic or sexual possibilities.'

The price, even for those without health problems, was the need for 'a day or two recovery period after clubbing and dance drug use'.

More than a third of the money young people spend on clubbing goes on drugs, the report said.

Of an average £51 spent on a night out, £18 is spent that way.

Nearly half the clubbers drive or are driven home, the report found.

'Driving under the influence of both alcohol and illegal drugs is a cause for concern,' it said.

The study by academics from Manchester and Lancaster universities, was financed by the Government's Economic and Social Research Council.

**Read more:** <http://www.dailymail.co.uk/health/article-7968/Dance-drugs-wreck-young-lives.html#ixzz3zhoHiTnk>

**Follow us:**

## Appendix III



# Drugs and Dance Music Culture, Part 1: The Importance of Ecstasy

FOR THE FIRST TIME IN THE HISTORY OF THE WORLD

Welcome to the first installment of our series detailing the complex relationships between drugs and dance music! Stretching back to the inception of the scene in many areas, drugs are now an omnipresent force within the culture of dance music: at nearly every event, it is possible—and, in many cases, quite easy—to find a wide variety of psychoactive substances available for purchase. In many ways, the use of these substances has substantially shaped the evolution of the subculture—and, in some cases, even the inverse is

true. Please note that, while we stress the importance of education when it comes to making personal decisions about drug use, *we are not advocating for unsafe and dangerous drug consumption*. This series is meant to be informative, analytical, and entertaining, so we hope you enjoy!

“You and I could paint the sky together,” a gentle, breathy female voice serenades from speakers two stories high. “As the world goes by, we’ll go on forever.” The kick drum resonates throughout the huge space, while lights flash and dance from the front stage and from every corner of the room. “Eyes are the windows to the soul.” Bright colors adorn the clothing of most of the people at the event. Nervous excitement is exchanged via glances as people remove pills from pockets and swallow them dry; others take small bags of white crystals from purses and eat the substances inside. The music builds in intensity and volume, and at the drop of the beat, thousands of hands shoot into the air as lasers flash every color of light into the crowd. “Look into my eyes.” The music fades down, giving reprieve to the dancers, some of which dash out of the crowd into the lit areas to search for water and take a break from dancing.

This scene—complete with popular American producer **Kaskade**’s summer 2011 single “Eyes”—is a common occurrence within rave culture: flashing lights, lyrics filled with themes of love and acceptance, and a communal reaching towards the iconic, almost God-like figure—the DJ—in front of the crowd. Originating from the parties that characterized the Chicago house, Detroit techno and European trance scenes, Kavanaugh and Anderson define raves as “grassroots organized, antiestablishment and unlicensed all-night dance parties, featuring various genres of electronically produced music, populated by large numbers of youths and young adults” (2007:181). Raves began as a cultural movement in the United States and United Kingdom, and continued to grow in popularity throughout the 1990s in both places, as well as abroad (Kavanaugh & Anderson 2007:181).

Like any subculture, raves developed their own idiosyncrasies and principles that guided their character and conduct. Historically, raves have been grounded in a sense of community and solidarity; rave-goers are obliged to follow the four essential tenets of peace, love, unity and respect—PLUR in the vernacular—both while in attendance and outside of raves (Kavanaugh & Anderson 2007:181-182). Several other practices, such as colorful, outlandish dress style, the exchange of back rubs, glow sticks and light shows, communal love of the music present at the show, and respect towards others are also central to rave culture.

Many of these practices, however, arose from another component of raves: drug use. Drug use has always been consistently linked with dance music culture. The predominant drug associated with rave culture is methylenedioxymethamphetamine (MDMA), a drug similar in composition to amphetamine; in its pure form it is an offwhite crystalline substance, but it is commonly pressed into pills. MDMA, more commonly known as ecstasy or E, is a stimulant that produces euphoria, increased energy and confidence, agreeableness, a sense of emotional connection and closeness with others, and an increased appreciation for sound, color, light and touch (Davison & Parrott 1997:222-223). Physiologically, MDMA increases core body temperature, heart rate and sweating propensity, along with dilated pupils and clenching of the jaw (Davison & Parrott 1997:223).

The use of MDMA is central to dance music culture; in fact, many common practices at raves stem from the use of the drug. For example, light shows are frequently seen at raves: during a light show, one person will take small handheld lights or put on gloves with lights on the fingertips and wave them rapidly in complex motions and shapes in front of another person’s face; given that MDMA increases sensitivity and



appreciation of light and color and the dilation of pupils allows more light to reach the lens (Davison & Parrott 1997:223), viewers report seeing 'trails' of light that enhance the effect of the drug and bring pleasure and euphoria. In addition, many ravers will bring items such as pacifiers, glow sticks or even gum into the party with them; a commonly reported unpleasant side effect of MDMA, similar to other forms of amphetamine, is jaw clenching and tightness (Davison & Parrott 1997:223)—people will chew on these objects to relieve the pressure of the jaw constantly biting down and eliminate soreness in the following days. Even the music played at raves seems tailor-made to those under the effects of ecstasy: many producers of dance music will include white noise, initially beginning at low pitch and volume and gradually increasing, during the buildups of their songs, in hopes that this will pump up the crowd and garner a positive reaction.

The sense of unity and solidarity seen at raves could be attributed to the use of ecstasy in close relation with them. From a public health standpoint, raves have been historically targeted as being toxic venues with massive drug consumption and unsafe sex practices, but Kavanaugh and Anderson (2007) argue that, from a cultural viewpoint, raves are a "safe space" for marginalized youths to gather and find a place to belong. The effects of MDMA lead the drug to the forefront of PLUR raver culture, but it is not the only way that rave attendees form bonds with each other. Historically, dancing itself is a ritualistically rich event that "synchronize[s]" the emotional and mental states of collective members, as they are exposed to the same 'driving stimuli' [music]" (Kavanaugh & Anderson 2007:182). In this sense, ecstasy has a dimension that connects rave participants via another, often unrecognized effect of the drug: MDMA has both psychedelic and stimulant properties, and while the feelings of closeness and emotionality are tied to the psychedelic portion of the drug, the stimulant effects allow for extended periods of dancing and the ability to stay awake late into the night, making dancing itself the forefront of the event (Kavanaugh & Anderson 2007:191).

### *Works Cited*

Davison, D. and Parrott, A. C. (1997), Ecstasy (MDMA) in Recreational Users: Self-Reported Psychological and Physiological Effects. *Human Psychopharmacology: Clinical and Experimental*, 12: 221–226. doi: 10.1002/(SICI)1099-1077(199705/06)12:3<221::AID-HUP854>3.0.CO;2-C

Kavanaugh, P. R. and Anderson, T. L. (2008), Solidarity and Drug Use in the Electronic Dance Music Scene. *The Sociological Quarterly*, 49: 181–208. doi: 10.1111/j.1533-8525.2007.00111.x

**Read more:** <http://www.youredm.com/2012/08/14/drugs-and-dance-music-culture-part-1-the-importance-of-ecstasy/#ixzz3zhp83ghn>

## Appendix IV

### UNDERWORLD LYRICS

### RADIO

#### "Born Slippy"

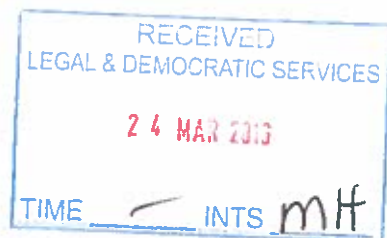
Drive boy dog boy  
Dirty numb angel boy  
In the doorway boy  
She was a lipstick boy  
She was a beautiful boy  
And tears boy  
And all in your innerspace boy  
You had  
hands girl boy  
and steel boy  
You had chemicals boy  
I've grown so close to you  
Boy and you just groan boy  
She said comeover comeover  
She smiled at you boy.

Drive boy dog boy  
Dirty numb angel boy  
In the doorway boy  
She was a lipstick boy  
She was a beautiful boy  
And tears boy  
And all in your innerspace boy  
You had  
hands girl boy  
and steel boy  
You had chemicals boy  
I've grown so close to you  
Boy and you just groan boy  
She said comeover comeover  
She smiled at you boy.

Let your feelings slip boy  
But never your mask boy  
Random blonde bio high density rhythm  
Blonde boy blonde country blonde high density  
You are my drug boy  
You're real boy  
Speak to me and boy dog  
Dirty numb cracking boy  
You get wet boy  
Big big time boy  
Acid bear boy  
Babes and babes and babes and babes and babes  
And remembering nothing boy  
You like my tin horn boy and get  
Wet like an angel  
Derail

You got a velvet mouth  
You're so succulent and beautiful  
Shimmering and dirty  
Wonderful and hot times  
On your telephone line  
And god and everything  
On your telephone  
And in walk an angel

And look at me your mom  
Squatting pissed in a tube-  
hole at Tottenham Court Road  
I just come out of the ship  
Talking to the most  
Blonde I ever met  
Shouting  
Lager lager lager lager  
Shouting  
Lager lager lager lager  
Shouting...  
Lager lager lager  
Shouting  
Mega mega white thing  
Mega mega white thing  
Mega mega white thing  
Mega mega  
Shouting lager lager lager lager  
Mega mega white thing  
Mega mega white thing  
So many things to see and do  
In the tube hole true  
Blonde going back to Romford  
Mega mega mega going back to Romford  
Hi mom are you having fun  
And now are you on your way  
To a new tension  
headache



Tree Nursery House  
Panmure Estate  
By Carnoustie  
Angus DD7 6LW  
22<sup>nd</sup> March 2016

Dear Members,

*Letter of Objection to the application for a Public Entertainment License by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitlivie Farm, Angus*

OPENING STATEMENT

From Thursday 9th June 2016 until Sunday 12th June 2016 a small, relatively inexperienced events management company known as Jigsaw Events (and referred to below as the applicants ) are proposing to hold a major festival of electronic and dance music for 15,000 people (predominantly in the under 30's age group) in the Panmure Estate. A rural, historical and wildlife rich area of Angus that has never experienced anything like this in its 800 plus years of history. The ruins of Panmure Castle which lie on a site very close to the festival area date back to the 13th Century and are designated a Scheduled Monument by Historic Scotland. The entire Estate is full of listed monuments and buildings of national historic importance. Protected wildlife species flourish due to the relatively unspoilt nature of the area -with badgers, red squirrel, numerous species of birds of prey, barn owls and otters just some of the resident species. There are historic trees in abundance, again many of national significance and with links to important past events.

