

**Report of: Environmental Health Business Manager**

**To: Executive Board**

**Date: 19 February 2007**

**Item No:**

**Title of Report:**

**Officer Response to the Environmental Enforcement Scrutiny Review**

### **Summary and Recommendations**

**Purpose of report:** This report was requested by the Executive Board to provide officer comments on the recommendations arising from the Environment Scrutiny review of environmental enforcement.

**Key decision:** No

**Portfolio Holder:** Councillor Jean Fooks

**Scrutiny Responsibility:** Environment

**Ward(s) affected:** All

**Report Approved by:** Councillor Jean Fooks (Cleaner City Portfolio Holder) Jeremy Franklin (Legal Services), Ian Wright (Environmental Health), Andy Collett (Financial and Asset Management)

**Policy Framework:** This supports the City Council's vision of improving the environments where we live and work

**The Executive Board is recommended:**

To adopt recommendations 1-3, 5 & 6, & 8-12 with caveats, where appropriate, as set out in this report.

### **Introduction**

At the meeting on 29th January 2007 the Executive Board asked for an officer report on the recommendations contained in the Environment Scrutiny Committee report on their review of Environmental Enforcement.

### **Background**

A review of environmental enforcement by the Council has been carried out by the Environmental Enforcement Scrutiny Review Group which was endorsed by the Environment Scrutiny Committee. The report contains 12 recommendations to be considered by the Executive Board. Prior to adopting

the recommendations the Executive Board asked for the opinions of officers. The recommendations have been considered by the Strategic Director for the Environment and Business Unit Managers of the relevant services at the meeting of the Cleaner Greener Group on 31st January.

### **Officer comments**

The Cleaner Greener Group agrees with most of the recommendations subject to the caveats below. Only in the case of two recommendations (numbers 4 and 7) is there disagreement.

**Recommendation 1** - That the Council adopts an enforcement policy / framework as soon as possible, which reflects the Council's aims and objectives in relation to environmental enforcement. The policy should be well publicised so that offenders are aware of the potential consequences if they are caught committing an environmental crime and the public know what response the Council will take in a given situation.

*Response - The Executive Board has approved the Environmental Enforcement Protocol, for consultation. It provides a framework that reflects the Council's aims and objectives. Following the consultation process it will be published on the Council's website and examples of how the Council will deal with certain offences will be included to provide clarity for the public. The above ongoing action therefore addresses recommendation 1.*

**Recommendation 2** - The Council agrees a uniform approach to issuing FPN's (Fixed Penalty Notices) across the range of offences that they can be issued for, so that there is a standard response in all areas of the city to a particular offence.

*Response - Whilst it is agreed that there should be a consistent approach to the issuing of (FPN's) across the range of offences, it is not possible to introduce total uniformity. This is because good enforcement must be based on several guiding principles including proportionality, expediency, priorities/targeting and transparency. In line with best practice, each incident must be viewed on its merits and factors such as the offender's history, local issues and the public interest should inform the enforcement decision. Experience elsewhere has shown that FPN's will need to be issued sensibly, enforced even-handedly and be seen as a response to genuine problems. It is essential therefore that they are only issued where there is adequate evidence to support a prosecution if a notice is not paid and that any non-payment is followed up. In the light of this, the recommendation should be varied to take on board the above.*

**Recommendation 3** - An agreed set of "indicators of success" that the Council's enforcement work can be judged against should be presented to ESC by April 2007, along with the methodology for measuring the indicators. At least one member of ESC should be involved in choosing these indicators.

*Response - It is agreed that there ought to be indicators of success and these should relate to the cleanliness of neighbourhoods. Since the overall aim of this environmental enforcement work is to improve the cleanliness of the environment - this can be measured by using Best Value indicators BV199a-d. The indicators provide a national benchmark against a wide range of criteria and the Council has experience in calculating the figures. Historical data is held which can be used to measure progress and success, (also in the context of the performance of other local authorities). This will address the recommendation.*

**Recommendation 4** - The city centre Enforcement Officers don't continue with their education work, but focus on enforcement. There are other officers in the Council (such as Malcolm Hart in City Works) who already cover the education side of enforcement. Street Wardens also do some informal education as they patrol in their areas and they visit schools.

*Response - There was agreement among the Members who attended the Enforcement Seminar in November that it is not possible to divorce education from enforcement. There is a plethora of advice and guidance for local authorities which consistently emphasises the role of education in enforcement. Advising dutyholders what is expected of them and providing clear statements of required standards is a fundamental part of the enforcement process, irrespective of whether this is considered to be "education" or not. Best practice models, e.g. the Cabinet Office's Chartermark guidance for local authority regulatory services, include education as an essential ingredient for successful enforcement. Audits of good local authority regulatory services expect to find a balance of actions from education through to prosecution that help demonstrate value for money (since compliance achieved through education is in general far less costly than compliance achieved through prosecution). In addition, Best Value Indicator BV166 requires enforcement authorities to have targeted educational and information programmes. Finally, the Council has signed up to the Government's Enforcement Concordat and a key part of this is that the Council will inform "business and others who are regulated" about legal standards. In the light of the above this recommendation is not supported.*

As a minor point of clarification, the officer cited in City Works does not carry out Cleaner Greener education work.

**Recommendation 5** - The city centre Enforcement Officers provide advice and support to other enforcement teams, using their specialist knowledge to ensure consistency and good practice in enforcement across the city.

