

# MINUTES OF THE SCRUTINY COMMITTEE

Tuesday 2 June 2015

www.oxford.gov.uk



**COUNCILLORS PRESENT:** Councillors Simmons (Chair), Hayes (Vice-Chair), Coulter, Fry, Hollick, Henwood, Lloyd-Shogbesan, Smith, Taylor, Upton and Fooks.

**BOARD MEMBERS PRESENT:** Councillor Dee Sinclair

**INVITEES AND OTHER MEMBERS PRESENT:** Councillor Elise Benjamin, Councillor Ruthi Brandt and Councillor David Thomas

**OFFICERS PRESENT:** Richard J Adams (Community Services), Jeremy Franklin (Law and Governance), Elaine Philip (Markets Manager), Andrew Brown (Scrutiny Officer) and Catherine Phythian (Committee Services Officer)

## 1. ELECTION OF CHAIR FOR THE COUNCIL YEAR 2015/16

The Scrutiny Committee elected Councillor Simmons to be the Chair for the Council Year 2015/16.

## 2. ELECTION OF VICE-CHAIR FOR THE COUNCIL YEAR 2015/16

The Scrutiny Committee elected Councillor Hayes to be the Vice - Chair for the Council Year 2015/16.

## 3. APOLOGIES FOR ABSENCE

Apologies for absence were received from Cllr Altaf-Khan (substitute Cllr Fooks) and Cllr Darke.

## 4. DECLARATIONS OF INTEREST

There were no declarations of interest.

## 5. UPDATES SINCE THE LAST MEETING

The Chair welcomed Cllr Taylor as a member of the Scrutiny Committee and thanked Cllr Anwar for her contribution to the work of scrutiny.

The Committee paid tribute to the valuable contribution that the late Cllr Val Smith had made to the work of the Scrutiny Committee and the Scrutiny Housing Panel.

Cllr Van Coulter reported that the Inequalities Scrutiny Panel had concluded its work and would present its report to the Scrutiny Committee meeting on 30 June 2015, for onward submission to the City Executive Board on 9 July 2015.

The Committee noted the dates for the next Standing Panel meetings.

## **6. SCRUTINY OPERATING PRINCIPLES AND PREPARATION FOR THE 2015/16 WORK PROGRAMME**

The Scrutiny Officer presented the report.

### **Scrutiny Operating Principles 2015/16**

In discussion the Committee agreed the following points:

- The Finance and Housing Standing Panels should continue in 2015/16;
- Membership of the Housing Panel should be increased to 6 councillors;
- Chairs of the Standing Panels would be elected at the first meeting of that Standing Panel;
- The timing of the Finance Panel meetings should be flexible so that if possible it could report back to the Scrutiny Committee on the budget proposals.

The Committee resolved to APPROVE the scrutiny operating principles for 2015/16 as listed in the report.

The Committee resolved to APPROVE that the following councillors should serve as members of the Finance and Housing Standing Panels in 2015/16:

- **Finance Standing Panel:** Cllrs Simmons, Hayes, Fry and Fooks.
- **Housing Standing Panel:** Cllrs Benjamin, Henwood, Hollick, Sanders, Smith and Wade.

### **2015/16 Work Programme**

The Chair said that the 2015/16 Work Programme would be discussed and determined at the meeting on 30 June 2015. Members were asked to submit any further topics to the Scrutiny Officer by 12 June 2015. The Scrutiny Officer reminded the Committee that, if appropriate, some items on the work programme could be the subject of a member briefing session rather than a scrutiny review.

## **7. REPORT OF THE LOCAL ECONOMY SCRUTINY PANEL**

Cllr Fry presented the report and recommendations of the Local Economy Panel which had been formed to examine the situation of small and medium enterprises in and near the city centre during a time of major developments which will affect the trading environment while construction occurs. The Panel

considered how the City Council could make the city centre even more attractive to the public and to local businesses.

In discussion the following points were made:

- That there was a case for the Local Economy Panel to continue looking at this, and related issues, in other parts of the city in 2015/16;
- That consideration of the business case for a BID in Oxford City Centre should be added to the work programme and that this should include looking at the scope for public involvement in that initiative;
- That there was a strong argument for returning to previous practice in having a dedicated point of contact / lead officer for businesses within the Council.