And this only scratches the surface of the richness and diversity of the Estate.

The so called Festival of Dance (which makes it sound almost pastoral and perhaps rave would be a more accurate description of the type of event it actually is) has virtually unanimous opposition from those of us who live on the Estate. For reasons expanded on below, this is not the place for an event of this nature and scale. And why here? A fundamental question which we have asked the event organisers. The answer they have given is "because of its beautiful and historic setting". For an electronic/dance/rave event with a target audience mainly under 30. And a response which says much about the organisers and their style over substance approach to the detail and planning of this event which is

examined in more detail a below. And which finds us in the difficult position we are in today.

I wish therefore to make a formal objection to this application for a PEL. In an attempt at clarity I framed the objections as follows:

**(a) Substantive Objections**

**(b) Specific Objections**

**(c) Representations**

**(a) Substantive Objections.**

1. That the decision by officials at Angus Council that no Environmental Impact Assessment (EIA) was needed for this event is fatally flawed, that it is based on erroneous information supplied by the applicants and is therefore open to challenge.

An EIA is, as its title suggests, an assessment process whereby various bodies are requested to make representations about the likely effect a proposal would have on a particular environment. The reason that this crucial initial decision not to carry out an EIA is of such significance and is of critical importance in this case is due of the nature and circumstances of Panmure Estate. It is a hidden gem -yet currently has little or no protection and falls under the radar in so many respects. This is part of its charm but has also turned out to be a fatal flaw. In a different time and place it would likely be subject to all sorts of special designations. Ironically a proper and thorough screening assessment validating the need for an EIA in this instance would have triggered such a process. Unfortunately and significantly -that it not how events unfolded. It is as a direct result of this highly significant decision not to carry out an EIA (which would appear to have been made by a single planning official) that no thorough and proper consultation process has taken place with any of the statutory and regulatory bodies in place to protect our natural and historic built environment.

If you examine the correspondence and paper work associated with this crucial decision, it makes quite shocking reading. Bell Ingram -the Land Agents for the event organisers made an initial request for an opinion on

whether an EIA was needed on July 10<sup>th</sup> 2015. It describes an event 2 days in length in May 2016 starting at midday and finishing at 10:30pm where no permanent infrastructure would be required. It stated that there "are no natural heritage or landscape designations over or within close proximity to the site". It seems to highlight a festival area which is significantly different from that presented in the PEL application. This letter goes on to conclude that the Public Entertainment Licence would make sure everything was proper and correct and indeed that the PEL would be the best mechanism to make sure everything was checked and dotted and crossed.

2. That the Screening Checklist 15/00676/EIASCRC upon which the decision not to do an EIA rests does not stand up to scrutiny on any level. It is at the very best an exercise in tokenism. At worst it is shockingly negligent. As a direct result of this failure to carry out proper and thorough assessments of this very significant and important environment that is Panmure Estate, and of the potential impact of this event, the Council's Licensing Committee are being put in an extremely difficult position.

The phrase "based on the information available" appears at least 13 times in a 13 page EIA screening checklist.

It is submitted that if a thorough and proper Environmental Impact Assessment had taken place involving all relevant parties with an interest, we would not be in the situation we are in now. That is to say, where only weeks before the event a PEL application is being played like a very high stakes game of poker. Perhaps this was the intension all along and the last paragraph of the Bell Ingram letter dated 10th July 2015 to Alan Hunter of Angus Council suggests it may well have been Who is going to stop this particular juggernaut going at full speed along an Angus country track? The same tactics were successfully employed at T in the Park last year. This is too big to fail at this late stage.

3. That the following applications and notifications which are not referred to or referenced in any of the approvals sought by the applicants be scrutinised and investigated to ascertain their link with the proposed event. If they are shown on the balance of probability to be linked -then that brings into question the integrity of the whole process to date:

15/00811/FULL

15/00812/FULL

16/00090/PRIORN

16/0094/PRIORN

4. That there has been a failure of due process in all of the stages of this application. A proposed event of this size and scale by an inexperienced events company in a rural area which has seen nothing like this ever and with a local authority with no history of being involved in hosting music events of this type with 15,000 people mainly in the under 30's age group should have required proper scrutiny and handling from the start. Instead, a series of poor decisions that do not appear to hold up to scrutiny have set in motion a chain of events that now appears unstoppable.

As residents, we were first informed by a hand delivered undated letter that a consultation was taking place two days hence at the Carnoustie Golf Hotel on 22 October 2015. This badly organised and hasty gathering was hosted by Jigsaw and it set the tone for everything that has followed subsequently. What was we were told a two day event finishing at 10.30pm has become a 4 day event finishing at 1am.

Any information we have requested in writing has not been forthcoming. Details change on a whim depending on the time of day and the person asking.

We were told at that meeting that any issues or concerns we had would be addressed as part of the PEL process which was extremely thorough. At that point we would all be given the opportunity to put our views forward and have specific concerns addressed.

However, here we are days before the deadline for putting together our objections and we are unable to access the very information we need to properly scrutinise the application and respond. This is a clear and fundamental breach of the principles of due process and of natural justice. Basic legal principles that I believe have not been followed here and that therefore open the process up to a legal challenge.

#### **(b) Specific Objections**

1. I would like to state from the onset that it is very difficult to frame specific objections without having detailed information. This makes this process flawed, biased and unfair. The following objections are therefore generic and based on the facts and information available. I would like Licensing Board members to recognise this when evaluating our comments and reaching their decision.



2. Panmure Estate is rural and not accessible by footpath or public transport from any urban area including Carnoustie, the largest nearest town. It has poor mobile phone reception. The Estate could best be described as extremely porous. At the present time, the area is a mix of farmland, wooded policies, commercial forest and residential homes. It is also a very beautiful and relatively unspoilt part of Angus with a long and in many ways unexplored history. It is home to many species of flora and fauna. Because no EIA has been carried out much of this is not documented. This lack of public record has been exploited by the organisers here and the fact that the festival proposal did not trigger such a process is a travesty. People who have lived on the Estate for twenty years or more are distraught by the prospect of such an event being held here. They know what there is to potentially lose. However because much of the richness and diversity is currently unrecorded and undocumented, leaves it vulnerable. The applicants want to hold their festival here because of its beauty. The irony is that they risk spoiling the very beauty of the Estate by holding their event.

There is a place for music festivals. They bring pleasure to people and are very popular summer events. But they need to be very well planned, have people in charge who instil confidence, have a long lead in time where everything is open and transparent and most importantly is seen to be so.

My objections here are that few if any of these basic criteria have been met for this event. There appears to be less than a year between the Bell Ingram approach to Angus Council and the event taking place. If you look at when the festival was made public, acts announced and tickets put up for sale, only a matter of months.

Many of the significant safety concerns raised by residents and other interested parties are being "looked at" even at this late stage by the organisers in what can only be described as a knee jerk reactive way. The ravine over Monikie Burn, the network of drain ditches, the gorge area near the Montague Bridge are a few of the most obvious dangers pointed out to them by residents. They did not know this site well before they set the wheels in motion. They did not carry out thorough checks, consultations and assessments before they made their decision which appeared to put beauty above safety. I have no confidence that they are capable of overseeing a high risk event of this type based on their approach to date.

4.

I have concerns regarding the security, road traffic management and overall health and safety management of the proposed event. Without detailed and specific information it is not possible to go through these in detail. The lack of transparent and detailed information at this very late stage and the experiences to date trying to get specific information fill me with foreboding. This is too big and risky an undertaking to leave to the last minute, or chance or good luck and crossed fingers. Yet that would appear to be the default position. The process to date has been very reactive. We have seen little evidence of thorough planning, thoughtful consideration, proper engagement and transparency. Again, it does not instil any degree of confidence.

**(c) Representations**

1. I would urge that members of the Licensing Committee look at this application and the process that has led up to it with openness and objectivity.
2. I would urge that you set aside the huge commercial pressures you are being put under in a ticking time bomb of the organisers making and examine the fundamental flaws in due process and due diligence in the lead up to this event.
3. I would ask the Board to consider whether they are being railroaded into granting a PEL on the basis that it is too big to fail/ too late to stop this event.
4. I would request the Board adopt the position that it is the organisers who are playing a very high stakes game here and that they are the ones who have failed to go through the proper checks and procedures therefore putting their entire scheme at jeopardy at this very late stage. They carry the risk.
5. I would submit that private financial gain should not be placed above the basic principles of openness, transparency, accountability and proper and meaningful consultation. If these basic tenets were adhered to at the initial stages then we would not be where we are today. The Licensing Committee would not be between a rock and a hard place.
6. I would request that the applicant's reports and assurances be scrutinised intently and viewed with a sceptical eye. They are commissioned by the applicants and have not been subjected to any public scrutiny. They will of course be highly supportive of the application and as they are not impartial, be framed to suit their brief.

