

Item No.	Classification: Open	Date: 4 th November 2003	MEETING NAME Executive
Report title:		Enforcement Policy : Environmental Health and Trading Standards (EH&TS)	
Ward(s) or groups affected:		All	
From:		Strategic Director of Environment and Leisure	

RECOMMENDATIONS

1. That the Executive approves the Enforcement Policy for Environmental Health and Trading Standards.
2. That the Executive determines the enforcement and regulatory stance to be taken by EH & TS.
3. That the Executive agrees the priorities for enforcement and regulatory activity.
4. That the Executive approves the Statutory Plan for Food Safety and Health and Safety.
5. That the Executive approves the Service Delivery Plan for Trading Standards and that the Executive fulfils it's statutory obligation under the Children And Young Persons (Protection From Tobacco) Act 1991 and note the proposed action for dealing with underage tobacco sales.
6. That the Executive instruct officers to provide a further report next year following appropriate research and consultation providing a set of options for the future direction of the Service.

BACKGROUND INFORMATION

7. On 25 March 2003 the Executive considered a report from the Director of Environment and Leisure detailing the outcome of the Best Value inspection of Commercial and Living Environments. The report stated that the Audit Commission had found the Services provided to be good, but with uncertain prospects for improvement and also stated the intention to re-inspect the food and health and safety functions in the winter of 2003, where there were areas of concern.
8. The Executive approved 5 recommendations (see Appendix 1) designed to raise the prospects for improvement. One of the recommendations required officers to *'provide a further report specifying a set of priorities for enforcement activity, appropriately resourced, to deliver targeted proactive work and inspection programmes'*.
9. The attached statutory plans (Appendix 2 and 3) detail how Environmental Health & Trading Standards proposes to deliver targeted, proactive

enforcement work and inspection programmes in those areas.

10. Best Value Performance Indicator 166 requires Environmental Health and Trading Standards Services to produce, consult, formally adopt and publicise their Enforcement Policy.
11. EH & TS has recently undergone a re-organisation aligning services to address areas for improvement highlighted in the Best Value inspection report. There is a significant amount of new legislation, which has and will continue to impact on the Unit with greater demands and expectations being placed upon it. After a period of “bedding down” the Service is committed to reporting back to members on the success and impact of these changes together with a set of options for the future direction of the Service. The report will follow a period of research, consultation, benchmarking and exploration of best practice.
12. We contribute to the delivery of the Community Plan and ‘six to fix’, playing key roles in reducing crime and fear of crime; improving the health of the borough; and making Southwark cleaner and greener.
13. The EH&TS Business Unit provides priority services that feed into the Community Plan. These are discussed in detail later in the report.

KEY ISSUES FOR CONSIDERATION

The Enforcement Policy

14. The Enforcement Policy for EH&TS is attached, appendix 4
15. The purpose of this Enforcement Policy is to comply with the requirements of BVPI 166, to promote greater consistency, balance and fairness across the regulatory services of EH&TS.
16. The rationale behind the Policy is common sense: consistent and effective enforcement designed to assist the majority of businesses who wish to comply with the law, whilst focusing remedial action on the minority who compromise the health, safety or welfare of others.
17. The adoption of the policy will ensure that enforcement action is focused on situations where the public is put at risk and on businesses that are negligent of their obligations or are intentionally infringing the law.
18. The principles of good enforcement set out in the Enforcement Concordat, which was formally signed on 5 March 1998 by central government and the Local Government Association, form the central backbone of the Policy. The Council signed up to the Concordat in July 1998. The Concordat is based on the principles that businesses should:
 - Receive clear explanations from enforcers of what they need to do and by when;
 - Have opportunities to resolve differences before enforcement action is taken - unless immediate action is needed;
 - Receive an explanation of their rights of appeal.

19. Consultation with users, non-users, businesses and residents clearly indicate that all sectors of the community require the Service to provide more enforcement to protect the health, safety and welfare of those people who live, work, visit and travel through the Borough.
20. A draft enforcement policy was sent as part of the consultation process to 300 businesses, landlords and users of our service. They were invited to comment on the policy. 24 responses were received. 92% of respondents thought that the Enforcement Policy was clear and concise and that there was a satisfactory balance between formal and informal action. Most respondents did not think that the Policy would over burden business.

Environmental Health & Trading Standards' Regulatory Stance

21. During the 1990s the Government set up a Deregulation Unit, which, following a number of cases highlighted by the media about over-officious inspectors, had the brief of simplifying regulations and driving down compliance costs. As a direct result of this EHTS took a 'soft' approach to regulation, using advice and guidance as the prime means of achieving compliance and only using enforcement powers as a last resort.
22. Following extensive consultation as mentioned previously our customers were united in their desire to see more effective and tougher enforcement. This approach needs to be balanced against the Concordat principles.
23. Members are requested to determine which regulatory stance they wish the Service to pursue which breaks down into three broad options:-
 - A: A soft approach using advice and guidance as the prime means of achieving compliance.
 - B: An intermediate approach using service of notices as the prime method of securing compliance with enforcement action taken as a last resort.
 - C: A tough approach following the principles of the enforcement concordat using enforcement action including prosecutions and fines as the prime method of securing compliance..

