

Report to: Environment Panel
Community Protection Panel

Date: 28 January 2009
16 March 2009

Subject: Environmental Enforcement Strategy

Report of: Executive Director of Environmental Services

Contact officer: Sally Wolstencroft 01942 705102
Michell Woodburn 01942 827450

Purpose / summary: To inform Panel about the new Environmental Enforcement Strategy, the positive outcome of recent consultation and implementation plans.

Alternative options considered and reason for selecting the one recommended: The alternative option was not to update current strategy or policy to reflect new legislation and Council priorities or direction. Option selected is aligned to corporate and LAA priorities and brings our approach up to date legislatively.

Recommendation / decision: Panel to note the outcome of consultation on the Environmental Enforcement Strategy and comment.

Risks / Implications:

Financial:	None
Staffing:	Within existing resources
Policy:	Enforcement Policy
Equal Opportunities - Has a Diversity Impact Assessment been conducted?	No
Wards affected:	All

Property Implications – Does the proposal involve a reduction, addition or change to the Council’s asset base or its occupation?

No

If yes, have the property implications been agreed with the Corporate Property Officer?

Does this proposal have significant implications for the Council and the local population?

A full diversity impact assessment will be been undertaken during the consultation process for the strategy.

Does this proposal involve a new policy or procedure or significant changes to an existing policy or procedure?

A full diversity impact assessment will be been undertaken during the consultation process for the strategy.

Has the Service Director - Borough Solicitor confirmed that the recommendations within this report are lawful and comply with the Council’s Constitution? **Yes**

Has the Service Director - Corporate Services confirmed that any expenditure referred to within this report is consistent with the Council’s budget? **N/A**

Are any of the recommendations within this report contrary to the Policy Framework of the Council? **No**

* delete which applicable

For Cabinet reports only:

Categorisation of the report:	x		
Discussion leading to a decision		Discussion	
Monitoring		Decision	
Sharing for corporate understanding		Information	

Tracking/Process:

	Consultation	Ward Members	Partners
Panel	Overview & Scrutiny	Cabinet	Council
Env 28/1/09 Comm Prot 16/3/09			

There are no Background Papers to this Report within the meaning of Section 100D of the Local Government Act 1972.

Proper Officer Martin Kimber

Date 19 January 2009

1. **Background:**

- 1.1 Panel will recall the recent report of the Executive Director of Environmental Services, which introduced the department's new draft Environmental Enforcement Strategy.
- 1.2 The Strategy was commissioned in response to legislative changes and the introduction of extended powers within the Clean Neighbourhoods and Environment Act 2005. It will ensure that the Council delivers environmental enforcement actions in a consistent, robust and lawful way and identifies when it would be appropriate to consider other options to secure compliance, such as education, informal action or advice.
- 1.3 A comprehensive consultation exercise has now been undertaken, and the views of local people obtained through the Citizens Panel and evaluation of the Partnerships and Communities Together (PACT) community engagement process. Key partner respondents below fully support proposals outlined in the Strategy.
 - Greater Manchester Police, Wigan Division
 - Children and Young Peoples Services
 - Wigan and Leigh Housing
 - Wigan Leisure Culture Trust
 - Wigan and Leigh Fire and Rescue Service
- 1.4 Agreement has already been reached with Greater Manchester Police to extend delegated authority for the issue of Fixed Penalty Notices (FPN) for litter and dog fouling offences to Police Community Support Officers. Discussions are continuing with Wigan Leisure and Culture Trust and Wigan and Leigh Housing.
- 1.5 Although some minor amendments have been incorporated into the Strategy following the consultation, there are no significant changes to report.
- 1.6 Partners were particularly supportive of the fact that we have tailored our approach to align with other relevant priority areas, such as anti-social behaviour, and the way we deal positively with children and young or vulnerable people.
- 1.7 Initial training for the first group of officers is complete and partners are now using the Strategy as a reference point for service delivery. However, measures outlined in the Strategy present a new way of working for many officers and a simple toolkit has been developed to guide them through the processes and options available.