We live in an advanced democracy. We have all sorts of checks and boundaries that should ensure big impact decisions are taken with due care and attention. .But this event and the process surrounding its incubation show just how easily all of this can be circumvented and manipulated with major consequence. You can be assured that if this festival is given the go ahead and is deemed financially successful for the organisers, it will become an annual event and will likely grow arms and legs. Any issues, incidents and problems will be downplayed, given the PR airbrush, put down to teething problems or ignored and side lined altogether. Just look at T in the Park 2015. And the startlingly frightening fact is that if it is given the go ahead, it is my contention that it will be as a result of a very successful manipulation of the planning process (see avoidance of EIA and circumstances surrounding this crucial decision above/ cross reference with the various planning applications mentioned above ) plus the ability to play the high stakes poker game that is the PEL hearing weeks before a very high profile 15000 capacity national music event that wishes to become an annual fixture. Who would dare call off the party at this late stage and disappoint thousands of young people. Not many want to hear about claims regarding a lack due process, calls for an examination of potentially flawed decision making and the belief that the fundamental principles of natural justice may have been flouted. However, it is respectfully submitted that the elected members who make up the Licensing Committee cannot ignore these assertions and that they give them the weight and consideration they deserve when reaching a fair and proper decision regarding the applicants request to grant them a PEL.

Yours faithfully,

A black rectangular box redacting the signature of Joanne Delaney.

Joanne Delaney



30 Clayhills Drive,  
Dundee,  
DD2 1SX

22 March 2016

Dear Sirs,

**Objection to application for Public Entertainment License made by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitlivié Farm**

I refer to the above application for a Public Entertainment License, and hereby make a formal objection to the grant of this license

I would like to oppose this application on the basis of the nature and extent of the proposed activity

The proposed event by reason of its size, scale, nature and the noise it will produce will have an unacceptably adverse impact on the amenities of the properties immediately adjacent to the site and the surrounding area by reason of overbearing impact.

In terms of impact, my concern that the specific plans in relation to the management of noise, traffic and light have been withheld during this application process which has prevent individuals from making a proper assessment of this event and the preparation of valid objection.

I am very concerned about the organisers approach to this event. I have recently learned that the organisers have made application to the Council to suspend the Right to Roam in terms of the Land Reform (Scotland) Act 2003 without talking to me or asking for my permission.

From talking to my neighbours, I understand that virtually none have them have been consulted about this, but the organisers have simply picked bits and pieces of our land to include in their application. It may be that they do not have a clear understanding of landownership and boundaries on the former estate and that is deeply worrying given the powers they will have if this application is granted.

Whilst I am not necessarily against such a suspension, I am stunned that they would make such an application without talking to me. Moreover, they have only made the application in respect of part of my land, so even if it was a positive step, it really is of absolutely no use to me at all.

I am deeply concerned that this incident is characteristic of inexperienced, chaotic and disorganised approach to the staging of this event. I note that that whilst the line up has been established and positively promoted, there is no information available about the management of the event and how the impact

on those living nearby will be minimised. Indeed, the organisers have even managed to run a competition offering supporters who sell the most tickets a trip to Ibiza, but cannot seem to find the time to talk to me about suspending rights on land that I own.

To give a further example of the chaos already experienced by residents on the estate, I enclose an email from the event organisers to one of my neighbours which advises her that she is not entitled to security at her home and asking where she got that information from. I also enclose a photo of a board from the organisers consultation event which states that there will be 24 hour security for residents properties.

My wife took the attached photo and whilst taking photos at the event she was approached by several of the organisers representatives who advised her not to take photos because everything would be made available to the public. So far as I am aware nothing was later published.

The traffic management plan presented at this consultation event relied heavily on signposting. The expert was unable to answer questions about how, or even if, it would be tested. He was unable to answer questions about what would happen in scenarios where a car broke down, or there was an accident, or a road was blocked for some reason. He was unable to explain what would happen if festival-goers ignored the longer signposted route and took a shortcut down one of the many roads in the network of roads that lead toward the festival site.

Consultation and information provision in respect of this event has been abysmal and whilst, I would normally support an event of this nature because of the opportunities it brings for the local area, I have grave concerns about the organiser's ability to manage this event safely, efficiently or well.

Councillors and therefore the licensing board are likely to have access to more information than I do at the time of writing this letter, and before considering the information you have, please consider whether this process has been fair or democratic or suitably transparent and whether therefore it is possible to actually make a decision when so many have not been given a fair chance to properly scrutinise the proposal and given a fair hearing about any concerns.

On 17 February 2016, First Minister Nicola Sturgeon spoke about the Scottish Government's commitment to Open Government, which as I understand it means encouraging openness and involving communities and individuals in policy and decision making. This process has not been open or inclusive.

I would also like to object to this event with regard to the location, character or condition of the proposed premises.

It is impossible to hold this event at the proposed site without exposing residents to significant noise and light nuisance, or infringement of legal rights of access and egress.

My wife has spoken with both the organisers and the landowner. She was advised that living next to this event would be no different to the experience of those who live next to Liquid nightclub in Dundee. I wouldn't choose to live next to Liquid nightclub. When I bought property on the former Panmure Estate, it really did not occur to me that I might have to deal with the same issues as those who live next to a nightclub. I was looking for a relatively quiet place to live with my family; somewhere my children would be able to explore and play safely and without the kind of concerns that a parent would have if they lived next to a nightclub. So for me, this event represents quite a significant change in the character of the area. I anticipate that the organisers will respond that this change is only for a few days per year. However, that does not diminish the significance of this change in my mind. My family will have year-long anxiety in respect of this event which the organisers intend to hold as an annual event. I would not have chosen to live in this area had I known about the proposed event before I bought my property. This event will change the character of the area and sadly, I anticipate that long term it will negatively impact on the condition of the land.

I would request that the licensing board do not grant the license in respect of this event.

Yours sincerely,

A black rectangular box redacting the signature of Geoff Gordon.

Geoff Gordon

-----Original Message-----

From: [craig.blyth@jigsawmedialtd.co.uk](mailto:craig.blyth@jigsawmedialtd.co.uk)

Date: 02/02/2016 17:13

To: [REDACTED]

Subj: Re: panmure

Hi [REDACTED]

Thanks for your email.

There is no entitlement as such to a home security provision that we are aware of. We would however be keen to find out who supplied you with this information?

The concerns of the owners of properties nearest the event site are being assessed on an individual basis and, where possible, measures are being proactively considered to mitigate the impact of the festival on those owners and their properties.

Current traffic management plans will be available for viewing at the community consultation event tomorrow and will show ingress and egress flows to the event site. We are working closely with our Traffic Management Contractor, Angus Council and Police Scotland to produce a robust and effective traffic management plan. All agencies involved in the Traffic and Transport sub group will have the opportunity to comment on and contribute to the plan and this will remain a flexible, working document in order to take into account any factors which might affect the scope of it as we near the event. There is however no 'police report' on the traffic management plans thus far that we have been privy to so I'm afraid we cannot provide what we do not have.

The Public Entertainment License has not yet been applied for but again further details relating to the timeline for the license application will be available for viewing at the consultation event tomorrow. We would welcome the opportunity to further discuss plans openly and positively with you at the event and hope to see you there.

Regards,

Craig Blyth

Jigsaw Media Limited

Director

Tel: 07969569804

Web: [www.jigsawmedialtd.co.uk](http://www.jigsawmedialtd.co.uk)

Email: [craig.blyth@jigsawmedialtd.co.uk](mailto:craig.blyth@jigsawmedialtd.co.uk)

Redacted to protect  
personal information  
of 3rd parties



# FESTIVAL SECURITY

## Safety

Jigsaw Events and Management Ltd is committed to delivering a safe event in accordance with "The Purple Guide to Health, Safety and Welfare at Music and Other Events" which is endorsed by the Health and Safety Executive (HSE). The Guide's aim is to help those event organisers who are duty holders to manage health and safety at large-scale music and similar events.

In line with the Purple Guide, the Festival of House Steering Group set up a Safe Events Sub Group to promote a collaborative approach between Jigsaw, Angus Council and other partner agencies in relation to the risk, safety, security, and medical contingency planning aspects of the festival. The Safe Events Sub Group includes representatives from Angus Council, Police Scotland, the Scottish Fire and Rescue service, the Ambulance Service and the NHS.

## Security

Security and stewarding of the festival will be undertaken by SecuriGroup. With a resilient history in the security and safety sector, SecuriGroup began trading in 2003 and has developed into the largest security company based in Scotland today.

SecuriGroup is a Security Industry Authority (SIA) Approved Contractor for the provision of security services including security guarding, mobile patrols, key holding, events security, door supervision, CCTV and close protection. SecuriGroup quickly became an award-winning organisation, collecting a range of prestigious contracts and appointing a number of high-profile security professionals to its Board of Directors. SecuriGroup's cultural contribution spans an eclectic mix of popular music and sporting events, including the 2014 Ryder Cup, T in the Park, the 2014 Commonwealth Games in Glasgow, Wickerman Festival and the Royal Highland Show at Inverlorn.

## Proposed Measures


The organisers are extremely keen to get things right in year one with a view to securing a longer term future for Festival of House at Panmure. The project team is working closely with SecuriGroup to devise a security strategy for the external "events area" surrounding the proposed Festival of House site. Key elements will include:

- 24 hour residents' property protection
- External area 24 hour mobile patrolling
- Stewarding of surrounding area roads (including the Montague Bridge)
- Provision of a 24 hour residents' hotline to allow residents to report any concerns during the festival which can then be actioned by the security team

## Community Feedback

Feedback from local residents is vital to the success of the safety and security strategy and the proposals have already evolved in response to initial consultations. Please take the time to complete our feedback questionnaire with any further comments you wish to share.

[WWW.FESTIVALOFHOUSE.CO.UK](http://WWW.FESTIVALOFHOUSE.CO.UK)  
[WWW.FACEBOOK.COM/FESTIVALOFHOUSE](https://WWW.FACEBOOK.COM/FESTIVALOFHOUSE)  
[WWW.TWITTER.COM/FESTIVALOFHOUSE](https://WWW.TWITTER.COM/FESTIVALOFHOUSE)

24 March 2016  
 mff

Tree Nursery House  
 Panmure  
 Carnoustie  
 DD7 6LW

21 March 2016

Dear Sirs,

**Objection to Public Entainment License application made by Jigsaw Events and Management Limited trading as Festival of House in respect of proposed festival at Panmure Estate near Pitlvie Farm**

I refer to the above application for a Public Entertainment License (PEL), and hereby make a formal objection to the grant of this license. I am a resident of Panmure Estate and have strong reason to believe I will be adversely affected by the proposed festival.