*Response - This is agreed. Where demands permit this widening of their role, the Environmental Enforcement Officers can provide advice and support to other enforcement teams to improve consistency of enforcement in other Business Units.*

**Recommendation 6** - Members are informed as soon as possible what officers are responsible for in enforcement terms – e.g. who can issue FPN's

and for what offence, which officers can take forward prosecutions, and most importantly, who is in overall charge of enforcement within the Council (possibly the Environmental Health Business Manager). This is so that the lines of responsibility are clear to members and appropriate support and guidance available to those carrying out enforcement work. This should be done within 3 months (by April 2007) and Executive Board should advise Environment Scrutiny once this work is done. It is also necessary for the relevant officers to have the delegated authority to do this work.

*Response - The clarification of officers powers and their areas of enforcement should pose no difficulties. Each business manager should be aware of the roles of their staff and what training they have received. The Constitution is presently being updated and any necessary changes can be incorporated at that time. Sharon Cosgrove, Strategic Director for the Environment, is Oxford City Council's Cleaner Greener Enforcement Champion and therefore provides the lead. This addresses recommendation 6.*

**Recommendation 7** - Appropriate City Works staff (managers and supervisory staff were suggested to the review group) are trained and given the powers to enable them to issue Fixed Penalty Notices for environmental offences as soon as possible. The Environment Scrutiny Committee should be informed once this has happened.

*Response - This recommendation is not supported as it will not make best use of City Works staffing resources and will divert officers from current priorities at a time of considerable pressure. There would be a considerable training requirement if selected City Works staff were to be skilled up to issue FPNs and this would result in either slippage on core programmes or the creation of additional unfunded costs. It would be more cost effective for the Council to make better use of existing knowledge and skill sets – in essence playing to officers' strengths.*

**Recommendation 8** - The Executive Board asks officers (perhaps through the Cleaner, Greener Working Group) to widen the enforcement protocol between Environmental Health and City Works to other business units and also to include other environmental crimes, not just fly tipping. As other teams (such as Street Wardens) become more involved in enforcement work, it will be important for each to understand the roles and responsibilities of the others. Proposals should be put before the Executive Board and the correct delegated authority given to officers carrying out enforcement work.

*Response - The Cleaner Greener Group is already coordinating enforcement work and the joint approach on fly tipping now includes other Business Units such as Leisure and Culture and Oxford City Homes. In addition other joint enforcement work is being carried out, for example the Dog Warden is carrying out patrols with the Street Wardens. This recommendation has therefore been actioned.*

**Recommendation 9** - The review group recommends that the Environment Agency are approached to find out what they would be prepared to offer

Oxford City Council in terms of help and assistance to improve enforcement in Oxford. A local agreement with the Environment Agency should be signed without delay. The Environment Scrutiny Committee should be kept up to date on progress with this.

*Response - The Council has been working with the Environment Agency (EA) for some time now. This has taken two forms; following up individual incidents in the City and working with the Agency via OLEG (Oxfordshire Local Environmental Enforcement Group). Due to the cross-cutting nature of waste enforcement, the EA's preference is for a comprehensive single local agreement covering the whole of Oxfordshire with all enforcing authorities as signatories (rather than a single agreement with Oxford City Council). OLEG is currently working on National Protocol 6 to establish such a local agreement. From discussion with the EA's Officers it is clear that they are focused on major incidents that have a substantial impact and have limited spare resource to investigate issues such as flytipping on a scale dealt with by the Council. This recommendation has therefore been actioned.*

**Recommendation 10** - An action plan setting out the process to invoice and collect costs from commercial and retail landowners on whose land an environmental crime has taken place, such as graffiti on utility boxes, is prepared and reported to Environment Scrutiny Committee by April 2007. If it is not possible to do this, the Committee should be told the reasons why as soon as possible.

*Response - City Works Street Scene Officers have visited other local authorities to identify best practice regarding recharging for issues such as graffiti on utility boxes. An approach based on the Swindon model of local agreements with utility companies is under negotiation and will be rolled out in the city in due course. This recommendation has therefore been actioned.*

**Recommendation 11** - Effort should be made to ensure all Oxford University Colleges agree that City Works are able to clean graffiti off their walls, without having to seek permission each time. Costs should also be recovered where possible. Progress with this should be reported to Environment Scrutiny Committee in 3 months time.

*Response - City Works Street Scene Officers have approached several University Colleges in an attempt to negotiate agreements for cleaning graffiti on their premises. These negotiations are continuing and it is hoped that it will be possible to conclude an agreement with all or some of the Colleges affected. This recommendation has therefore been actioned.*

**Recommendation 12** - Supermarkets should be charged a collection fee when they pick up trolleys from the City Works depot, providing schedule 4 of the Environmental Protection Act 1990 is adopted by the Council. The fee should cover the cost of recovering them, taking them back to the depot, storage and administration, in line with legislation.

*Response - The officer preference is to encourage supermarkets to collect their own abandoned trolleys. Where trolleys are collected by City Works, a recovery and charging scheme will apply. It is anticipated that this will be in place by the end of the financial year. This recommendation has therefore been actioned.*

### **Financial implications**

There are no financial implications arising from this report.

### **The Executive Board is recommended:**

To adopt recommendations 1-3, 5 & 6, & 8-12 with caveats, where applicable, as set out in this report.

*Background papers: None*

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