2 **Proposals:**

- 2.1 Operational service delivery groups are using the strategy alongside detailed performance information obtained from cleanliness national indicator returns and customer complaints and requests to tailor resources and solutions to local priorities.

- 2.2 Where PACT has been established, communities have identified the quality of their local environment as a priority. Ultimately, it is proposed that PACT will lead local tasking and scrutiny of service delivery and performance in relation to targeted enforcement, using the Strategy as a guidance tool.
- 2.3 Multi-skilling of officers from across the Community Safety Partnership improves value for money and has increased resources to tackle environmental crime. Income raised through enforcement action will be re-invested to support awareness-raising campaigns as well as preventative and problem solving approaches.
- 2.4 Fixed Penalty rates and discounts are set out at Appendix A. These have generally been set at the level recommended by Defra. We have also considered rates levied by other local authorities, the views of the Citizens Panel and the seriousness, local prevalence and high clean-up costs associated with some offences, such as commercial fly-tipping, when setting charges.

3 Conclusions

- 3.1 Sustainable environmental improvement is dependent on changing attitudes and promoting responsibility and accountability of all who live, work and visit our Borough. Success will be more likely if we can foster widespread confidence in our approach. The Strategy has three main elements that contribute to achieving improvement and harnessing community support: -
- Raising awareness of the effects of environmental crime, thus encouraging responsible behaviour
 - Improving local environmental quality in our neighbourhoods by providing responsive services that our communities want and need
 - Taking proportionate, transparent, consistent and effective enforcement action
- 3.2 The approach is already generating improved performance as evidenced in Wigan's recent National Indicator returns for street cleanliness.

Summary

The Environmental Services Department is determined to make our Borough Cleaner, Greener and Safer for all. To help achieve our aims and objectives, the department will use enforcement measures outlined in the following Strategy. This together with Educational Awareness campaigns and changes in the way the department delivers services will help us achieve our ambitious targets by 2011. Sustainable success is dependent on changing attitudes and promoting responsibility. Encouraging all those who live, work and visit our Borough to respect our communities.

Environmental Crime, litter, dog fouling, graffiti, fly posting and fly tipping blights every community across the Borough. Wigan Council has a responsibility to protect our communities from litter and debris promoting environmental quality for all those who live, work and visit the Borough. We also recognise the community has a responsibility for the environment and we will encourage respect and standard setting. Working together we can achieve a quality local environment.

An effective Enforcement Strategy working together with Educational campaigns should contribute to our objectives of a Cleaner, Greener and Safer Borough by promoting responsibility and accountability for all.

Improving the quality of our residential areas, parks, retail centres and leisure facilities will help us achieve the challenge of meeting our community's aspirations and assist in meeting the Local Strategic Partnership commitments.

To ensure the effectiveness and accountability of the Strategy it will be supported by detailed guidance, processes and procedures.

Aims and Objectives

Improve Wigan's local environmental quality by reducing environmental crime and encouraging respect and responsibility for all.

To help us meet this challenge we will;

- ◆ Raise awareness of the effects of environmental crime.
- ◆ Promote respect, responsibility and compliance through educational campaigns targeted towards all who live, work and visit the Borough.
- ◆ Improve service delivery in our neighbourhoods providing responsive services that our communities want and need.
- ◆ We will use an intelligence led problem solving approach to tackle hotspot areas, focusing on prevention as well as cure.
- ◆ Take proportionate and effective enforcement action.

Enforcement action will reflect the principles of the Statutory Code of Practice for Regulators and Wigan Council's Enforcement Policy. We will set clear standards and processes, which are consistent and proportionate, supported by a transparent complaints procedure.

The principles will ensure that

- ◆ We assist all those who live, work and visit the Borough in challenging environmental crime.
- ◆ Carry out proportionate enforcement transparently in a fair and reasonable manner.