However I have a fundamental problem in terms of presenting my objection(s). In order for me to specify grounds for objecting to the proposed festival I should be in a position to review relevant information and it is patently clear that the requisite relevant information is not available.

It is clear that the execution of a very large public event, especially for the first time, requires a significant effort. It is understood the following documentation would (at minimum) be required to be prepared by the event organisers:

- Event Plan (including maps of the entire site, with clearly marked locations of stages, parking, access / egress routes, camping areas, etc.)
- Health and Safety Plan
- Risk assessments for each site and activities
- Public Health including, sanitation, food safety
- Fire Risk assessments
- Security & Stewarding Plan - on and offsite (risk areas)
- Environmental Plan, water, waste, impact on site and species.
- Noise Plan
- Traffic Plan
- Medical Plan
- Drug Management Plan
- Alcohol Management Plan
- Contingency Plan
- Evacuation Plan
- Weather Plan
- Communications Plan

It is not clear if any of the above have been prepared; what is clear that none of the above have been seen or shared as part of the PEL application.

This presents a question of procedural fairness. I have consulted "Right First Time" – this is a document provided by the Scottish Government as a practical guide for public authorities in Scotland to decision making and the law. This document also explains the existence of "due process" as a key principle of decision making. In other words the Licensing Committee is required to arrive at a decision in a procedurally fair way. It is a feature of a fair procedure or decision making process that the person affected by it will know in advance how it will operate, notice of the information on which the decision will be based, and so how to prepare for the decision and participate in it. It has not been explained to me how the decision making will operate, nor have I been given any notice of documentation relating the proposed festival itself. Therefore I do not believe due process has been served.

I would like to point out that I have made a significant personal effort to find relevant information regarding the proposed festival.

- I wrote an email to Mr. Alan McKeown on March 8<sup>th</sup> to which I received no reply. In this email I wrote:

*As a Panmure resident I recently received a letter telling me that I have the opportunity to object to the Festival of House Public Entertainment License (PEL) application. However the letter had no information in terms of the PEL application itself other than the dates and times. In principle a resident should have the right to know what the License Application says (in terms of noise levels, traffic management, number of attendees, site layout, environmental assessment, etc. etc.) in order to decide if an objection is appropriate.*

*It is a serious omission that the letter had neither a copy of the License Application attached, nor did it make reference to where the License Application can be found (website, etc.). How can someone object (or support) the PEL application without knowing the content?*

*Can you please help by pointing me in the right direction of how to get a copy of the PEL and supporting documentation in the near term.*

- I wrote a similar email to Mr. Blair Melville (cc'ing Alan McKeown) on March 13<sup>th</sup>. To this email I received the following reply from Mr. McKeown:

*I will reply to any specific requests if they are put directly to me. If I am cc'd into an email I will rarely respond unless there is a specific request made of me.*

*Please forward any specific request to me and I will reply as best I can.*

- I replied to Mr. McKeown on March 14<sup>th</sup> explaining that I had already emailed him directly but had had no reply. Mr. McKeown replied the same day as follows:

*I must apologise, my mistake entirely you did of course email me and I have not responded. I hope you can accept my apology.*

*We are presently speaking to the organisers of the event to have this information put on their web site as soon as possible. We will alert all known contacts when that is done and hope to have this done this week.*

I have not been alerted since Mr. McKeown's last email and am not aware that the information I requested has been posted.

Finally, on March 16<sup>th</sup> I received an email from Mr. Melville which stated (in part):

*I refer to your undernoted e-mail and recent correspondence with Alan McKeown. In terms of the Civic Government (Scotland) Act 1982 there is no requirement for the application or any policies and supporting documents to be made public. Notwithstanding this I have attached a copy of the application with personal information redacted. .... This application is subject to revival by the applicant after discussions with consultees, and additional conditions may be attached by the Civic Licensing committee.*

*With reference to additional plans and policies, I understand that these are being uploaded onto the organiser's webpage. Any queries you have concerning the plans and proposals should be directed to the event organiser who should be able to assist.*

*In the event that you are unsatisfied with any element of the proposals, you have until the 25<sup>th</sup> March 2016 to lodge an objection. Your objection will be considered along with the public entertainment application by the civic licensing committee at a public meeting. This meeting will be fixed after the window for objections closes and a separate letter will be issued to all of the objectors inviting them to attend the meeting if they want to speak to their objections.*

The redacted PEL application references "event planning documents" which form part of the PEL – however these were not provided. I am not aware that any documents have been provided elsewhere by the organisers. Mr. Melville's advice to contact the event organiser with queries should have been provided at the time of the Notice for Display at Premises; I do not have sufficient time for queries given the deadline for submitting this letter.

What is patently evident is there has been a chronic lack of information regarding the proposed festival. There is insufficient information available to understand what the event entails.

A material element of "due process" is the question of consultation. Proper consultation must satisfy several key conditions including:

- Sufficient explanation for each proposal must be given, so those consulted can consider them intelligently and respond.
- Consultees' responses must be conscientiously taken into account when the ultimate decision is taken.

I submit that no explanation of, or for, the proposed festival has been given – certainly nothing in writing that can be accessed by the public and more specifically by people like myself who have a entirely reasonable expectation that we will be adversely affected. Therefore I am being kept in the dark and cannot offer intelligent responses and feedback, or objection(s).

I'd like to summarise my comments above. Where a decision is to be made that may result in detriment or loss of amenity to an individual, then that individual has a right to a fair hearing and to make representations to a decision maker to influence any decision which has the potential to cause them harm. In this case residents near the proposed festival have a right to make representations to the Licensing Committee in respect of the potential nuisance caused by waste, traffic, light, noise, etc. It is unfair that the ability of residents to assess the true impact of such nuisance and to prepare valid objection has been undermined by a failure on the part of the organisers to provide all relevant information in respect of this event at the same time as the PEL application was made. The failure to produce these documents and make them available means that nearby residents have not been given fair notice of what is actually proposed. As indicated, these residents have been put at a significant disadvantage in terms of assessing the impact of the event on their lives and properties and being able to frame valid and relevant objections, if appropriate. It is unfair and contrary to Natural Justice that these documents were not made available to the public at the same time that the application for the PEL was made. It is impossible to properly understand what is actually being proposed without this information. And it is therefore impossible to make material / credible objections.

I have additional objections and representations which follow:

1. The Application for Public Entertainment Licence states that Jigsaw Events shall "display at or near the premises so that it can conveniently be read by the public a notice complying with the requirements of paragraph 2(3)" of the Civic Government (Scotland) Act 1982. For reference Paragraph 2(3) reads:

**3.-(1)** *Any objection or representation relating to an application for the grant or renewal of a licence shall, subject to sub-paragraph (2) below, be entertained by the licensing authority if, but only if, the objection or representation-*

- (a) is in writing ;*
- (b) specifies the grounds of the objection or, as the case may be, the nature of the representation ;*
- (c) specifies the name and address of the person making it ;*
- (d) is signed by him or on his behalf ;*
- (e) was made to them within 21 days of whichever is the later or, as the case may be, latest of the following dates-*
  - (i) where public notice of the application was given under paragraph 2(7) above, the date when it was first so given ;*



*(ii) where the application relates to a licence for an activity which is wholly or mainly to be carried out in premises and the authority have specified a date under paragraph 2(6) above, that date ;*  
*(iii) in any other case, the date when the application was made to them*

**(2)** *Notwithstanding sub-paragraph (1)(e) above, it shall be competent for a licensing authority to entertain an objection or representation received by them before they take a final decision upon the application to which it relates if they are satisfied that there is sufficient reason why it was not made in the time required under that sub-paragraph.*

**(3)** *An objection or representation shall be made for the purposes of sub-paragraph (1) above if it is delivered by hand within the time there specified to the licensing authority or posted (by registered or recorded delivery post) so that in the normal course of post it might be expected to be delivered to them within that time.*

**(4)** *The licensing authority shall send a copy of any relevant objection or representation (within the meaning of paragraph 19 below) to the applicant to whose application it relates.*

The notice did not comply with the requirements of paragraph 2(2) and therefore does not meet the requirements of the PEL application or the Civic Government (Scotland) Act 1982. The notice did not comply in that it did not include any reference to Paragraph 2(3) sub-paragraphs (2), (3) or (4).

[And, although not strictly speaking referenced in the the Civic Government (Scotland) Act 1982, I submit the notice was incomplete in that it did not direct the reader to a location and/or source where relevant information could be found.]

2. An Environmental Impact Assessment Screening Opinion was issued by Angus Council in respect of this event under reference 15/01040/EIASC. However a number of other planning applications and notifications have been made in respect of the proposed site which have not been taken into account as part of the EIA screening opinion process. The references for these applications and notifications are: 15/00811/FULL; 15/00812/FULL; 16/00090/PRIORN, and; 16/00094/PRIORN.

These applications and notices detail changes to the use of the land for agricultural purposes. However, in the interests of fairness the Council should investigate to determine whether these changes are actually for the purposes of improving the land for the festival or to facilitate the festival. In the event that the changes detailed in these applications and notices are for the purpose of the festival, then the EIA screening opinion carried out in respect of the festival has failed to take into account the true impact of the festival on the proposed site. Moreover if the duration of the works detailed in each of these applications and notices is taken into account in terms of the duration of the festival, then the entire duration of the event is in excess of 28 days in which case the EIA screening Opinion may be incorrect in its assessment that the Festival does not constitute an Environmental Impact Assessment development.

3. There are significant differences between the event that was described in the application for an Environmental Screening Opinion and what is being sought in terms of the PEL. Two key points are:

- i. The EIA screening request application describes a two day event, the application for the PEL details a three day event.
- ii. The supporting information with the EIA screening assessment application states that the event will conclude at 11pm whereas the PEL notice states the event will not conclude at 1am.