The Scrutiny Committee resolved to APPROVE that the Local Economy Panel Report on Support for Businesses in the City Centre should be submitted to the City Executive Board subject to the following amendment to Recommendation 7 (text in italics):

7. We recommend that the City Council takes a lead in establishing and facilitating a city centre commercial property landlord forum. This would be intended to bring together the owners of commercial properties, including the City Council, to ensure that there is a coordinated approach towards issues affecting the city centre, such as the minimisation of the time during which premises are empty. *The forum could be chaired by the Leader of the Council and linked to the work of the Town Team and constituted based on the model of the previous Pensions and Language School forums. We also suggest that its membership should include a representative of each political group and that City Councillors should be able to observe meetings of the forum.*

## **8. CITY CENTRE PUBLIC SPACES PROTECTION ORDER (PSPO)**

Cllr Sinclair, Executive Board Member for Crime, Community Safety and Licensing and the Service Manager, Environmental Protection presented the report. She said that this was the second Public Spaces Protection Order (PSPO) in Oxford and that it was aimed at tackling long-standing problems of anti-social behaviour within the city centre. She said that it was the Council's intention to be fair and balanced in its enforcement of the PSPO.

The Committee heard the following addresses:

Cllr Thomas: urged the Council to reconsider its position on busking as he believed that the consultation responses suggested there was no enthusiasm for such a measure. He suggested that the problems associated with busking would be better managed through use of a Community Protection Notice. He said that the Code of Conduct for Busking and Street Entertaining needed revision and referred the Committee to examples of documents produced in York. Copies of the personal material circulated by Cllr Thomas at the meeting, but which do not form part of the Council report, are appended to these minutes.

Cllr Brandt: urged the Council to take a sensitive and collaborative approach with local organisations and communities to deal with anti-social behaviour issues rather than to introduce the PSPO.

Giles Payne of Crisis Skylight, Oxford - welcomed the Council's decision to revise its position on rough sleeping and asked that they reconsider their position on begging. He said that it would be difficult to differentiate between instances of rough sleeping and begging and questioned the practicality of imposing Fixed Penalty Notices.

The Committee asked a number of questions around: what powers PSPOs replace, alternative powers available to the City Council, the wording and interpretation of the PSPO, how evidence is gathered, the enforcement process, and how representative the results of the consultation were.

In discussion the following points were made:

**Control of dogs and street drinking:** The Committee noted that there was a legal requirement on the Council to replace the existing city wide public space restrictions on dog control and street drinking. The inclusion of these issues in the PSPO was a replacement of existing provisions.

**Begging:** The Committee considered a proposal that 'persistent begging' should be removed from the PSPO. A majority of members did not support this proposed change. The Committee also discussed whether 'persistent begging' should be changed to 'persistent and aggressive begging'. A majority of members did not support this proposed change.

**Enforcement:** The Committee expressed concerns that enforcement was potentially quite a subjective matter and asked what guidance or rules were given to officers. The Service Manager, Environmental Protection explained that the Council followed a 3 stage approach to enforcement:

1. Early intervention & discussion
2. Issue of a Fixed Penalty Notice
3. Prosecution

He said that the preferred approach was always to take early action and speak to the individuals about the problem. This was found to be the most effective approach when dealing with anti-social behaviour. He offered to provide the Committee with a report detailing the breakdown between early intervention and enforcement actions. He informed the Committee that a corporate enforcement policy was being developed and would go to the City Executive Board later in the year. This would in effect be a code of conduct for enforcing officers. The Committee suggested that guidance should be available to officers and be in the public domain before any enforcement action is taken.

**Busking / Code of Conduct:** The Committee considered a proposal to remove 'breaches of the Code of Conduct for Busking and Street Entertaining in Oxford' from the behaviours included in the PSPO. A majority of members did not support this proposed change. The Committee supported having a code of

conduct for buskers and the principle that buskers should busk for a maximum of 60 minutes in any one place, as this enables more people to have the opportunity to busk in prime locations. The Committee felt that the City Council's Code of Conduct for Busking and Street Entertaining in Oxford could be strengthened and should be reviewed in light of examples of policies in other cities such as Liverpool and York, as well as input from groups such as the Musicians Union.

**Sleeping in toilets:** The Committee noted concerns about 'Sleeping in toilets' as this is primarily a safeguarding issue. The Committee suggested that officers should look at whether including this behaviour in the city centre PSPO would have a differential impact on equalities, for example by affecting women more than men.

