

Report

Cabinet Member for Regulatory Functions

Part 1

Date: 4 April 2016

Item No: 1

Subject **Public Protection: Environmental Health, Trading Standards and Licensing: Reduction in Statutory Enforcement Work 2016-17**

Purpose To ask the Cabinet Member to consider various options to reduce statutory enforcement work and agree those areas of work which can be reduced or discontinued in Environmental Health, Trading Standards and Licensing in order to deliver the required budget savings of £110,000 in 2016/17

Author Public Protection Manager

Ward All

Summary The work of the Public Protection group of services comprises a sizable number of the statutory regulatory functions the council is obliged to fulfil, including the many and diverse statutory functions of Trading Standards, Animal Health, Environmental Health, Licensing.

However, in common with all other council services, more savings are needed for 2016/17 and beyond. It has reached a point where in Environmental Health, Licensing and Trading Standards, that in order to make staffing savings of £110,000 (Cabinet 15th February 2016 decision on Medium Term Revenue Plan Proposals - Business Case LR08), then there needs to be a reduction in the amount of statutory enforcement work being undertaken. In order to make the requisite savings, managers have identified a number of areas that, although forming part of these statutory duties, present a lower risk to the public in terms of a reduction in protection and these are listed in Table 1 (para 3.3). These areas of work, as the least risky, now form those recommended to curtail. Therefore, for the Cabinet Member to consider and agree the areas of public protection work that should be reduced or discontinued in order to make budget savings of £110,000 for 2016/17. The staffing reductions and operational changes consequent upon this reduction in enforcement work will then be taken by the Head of Service under delegated powers, in full consultation with the staff and recognised trade unions. Whilst this will involve the loss of three operational posts, none will involve a compulsory redundancy.

Proposal **That the Cabinet Member considers the options contained within the report to reduce levels of statutory enforcement work in some areas and agrees which areas of work will be reduced or discontinued in 2016/2017 in order to make savings of £110,000. That the Cabinet Member agrees that Public Protection reduces the level enforcement work listed in Table 1 (para. 3.3).**

Action by Head of Law & Regulation

Timetable Immediate

This report was prepared after consultation with:

- Head of Law & Regulation
- Head of Finance
- Head of People & Business Change
- Trading Standards Manager and Team Leaders
- Environmental Health Manager and Team Leaders
- Principal Licensing Officer

Please list here those officers and members you have consulted on this report.

Signed

1. Background

1.1 The Public Protection Division has a wide remit, taking the many and diverse statutory functions of Trading Standards, Animal Health, Environmental Health, Licensing and Community Safety.

1.2 Public Protection carries out a wide range of enforcement initiatives, including a number of high profile prosecutions, but balances this with an advice/inspection programme for businesses' legal obligations, and for consumers' rights. The teams work to protect the rights and the safety of the City's residents, workers, visitors and the local environment.

The service interacts with everyone who comes into Newport and with people from much further afield who buy or use goods and services originating from the City.

1.3 Service Aim

Create and maintain a fair and safe (trading) environment and community for Newport's residents, visitors and responsible businesses.

Bring businesses into a state of being broadly compliant with Public Protection legislation and alleviate anti-social behaviour.

2. The Service Areas- all Statutory

2.1 Environmental Health

- Food Safety (Hygiene)
- Health and Safety at Work, including accident investigation, intervention and Education, Port Health and Infectious Diseases;
- Environmental Protection (includes contaminated land, noise nuisance, flytipping, waste management by local businesses, air quality, regulating special industrial processes, private water supplies);
- Private Housing (includes licensing Houses in Multiple Occupation, policing standards in private housing, new Housing Act- Landlords licensing)

2.2 Trading Standards

- Fair trading, weights and measures, product safety, consumer credit, pricing, counterfeiting, age-restricted goods controls, policing descriptions in all forms of marketing, fireworks, countering rogue trading and scams, consumer intervention;
- Food standards and animal feed.
- Grant funded- Welsh Scambusters Unit and Regional Intelligence;
- Animal health and welfare (farmed animals), including animal licensing;
- Dog Control. inc. council Kennels

2.3 Licensing

In relation to: alcohol, regulated entertainment, gambling, taxis, scrap metal, street trading consents etc.; includes the administration and enforcement of these provisions.

2.4 NB Community Safety: (mostly discretionary/ some statutory)

The CCTV Unit, Community Safety Warden Service, the Anti-Social Behaviour Team- do not feature as part of this report. Cabinet has already decided, following budget consultation and in the light of the better than expected RSG settlement from Welsh Government, that there should be no reduction in these services.