Scope of Strategy

The scope of the Strategy covers environmental crimes that blight our communities in Wigan including;

- ◆ Litter
- ◆ Dog fouling
- ◆ Graffiti
- ◆ Fly tipping
- ◆ Commercial waste
- ◆ Domestic waste

Priorities will be driven by the community and the local environmental quality survey supported by detailed analysis and research using the National Intelligence Model to direct resources.

To aid targeting of enforcement action, in-depth analysis of environmental crime will be undertaken and problem solving will be planned.

We will also strengthen our partnership links, by delivering complimentary services in Neighbourhoods to help us achieve our aims and objectives.

A new way of working in our communities is being developed through Partnerships and Community Together (Pacts) these will prioritise and shape delivery of Neighbourhood Services that communities want and aspire to. This will ensure intelligent delivery of joined up solutions with simple achievable steps to improve neighbourhoods.

Education and Awareness Raising

Eco-Education

Eco-Education projects will support enforcement activity with a range of education projects aimed at changing attitudes to environmental crimes.

These projects include working in Primary Schools and Secondary schools with teachers, pupils, parents and governors to deliver a holistic environmental education through cross-curricular lessons, practical activities, interactive whiteboard sessions, photography and theatre groups.

This work is aimed at changing people's behaviour and increasing knowledge on environmental issues so that more environmentally responsible, sustainable and healthy lifestyle choices can be made. All this will complement our core education purpose, which is to deliver the Eco-School programme across all schools in the Borough.

The Eco-Education team will also carry out three major campaigns annually to target specific environmental themes that affect our town centres, such as chewing gum deposits, trade waste and the night time economy.

These campaigns will be educational, informative and targeted at those who live, work and visit our town centres.

Tool kits will also be available for use by community groups, Neighbourhood Teams and Township Groups. These tool kits will provide information and resources available for the community to use in order to run their own campaigns with support from the Council. These projects will provide the main educational and promotional projects to be delivered by the Environmental Education Team.

Statutory Duties

Environmental Service department will work with communities, businesses and organisations providing information and advice on how to meet regulatory responsibilities and put our local environment first. The department is committed to fulfilling its statutory duties making the Borough Cleaner, Greener and Safer for all.

Principles of Enforcement Strategy

We will be Proportionate in applying legislation and encouraging responsibility linking enforcement action to the environmental and community risks.

We will Target enforcement action, ensuring that resources are directed primarily towards those whose activities, risk or give rise to serious environmental and community damage or other environmental damage that is a local or borough priority.

We will be Consistent in our approach, which does not mean uniformity but rather taking a similar approach in similar circumstances to achieve similar ends

We will be Transparent in our processes and procedures reporting achievements and outcomes.

We will be Accountable for our actions.

The Strategy is designed to be inclusive and an enforcement toolkit has been developed to optimise resources available to challenge environmental crime. It will guide Safer Neighbourhoods' Officers, Neighbourhood Teams, Waste Management Officers, Cleansing Operatives, Wigan & Leigh Housing Officers, Police Community Support Officers, Wigan Leisure and Culture Trust etc.

We recognise the importance of consistent and proportionate enforcement action and a range of options will be considered linking punishment and community impact. We will communicate with individuals, communities, businesses and organisations, explaining the reasons for any enforcement action.

Purposes of Enforcement

- ◆ Prevent continuing environmental risk or harm
- ◆ Secure improvements leading to compliance
- ◆ Ensure environmental damage is put right
- ◆ Remove cost savings or economic gain from non-compliance
- ◆ Make restitution to adversely affected communities
- ◆ Publicly condemn moral and legislative wrongdoing
- ◆ Promote future compliance and/or deter non-compliance with environmental requirements

The purpose of this Strategy is to protect our communities and environment. All enforcement investigations will be carried out in line with the Police and Criminal Evidence Act 1984 codes of practice and agreed procedures to ensure actions are carried out within the principles of the Statutory Code of Practice for Regulators and Wigan Council's Enforcement Policy.