It is also therefore submitted that what has been assessed for the purposes of an EIA screening opinion is substantially different to the event that a PEL is being sought for. The determination that an EIA is not required is now questionable and the matter should be reviewed again.

4. The EIA Screening opinion issued by the Council clearly identifies potential detriment to resident of premises near the festival in terms of waste, traffic, light and noise. It indicates that such issues will require management and that detailed plans should be produced. Such plans should have been made public but have not. These are material documents; the consequences of getting them wrong would be severe to local residents.
5. The process gives rise to unfairness. The organisers are entitled to receive all objections made in respect of the event to allow them to react to those objections before the Committee whereas the residents and general public have no apparent right to information in respect of the event to enable them to assess the impact of the event and prepare valid and relevant objections, if appropriate.
6. The former Panmure Estate is an area of outstanding natural beauty, but is not a suitable location to safely and effectively hold an extremely large music festival. When asked at a consultation event why the Panmure location was chosen over other potential locations the organiser advised attendees that the sole reason it was chosen is because it's beautiful. This is a decision making failure. Decisions should be made rationally; good decision making evaluates various options against a list of criteria in a structured manner. No such approach appears to have been adopted for the proposed festival. Whilst the festival may be a good idea in principle the organisers have picked an inappropriate location given the size, scale and nature of the proposed event.
7. It is not understood how the event can be held at the proposed site without exposing residents to significant noise and light nuisance or infringe legal rights of access and egress.



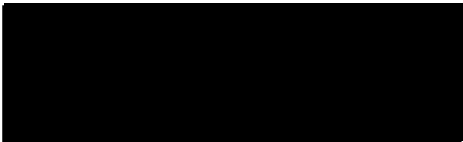
8. Due to the fact that the final layout of the festival and traffic management plans are not yet available, it is impossible to comment on the exact nature of the impact to residents and those who live or own property near the site. However it is impossible to hold the event without affecting some if not all of the residents and it is unfair that these residents are unable to offer specific and detailed objection to the plans because these plans are not available.
9. It should be noted that the Estate is "porous" with a network of roads leading to the festival site and it will be extremely difficult if not impossible to manage all routes in and out of the area effectively. The seeming last minute nature of the traffic planning exercise is perhaps evidence of the difficulty of this task and the risk that the measures put in place will not be sufficient to avoid traffic chaos is high.
10. There are also many dangerous features in the area such as a large ravine, networks of ditches, barbed wire, etc. There are other sites which would pose far less risk to festival goers. It is respectfully submitted that the site selection decision making has failed as a full assessment of risks should have been assessed whereas the organisers seem to have only considered natural beauty.
11. The proposed event by reason of its size, scale, nature and the noise it will produce will have an unacceptably adverse impact on the amenities of the properties immediately adjacent to the site and the surrounding area by reason of overbearing impact. There are properties which will be completely landlocked by this event and most nearby residents will be impacted by the noise and light produced both by the setting up of the event and the event itself. It is also highly likely that residents normal day to day movements in and around the Estate will be significantly impacted by the event and its set up. There is also a risk of illegal "wild" campsites on neighbouring properties with associated health and safety and fire risks.
12. Residents are at a disadvantage to the organisers because they have not been included in Steering Group or Sub-groups and have therefore not had support and assistance provided to the organisers in terms of identifying and mitigating risks associated with a large influx of people to the area.
13. The small amount of information in the public domain is contradictory. The EIA Screening application indicates that the event will take place over 2 days to 11pm at night whereas the PEL Notice of application indicates that the event will take place over 3 days until 1am.
14. The event organisers have put considerable effort into organising a line up, promotion and engaging with the media in relation to this event. The last minute nature of the reports which were requested some time ago by

the Council would suggest less effort has been put into managing the practicalities of the event such as public safety, and traffic management. I have a concern that the organisers believe that by building up momentum for the event through promotion and ticket sales that the Licensing Committee will come under pressure to approve the event to avoid disappointing the organisers and prospective festival goers. I sense the organisers may have a belief that a favourable decision is a foregone conclusion. I would suggest to the Licensing Committee that any activities undertaken by the organisers to date have been undertaken at their own risk and should have no bearing on the license decision.

15. I would also request that the Council have regard to the fact that this is the first time that this festival will take place at any site. How it will turn out is an unknown. Whilst it may be anticipated that the various reports that the Licensing Committee will eventually have access to will be supportive of the argument that the event can be successfully, safely and effectively managed at this site, I would ask the Committee to bear in mind that many of the reports, and particularly those which deal with environmental concerns, will have been commissioned by and paid for by the organisers and there is therefore a collective interest in seeing the event take place and the production of subjective reports which support that conclusion. In that regard it is also significant that these reports were not made public at the time of the application and therefore it has not been possible for interested parties to arrange impartial and objective scrutiny of these reports.

In closing I'd like to reiterate that the process has not been fair. I have not been told how the decision making process will operate, how to prepare for the process, and how to participate in it. I have not been given any relevant information; and my efforts to find relevant information have failed. I am deeply distressed at the thought that the proposed festival could be approved without due process and that 15,000 people along with the accompanying noise, traffic disruption, security risks, environmental impact, etc. etc. can be unilaterally thrown into the lives of local residents without due process – this result would be a profound failure of our democratic process.

Yours sincerely,



✓ Andrew Walker

21.03.2016

J P Gray and Son

Auchrennie Farm

Muirdrum

By Carnoustie

Angus

Head of Law and Administration

Angus Council

Angus House

Orchardbank Business Park

Forfar

To whom it may concern

Re Public Entertainment Licence – Jigsaw Events and Management Ltd, Festival of House,  
Panmure Estate.

We have been in discussion with roads at Angus Council and talked about alternatives to help our farm traffic in and out of the farm but as yet we haven't had a conclusion. We have had no traffic modeling on expected traffic through the days of the Dance Event. Our busy times are between 11am -5pm.

We have been advised by traffic consultants that as it stands, the traffic plan of all traffic entering and exiting from Muirdrum will result in major disruption to our business and the several local businesses that we pack fruit for. With the large volume of traffic on these dates we think that the fruit coming in from the fields to the packhouse will be held up in traffic and in the heat of the day could go to waste or miss orders. Supermarkets regularly visit on these days and if they arrived on a day where fruit destined for them was stuck in traffic in hot temperatures due to a dance festival in the height of summer, then they would source fruit from other parts of the UK. Its different from a fallen tree or an accident on a road causing a traffic delay as this isn't a planned event.

We also have major concerns over security and hygiene concerning our fruit crops over these days due the timing of the event. We have asked for fencing in various places but as yet none of these have been confirmed.

JP Gray & Son's Auchrennie site is situated just north of Muirdrum on the B9128. This week is likely to be one of the highest value (1.75m) movements of fresh produce from any one site in Scotland on that week. I have attached the vehicle movement records for the site from last season. You will see that 59 trailers delivered fruit to the site each day with an average frequency of one delivery every 12 minutes. These vehicles come from both the Arbroath and Dundee directions along the A92 from outlying farms. At the same time fruit is dispatched via 15-20 vehicles per day. The short shelf life of soft fruit means that we operate to extremely tight windows with fruit picked at 6am commonly packed and despatched within a couple of hours. Vehicles then have to hit one of 40 UK wide distribution centres again to a strict deadline and if they are late then the fruit is rejected and cannot be reused as it is too old. At the same time we can be liable for financial penalties for non delivery as well as loss of future business.

Our first option was that if the festival takes place that all traffic to the festival should be from the north via Upper Victoria and exiting the festival on the Muirdrum side. This will avoid congestion and is safer as the Muirdrum road is narrow for double traffic especially HGV's and also dangerous if pedestrians are there.

Our second option is a lane up from Muirdrum for farm traffic only coming in and out of the farm. This would result in a one way system for the Dance Event traffic from Muirdrum and then they would exit the event Northwards. There is advantages of traffic leaving an event in a different direction and this would avoid a combination of HGVs, buses and cars trying to go both ways in large numbers, on an already narrow road.

Yours sincerely

Andrew Gray

J P Gray and Son.

June 11th

## Vehicles for Deliveries

Grower	Time in	Time out
Grower	06:45:00	06:55:00
Grower	06:50:00	07:00:00
Grower	07:15:00	07:25:00
Grower	07:15:00	07:25:00
Grower	08:10:00	08:20:00
Grower	08:10:00	08:20:00
Grower	08:20:00	08:30:00
Grower	08:30:00	08:40:00
Grower	08:40:00	08:50:00
Grower	08:40:00	08:50:00
Grower	09:10:00	09:20:00
Grower	09:10:00	09:20:00
Grower	09:10:00	09:20:00
Grower	09:40:00	09:50:00
Grower	09:40:00	09:50:00
Grower	10:10:00	10:20:00
Grower	10:30:00	10:40:00
Grower	10:30:00	10:40:00
Grower	10:40:00	10:50:00
Grower	10:50:00	11:00:00
Grower	10:50:00	11:00:00
Grower	11:15:00	11:25:00
Grower	11:40:00	11:50:00
Grower	11:40:00	11:50:00
Grower	11:50:00	12:00:00
Grower	12:40:00	12:50:00
Grower	12:40:00	12:50:00
Grower	13:00:00	13:10:00
Grower	13:20:00	13:30:00
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Grower	15:40:00	15:50:00
Grower	15:40:00	15:50:00
Grower	15:50:00	16:00:00
Grower	16:20:00	16:30:00
Grower	16:30:00	16:40:00
Grower	17:10:00	17:20:00

	Grower	17:30:00	17:40:00
	Grower	17:30:00	17:40:00
	Grower	19:00:00	19:10:00
Total	Grower		
	Grower	12:30:00	12:55:00
Total	Grower		
	Grower	13:10:00	13:50:00
	Grower	17:40:00	18:05:00
	Grower	20:30:00	20:50:00
Total	Grower		
	Grower	15:30:00	15:50:00
Total	Grower		
	Grower	15:00:00	16:10:00
	Grower	19:15:00	20:05:00
Total	Grower		
	Grower	13:30:00	13:55:00
	Grower	16:20:00	16:40:00
	Grower	17:05:00	17:30:00
	Grower	18:00:00	18:20:00
Total			