3. Savings requirements

- 3.1 Over the last four years, the public protection group of services has made over £500,000 of savings on a budget that for 2015/16 is now: approx. £3.53m gross, £2.2m net. This has been done by curtailing number of (mostly) discretionary services we used to do and by implementing a number of efficiency measures throughout the group.

These have included:

- Closure of the Pest Control service
 - Reduction of the CS Wardens service by one third
 - Increasing the income target for the CCTV Unit to endeavour to make that service pay for itself by bringing in new fee-paying work (several new area of work have already been secured)
 - Stopping public protection campaigns and education
 - Increasing fees (where the law allows us) to ensure full cost recovery
 - Trading Standards no longer giving advice to help consumers resolve their problems with the goods and services they have bought
 - No longer carrying out routine low risk and medium risk inspections and new business interventions for trading standards (In relation to food standards work this contravenes the statutory Food Law Code of Practice)
 - No longer carrying out low risk inspections for health and safety and food safety, housing and licensing (In relation to food hygiene work this contravenes the statutory Food Law Code of Practice).
 - Reduction of Principal Environmental Health Officers (team leaders) from 5 to 4, with the subsequent merger of two EH Housing teams: reactive and HMO.
 - Reducing administrative/ technical support to the operational teams
- 3.2 However, in common with all other council services, more savings are needed for 2016/17 and beyond. Savings of £110,000 have been identified (Cabinet 15th February 2016 decision on Medium Term Revenue Plan - Business Case LR08). It has reached a point where in Environmental Health, Licensing and Trading Standards, that in order to make further savings, then there needs to be a reduction in the amount of statutory enforcement work being undertaken. In order to make the requisite savings, managers have identified a number of areas that although forming part of these statutory duties, present a lower risk to the public in terms of a reduction in protection.

Public Protection services are all statutory and, in many cases there is a mandatory duty to carry out inspections and take enforcement action. Therefore, the Council has no discretion regarding these core services. Also, any reduction in food safety inspections would have an impact on National and Local PI targets for standards of food premises.

However, there is an element of discretion in some areas regarding the level of investigatory and enforcement work being undertaken and how this work is carried out. It is, therefore, a question of identifying those areas where there is less risk, both to the public and in terms of the Council's reputation, in not carrying out the work.

In making these savings of £110,000, it will involve the loss of three professional posts. We anticipate deleting these posts without the need to make any officer compulsorily redundant.

There are potentially many options by way of statutory work reduction to achieve the savings, but as stated, team managers have compiled this list in Table 1 below from areas of work that could be reduced or discontinued without having a significant detrimental impact on public safety.

3.3 Table 1 - Service Managers' recommendations as to areas of work to be stopped

Service area	Details	Implication
Trading Standards	1 We will no longer give a 'full response' for all allegations of criminal activity. Instead each case would be risk assessed and only the most serious matters will receive a full response; some matters will receive a limited response; and some, lower risk breaches, would receive no response.	That consumers make complaints about the service when their case does not receive the investigation they feel it warrants; or else, following such complaints, officers are put under pressure to investigate cases that have not 'passed the test'.
	2 We will no longer monitor the 'first tier' advice "notifications" sent in daily by the consumer advice line- CITAS, formally <i>Consumer Direct</i> (this activity is done to identify problem traders and vulnerable consumers which we then investigate further to try to prevent criminality/ further consumer detriment). However, CITAS "referrals" will still receive attention on a risk- assessed basis.	The service will no longer proactively identify consumer problems and will only react to specific complaints or referrals.
	3 We will no longer provide free business compliance advice; where a business proactively contacts the authority. Instead a charge will be levied, on a cost recovery basis.	Loss of opportunity to educate and avoid inadvertent breaches of legislation, but responsible businesses should be prepared to pay for discretionary advice
	4 We will not be able to establish any more Cold Calling Control Zones in residential areas. However, we will still respond to complaints or intelligence that doorstep crime is taking place.	The service will no longer proactively 'target harden' vulnerable communities but will only respond to specific complaints and problems.
	5 We will no longer routinely test weighing and measuring equipment. We have been finding that most modern electronic equipment, used as it should be, is accurate. We will continue to respond to complaints.	Routine surveillance ensures consumers are not ripped off and identifies rogues and keeps reckless/careless business in check. However, specific complaints and problems will continue to be addressed.
Environmental Heath	1 We will no longer investigate housing complaints from tenants of Registered Social Landlords (with the exception of investigations necessary to support Housing Options) and will instead advise the tenants to contact their RS landlord. RSLs have their own systems and are well set up to deal with property condition issues, as opposed to a private landlord.	Tenants who contact EH will be advised to raise the issue with their RSL There is the risk that tenants may not be able to use these alternative RSL complaint mechanisms and as a result, housing conditions that should be improved, may not be. However, responsible social landlords should be equipped to deal with these issues and have to comply with housing standards to meet the requirements of their Regulators.
	2 We will no longer investigate lower risk housing complaints from private sector tenants at initial complaint stage; Instead officers will give tenants advice and the landlords will be sent specific reminders	There is the risk that tenants may fail to complain and /or fail to inform us when issues are not addressed by the landlord, However, serious and persistent failures will still be investigated and enforced.

