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<b>REPORT TO:</b>	<b>ENVIRONMENTAL AND DEVELOPMENT SERVICES COMMITTEE</b>	<b>AGENDA ITEM: 12</b>
<b>DATE OF MEETING:</b>	<b>31<sup>st</sup> MAY 2018</b>	<b>CATEGORY: RECOMMENDED</b>
<b>REPORT FROM:</b>	<b>STRATEGIC DIRECTOR SERVICE DELIVERY</b>	<b>EXEMPT PARAGRAPH NO: NOT EXEMPT</b>
<b>MEMBERS' CONTACT POINT:</b>	<b>MATT HOLFORD – ENVIRONMENTAL HEALTH MANAGER</b>	<b>DOC:</b>
<b>SUBJECT:</b>	<b>ENFORCEMENT AND COMPLIANCE REPORT</b>	<b>REF:</b>
<b>WARD(S) AFFECTED:</b>	<b>ALL</b>	<b>TERMS OF REFERENCE: EDS14, HCS10</b>

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## **1. Recommendations**

- 1.1 That the Committee note the contents of the report, that the Council is using its regulatory powers in a way proportionate to the demands for all regulatory services it provides.
- 1.2 That in future, the Committee receive an annual report summarising the use of the Councils regulatory powers.

## **2. Purpose of Report**

- 2.1 To provide the Committee with details of the Council's use of its tools and powers to take appropriate enforcement action.

## **3. Background**

- 3.1 One of the key objectives of the 'People' theme of the 2016-21 Corporate Plan is that the Council will *"Use existing tools and powers to take appropriate enforcement action"*.
- 3.2 The Council is authorised to use in excess of 100 different statutes to regulate and ensure compliance in areas of work as diverse as planning, food hygiene, licensing, pollution control, anti-social behaviour, building control, public health, waste and dog control.
- 3.3 The way in which the Council utilises these powers is governed by law, statutory guidance and previous legal precedent. Some services (notably many of the functions of Licensing and Environmental Health) also have a duty to have regard to the five governing principles of the Legislative and Regulatory Reform Act 2006, namely that all regulatory interventions are transparent, accountable, proportionate and consistent and should be targeted only at cases in which action is needed.

- 3.4 This report provides a high level summary of the regulatory action over the past year and provides a comparison against historical levels of regulatory action.

### **Demands for services**

- 3.5 The demand for our services this year is illustrated by Figure 1 in the report appendix.
- 3.6 During 2017/18 there was a 54% reduction in complaints about dogs (fouling and dangerous dogs) and a 23% reduction in noise complaints compared to last year.
- 3.7 Complaints about abandoned vehicles remain very high compared to historical levels. Also public health complaints, covering problems such as waste in gardens, filthy properties and vermin infestations continue to remain high.
- 3.8 Having increased for the last three years, there was a fall in the recorded number of fly tipping incidents in 2017/18. The underlying causes of fly tipping are many and varied. Over the past 18 months the Safer Neighbourhoods Wardens have devoted a significant proportion of their time towards investigating incidents in pursuit of the corporate plan priority to reduce fly tipping. It is hoped that the reduction in incidents is a direct reflection of the work of the Wardens, although this is only likely to become apparent when comparative national data for fly tipping incidents is released at the end of this calendar year.

### **Demands for Inspections of Businesses**

- 3.9 Food hygiene law require that businesses are risk assessed and then inspected with a frequency based on national legal guidance. Figure 2 in the appendix to this report illustrates the number of inspections carried out.
- 3.10 83.4% of food businesses have been awarded the top score for their food hygiene. This is slightly lower than last year (84%), but represents a solid and consistent improvement from three years ago (76.1%) and a significant step change from six years ago (58%). By the law of diminishing returns it is anticipated that this performance is unlikely to continue to improve at the same rate. The 16% of food businesses who are yet to meet the top score are the toughest group to positively influence. The Commercial team, which delivers food hygiene inspections, is looking at various forms of behavioural change interventions as well as direct legal action on the rare occasions it is appropriate, to improve the Council's influence on this hard to change group.
- 3.11 Over 98% of food businesses are defined as 'broadly compliant', which means that our food inspectors are satisfied that they can be left to manage their own hygiene practices until their next programmed inspection. This is unchanged from last year.