The Scrutiny Committee AGREED to make the following recommendations to the City Executive Board:

1. that an Enforcement Code of Conduct for Officers should be produced and that this code should be in place and in the public domain before any enforcement actions are taken under the City Centre Public Spaces Protection Order;
2. that the existing 'Code of Conduct for Busking and Street Entertaining in Oxford' should be reviewed and revised to provide a more comprehensive "Guide to Busking and Street Entertaining in Oxford". This guide should be accessible to buskers, street entertainers, businesses and the public, and draw on examples of good practice from other cities such as Liverpool and York, as well as input from stakeholders such as the Musicians Union;
3. that officers are instructed to look at the differential equalities impact of the proposal to include the behaviour of sleeping in public toilets within the City Centre Public Spaces Protection Order, having regard to safeguarding concerns for vulnerable adults.

## **9. COVERED MARKET LEASING STRATEGY**

The Markets Manager presented the report which provided details of the updated leasing strategy for the covered market. She explained that the updated Leasing Strategy builds on the 2007 leasing strategy, by incorporating the conclusions and recommendations of the 2013 review of the covered market management and operations. The draft revised leasing strategy was shared in a meeting with covered market traders in February 2015 and circulated to all traders for consultation. No substantive responses or concerns were received by officers.

The review identified a range of improvements which were needed to raise the market's trading performance. This included the need for a change in the retail mix and improvements in the quality and range of traders.

In discussion the Scrutiny Committee made the following points:

- It was essential that the distinctive character of the market was maintained;
- Were there sufficient incentives to attract the right mix of traders;
- the wording at paragraph 3.13 should be reviewed for clarity.

The Scrutiny Committee AGREED to make the following recommendations to the City Executive Board:

1. That paragraph 4.4. should be amended to read “Uses which detract from the Market’s special character will be ~~discouraged~~ **avoided**, for example, electrical / white goods, mobile phones, travel agents, estate agents, nailbars and other ‘high street’ type operators.”
2. That paragraph 4.9, bullet point 6 should be amended to read: “Independent with limited (~~typically~~ **usually** less than 10) other shops.”

## **10. REPORT BACK ON RECOMMENDATIONS**

The Scrutiny Officer presented the report back on recommendations. He said that he was chasing for updates and for the outstanding written responses from by the Executive. The Chair said that it was pleasing to note that the majority of scrutiny recommendations were accepted by the Executive.

The Committee NOTED the report.

## **11. MINUTES**

The Committee resolved to APPROVE the minutes of the meeting held on 27 April 2015 as a true and accurate record subject to the following amendment:

- that Cllr Coulter be included in the list of those present.

## **12. DATES OF FUTURE MEETINGS**

The Committee NOTED that next meeting was scheduled for 30 June 2015, and that further meetings were scheduled on the following dates:

7 September 2015  
6 October 2015  
2 November 2015  
8 December 2015  
12 January 2016  
2 February 2016  
7 March 2016  
5 April 2016

The Committee agreed that all future meetings would start at 6.15pm.

**The meeting started at 6.30 pm and ended at 8.15 pm**

This page is intentionally left blank

**Appendix to the minutes–Agenda item 8: PSPO**

**Documents circulated by Cllr Thomas at the Scrutiny Committee meeting on 2 June 2015 – this material is not part of the Council report.**