Food Safety and Health and Safety Statutory Plan

24. The introduction of the Food Standards Agency gave it a responsibility for setting and monitoring standards of local authority enforcement activity. This they have done through issuing the Framework Agreement on Local Authority Food Law Enforcement. The Agreement requires local authorities to develop service plans to ensure national and local issues are addressed and delivered locally.
25. There is also a requirement of the Food Standards Agency that these plans should be submitted for member approval to ensure local transparency and accountability.
26. Failure to meet the expectation of the Food Standards Agency may result in intervention. So far the Food Standards Agency has publicly named and shamed only those authorities that have significantly failed to deliver

27. In September 2001 the Health and Safety Commission issued Mandatory Guidance under Section 18 of the Health and Safety at Work etc. Act 1974. Within this guidance is a requirement for local authorities to produce service plans that are agreed by elected members. The guidance was issued in response to the Health and Safety Commission's concerns about the decline in enforcement activity by local authorities.
28. This service plan (appendix 2) covers both the enforcement of food and health & safety, as the two key areas are currently delivered through the same operational unit.
29. The Health & Safety Executive, on behalf of the Commission, has commenced a programme of local authority audits to determine compliance with the guidance. During 2002/03 the Service was subject to a peer audit of its health & safety enforcement function. Following this an Action Plan for improvement was prepared submitted and included in the Service Plan.
30. The current funded staffing levels are detailed in Para. 4.1 of the Service Plan . The Unit this year has been allocated additional resources from within Environmental Health & Trading Standards and now has an establishment of 19.6 full time equivalent members of staff, 17 of who hold relevant professional and technical qualifications. This represents a gain of two posts from the previous year's establishment. Three enforcement officer posts are currently vacant and these are being held at the moment to fund external contractors undertaking food safety inspections in Medium and lower risk premises.
31. The Service has undertaken a risk-based review of its capability to deliver the plan and, while acknowledging that the supervising agencies' requirements will not be fully met in respect of the lower risk premises, we believe that the risk of intervention is low.

Trading Standards Service Delivery Plan

32. The National Performance Framework (NPF) introduced performance standards for Trading Standards and is aimed at ensuring that Trading Standards Services throughout the UK are able to develop a modern service working towards national and local priorities in a coherent and consistent way.
33. The NPF came into effect on 1st April 2002 and requires the Service to draw up a Service Delivery Plan outlining provisions in key areas, setting priorities for the year ahead, reviewing progress and reporting on performance at the end of the year. It will be used as the basis on which local authorities will be monitored and audited nationally on their provision of a Trading Standards Service. It contains within it a requirement that the plan should be submitted for member approval to ensure local transparency and accountability.
34. This service plan is appended (appendix 3).
35. The Service Delivery Plan aims to link Trading Standards core responsibilities with the wider community and corporate objectives such as the Community Plan and those priorities relating to tackling poverty, health improvement, racial equality, disability, community safety, tourism etc.

36. The Framework requires the Service to adopt an enforcement policy in line with the Enforcement Concordat. It also requires the Service to operate to the LACORS Home Authority principle.
37. Under the Children And Young Persons (Protection From Tobacco) Act 1991 the local authority has a duty to consider every 12 months a programme of enforcement relating to the sale of tobacco to people under the age of 16. This is set out in the Service delivery plan under key aims and objectives.

Changes to Licensing Legislation

38. The Licensing unit deal with licensing of Entertainment, Special Treatments and from 2004 Sale of Alcohol. Licensing is entering a major transitional phase. The Licensing Act 2003 received Royal Assent on 10 July 2003. It introduced a new licensing regime for alcohol, entertainment and late night refreshment and gave responsibility for all to the local authority. This service equally has a key role in controlling and reducing un-neighbourly behaviour and in reducing crime and the fear of crime.
39. Current preparations include the formulation of a "Licensing Statement of Policy" which is to deal with the issues of the prevention of crime and disorder; of nuisance; of harm to children; and of risk to public safety. The Act also directs the enforcement activities of the Service toward joint working with the Police and Trading Standards Officers aimed at targeted "problem" operations.
40. The Licensing Act 2003 is being closely followed by further major new legislation dealing with all forms of gaming. It is anticipated that this will result in the Licensing Service absorbing additional new responsibilities for the licensing of gaming premises. Conversely, the establishment earlier this year of the Security Industries Authority (SIA) under the Private Security Industry Act 2001, will see the transfer of responsibility for the registration of door supervisors from this Authority to the SIA around April 2005 requiring the establishment of further new enforcement protocols with the Authority in due course.