## Vehicles for Collections

**June 11th**

<b>Vehicles</b>	<b>Grower</b>	<b>Time in</b>	<b>Time out</b>
Vehicle 1	Grower	07:15:00	07:45:00
	Grower		
	Grower		
Vehicle 2	Grower	07:30	07:50
	Grower		
	Grower		
Vehicle 3	Grower	08:10	08:30
	Grower		
	Grower		
Vehicle 4	Grower	11:00	11:10
Vehicle 5	Grower	12:25	12:35
Vehicle 6	Grower	12:55	13:10
	Grower		
	Grower		
Vehicle 7	Grower	13:20	13:45
	Grower		
	Grower		
Vehicle 8	Grower	14:40	14:50
Vehicle 9	Grower	15:45	16:10
	Grower		
	Grower		
	Grower		
Vehicle 10	Grower	15:10	15:40
	Grower		
Vehicle 11	Grower	17:00	17:15
	Grower		
	Grower		
	Grower		
	Grower		
Vehicle 12	Grower	21:00	21:20
	Grower		
	Grower		
Vehicle 13	Grower	21:30	21:55
Vehicle 14	Grower	22:00	22:35
	Grower		
	Grower		
	Grower		





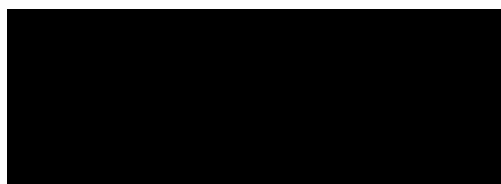
Den Cottage,  
Panmure,  
Carnoustie,  
DD7 6LW

23th March 2016

Dear Sir/Madam,

Please find enclosed my objection to the application for Public Entertainment License made by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitlivie Farm.

Regards,



Andrew Martin

**Objection to application for Public Entertainement License made by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitlivie Farm**

I am writing to state my objection to the above PEL application. My family and I live within 300m of the proposed campsite, 350m of the proposed weekend parking and 700m of the main stage. We have two boys of 5 & 7 years old with oldest having problems with loud noises. He has attended a Community Paediatric Clinic at the Armistead Centre on many occasions and has been diagnosed as having sensory issues and a festival with such loud noise may have a detrimental effect on his health especially as some of this noise will be inflicted on him during the school week.

I believe that Angus Council issuing a PEL to the Festival of House it will create a legal nuisance that will prevent us from enjoying our family life.

**Objection 1: The decision not to have an Environmental Impact Report should be reassessed.**

The original decision was that an Environmental Impact Assessment was not necessary. However, what was assessed for the purposes of an EIA screening opinion is substantially different to the event that a PEL is being sought for. The number of days are different; 2 days were suggested originally whereas the event is now 3+ days; also the timing has been extended by 2 hours each day.

The validity of the original determination not to do an EIA must be questioned and this decision should be reviewed.

**Objection 2: The Festival of House team have not adequately considered public safety in their plans and their actions would suggest that they do not understand their responsibilities with respect to public safety.**

### **Lack of drug control**

When I asked Craig Blyth what preventative measures would be in place, I was told that only those to satisfy the council's recommendations of having an amnesty box at the entrance and applying to the Police for a dog unit to be in attendance at the site entrance. Should the Police not provide a dog unit then the organisers would not be under any obligation to provide one. This was standard procedure for events of his nature and that he saw no reason for any others being implemented. Given that this genre of music has always had an infamous reputation for illicit drugs, this approach demonstrates a lack of willing to provide adequate preventative measures for public safety.

The overwhelming picture I get is of doing the minimum to get the license rather than doing what is necessary to ensure a safe environment for patrons and residents alike.

No information has been given on the tidying up procedure for any mess coming onto my property. This, I presume, will be my responsibility.

### **Objection 3. The site is not suitable for an event of this scale.**

There are too many roads in and out of the area and those who do venture through fields may well encounter areas with incredibly steep sides and within my own boundary, there is section of cliffs with a 30ft drop. The den between my property and the Garden House has a section of unfenced cliffs with the same drop. Other areas within the estate have considerably greater drops. No access to the den will be available from my property for the emergency services throughout the duration of the event as the gates will be locked.

The road known as The Marches is only 1km from the event and the A92 is 2km so both are easy walking distance either onto or out of the festival for those without tickets or those wanting an alternative exit should the official ones become clogged. This will inevitably bring people onto my property over the course of school days and the weekend. Craig Blyth & Ed Murdoch have both said that there will be a good number of security staff patrolling the area but both conceded that they have no legal jurisdiction and it is well known by those

going to festivals that security staff have no legal right to stop anyone. They may well be visual and they will prove irrelevant if they have no powers to control.

Auchrennie Farm to the south of us has several hundred berry pickers at that time of the year and it is likely that a good number of them (and friends on other fruit farms) will want to attend this event. It is unlikely that they will want to pay for a ticket when they know how close they can get by crossing a couple of fields. Ed Murdoch and Craig Blyth have both assured me that through conversations with the farmer, that any worker coming over the fields will be dismissed and that they will offer the workers a shuttle bus and half price tickets. This I do not think it will be a deterrent as should workers be in demand at that time, it is unlikely they will be dismissed just to honour a verbal agreement with an events company and even if they are, work is readily available for overseas workers at that time of year.

#### **Objection 4. Fear of Confrontation**

I have suffered from Rheumatoid Arthritis for many years and have considerable joint pain on occasion. I feel very threatened at the prospect of not being able to physically protect my family should people come onto my ground. The Police are the only real deterrent to trespassers and I'm sure they will have enough to be dealing with elsewhere. This means I will have my family in the house and if there are people in various states of inebriation on my property, we are effectively trapped until they can be removed. This causes me great concern and the feeling of helplessness in such a situation is not one I would ever hope to be in.

#### **Objection 5 - Cost of Increased Insurance**

I have been told by Craig Blyth that his insurance will be adequate and that I need not increase my insurance or seek an appropriate policy. I have told by an insurance company that I will. This lack of basic knowledge only confirms my suspicions that his is not a professional events company with thorough knowledge of all aspects of the business in which they are applying for a license to host.

### **Objection 6 - Lack of expertise**

Craig Blyth may well be experienced in marketing but not in the events industry and his inexperience in this line of work could be detrimental to the competent management of an event for so many people.

Ed Murdoch of Red Pepper Events who's experience of music festival seems to be more than that of Craig Blyth's but running the cash office and car park at T in the Park but certainly nothing on the scale as to what they are intending on running here. This gives great cause for concern as should something go wrong, I doubt they will have adequate method statements on hand for dealing with such an incident. I suspect that in this type of operation, a knowledgeable and experienced hand at the helm is a prerequisite for success.

### **Objection 7- Condition of Fields To Host Campsite & Parking**

The fields where the campsite and both the weekend parking and the day parking have only tonight (23rd March 2016) been sown with grass seed. Whilst this may well be a fast growing variety, it is unlikely that the root structure will be strong enough to cope with the expected footfall and vehicles expected. Should the soil be damp then the fields will turn into mud very quickly. Festival fields normally have grass that is mature with deep, well established roots which will hold the soil and absorb water fairly quickly. With immature roots, the fields will revert to mud faster than most whether roads with hardstanding have been created or not. This has the potential to be even worse than T in the Park last year. It will not be long before the B9128 will have a lot of mud on it and as there are a couple of very sharp bends within 200m of the exits in both directions, this could very quickly become a serious hazard. This is a route taken by school buses, and people will be entering & exiting on the Thursday & Friday, I hope the councillors will appreciate my concerns for what could cause a foreseeable accident.

## **Objection 8 - Poor Communication**

Unfortunately the communication between Mr Blyth and myself has not been good. He did arrange meeting for residents of the estate in October 2015 giving 3 days' notice. My wife works as a Consultant Microbiologist in Ninewells and she had to stay in that evening as she was on call. I was able to arrive late at the meeting and vent my frustration as this shoddy organisation and ask him to deliver any information at my house as he both knew who I was and where I stayed. It was 2 weeks later that I had to email him and ask again for it before he handed his information over. On another occasion, my neighbour (Mark Patterson) has had to prompt him that, as someone who was living very close to his proposed his event, he might see fit and engage with me as to what was happening. He has since met with my wife and myself (early December 2015) and give a very vague description of events. The initial proposal he had was to apply for a license that ran until 10pm but when meeting with him in December, he steadfastly refused to be drawn on when he wanted the license to extend to. This further compounded my impression that everything about the Festival of House is very fluid and subject to change at short notice.

I have also been in contact with Ed Murdoch regarding my concerns about the access & egress to my property (See attachment 1) and how long I should look to factor in for waiting when entering & leaving. I received a somewhat convoluted reply telling me about the traffic procedures. When asked plainly about how long anyone using our lane could expect to wait, I received no reply.

Furthermore, I understand that in with the license application, they have asked for permission to have a fairground attractions of sorts. This has never been mentioned before now and will only increase the amount of light and noise pollution and will be immediately adjacent to my property where my two children will be sleeping prior to a school day.

## **Objection 9 – Callous Approach to Procedures**

I have asked about the 28 day rule of having all equipment on and off site and for events such as these and was told that these were only basic guidelines and no fines were issued if

the 28 day period was extended and that normally a reason could be found to justify why it took longer. It seemed that extending this period of time is commonplace and that those affected by the upheaval of festival logistics had no comeback or say in the matter.

Attachment 1 – Access / egress email



Attachment 1 – Correspondence between Ed Murdoch & Andy Martin re access / egress waiting times

On 24 Feb 2016, at 10:05, Andy Martin <[andymartin@clara.co.uk](mailto:andymartin@clara.co.uk)> wrote:

Thanks for that Ed.

