

Kart Racing Noise

Solicitors Title



Prepared by Mervyn Rundle

Solicitors Title

Specialists Lawyers in Motorsport Noise

Solicitors Title, 92 South Street Exeter EX1 1EN

www.solicitorstitle.co.uk

Index

Index	2
1 Introduction	3
2 Background.....	3
3 The Law	4
4 Assessment of Nuisance	4
5 Noise Measurement.....	5
6 Character	6
7 Other Factors	6
8 Attitude.....	7
9 Penalties	8
10 What action can you take to avoid legal action ?.....	8
11 What to do if you are the subject of Noise Nuisance Proceedings	10
12 What grounds can we fight a legal Case?	10
13 General Dos and Don'ts.....	11
14 Costs.....	12
15 Where can you get advice?	13

1 Introduction

Kart racing, like all motorsport is inherently noisy and has always been so. This is unlikely to change in the near future. Many kart tracks are suffering increased complaints regarding noise and local authorities are increasingly taking legal action in an attempt to lessen noise levels.

This booklet is intended to provide some guidance for track operators and clubs who have to deal with noise issues. It is not a definitive guide to either the law or acoustic practice.

2 Background

Britain is a changing place. Population levels are increasing and there is a desire by many people to live in what they perceive as the tranquillity of the countryside. In addition our own tolerance of things which we don't like such as noise or smell is changing and what was acceptable 25 years ago is no longer so.

Motorsport is caught up in this change. Tracks which have been traditionally located in rural or semi rural areas because of the scarcity of population now find themselves with housing development taking place on their very boundaries. Many of the people who move to the countryside do so because they seek tranquillity and thus there is an inevitable conflict with many activities (karting being only one) which traditionally take place.

Tracks near urban areas find that people are not as tolerant as they used to be.

3 *The Law*

Nearly all legal action in respect of karting noise is founded in the law of “*nuisance*”. Although the law dates back many hundreds of years but it hinges on one fundamental idea –

- *All landowners should be able to do as they wish with their land unless something “escapes” which causes unreasonable and serious nuisance to another person or their land.*

In the context of Karting the “escape” is of course *noise*.

There are then 2 basic types of nuisance law which apply to karting. These are:

- **Private nuisance** - where individual people bring legal actions against a track or operator.
- **Public nuisance** - where local authority decides that the track is creating a Statutory Nuisance and as a result issues a **Noise Abatement Notice**.

Both types of legal action are founded on similar legal principles - the key point being that the noise unreasonably interferes with a person or persons ability to enjoy their property.

4 *Assessment of Nuisance*

The assessment of whether or not there is a noise nuisance from kart track is a complicated matter. It is much more complex than whether local residents complain about the noise or the kart track operator does its best to manage the noise levels. The assessment of nuisance is made more complicated because there are no rules laid down by legislation nor is there any set noise level above or below which a noise nuisance exists. Contrary to popular belief there is no rule which says that a noise nuisance occurs (at say) 55Db.

The whole issue ultimately is left to the courts to decide based on the evidence with which they are presented. There are numerous conflicting decisions, some favour karting e.g. the recent decision in Mansell Raceway and Dunkeswell Kart Club, others such as the decision at Croft (not karting but motorsport) are distinctly unfavourable.

Many factors play their part in determining whether there is a noise nuisance - the key issues are laid out below.

5 Noise Measurement

Noise is a very complicated subject. Generally noise is regarded as unwanted sound. The human ear is very sensitive and it has proven almost impossible to devise mechanical means which can replicate and measure what the ear actually hears.

The “decibel” is the basic unit of noise measurement but to talk in terms of “decibels” is a gross simplification. Noise measurement is weighted (the “A” weighting) to try to make it more like human hearing. Even using the decibel scale noise is usually measured in 3 different ways! In simple terms there are:

- Peak noise - known as LA max (not the rotax max)- this is the maximum noise that an individual noise source produces when measured instantaneously. It is usually the noise measurement that most people think of when referring to a decibel level.
- Average noise - known as the Leq - this is the average amount of noise measured when taken over a period of time such as 10 minutes, 1 hour or 8 hours. It will be appreciated that the Leq can often be very different to the LaMax. One only has to think of a kart race meeting when in a given hour there could be a senior max race and a cadet race. The peak noise will be the rotax grid but the average will be a lot less by virtue of the cadet race. The position may be complicated further by the length of each race – rotax will make more noise over a shorter time.

- Background noise - referred to as the L90 - this is the average amount of noise produced for 90% of a given time period. It is often used to determine the noise level when karting is *not* taking place so as to give a framework for comparing noise with and without karting

Decibels are also calculated on a logarithmic basis so you do not simply add two decibel levels together and get double the noise. Its more complex. It is useful to remember for karting that in order to raise the decibel level by 3Db you have to double the number of karts on the track. So if 20 karts make 75DB of noise then 40 will only make 78!