This page is intentionally left blank

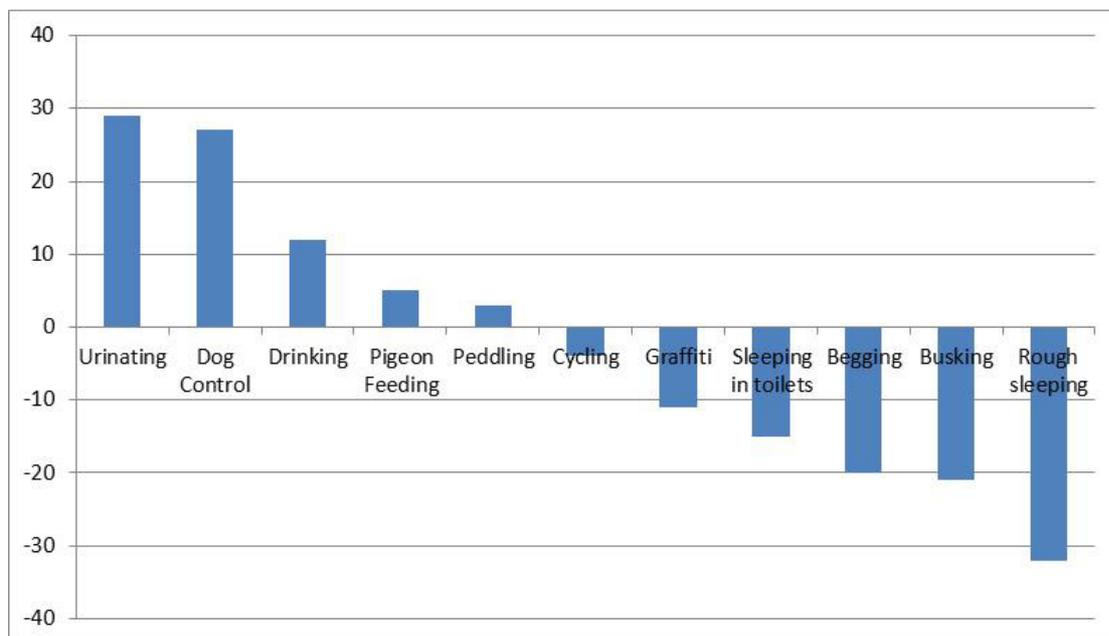
## Non-Compliant Busking Public Opinion

Submission to Scrutiny Committee from Councillor David Thomas 2/6/15

### PUBLIC RESPONSE

Consultation asked “if busking should be Include in the PSPO?” What was the public response?

- Second lowest ‘YES’ response behind rough sleeping.
- 53% responded ‘NO’. This was the third highest percentage behind rough sleeping (60%) and begging (54%)
- Third least level of enthusiasm (YES -NO percentage)



**Figure 1. Public Enthusiasm for behaviours to be included in PSPO**

- On-line petition with 5,000 signatures asking for non-compliant busking to be removed from the PSPO
- Musicians’ Union have advised against using a PSPO to regulate busking

**CONCLUSION – NO PUBLIC or PROFESSIONAL APPETITE TO SEE THIS MEASURE INTRODUCED.**

### AREAS OF CONCERN

- **Poorly targeted**– anti-social behaviour referred to is not carried out by buskers, but in fact by pseudo-buskers. So PSPO targets the wrong group.

- **Unfit-for-purpose** – Code of Conduct has not been refreshed or reviewed for a decade (other than having the instruction ‘to smile’ removed last week). Officers have admitted it no longer reflects best practice. Irresponsible to make non-compliance with an out of date code a criminal offence. ( theoretically “not enjoying yourself” would be non-compliant behaviour)
- **Unnecessary** – sufficient powers already exist to deal with recalcitrant pseudo-buskers or anti-social genuine buskers through **Community Projection Notices** (See Appendix A for comparison of CPN and PSPO drawn up by Jeremy Franklin). CPN has advantage that it can reflect the particulars and sensitivities of a given situation. Government PSPO guidelines stress that existing powers should be fully explored before enacting a PSPO.
- **Reputational** – travelling buskers will avoid Oxford for less confrontational and heavily regulated cities, and Oxford gains a reputation for criminalising busking.
- **Deployment of summary powers** – high risk the PSPO will be deployed with intimidation (See Appendix B for evidence of behaviour of Street Ambassadors last week), with a very low bar set for what constitutes ‘anti-social behaviour’ and need for supporting evidence.
- **Tone** – encourages a culture of confrontation whilst micro-management of busking is at odds with self-expression and spontaneity (sucks the joy out of life!)
- **Licence** – removing the need for a licence (which is welcomed) does not need a PSPO in place to implement. The two are only connect in that they are being implemented at the same time.