Service area	Details	Implication
	as to their responsibilities to maintain the property/ provide adequate heating etc.	
	3 We will no longer undertake repeated site visits to determine whether residential rented properties are re-occupied following enforcement action. However, we will still respond to complaints, or if we discovered through other means that the property had been re-let in contravention of housing legislation.	Properties may be re-let without works, required to improve the property to make it safe, being completed. We would have to rely on new tenants complaining to improve the property.
	4 We will no longer carry out routine swimming pool water sampling. Businesses will be reminded to carry out their own sampling are obliged to ensure their water is safe to use. We will offer to undertake sampling for a business for a fee. We will continue to respond to complaints.	We will be less proactive in maintaining water quality, but we will continue to respond to complaints and take enforcement action against any businesses who fail to carry out their own water sampling.
	5 We will no longer provide face-to-face advice to new businesses during the New Business process. Business will instead be sent a pack of relevant information or directed to relevant information on the internet.	New businesses may start to operate without meeting relevant legislative requirements. This may cause increased levels of enforcement work for the Council later.
	6 We will no longer carry out routine Food Safety (eg microbiological) sampling programme and resulting enforcement work. We will offer to undertake sampling for a business for a fee. Officers would still sample further to complaints about cleanliness, or if they suspected there was a problem.	We will be less proactive in food sampling, but we will continue to respond to complaints or specific problems and take enforcement action, where appropriate. More responsible food businesses may be prepared to pay for more regular food sampling.
Licensing	1 We will no longer inspect lower risk licensed premises under the Licensing Act/ Gambling Act. However, complaints will be responded to.	Officer will not routinely pick up issues that have already resulted, or will result, in a breach of the licence. The business may change ownership without us knowing. However, specific complaints will still be addressed

5. Risks

Risk	Impact of Risk if it occurs (H/M/L)	Probability of risk occurring (H/M/L)	What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
That in reducing or discontinuing areas of statutory Env Health, Trading Standards and Licensing work the council fails in its statutory duty and there is an increased risk to public protection.	H	L	The Council will continue to provide those core services where there is a mandatory duty to carry out inspections and take enforcement action. That the areas of work detailed in Table 1 are those areas where there is an element of discretion as to the level of work and how that work is carried out and, therefore, present the least risk in terms of reduction in public protection.	Public Protection Manager

6. Links to Council Policies and Priorities

- 6.1 The work of Public Protection group delivers on a wide variety of statutory duties the council is obliged to address and supports a number of Council Policies and Strategies. It also meets one of the aims of Newport City Council's Corporate Plan 2012-15, namely
- To make our City a better place to live for all our Citizens.
- 6.2. It also helps to meet all three of the objectives (listed below) from the One Newport Single Integrated Plan
1. Economy and Skills
 2. Health and Well being
 3. Safe and Cohesive communities.

7. Options Considered/Available

Option1 That Public Protection curtails the work listed in Table 1 in order to make savings of £110,000 in 2016/17.

Option 2 That Public Protection does not curtail the work listed in Table 1 and that the £110,000 savings are made instead by the curtailment of other areas in Public Protection, with a further report to be brought forward to the CM.

Option 3 These savings are not made at all.

8. Preferred choice and reasons

Option 1 above. Whilst there are potentially many other options by way of statutory work reduction to achieve the requisite savings, team managers are of the view that the areas of work listed in Table 1 are the least risky in terms of loss in public protection, at this stage.

9. Comments of the Head of People and Business Change

Whilst the author anticipates that this proposal will be achieved without any compulsory redundancies, there may still be human resources implications if these posts are occupied, and these may need to be considered via a further detailed SOD business case and involve consultation with affected staff and unions. *(NB Author's comment - two of the three posts are vacant and the third post holder has taken voluntary redundancy).*

The work of the Public Protection Service contributes to the priorities within the Local Service Board's Single Integrated Plan. The proposed changes may have some implications on the actions within the plan, however these will be addressed through the partnership structure as appropriate. As the proposals are implemented, the service will be required to consider the duties within the Wellbeing of Future Generations (Wales) Act.