Noise can also be broken into its spectral components so that it is possible to analyse the make up of a particular noise. This might be thought of like a “graphic equaliser” where certain tones or pitch can be louder than others and consequently more annoying. This is often known as the “octave bandwidths”. There is clearly a difference in the makeup of the sound of a 4 stroke and 2 stroke motor.

6 Character

Noise is not just about the decibel level. Other factors come into play, especially in karting, where the noise itself assumes a particular character. 2 stroke kart racing with its high pitched high revving engines which fire every stroke has a particular noise signature which many people find very annoying. In addition the rise and fall of karting noise due to acceleration and tyres squeal are problems especially associated with karting and motorsport.

7 Other Factors

Noise nuisance is also based on other factors:

- Dosage – in straightforward terms this is the amount of time and number of days during a month or year in which karting takes place. Thus there is a

considerable difference, in noise nuisance terms, between a kart track which operates every day and one which only operates once per month.

- History – Although this is a factor is it NOT sadly a determining factor as many kart race operators and drivers might believe. It is no defence to an allegation of nuisance to say “We were here first”. There are no grandparent rights and a resident who is new to living beside a long established kart track has the same right to complain as one who was there before the kart track itself began.
- Planning Permission - again this is not a determining factor although it will be taken into account. Thus the fact that a local authority has granted planning permission for a kart track and its activities is no defence to a legal action from noise nuisance *even if the legal action is from the same local authority who granted the original planning permission.*
- The area in which the track operates. Traditionally many motorsport venues were located on old airfields in the countryside. At that time it was thought that if there were noise problems then only a few people would be affected. Now those rural areas are perceived as areas of tranquillity to be protected from noise and so a position which once favoured motorsport has become distinctly unfavourable. That doesn't mean that towns are any more favourable although there is a distinct impression created by many local authorities that towns are noisy places and so many thousands of people can sustain noise levels which the few in the countryside cannot.

8 *Attitude*

Curiously, *attitude*, is one of the biggest factors when considering noise levels relating to karting. No competitor or team has ever been known to complain about engine noise at the trackside - indeed most people involved in motorsport actually like the sound of a race engine! On the other hand many residents who live beside kart tracks find the noise intensely annoying. They will tell you that their chickens can't lay or that

their fish are suffering from noise stress! In reality the noise itself is of course exactly the same - it is only the attitude to it which has changed. As an example think back to Concorde – when it flew over did you think “Ah there goes British greatness – I love it” or did you think “There is an example of a mass pollution machine which should be grounded for ever”?

9 Penalties

The penalties for breaching a noise abatement notice are quite draconian. In a public nuisance action there may be up to a £20,000 fine with the ongoing fines for every day of breach plus a prosecution. In the case of a private nuisance action the remedy could be damages amounting to many thousands of pounds and a court injunction restricting the number of days on which karting could take place or complete closure. Alternatively there may be the imposition of noise levels which may or may not be able to be complied with..

Either way it's a bad situation for any kart club.

10 What action can you take to avoid legal action ?

- The first most important point is to be aware that not everyone likes the noise you make. This sounds simple but many kart racers find this extremely difficult to understand!. Raising awareness will have a positive impact on its own and although it won't necessarily lessen noise levels it may well mean that only necessary noise is created.
- Keep extraneous noise to a minimum. Loud public address systems often trigger noise complaints which then flow over into complaints about engine noise. Continuous revving when static either on the trolley (banned under MSA rules) or a gearbox kart on the dummy grid contribute to problems at many locations.
- Manage generator noise and late night activity can also be important factors.

- Monitor noise levels with the use of a meter. That will be proof of the noise levels you have produced over time and show compliance with MSA guidelines for instance.
- Keep a detailed diary of events including wind direction. Quite often environmental health officers will receive complaints when noise levels were low due to wind direction or from other activities which have nothing to do with kart racing. A good diary will help prove that.
- Liaise with the local authority and the environmental health department. Although some environmental health officers are “green” in their approach most will be quite reasonable if approached in the right way and before noise becomes a major headache for them.
- Try to get the local authority to agree the creation and implementation of the noise management plan. If possible make this a formal agreement under S106 of the Planning Acts since this will strengthen your hand in dealing with noise complaints. (Assuming you have complied of course).
- Monitoring noise levels even on practice days coupled with calling drivers in who make too much noise is vitally important. It demonstrates a commitment to noise management but also reduces the sorts of peak noise which generate complaints. Black flagging drivers with broken exhausts immediately is crucial.
- Approaching you parish council or local residents groups if only just to alert them to your calendar of events can be useful. That way sensitive residents can plan their lives around your noise. In terms of public relations offering reduced price tickets for local people to events can be beneficial.
- Encourage your drivers and officials to stay in *local* guesthouses and spend their money at the local shop or in the local pub. This means that there are members of the local community who derive financial benefit from your activities and in

turn counteracts many complaints that your track brings no benefits to the local community.