## **CONCLUSION – PSPO IS AN INAPPROPRIATE TOOL TO REGULATE BUSKING IN THE CITY CENTRE**

### **ALTERNATIVE PROPOSAL RECOMMENDATION**

Follow the approach taken by Labour portfolio holder in York City Council

- **Review and update code of conduct to reflect best-practice through consultative process (residents, buskers, business owners, campaign groups, officers) with problem resolution flow chart using CPNs as a back-stop for enforcement**
- **Produce a ‘guide for businesses’ to facilitate interaction between business owners and buskers**
- **Remove crime of non-compliant busking from PSPO.**

Appendix A

## Appendix B

### **Statement of busker's experience of busking in Oxford 27<sup>th</sup> May 2015**

I arrived in Oxford last Wednesday 27th May for a spot of busking on Cornmarket street. I was approached by two council officers halfway through my show. They asked me if I had a license to sell my CDs. I told them my CDs were an extension of my busking act, available for free, and people could make a donation if they wanted to. Their response was that I needed a license to distribute my CDs. I said I wasn't distributing them per se, they were in a box and available as an extension of my busking act, along with fliers. **They told me that if I didn't remove my CDs from display immediately, they would go back to their office round the corner and return with an £80 'on the spot' fine.** I refused to remove my CDs from display and said I believed my activities were entirely lawful and that I intended to continue with my show. They said that they would return with the fine. I replied that I wouldn't pay the fine and they threatened to prosecute me if I didn't pay. I asked them why they were doing this, they said that they were only doing their job, but my strong impression was that they seemed to be enjoying the confrontation and their imagined power over me as a street performer. At this point some Malaysian tourists wondered over and asked if they could take a CD, I replied that they were welcome to. They wanted to make a £5 donation, which I was happy to accept. The council officers interrupted the tourists in a rather aggressive manner and said, 'You don't have to pay for that you know', the tourists looked rather embarrassed. They ignored the officers and made the donation. I asked them where they were from and we had a brief and friendly chat. The officers left and I resumed my show.

They returned around 20 minutes later with another lady from the council who introduced herself as a chief licensing officer (as far as I remember). She asked me for some minutes of my time. I replied that I'd already spoken with her colleagues who threatened court action, and I wasn't interested in wasting more of my time discussing all of this, I just wanted to continue my music performance. She repeated that she would only take up a few minutes of my time and that it was important. I agreed to speak with her. She asked me if my CDs were for sale. I replied as I'd done earlier, my CDs were an extension of my busking act, available for free, and people could make a donation if they wanted to. She asked me to confirm that if someone wanted to take a CD and make no payment, that I would have no objection. I replied that as long as they didn't take the whole box of CDs, I'd have no objection. She thanked me for my time and said I could continue busking, before she left she went over some of the key points from the Oxford buskers code of conduct. She seemed like a reasonable person.

My feeling at the time was that most buskers, especially younger buskers, would have felt so intimidated by the first two council officers that approached me, that they would perhaps have been afraid to busk in Oxford again. I was pretty shaken up, but felt vindicated when a smart businessman approached me some minutes later and said 'f\*ck the council, love the music'. I later wondered why these public servants were wasting tax payers' money on such a futile operation. I left Oxford that day and over the next couple of days busked in other towns in Oxfordshire, where I felt far more welcome and even made friends with a couple of council officers. One has a son at 6th form college who occasionally busks.

This is my recollection of events that day, hope it helps.

**LEGAL OPTIONS FOR DEALING WITH BUSKERS – PSPO v CPN**

Information quoted as at 27 May 2015

**INTRODUCTION**

**This note sets out the comparison between powers under the Anti-social Behaviour, Crime and Policing Act 2014.**

This is a general comparison of legal options for dealing with behaviour which can be construed as anti-social, for example, busking.

**FOR FURTHER INFORMATION CONTACT:**

DAVID WIGNALL

LAWYER

EXTENSION 2843

**27 MAY 2015**

NAME OF ORDER	PSPO PUBLIC SPACES PROTECTION ORDER	CPN COMMUNITY PROTECTION NOTICE
PUBLIC OR INDIVIDUAL REMEDY?	PUBLIC	INDIVIDUAL
WHO CREATES RESTRICTION?	Council subject to challenge through court	Council subject to challenge through court
LEGAL THRESHOLD?	Activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality or it is likely that activities will be carried on in a public place within that area and that they will have such an effect. Effect, or likely effect, of the activities: * Persistent	Conduct carried out by individual * Conduct of individual is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and