While I can appreciate the operational issues that can occur when implementing a traffic management plan in reality, I would like to know how many minutes that Jigsaw Events & Management Ltd perceive as a short delay. Both Mark & I, our families and visitors are going to have to make allowances in our travel plans when we gain entry & exit by the south drive and I want to know what you consider reasonable.

Regards

Andy

**From:** Ed FOH [<mailto:ed@festivalofhouse.co.uk>]

**Sent:** 24 February 2016 04:21

**To:** Andy Martin <[andymartin@clara.co.uk](mailto:andymartin@clara.co.uk)>

**Cc:** Mark Patterson <[gardenhousepanmure@btinternet.com](mailto:gardenhousepanmure@btinternet.com)>; Craig Blyth <[craigblyth@festivalofhouse.co.uk](mailto:craigblyth@festivalofhouse.co.uk)>; Allan Carnegie <[allan@carnegiebaseservices.co.uk](mailto:allan@carnegiebaseservices.co.uk)>; Eleanor Whitby <[eleanor@redpepperevents.com](mailto:eleanor@redpepperevents.com)>

**Subject:** Re: Festival of House - south drive access

Good morning gents

For clarity, I write on behalf of Jigsaw Events & Management Ltd t/a Festival of House.

There are different vehicular and pedestrian flows and rates at different times any combination of which would influence the duration with which ingress or egress will be achieved differently, including whether both you and Mark were accessing/exiting in opposing directions at the same time and in that scenario those particular flows would be prioritised in the safest possible manner.

Regards  
Ed

Ed Murdoch

Festival of House  
07764 203 999  
[www.festivalofhouse.co.uk](http://www.festivalofhouse.co.uk)

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On 23 Feb 2016, at 15:39, Andy Martin wrote:

Thanks for that Ed.

There are a couple of points that I would like clarification on.

1. You have written on behalf of 'Festival of House' which itself has no legal entity. Can you send the mail again clarifying in what capacity of what company you are representing here.
2. Can you clarify what you mean by "short delay"

Regards

Andy

**From:** Ed FOH [<mailto:ed@festivalofhouse.co.uk>]

**Sent:** 19 February 2016 12:31

**To:** Mark Patterson <[Gardenhousepanmure@btinternet.com](mailto:Gardenhousepanmure@btinternet.com)>; [andymartin@clara.co.uk](mailto:andymartin@clara.co.uk)

**Cc:** Craig Blyth <[craigblyth@festivalofhouse.co.uk](mailto:craigblyth@festivalofhouse.co.uk)>; Allan Carnegie

<[allan@carnegiebaseservices.co.uk](mailto:allan@carnegiebaseservices.co.uk)>; Eleanor Whitby <[eleanor@redpepperevents.com](mailto:eleanor@redpepperevents.com)>; Iain B.

Cram <[iain.cram@bellingram.co.uk](mailto:iain.cram@bellingram.co.uk)>; Jerry Watson <[jerry@albatraffic.co.uk](mailto:jerry@albatraffic.co.uk)>

**Subject:** Re: Festival of House - south drive access

Good morning Mark & Andy

I hope this finds you both well.

As discussed previously, I write to confirm on behalf of Festival of House that we guarantee there will be no measures in place relating to the festival which will prevent your access/egress via the south drive at Panmure.

We will have traffic management, security and marshalling points on the south drive to allow the safe access/egress and flow of yourselves, pedestrian traffic and event traffic.

These measures may result in short delays, to all movements, whilst vehicular/pedestrian traffic is managed to allow that safe movement however at no point will your access/egress be prevented. Where possible, taking safety into consideration of course, our measures will prioritise your movements on the south drive to allow you access/egress as quickly as possible.

I hope this sets your mind at ease with regards access/egress on the south drive and we will be in touch soon with more detailed information as to exactly what measures we intend to implement. These measures will be subject to discussion with the various agencies sitting on

the Multi Agency Steering Group including the various departments within Angus Council, Police Scotland, Scottish Fire & Rescue and so on. The next meeting of the overall steering group takes place at the end of February and the Traffic & Transport Sub Group meets in early March. Any amendments to the measures which are required as a result of input from those discussions will be communicated to you as quickly as possible thereafter.

We can also confirm that written permission has been received from both Mr Simon Laird and Dr Alistair Emslie granting access/egress via their roads west of the estate to emergency vehicles and Panmure Estate residents during the build/break periods and the weekend of the festival.

If you have any further queries in the meantime please let us know.

Kind regards  
Ed

Ed Murdoch

Festival of House  
07764 203 999  
[www.festivalofhouse.co.uk](http://www.festivalofhouse.co.uk)

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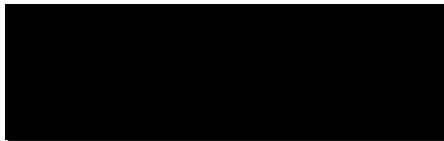
Den Cottage,  
Panmure,  
Carnoustie,  
DD7 6LW

23rd March 2016

Dear Sir/Madam,

Please find enclosed my objection to the application for Public Entertainment License made by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitlivie Farm.

Regards,



Dr Ila Aggarwal

**Objection to application for Public Entertainment License made by Jigsaw Events and Management Limited trading as Festival of House in respect of premises at Panmure Estate near Pitlivie Farm**

I am writing to state my objection to the above PEL application.

The proposed event will have an overpowering impact on the life of my family due to its size and proximity to my family's home. The amenity of my property will be directly affected by the grant of this license.

I am fearful that, in putting this objection in writing it will make the organisers even more inclined to make the impacts of this event even more harmful to my family. As such, I am putting my faith in the Council and the elected officials of the Council who represent the people of Angus to ensure that we are protected.

**Objection 1: This event, if you allow it, will limit the access to our home to such an extent that it is likely we will be unable to use the road which currently grants us access to and egress from the B9128.**

Like all working families with small children we have many time commitments and being able to access our home quickly and without barriers at all times is very important to us. The proposed event takes place during school term time including two school days. During this period, we need to be able to take our two children to nursery and school, collect them at the end of the school day and take them to other activities.

In addition, I travel to Ninewells Hospital in Dundee to fulfil my duties as a Consultant Microbiologist. At the time of the proposed event, I may be on call for part of or the entire duration of this event, and may need to travel to Ninewells at short notice. I may be required to work the weekend; a delay in my reaching work would have a significant impact on my ability to perform my duties, thereby affecting the management of patients with infection, including those in the Intensive Care Units in Ninewells and Perth Royal Infirmary, and the

provision of infection control services as I am the Infection Control Doctor for NHS Tayside when on call. Should an outbreak occur, this would necessitate urgent meetings with colleagues from Health Protection Scotland. As I am sure you will be aware, my foremost duty when working is to the people of Tayside, and this cannot be compromised for any reason.

We have asked the organisers to guarantee that we will have access and egress by our usual route (South Drive) during the proposed festival period. Mr Ed Murdoch emailed my husband, Andrew Martin, and said that Festival of House guaranteed access and egress via the South Drive, although there may be short delays. My husband replied to him asking what he meant by a short delay, and is yet to receive an answer.

I attended the last meeting organised by the Festival of House team and was concerned to hear that the main route of access to the festival is from the B9128. The B9128 is a busy road with many sharp bends and frequent heavy goods vehicles, especially during the berry picking season. I am worried that this will lead to considerable congestion along the B9128 and long queues in both directions. This will inevitably cause more than a short delay, even with the use of temporary traffic lights. The Traffic Management Plan has been much talked about, but has not been shared with members of the community who are likely to be affected by the festival. I was extremely concerned that there does not appear to be a contingency plan in place should the B9128 become gridlocked.

The Festival of House team has said that it will issue residents with passes to allow ease of travel. However, there has been no assurance that passes will be issued for visitors to the homes on Panmure Estate. My mother in law is a frequent visitor, and often helps with childcare. It is not fair to expect the residents of Panmure Estate to stop leading a normal life so that the Festival of House can proceed.

In his email Mr. Murdoch stated "we will be in touch soon with more detailed information as to exactly what measures we intend to implement. These

measures will be subject to discussion with the various agencies sitting on the Multi Agency Steering Group including the various departments within Angus Council, Police Scotland, Scottish Fire & Rescue and so on. The next meeting of the overall steering group takes place at the end of February and the Traffic & Transport Sub Group meets in early March. Any amendments to the measures which are required as a result of input from those discussions will be communicated to you as quickly as possible thereafter." It is now approaching the end of March and we are still awaiting further information.

Based on the limited information that the organisers of the event have presented to us it is clear that they will limit our ability to access our home. This is not fair and is very intimidating. It is also likely to severely affect my contractual obligations to NHS Tayside, and my duties to the people of Tayside, should I be required to be on call or work the weekend of the event either this year or subsequent years.

The organisers of this event will hold significant control over my family and our ability to live our normal lives. So far they have not approached this situation in a way that makes me feel that they will exercise this control with due care.

**Objection 2: This event, if you allow it, may result in members of the public entering the area of land adjacent to our home in large numbers.**

No provision has been made to limit public access to, or to help secure, the land neighbouring this event. This may result in members of the public camping in proximity to our home in large numbers, potentially setting camp fires and being close to us without adequate appropriate provision of toilet facilities.

This could be a recurring and persistent threat to my family enjoying and feeling safe in our home.

In addition, I am concerned about public safety as our house is accessed by a steep drive. On one side of the drive, there is a steep drop which would not be



apparent to persons unfamiliar with the surroundings in the dark. I am concerned for people who may suffer an accident on our property, but am also extremely worried about what our liability would be should this occur. I feel that I have no control over this situation, which makes me very anxious.

The attitude of the organisers of the event when this concern has been raised has reinforced the fact that they are unwilling and incapable of engaging effectively with us to take the necessary steps to ensure that this event will be undertaken safely or without harming those surrounding the event.

