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## Can we stop noise pollution using human rights laws? *Anna Fairclough*

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Anna Fairclough tells joyjoyjoy the courts balance the competing interests of those living under a flightpath with the wider community

joyjoyjoy asks:

**///** *What human rights laws are in place related to noise? If a town is unnecessarily blighted by aircraft noise would the community have any legal recourse?*

There are no specific human rights laws relating to noise, but excessive noise pollution is covered by article 8 of the European Convention on Human Rights, and incorporated into UK law by the Human Rights Act

Article 8 protects the right to respect

for private and family life, home and correspondence. It reads as follows:

“ 1. Everyone has the right to respect for his private and family life, his home and his correspondence.

“ 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

It is well established that excessive noise can interfere with the right to respect for private life and for an individual's home. However, article 8 is what is known as a "qualified" right. Broadly, this means that interferences must be governed by a clear and accessible law, pursue one of the legitimate aims laid down in article 8(2), and be proportionate to that aim.

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The grand chamber of the European Court of Human Rights considered a case about aircraft noise called [Hatton v United Kingdom](#) in 2003. In that case, individuals living near Heathrow airport complained about a new

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scheme for regulating [night flights](#) at Heathrow. They complained that increased noise at night time meant that they were frequently woken at about 4am, after which they could not get back to sleep. They had to wear ear plugs and keep the windows closed, and the noise was having significant effects on their wellbeing and happiness. The noise had forced many of them to leave the area.

The campaigners lost their case. The grand chamber said it had "no doubt" that implementation of the new scheme was capable of interfering with the right to respect for private life and for the homes of the individuals involved. The question for the court was whether the scheme struck a fair balance between the competing interests of the individuals affected by the noise, and the community as a whole. The court accepted that there was an economic interest in maintaining night flights to London noted that restrictions were in place to reduce the impact on individuals living nearby.

The court went on to say that it would take a relatively "light touch" approach in this type of environmental pollution case, because it has only a supervisory function. It is for the state to decide between different ways and means of striking the right balance between the competing interests.

The court was unable to make any firm findings about whether the noise pollution had actually deteriorated, and found that the government had been entitled to give weight to a 1992 sleep study which suggested that the noise had only a negligible effect. The claimants had not asserted that the

value of their homes had reduced, and they were able to move elsewhere apparently without financial loss.

As to the government's decision-making process, the 1993 night flight proposals contested in the Hatton case were preceded by a series of investigations and studies carried out over a long period of time. The new measures were announced by a consultation paper to which the affected people could respond.

Overall, the court found that the authorities had made a decision within the range of reasonable responses open to them, and there was no breach of Article 8.

So, the Hatton judgment is useful in establishing that article 8 was relevant, but did not exactly help the claimants in that case. In the field of environmental pollution, the court is fairly reluctant to substitute its decisions for the assessments of national governments, and has said that it will generally only do so in cases where the striking of a fair balance between the competing interests at stake has been subject to a "manifest error of appreciation" by the government.

Where actual physical harm is shown, for example by dangerous chemicals, exploding rubbish tips or mudslides, the court will consider whether people had been adequately warned and protected, so far as possible, against known risks to their health and to their lives.

One useful aspect of article 8 is what is known as the 'procedural' obligation - which focuses on whether the government's decision making process

was fair. The court will consider whether the affected individuals have been given sufficient information, and been sufficiently involved in the decision-making process so as to enable them to contribute and to protect their interests. In *Hatton*, however, the various investigations and studies and the consultation process met this obligation.

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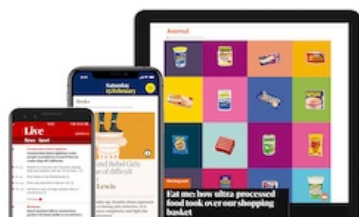


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