	<ul style="list-style-type: none"> <li>* Unreasonable</li> <li>* Justifies the restrictions</li> </ul>	* The conduct is unreasonable.
DOES IT INCLUDE OPTIONS FOR POSITIVE REQUIREMENTS?	Can require specified things to be done by persons carrying on specified activities in that area	<p>Can include:</p> <ul style="list-style-type: none"> <li>* A requirement to do specified things;</li> <li>* A requirement to take reasonable steps to achieve specified results.</li> </ul>
PENALTIES FOR BREACH?	<p>CRIMINAL OFFENCE:</p> <p>Level 3 fine – currently £1,000</p>	<p>CRIMINAL OFFENCE</p> <p>Level 4 fine – currently £2,500</p> <p>Further options include:</p> <ul style="list-style-type: none"> <li>* Remedial action by the Council</li> <li>* Court making order to remedy the problem</li> <li>* Forfeiture / seizure of items used in commission of offence</li> </ul>
DETERRENT EFFECT?	Deterrent effect may come from publicity that certain activities have been criminalised by the Council	<p>Prosecution for breach would take place in open court so unless reporting restrictions apply the media could report on breaches if they wanted to. Prosecutions normally published</p>

# A Guide to Busking in York

Information for city centre businesses



**Busking is an important part of creating a vibrant, exciting and cosmopolitan atmosphere for residents, visitors and businesses in York.**

**This leaflet summarises best practices for businesses and is a helpful document which promotes good relationships between buskers and the local community.**

**New busking guidelines have been agreed by representatives of the local business community, Equity and the Musicians' Union, the Keep Streets Live Campaign, the busking community and City of York Council.**

## **Why do we need guidelines?**

Buskers share streets and open spaces with everyone else who lives, works, trades and visits York city centre. The new guidelines aim to support a culture of consideration for others and negotiation to reduce potential conflicts of interests.

## **How will they work?**

The guidance is based on the principles of mutual respect, compromise and cooperation. If an issue exists, then buskers and businesses are encouraged to talk it over together and resolve it amongst themselves.

## **What are the guidelines for buskers?**

The new guidelines encourage buskers to exercise care, consideration and good judgement when busking in York. They encourage dialogue between buskers and yourselves as city centre businesses. They ask buskers to be mindful of noise levels, repetition of content, potential obstruction of thoroughfares and sensitive pitches. Buskers are encouraged to consider regular breaks and sharing pitches with others and should exercise courtesy in resolving any issues which may arise.

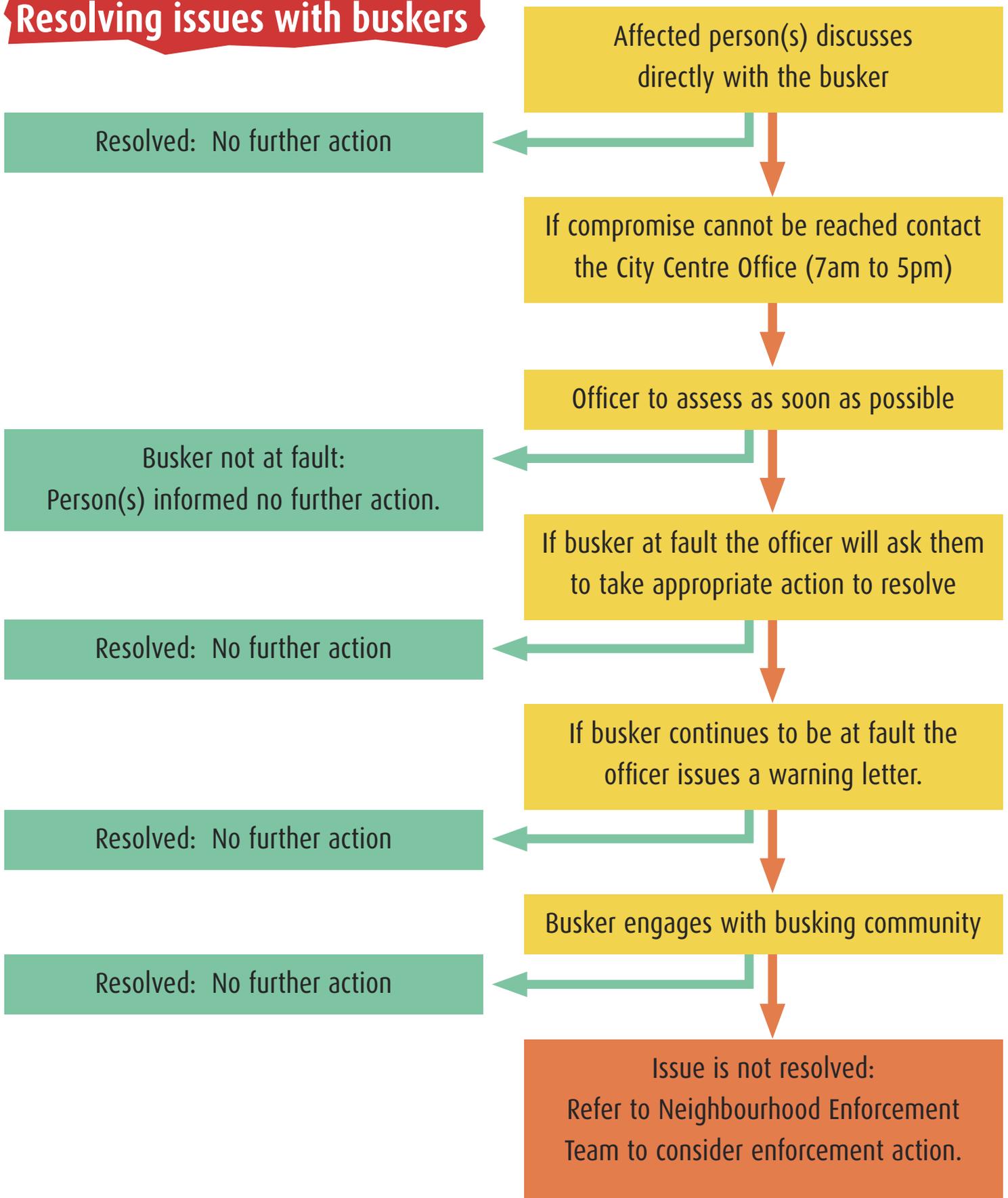
## **What are the guidelines for businesses?**