24 hour 7 day a week Noise Service

41. The 24 hour seven day a week reactive noise service deals with over 11,000 service requests per annum. The. This service aims to respond to 76% of service requests within 45 minutes of receipt. The service has a key role in controlling and reducing un-neighbourly behaviour and in reducing crime and the fear of crime.
42. The service has achieved top quartile performance. 100% of all service requests are responded to within 3 hours of receipt.
43. The service receives 18% of its funding from the Housing Department. 75% of the noise service requests dealt with emanate from Council owned homes.

Houses in Multiple Occupation (HMOs)

44. The Residential unit has responsibility for regulating housing conditions within the private rented sector. Of principal concern HMOs, which generally

offer relatively cheap accommodation. However, most HMOs are in poor and unsafe condition. Information from Southwark's 2003 Private Sector House Condition Survey estimates that there are over 2,000 HMOs that provide tenants with unsafe accommodation therefore putting over 12,000 residents at risk. The unit's work is key in preventing ill health and injury in the private rented sector.

45. The EH&TS Service require private sector landlords to improve and make safe poor standard housing under the provisions of the Housing Act 1985. The Unit continues to demonstrate upper quartile performance in terms of the amount of enforcement action and the number of HMOs improved.
46. In order to assist work in this area the Unit which currently runs two area based HMO registration schemes will be seeking approval for a third area to be declared.
47. The Unit delivers risk-based, proactive HMO inspections, which result in safety improvements in 250 premises per year. The Unit operates a self-assessment scheme to monitor and regulate HMOs after enforcement action.

Rapid Response to Public Health complaints.

48. EH&TS receive on average 1,400 service requests a year that would benefit from a rapid response service, responding within 24 hours. Such a Service will improve customer satisfaction, providing a swift joined-up approach to an area of work that has previously been fragmented and facilitating closer co-operation with community wardens. The rapid response service will feed into to Southwark's Clean and Green priorities and be key in tackling environmental crimes.

RESOURCE IMPLICATIONS

49. The cost of the above Enforcement Policy including the Statutory Plans and other service priorities will be met from the existing EH&TS budget through the redirection of existing resources and implementation of service improvements.
50. The Unit in terms of resources required to undertake the new work has assessed the impact of the proposed changes to alcohol licensing. However the net cost is not known since the Councils are awaiting Government guidance on fees and charges that can be imposed by the Local Authority for this Service.

EQUAL OPPORTUNITIES IMPLICATIONS

51. Enforcement and Regulatory work delivered by EH&TS are potentially delivered equally to different communities within Southwark. Through the enforcement of such functions as health and safety, food safety, trading standards, licensing, improving poor quality housing and noise control it could be said that the service is actively contributing to community cohesion through improvements to the community environment and its health quality.

LOCAL AGENDA 21 IMPLICATIONS

CONSULTATION

52. The Best Value Review included a large consultation exercise, which was conducted by MORI. The surveys were conducted with Members, staff, users, non-users, businesses and those people we enforce against. A separate in-house survey was carried out to gain users and non-users opinion on the proposed enforcement policy. The main findings of the consultation exercises were as following:

- All our customers said that they wanted us to take a tougher stance on enforcement
- While they were often satisfied with the way we acted towards them, they were less happy with the outcome of our intervention
- Businesses wanted us to help them comply with the law by advice, information, training and award schemes
- Businesses did not want joint inspections
- Consumers wanted more money spent on regulatory services to bring up levels of enforcement and inspection.

Background Papers	Held At	Contact
Report to Executive 25 th March 2003, Outcome of Best Value inspection of Commercial and Living Environments	The Chaplin Centre	Tim England
Food and Health and Safety, Statutory Plan 2003/4	The Chaplin Centre	Tim England
Trading Standards Service Plan 2003/4	The Chaplin Centre	Tim England
Environmental Health and Trading Standards Enforcement Policy	The Chaplin Centre	Tim England

Audit Trail.

Lead Officer	Gill Davies, Director Environment and Leisure
Report Author	David Littleton/Tim England
Version	Final
Date	24 th October 2003
Key Decision	Yes/No

CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER		
Officer Title	Comments Sought	
Borough Solicitor & Secretary	No	
Chief Finance Officer	No	
<i>List other Officers here</i>		
Executive Member	Yes	No
Date final report sent to Constitutional Support Services		

APPENDIX 1

Report to Executive 25th March 2003, Outcome of Best Value inspection of Commercial and Living Environments

APPENDIX 2

Food and Health and Safety, Statutory Plan 2003/4

APPENDIX 3

Trading Standards Service Plan 2003/4

APPENDIX 4

Environmental Health and Trading Standards Enforcement Policy