**Objection 3: This event, if you allow it, will result in a permanent change to the nature of the use of the Panmure area. This is inappropriate given the steps being taken to make the area a designated conservation area.**

This event will result in a permanent change to the nature of the Panmure estate. The estate has many historic features and, through time the special nature of this area is being lost.

**Objection 4: The site, by its nature, is not a suitable venue for the event that is planned, in terms of safety and security.**

Panmure Estate has a network of roads and paths leading to the festival site making it very difficult to manage all routes in and out of the area effectively. The organisers have identified Montague Bridge as a safety concern and are planning to provide 24 hour security cover on the bridge. However, the bridge is not the only safety issue as there are steep drops at various points along the banks of Monikie Burn. These drops are accessible by walking through the trees at many locations on the estate and it is possible that someone could sustain a fatal injury from a fall from any of these areas, particularly if it was dark. I spoke to Mr Ed Murdoch at the last meeting and he agreed that the area would be difficult to access by the fire brigade, and that mountain rescue services may be necessary. As no further information regarding the emergency services has been

forthcoming, I am left feeling worried and concerned by the apparent disregard for public safety by the organisers.

I am also concerned as there is uncertainty regarding police jurisdiction on the estate. This was highlighted by a recent event where a car was abandoned on South Drive. Our neighbour, Mr Mark Patterson telephoned the police after the car had been there for three days; he was told that the police have no jurisdiction on South Drive as it is a private road. This has created doubt in my mind about how safe we would be in our home and environment, and makes me feel very threatened for my own sake and my family.

**Objection 5: This event will stop my family from quietly enjoying our property without undue external noise. This noise will constitute a nuisance will severely impact the amenity of our home.**

The proposed event by reason of its size, scale, nature and the noise it will produce will have an unacceptably adverse impact on the amenities of my family home by reason of overbearing impact.

The noise associated with and created by the Festival is likely to constitute a legal nuisance and will severely impact my family's ability to enjoy our home during the period of this event. My seven year old son has problems coping with extreme noise; he has previously attended the Community Paediatric Clinic at the Armistead Centre and has been diagnosed with sensory issues. It is possible that he will find it impossible to tolerate the level of noise associated with the proposed festival. The ongoing threat of this will create a significant and sustained level of personal anxiety for us. The organisers of this event have at no time sought to work with my family to indicate how this anxiety could be limited. The PEL application states that permission is being sought for a fairground. The organisers have at no time mentioned that a fairground will exist, which again highlights the poor communication from the organising committee. A fairground is likely to further compound the noise and does nothing to alleviate the anxiety we already feel about this proposed event.

**Objection 6: The event may lead to the use and contamination of the environment with illicit substances which could cause direct harm to the families living on Panmure Estate.**

Music festivals are often associated with the consumption of illicit substances. We have asked the Festival of House team about their drug management policy. We were informed that they plan to have an amnesty box on entry. Craig Blyth informed my husband that they will apply to the police for sniffer dogs, but if the police are busy elsewhere there will be none at the event. After the event, they plan to have sniffer dogs to look for any substances that may have been dropped.

When I asked them what their policy is on the use of needles and syringes, the organisers replied that they have a zero tolerance policy on drugs. However, as this document has not been made public, I am not aware of the details of their drug management policy.

My concerns regarding illicit drugs are related to public safety and the safety of my family. As I have already stated, there are numerous places on the Panmure Estate where people who are intoxicated could sustain a serious or fatal injury. There is also a risk of accidental overdose, which I have witnessed as patients are treated in the Intensive Therapy Unit at Ninewells every year after T in the park. The organisers argue that drug overdose is unlikely as this event is smaller than T in the park. Such statements demonstrate a lack of understanding of the problem of substance misuse, and further reinforce my belief that the organisers are not capable of managing this event safely.

I am also very concerned about the possibility of a child picking up a used needle, or ingesting a tablet which may look like a sweet. There are eight children under eight living on the Panmure Estate, two of whom are mine. The organisers seem to think that sniffer dogs are sufficient to get rid of any dropped drugs on the estate. In my view, this further highlights their naivety and lack of understanding. It makes me feel very worried and threatened that my children

can be put at the risk of serious harm within their home environment by an event that should not take place in a residential area.

**Objection 7: This event, if you allow it, may result in contamination of the environment with pathogenic bacteria and result in a permanent change of use for agricultural land.**

There is a considerable risk of environmental contamination from human faeces if people cannot wait for or find adequate toilet facilities. Salmonella spp. can pass from humans to cattle and vice versa. It was stated at one of the meetings that Mr Hugh Niven is planning to plant crops in the fields next year that are to be used for the proposed festival this year. This raises the possibility of human pathogens entering the food chain. In addition, bacteria resistant to antimicrobials are often found in human faeces, and could pass between individuals or pass into the food chain. When I mentioned the possible biohazard risk at the last meeting, it was obvious the organisers had not considered it.

In terms of public safety, increased risk of enteric illnesses has been associated with many festivals in farm areas, including E.coli 0157. Often bacteria can persist within the environment for longer than 6 weeks. This poses another risk to the public which the organisers have failed to provide any information about. This serves to strengthen our belief that they are not taking public safety seriously, and are lacking in expertise.



**MEMORANDUM  
COMMUNITIES DEPARTMENT  
Environmental & Consumer Protection**

TO: Legal and Democratic Services (FAO Moira Hayes)

FROM: Steve Thomson, Senior Environmental Health Officer

OUR REF:

YOUR REF: SM/CivGov/5533

DATE: 25 March 2016

SUBJECT: Public Entertainment Licence (grant)

Festival of House Panmure Estate Nr Pitlivie Farm

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I refer to the above application and note that as part of the licensed activities the applicant seeks to provide music up until 0100hrs on 3 consecutive evenings, 9-11 June inclusive. I would comment on the subjects relevant to this service as follows;

**ENVIRONMENTAL NOISE**

Taking into account the size, location and duration of the event, I have concerns that music noise, patron noise and traffic noise will not comply with appropriate limits and accordingly these may then have a significant impact on neighbouring residential properties. My concerns regarding these matters are detailed below:

**Music Noise**

The application as submitted is for a 3 day festival ending each night at 1am in the morning. There are residential properties 600m from the main stage and approximately 200m from other music noise sources. The main stage faces towards some of the closest properties and they are also nearly downwind of the stage in the direction of the prevailing wind; both these factors can increase the propagation of noise. It has not been clarified which properties are under the control of the operator.

This service would apply the music noise limits which are quoted in the reference document 'The Noise Council Code of Practice on Environmental Noise Control at

Concerts'. Specifically I would expect the music noise level (MNL) to not exceed 65 dB(A) over a 15 minute period up until 2300hrs and be inaudible after 2300hrs. Consideration may also need to be given to low frequency noise. This would apply to all amplified sound from arena sources, campsite entertainment and fairground entertainment.

### **Patron Noise**

Up to 15,000 patrons may attend each day. The route in and out of the main arena passes very close to several residential properties which will give rise to significant disturbance particularly at the end of each night given the proposed 1am finish.

### **Traffic Noise**

Up to 2,500 vehicles may use the proposed day time car park each day. The vast majority of these vehicles would be expected to leave around 1am. Given there are several residential properties immediately adjacent to the road, particularly at Muirdrum Village crossroads, this could give rise to significant disturbance.

While discussions are still ongoing, to date, the applicant has not submitted any detailed information to demonstrate that the noise impact from the aforementioned sources will not be significant.

Given the fundamental nature of the concerns detailed above this service is currently unable to support this application and therefore objects on the grounds of the possibility of undue public nuisance. Should further information be submitted then this service may withdraw this objection and also recommend additional conditions be attached to any Public Entertainment licence.

### **Other noise matters**

I am satisfied that other noise such as construction noise and noise from temporary generators etc. can be adequately controlled and therefore should a Public Entertainment licence be granted I would recommend appropriate conditions are attached to cover these issues and I attach below draft conditions for your consideration.

### **WASTE MANAGEMENT, SANITATION ETC.**

The applicant has submitted a draft Environmental management plan and it is intended to finalise this and the associated operational plans prior to the event taking place. Together these would cover litter control, provision of drinking water, protection of Private water supplies and sanitation including hand washing facilities.

I am satisfied that these matters can be adequately controlled and therefore should a Public Entertainment licence be granted I would recommend appropriate conditions are attached to cover these issues and I attach below draft conditions for your consideration.

### **Food Safety, Health and Safety at Work**

The Food and Safety section have been in consultation with the applicant and are content with proposals in relation to Food Safety and Health and Safety.

If you have any queries regarding any of the above, please do not hesitate to contact me.

#### Draft conditions

1. Construction noise audible at any residential property shall be restricted to 0700hrs to 1900hrs Monday to Friday and 0800hrs to 1700hrs Saturday to Sunday.
2. All noise from generators, ventilation or refrigeration plant shall not exceed Noise Rating Curve 30 between 0700hrs and 2300hrs and Noise Rating curve 20 at all other times as measured in any habitable room with the windows open 50mm for ventilation.
3. At least one month before the commencement of the event a detailed Environmental Management Plan including relevant operational plans shall be submitted for the written approval of Angus Council. These documents shall include detailed information on Waste management, Sanitation, Drinking water provision, Private water supply protection, and Noise. Once approved all measures specified in the aforementioned Environmental management plan and associated operational plans shall be implemented in full unless agreed in writing with Angus Council.
4. Litter within the arena shall be cleared prior to opening to the public. The cleanliness of the arena before opening should be measured as Grade B (predominantly free of litter apart from a few small items) as defined by the Code of Practice on Litter and Refuse issued under section 89 of the Environmental Protection Act 1990.
5. Waste and Litter within the site boundary shall be cleared within 7 days after the end of the event. The cleanliness of the site should be measured as Grade A (no litter or refuse) as defined by the Code of Practice on Litter and Refuse issued under section 89 of the Environmental Protection Act 1990.