Most issues can be resolved amicably if they are dealt with before they escalate and in most cases a formal complaint will not be needed. Legal enforcement powers will only be used as a last resort if there are persistent issues. The flow chart explains the actions you should take to resolve any issues with buskers, in the spirit of resolving your differences together.

- Wait for a suitable interval in the busker's performance before you approach
- Explain your issue calmly and politely. Buskers may not be aware of an issue
- Try to reach a compromise (and feel free to draw a busker's attention to this guidance)
- Contact the City Centre Office on 07983 956500 if a compromise cannot be reached and the issue remains. An officer will try to help resolve the issue.

If an officer is called they will assess the situation as soon as they are able. They will either ask the busker to change the performance or, if appropriate, let you know that they don't feel that there is an issue.

## Resolving issues with buskers



## Enforcement as a last resort

In the event of a complaint that cannot be resolved between a complainant and a busker, following attendance by a City Centre Officer, an officer from the Neighbourhood Enforcement Team may attend to assess the situation. A warning letter may be issued. Ultimately enforcement action will be taken where necessary.

## Further Details

You can pick up a copy of the full guidelines from the City Centre Office at 5 Silver Street or visit [www.york.gov.uk/arts](http://www.york.gov.uk/arts)

## Reviewing the guidance

All parties responsible for these guidelines will remain in discussion and will review the guidelines regularly and address any issues that arise.

If you have any enquiries please contact the City Centre Manager at [york-markets@york.gov.uk](mailto:york-markets@york.gov.uk) or **01904 551355**.

**Visit York**  
[visityork.org](http://visityork.org)

Musicians'  
Union  
**MU**

**Equity**



### This information is available in your language

#### Polish

To jest roczny raport z działu usług mieszkaniowych ukazujący osiągnięte przez nas wyniki oraz plany wdrożenia udoskonaleń. Niniejsze informacje mogą zostać dostarczone w Państwa własnym języku.

#### Turkish

Bu, konut hizmetlerinin performansımızı ve iyileştirme planlarımızı gösteren yıllık raporudur. Bu bilgiler sizin kendi lisanınızda sağlanabilir.

#### Cantonese

這是住房處年度報告，呈現有我們的績效和改善計畫。該資訊能以您的母語提供。

Please let us know if it would help to have this information in a different format. For example we can offer it by email, in large print, braille, as a spoken word CD or in another language.

20



01904 551551