The Council will also consider the rights of individuals Under Article 1 right to peaceful enjoyment of property and possessions and Article 8 respect of privacy and family life of the Human Rights Act 1998.

These rights will be weighed against the rights of communities, quality of the environment and the seriousness of offences committed.

Enforcement Options

The following options will be considered before taking action against individuals, businesses and organisations who commit environmental crime.

Action will be dependent on: -

- The nature of the offence
- The impact on the local environmental quality and community

Action will only be taken if

- Sufficient evidence is available to support legal proceedings
- Where other actions have failed or
- The offence is considered to be sufficiently serious or such a local or borough priority to proceed to formal prosecution

Enforcement action will be publicised to support the deterrent effect of the Strategy.

Verbal Warnings

Officers will be empowered to issue verbal warnings to offenders for minor and or first time offences, which are easily or immediately remedied by the offender. For example a person dropping litter would be advised to dispose of the debris in a waste bin or in a suitable manner.

Written Warnings

Officers will also have the option of issuing a written warning, which would include advice on responsibilities, although no formal action will be taken. The warning would be entered onto APP the Council's IT recording system for a period of twelve months and would be used to assess enforcement options should a further environmental offence occur.

Simple Cautions

A Simple Caution is a non-statutory disposal for adult offenders. It can be used for cases involving first time, low-level offences where a Simple Caution can meet the public interest. An admission to committing the offence is needed from the offender, which will be recorded and logged onto APP the Council's IT recording system. A Simple Caution could also be cited in court in any subsequent court proceedings; Simple Cautions are not covered under the Rehabilitation of Offenders Act 1974 and therefore can be held on file indefinitely.

Fixed Penalty Notices

Officers can offer Fixed Penalty Notice (FPN) for certain environmental crimes Appendix 1. FPN's are used as an alternative to prosecution and are issued when an officer believes an offence has been committed. They provide an opportunity for an offender to dispose of any liability for an offence that they

have committed and avoid prosecution. In the majority of cases, individuals will only be offered this course of action once - should they re-offend, cases will always be considered for prosecution. FPN's are only issued where sufficient evidence is available to support a prosecution. An early payment discount will be offered.

Vulnerable Adults and Young People 10-17.

An alternative approach will be taken for offences involving young people, vulnerable adults and persons with chaotic lifestyles. Fixed Penalty Notices can be issued to anyone over the age of 10. However it is important that Wigan Council fulfils its duty with regard to the Children Act 2004, taking reasonable steps to ensure young people are not criminalised for minor offences.

The following process will also be applied to vulnerable adults and those with chaotic* lifestyles so that young people, vulnerable adults and those with chaotic lifestyles have the opportunity to change their behaviour.

A first offence committed by a young person over the age of 10 and up to the age of 18, a vulnerable adult or a person with a chaotic lifestyle, where there is sufficient evidence to issue a Fixed Penalty Notice, will receive information to improve awareness of environmental crime.

Should a second offence occur within the following 12 months, an individual would be given the option of carrying out a period of restorative justice within the community and intervention actions contained within the Anti-Social Behaviour Process delivered by Neighbourhood Teams.

If a further offence occurs despite the intervention actions the individual would be issued with a Fixed Penalty Notice and payment would normally be required.

The council will offer discounts for early payment of FPN as detailed in Appendix 1. Unpaid notices will be assessed for prosecution. Fines will be retained by the Council to fund prevention and enforcement actions and improve the quality of the local environment.

*Chaotic lifestyle will include those who are homeless, with dependency issues or mental health issues.

Statutory Notices

Certain offences will require the serving of Formal Statutory Notices on individuals, businesses and organisations requiring them to carry out specific legal obligation or requirement.

Prosecutions

For certain offences prosecutions will be undertaken, the seriousness of the offence, previous behaviour of the individual, business or organisation as well

as the effect and impact on the community and environment will be assessed before prosecutions are undertaken.

