

Report of: Environmental Health Business Manager

To: Executive Board

Date: 18th June 2007

Item No:

Title of Report: Enforcement Protocol - consultation results

Summary and Recommendations

Purpose of report: This report advises the Executive Board of the results of the consultation on the Enforcement Protocol prior to its implementation across all Business Units and seeks its approval to formally issue the Protocol.

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), Christopher Kaye (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:

- (a) approve the issue of the Enforcement Protocol to all Business Unit Managers, and
- (b) approve the publication of the protocol on the Council's website and staff intranet.

Introduction

1. On 29th January 2007 the Executive Board approved the attached draft Enforcement Protocol for consultation. The protocol was developed by representatives from the Business Units involved in enforcement and aims to provide a straightforward guide to the public and others that includes the following:

- (a) the areas of work that are covered by the protocol,
- (b) a definition of what enforcement means,

- (c) the main principles of enforcement,
- (d) what the Council is aiming to achieve by enforcement,
- (e) explanations of when enforcement action would be taken.

Consultation

2. A single multiple choice question was asked in a deliberate attempt to keep the consultation exercise simple. The choices were based on how enforcement is often reported in the media, where it is often referred to as being "too harsh" or "too soft" and if it is considered reasonable it is "about right". The final choice was "didn't understand it" as there will always be a percentage of people who cannot interpret or understand official documents.

3. The draft protocol and questionnaire was sent to 150 householders who had contacted the Environmental Health Service regarding environmental concerns such as dog fouling, rubbish problems, litter, smoky bonfires etc. These individuals were considered to be interested in environmental issues, motivated and therefore likely to provide a reasonable return rate for the consultation.

4. The second element of consultation was to place an interactive Quickpoll item on the front page of the staff intranet which is accessible to all staff involved in enforcement work. This was the first occasion that the staff intranet Quickpoll had been used for a work-related issue. The same multiple choice question was included for the staff to complete.

Results

5. A total of 36 householders responded to the consultation, giving a response rate of 24%. The results were:

Too harsh	1
About right	30
Too soft	2
Didn't understand it	3

6. This means that an overwhelming 83% of respondents considered that the protocol was "about right" which is a positive result.

7. A number of additional comments were received, including:

- I would support these measures and hope you have the resources to enforce them, especially in my area.
- Well explained and good examples. Sensible and helpful.
- I hope it will be available in other languages and be just as clear.
- I trust this does not mean expensive translation of literature.
- Thanks for the opportunity to comment.
- The Enforcement Protocol was thorough, logical and who could reasonably object to it?
- I applaud your decision to take these people to task.

- Whilst I think the protocols are good, I am unconvinced about enforcement.
- "About right" is, well, about right!

8. A total of 139 responses were received from the interactive Quickpoll and the results were:

Too harsh	1
About right	109
Too soft	24
Didn't understand it	5

9. This means that 78% of the staff who responded are of the opinion that the Enforcement Protocol is "about right", which is another positive result.

Enforcement Seminar

10. The results of the consultation were presented at the second Enforcement Seminar held on the 26th April to which all members were invited. There was agreement that the results of the consultation were encouraging and that there was no need for any amendments. It was agreed that the protocol should be sent to the Executive Board for approval.

The next steps

11. If approval is obtained from the Executive Board then the protocol can be issued to all Business Unit Managers for them to advise their staff involved in environmental enforcement of its existence and status as an approved document. It can then be published on the Council's website to raise public awareness and be added to the intranet so it is available to all staff.

Financial implications

12. There are no financial implications arising from this report.

The Executive Board is recommended:

13. The Executive Board is recommended to:

- approve the issue of the Enforcement Protocol to all Business Unit Managers and
- approve the publication of the protocol on the Council's website and staff intranet.

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Background papers: None

Clean Neighbourhood Enforcement Protocol

This protocol covers the Cleaner, Greener enforcement work carried out by a number of Council services. The purpose of our enforcement work is to protect and enhance the environment and the places where people live and work. Our aim is to provide a firm but fair approach to enforcement that can be understood by everyone.

Breaking the law - some examples

- Dropping litter or chewing gum and not clearing it up
- Dumping a bag of rubbish on the pavement
- Street trading without a licence
- Letting a dog foul in a public place and not clearing it up
- Causing a nuisance by feeding pigeons
- Blocking the pavement with tables and chairs outside a café
- Flytipping rubbish in a park or layby
- Putting rubbish out too early

Decisions about enforcement action

We cannot take action every time we find evidence of an offence. We have to use our judgement to decide when enforcement action is possible and necessary.

We will ask ourselves the following questions when we find that a law has been broken:

- Has the offender been given an opportunity to rectify the offence?
- Is the offence serious? Is it a danger to the public?
- Is the offence spoiling the local environment?
- Has the offender done it before?
- Is there a reasonable excuse?
- Is it likely that it will happen again?
- Does the offender care about their responsibilities - or not?
- Are there aggravating circumstances?
- Is the offender in a fit state to stand trial?
- What is the likely severity of punishment that the courts will impose?