10. Comments of the Monitoring Officer

There are no specific legal issues arising from the Report. Public Protection services are all statutory and, in many cases there is a mandatory duty to carry out inspections and take enforcement action. Therefore, the Council has no discretion regarding these core services. However, there is an element of discretion in some areas regarding the level of investigatory and enforcement work being undertaken and how this work is carried out. It is, therefore, a question of identifying those areas where there is less risk, both to the public and in terms of the Council's reputation, in not carrying out the work. The proposed reduction or discontinuation of the areas of work identified in the Table in Section 3.3 would not constitute any breach of statutory duty by the Council and would be a reasonable exercise of the Council's discretion in prioritising higher risk enforcement and regulatory services.

11. Comments of Chief Financial Officer

All of the Business Cases contained within this report have gone through financial resilience testing, and been reported to Scrutiny and Cabinet through the MTRP budget setting process though the decision making point for these is the Cabinet Member and formal consultation is through this process.

Proposals here have been developed for a number of months and with the knowledge of Cabinet Members and therefore it is anticipated that decisions and proposals here will be approved. Any reduction in savings through change and/or refusal here will need to be mitigated by the Cabinet and be done in conjunction and at same time with that decision to ensure that a balanced budget is always in place.

12. Comments of Cabinet Member

The Cabinet Member has approved the report.

13. Comments from Non-Executive Members

Councillor Fouweather

This report is quite worrying on a number of issues.

Cold Calling Zones:

It is important that the council continue to promote and support the setting up of cold calling zones. These zones are vital for the protection of some of our most vulnerable residents who feel pressured by door to door sales people. I believe that the cabinet member is making a mistake by allowing this to go through.

Environmental Health:

This is another very concerning proposal to stop investigating housing complaints. I am concerned that some land lords may take advantage of this position and once again the council leave some residents vulnerable. This applies to both the private and RSL landlords.

Swimming pool testing is vital if we are to stop the spread of infections. It was not long ago that the pool at the Newport centre had to be closed because of a problem with the swimming pool. In my view this is a vital service that should not be cut or reduced.

I am astounded that food sampling has been put forward as a saving. The department had a proud record of meeting all its food hygiene and premises inspections. This is yet another cut that could lead to firms getting away with poor standards and should therefore be maintained.

Response From Cabinet Member

Cold calling control zones can indeed be popular with residents in helping to “warn off” undesirable cold callers, but they have no legal effect. If a trader chooses to ignore them, then there is nothing Council Trading Standards can do unless other legislation is breached i.e. the trader does not give the consumer their requisite cancellation rights/ cooling off period. Consequently, helping residents to set up a CCCZ is not an activity that the Council is obliged to carry out and it can be very time consuming: leafleting addresses, calling public meetings, obtaining “buy in” from all, putting up signage etc. Residents can be reassured that countering door step crime remains a high priority for Trading Standards and our officers will continue to gather intelligence, participate in all partnership rogue trader operations and respond rapidly to any complaints/concerns, especially where neighbours/ relations feel a vulnerable person is being targeted.

The Council (Environmental Health) receives a great many complaints from private sector tenants (which include those that live in registered social landlord accommodation), but many of them have made no attempts at contacting the landlord in the first instance to discuss the problem. Instead of immediately visiting the property, we are advising tenants of their rights, of the landlord’s obligations and advising them to contact the landlord first. We will also write to the landlord with specific reminders as to their responsibilities. Most landlords, we find, will sort the adverse property conditions once contacted by the tenant. However, where this does not happen and the tenants contact us again and their health or safety is at risk, our officers will investigate and intervene as appropriate to ensure the landlord’s legal obligation to comply with housing standards is met. Newport’s registered social landlords have their own systems and are well set up to deal with property condition issues.

There is no obligation on the Council (Environmental Health) to test pool water. The legal obligation is on the business (which would include *Newport Live* for the Newport public swimming pools), under health and safety laws to ensure the water is safe for users and as such, they should have a programme of frequent water sampling and analysis. These pools will continue to feature in Environmental Health’s inspection programme, commensurate with the health and safety risk they pose to users. We will respond to complaints/ concerns from members of the public and that response may include testing the water. Businesses may wish to consider paying the Council to carry out this testing for them.

There is no obligation on the Council (Environmental Health) to carry out routine microbiological sampling of foodstuffs. It is just one method we can use to check legal compliance. The legal obligation is on the food business under food safety laws to ensure the food they produce, distribute and serve is fit to eat. Consumers can be reassured we will continue to inspect Newport’s food businesses, at frequencies commensurate with the risk (taking into account a number of factors) they pose to the public and taking appropriate action to address non- compliance. We will respond to complaints/ concerns from members of the public and that response may include taking microbiological samples of the food and submitting them for analysis. Businesses may wish to consider paying the Council to carry out this testing for them.

14. Background Papers

None.

Dated: 4 April 2016