- Encouraging local drivers is of key importance. Nothing is worse than a legal case where no supporting local witnesses will come to court.
- In short *make friends with your local community and get some support there.*

11 What to do if you are the subject of Noise Nuisance Proceedings

If you get into the position where you are threatened with either a Noise Abatement Notice or a private nuisance action *get good legal advice from a firm who know about noise and motorsport immediately.*

- ***Remember: If a Noise Abatement Notice is issued you have only 21 days to lodge an appeal. If you fail to do this in time then you will be subject to the terms of notice and nothing can legally be done about it.***

Of course you are probably thinking they would say that wouldn't they as this booklet has been prepared by a firm of lawyers specialising in noise! But as we have said – understanding noise is a very specialist subject let alone arguing it legally.

12 What grounds can we fight a legal Case?

Firstly and perhaps most importantly.

- ***Just because a local authority says it's a nuisance doesn't mean that it is at law. The fact that someone complains or is annoyed does not make it a legal nuisance.*** *Abatement notices can be successfully appealed on the grounds that there is no nuisance at law. So the first step is to gather evidence to establish whether there is a nuisance. This will probably mean engaging an acoustics expert to take and check noise readings.*
- In a private nuisance action the same argument will apply – ie that there is no nuisance at law.

- A noise abatement notice can be amended by the court *but only in favour of the kart track*. So if a noise abatement notice specifies that a track can operate on say 3 days per month the court can amend this to 4 or more but not less than 3.
- The mere fact of appealing the case is likely to lead to negotiations and there is no doubt that a tracks hand is strengthened if it has joined legal proceedings.
- The employment of “*best practical means*” is a complete defence to a public nuisance action. However in order to establish this a kart track must first of all be “business premises”. (The defence is not available to private persons). There is doubt as to whether kart clubs are “businesses” operating from “business premises”. If however you do come within the definition then it is necessary to *prove* that you have employed best practical means. This is not something that you can do yourself — just because you have done your best does not mean that you have as a matter of law employed best practical means. Note also that best practical means must be employed *prior* to the issue of a Noise Abatement Notice for it to be a defence to the allegation of Statutory Nuisance although it can be employed later as a defence to any prosecution.

13 *General Dos and Don'ts*

- Don't make assumptions about noise. Common assumptions are:

The residents are all nimbys and will be ignored. Not true – many nimbys run modern Britain

All complainants lie. Some do most don't. However many are prone to gross exaggeration.

Trees will lessen the noise. Holding up a copy of the Daily Telegraph or the Sun will lessen the noise but it won't win a noise nuisance case. Tree lines can lessen noise but not as much you would think.

Lets build a berm or earth bank. All obstacles lessen noise but if you are considering this type of barrier then take good acoustic advice. You may save yourself a lot of money.

Put a bag over the noise meter. Don't even bother! Modern acoustic monitoring is such that your ruse will be discovered.

The Council granted us planning permission. Councils make lots of grants but consistency between the planning department and the environmental health department is not one.

- Do liaise with your Environmental Health Department but do NOT rely on any assurance given by the Council about noise issues. In particular do not assume that they are there to advise you or assist you except in the most general way.
- Always use your own advisers when carrying out any kind of works or noise attenuation measures. In particular get a good acoustician experience in motorsport matters to check anything you do or propose doing.
- Always try to get things in writing.
- Keep good records of noise recordings.
- Keep an accurate diary as to events (remember you can always get the numbers attending an MSA event from the permit).
- Try to get your members to understand how important noise control is.

14 Costs

The earlier you deal with a noise problem the cheaper it will be. However noise attenuation is not cheap and if you are faced with legal action you will need a budget. This always puts kart tracks at a disadvantage – complainants generally get the Council to spend public money whereas a kart club has to spend its members money.

If you do end up in court its not a foregone conclusion that you will get costs even if you win. Its unjust but it doesn't work that way sadly. Costs are always in the discretion of the court and how reasonable you have been will be taken into account. There is a big difference between a kart club which sees karting as a licence to make noise and one which sees the sport as kart racing and high noise levels as something undesirable.

15 Where can you get advice?

Solicitors Title specialises in motorsport noise. You can always email us at mervyn@solicitorstitle.co.uk. We will usually give you some upfront advice without charge.

The Motor Sports Association is a good source of information or the ABKC. Or try www.savemotorsport.com.

We would suggest not taking advice from any adviser who does not have experience of both noise *and* motorsport. The subject is just too specialist



Remember – its your club and your racing that's at stake.

(Picture courtesy of CRDSigns www.crdsigns.com)

Mervyn Rundle Solicitors Title www.solicitorstitle.co.uk

Dated: November 2010.

.