We consider other matters as well

An offence may seem minor - like dropping litter or gum. But if the offence is often repeated by many people, the overall effect can be very damaging. So we may need tough enforcement action to control a minor but widespread problem.

We need to protect investment and enhance tourism and economic vitality. For example, the City centre is an international tourist attraction and Cowley

Road has been improved using public money. We will be tough on anyone who spoils these streets with litter, rubbish or illegal trading.

Sometimes there has to be give and take, particularly where the problem is short term and there are understandable reasons the problem exists. For example, a builder is working on a house and has ordered a skip to arrive at ten o'clock in the morning. He leaves some waste outside the house at a quarter to ten to make room for a delivery of materials but the skip lorry is delayed for a few hours because of road works.

What kind of enforcement action is taken?

We can take tough enforcement action to protect public safety and to help people enjoy the local environment. However, sometimes we decide that tough enforcement action would not be right. We can get the same result by giving a warning, or advice.

We use our judgement to decide what kind of enforcement action best fits the crime. Here are some examples of enforcement action:

- A verbal warning
- A written warning
- A legal notice
- A formal caution
- A fixed penalty fine
- Prosecution in court
- Seizing goods or vehicles, for example from an illegal trader
- A court injunction to stop something happening again and again

Fixed penalty fines can be an effective form of enforcement. We usually offer a fixed penalty fine as an alternative option to being prosecuted. Formal cautions are another alternative to prosecution.

We will never offer the option of paying a fixed penalty notice or a formal caution unless there is sufficient evidence for a prosecution. If the offender refuses the options of a fixed penalty fine or caution, or doesn't pay the fine, the case will then generally go to court.

The Enforcement Concordat

The government has issued a code that contains principles of good enforcement. This is called the "Enforcement Concordat". We have signed up to this code.

Openness and helpfulness

We will publicise this enforcement protocol so people know what standards are expected. We will help you keep within the law. We will always explain what we are doing and why. We will explain the likely timetable for enforcement action and we will make sure people know about their rights of

appeal. We will make sure people know how to complain. We will ensure those people who cannot read or speak English receive help to understand this protocol.

Getting the balance right

We will not take harsh enforcement action against every petty technical offence. However we will not be soft on serious offences. Any enforcement action we take will be proportionate and expedient. We will take all the circumstances into account such as the severity of the crime, the previous record of the offender and what warnings we have given.

Targeting

We will deal with the worst first. We may have to walk past a petty offence if we need to deal urgently with a serious one. We may also concentrate all our efforts in "hot-spots" rather than spread out what we do thinly across the whole City.

Consistency

The facts of each case will be unique. Some offences are much worse than others. Our enforcement priorities will change from area to area. But we will train staff to apply the law and this protocol in a consistent way as far as possible. Management will look at cases regularly to check for consistency.

Working with other Enforcers

We will have regular contacts with other enforcement organisations e.g. the County Council, to ensure effective co-ordination, avoid inconsistencies or duplication, and to ensure that the most appropriate enforcer takes action.

Case studies

Here are some examples of how we would use this enforcement protocol to help our choice of enforcement action.

The rubbish dumper

There is a problem with people dumping rubbish on the corner of a street in Oxford and it is considered to be a public health problem because rats have been seen. All local residents are sent a letter asking them not to dump rubbish or put it out too early for collection. A month later an inspection of the street corner reveals a bag of rubbish dumped by Mr K. We will prosecute Mr K because the rubbish problem is serious.

Rubbish out too early

Neighbours on a street in Oxford are complaining that Mrs B often puts her rubbish out on the pavement several days before the collection day. She was

seen doing it last year and was issued with a legal notice requiring her to stop putting it out early. We found she was doing it again and so we will issue her with a fixed penalty fine.

The litter dropper

Mr H is spotted dropping a crisp packet on the grass in a park in Oxford. He is approached and asked to put it in the bin. He apologises, picks up the crisp packet and puts it in the nearest litter bin. No further action is taken.

The careless dog owner

The Street Wardens are patrolling an area of Oxford and catch Mr C walking away after his dog has fouled the pavement. We tell him he could be issued with a fixed penalty fine or prosecuted, but because it is a first offence we get him to clear it up and write to him giving him firm advice about "scooping the poop" in future.

The couldn't care less dog owner

Residents have complained about dog fouling on a street in Oxford. The Dog Warden has put up stickers on lamp posts, sent a letter to residents in all affected roads and asked the Street Wardens to help keep an eye out in that area. A local resident, Mr F, is caught walking away after his dog has fouled the pavement. We issue him with a fixed penalty fine because we have targeted the area for special attention.

Bins out at the wrong time

A shop keeps leaving its wheelie bins out all day blocking the pavement on a busy street. The manager is asked to stop but the bins are left out again. A legal notice is served requiring the bins to be taken in by a certain time. The wheelie bins are found out at the wrong time and so we issue a fixed penalty fine on the shop.