Injunctions

Where an officer considers it appropriate an injunction may be sought to stop certain actions or to ensure actions are undertaken.

Anti Social Behaviour Orders

In certain circumstances Anti-Social Behaviour Orders will be considered to effectively challenge behaviour, which is or has caused significant harassment, alarm or distress to persons not of the same household. Orders can contain specific conditions preventing specific acts or from entering specific areas.

Performance Management & Quality Control

In order to assess the effectiveness of the Strategy in meeting the aims and objectives of the Council as well as the community's aspirations for our environment, a number of evaluation tools will be used to measure our effectiveness these will include monitoring;

- ◆ Improvements in the local environmental quality survey.
- ◆ Improvements in community satisfaction relating to Safer, Greener and Cleaner Wigan.
- ◆ Number of Fixed Penalty Notices issued and the payment rates.

A quality system will be adopted to ensure consistent and proportionate approach is taken with all offences. All cases will be reviewed by a Service Manager or Principal Officer before case files are presented to legal for prosecution.

Training

Training is a key requirement to consistently deliver professional and effective enforcement regime.

Officers will receive training in*;

- ◆ Enforcement principles
- ◆ Evidence gathering
- ◆ Investigative interviewing
- ◆ Surveillance training
- ◆ Relevant Legislation
- ◆ Customer Care
- ◆ Interpersonal skills including vulnerable people
- ◆ Health & Safety
- ◆ Risk Assessments
- ◆ Violence and aggression

*note not all training will be applicable to every officer, e.g. investigating officers will receive PACE interviewing techniques.

Complaints Procedure

Should an individual, business or organisation be unhappy with any aspect of the Enforcement Strategy they will be directed to contact

Safer Neighbourhood Manager
Wigan Council
Town Hall
Library Street
Wigan
WN1 1NQ

01942 827949

enforcement@wiganmbc.gov.uk

All complaints will be investigated and responded to within 10 working days and the complainant will have the right to use the council's complaints procedure if they are dissatisfied with the response. .

Appendix 1

Fixed Penalty Notices

Offence	Legislation	Penalty Notice	Early Payment Rate	Maximum Court Fine
Litter	Section 88 (1) EPA 1990	£80	£50	£2,500
Non compliance of Street Litter Control Notice or Litter Clearing Notice	Section 94 (8) EPA 1990 Section 92C (2) EPA 1990	£100	£80	£2,500
Unauthorised distribution of literature on designated land	Schedule 3A para 7 (2) EPA 1990	£80	£50	£2,500
Graffiti	Section 43 ASBA 2003	£80	£50	£2,500
Fly posting	Section 43 ASBA 2003	£80	£50	£2,500
Failure to comply with waste receptacle notice	Section 47ZA EPA 1990	£100	£80	£1,000
Failure to produce waste carrier notice	Section 34 (2) EPA 1990 Regulation 4 EPA regulations 1991	£300	£250	£5,000 or unlimited fine on indictment
Failure to produce waste transfer notice	Section 5B (2) Control of Pollution (Amendment Act 1989	£300	£250	£5,000
Breach of Dog Control conditions	Section 59 (2) CNEA 2005	£80	£50	£1,000
Failure to remove Dog Fouling	Dog Fouling Land Act 1996	£50	N/A	£1,000

Nuisance Parking	Section 8(2) Clean Neighbourhoods & Environment Act 2005	£100	£80	
Abandoning a vehicle	Section 2C(2) Refuse Disposal (Amenity) Act 1978 Section 10 Clean Neighbourhoods & Environment Act 2005	£200	£150	
Noise from Domestic Premises	Section 9 (4A) Noise Act 1996 Section 79-82 EPA 1990	£100	£80	
Noise from Licenced Premises	Section 9 (4A) Noise Act 1996 Section 79-82 EPA 1990	£500	No discount	