### **Legal Interventions**

- 3.12 The Council has published an enforcement policy which explains how it will use the various tools and powers to help the business community and residents to meet the various laws the Council is tasked with regulating. When the Council is unable to ensure compliance through persuasion it may be necessary to resort to use of more formal means. The Council has powers in the form of various compliance notices which can be issued requiring some form of action to be taken (or to be stopped) by the recipient in order to more formally require compliance than through advice and guidance.

3.13 Figure 3 in the appendix to this report illustrates the numbers of formal notices issued and in broad terms the nature of the problem which led to the notice being served.

### **Punitive Outcomes from Offences**

3.14 In a small number of cases, the Council is required to resort to the courts or other forms of judicial punishment in order to seek restitution for confirmed offences. This restitution can be in one of three forms:

- For a limited number of offences and where the offender admits to the offence a fixed penalty notice can be issued;
- Where the offender admits the offence and there is no fixed penalty notice option available, but prosecution is not deemed to be proportionate then the offender may be given the option to sign a formal caution;
- The most severe form of intervention is a prosecution.

3.15 Table 1 below summarises the recent numbers of each of these punitive outcomes compared to historical levels.

**Table 1 – Summary of Punitive Outcomes following Offences**

	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>2016-17</b>	<b>2017-18</b>
Total Fixed Penalty Notices	3	6	34	91	79
Dog offences	0	1	23	9	6
Fly tipping & waste offences	1	1	0	7	7
Litter	2	4	8	65	54
Community Protection Notice / PSPO breach	0	0	3	10	12
Formal Cautions	0	3	3	1	3
Prosecutions	0	0	3	1	5

3.16 Overall the Council is making significantly greater use of fixed penalty notices for low level offences than has previously been the case.

3.17 In 2015-16 Safer Neighbourhood Wardens focused on using FPNs to improve the control of dogs within the District's parks and open spaces. Anecdotal feedback from park users is that the increase in enforcement activity in 2016 resulted in a significant improvement in dog stewardship in the parks. In 2016/17 significantly more FPNs were issued for littering offences - mainly relating to material being left illegally at the recycling sites at Hatton and Willington. The Council has also increased its use of the new anti-social behaviour laws which enables fixed penalty notices to be issued for breaches of Community Protection Notices and Public Spaces Protection Orders.

3.18 Fixed Penalty Notices are issued where the recipient admits to the offence and agrees to pay the fine to discharge their liabilities. If the recipient of an FPN subsequently fails to pay the fine then the Council should be considering the need to prosecute for the offence. To date no prosecutions have been taken for failure to pay an FPN.

### **Matters of Particular Note**

- A man from Derby has been prosecuted and fined over £2,500 for dumping household waste near to Findern. For the first time the courts also took the unprecedented action of banning him from driving for 6 months. The Safer Neighbourhood Warden team brought the prosecution despite the man initially

denying any knowledge of the incident and claiming that the vehicle identified as responsible was not in his possession at the time of the incident.



- A man formerly of Overseal has been fined over £12,000 for illegally burning waste. The waste consisted of a mix of plastics, rubber and other materials being burned in a large skip on his property in May 2017. This exposed residents to potentially high levels of air pollution. The man had been given previous verbal advice and warnings about how to dispose of waste properly.



- A man from Hilton has been issued with an Injunction which prohibits any banger racing on land under his control and prevents the burning of any waste on the land. He has also been instructed by the court to remove large quantities of controlled waste which has been brought onto the land.
- Environmental Health Officers oversaw the voluntary surrender of nearly 20 tonnes of meat from a food business near Foston on the advice of the Food Standards Agency.
- The Council is currently consulting on the use of a Public Spaces Protection Order to ban access into a short stretch of land off Staker Lane, Findern. The

secluded location is being used as a regular fly tipping spot and location for other forms of anti-social behaviour and criminality.

- Managing anti-social behaviour in Swadlincote Town Centre has been a priority over the course of the year. Joint action by the Council and Police resulted in 19 Community Protection Notice warnings being issued to young people engaging in anti-social behaviour and their parents. 8 of these were escalated to Community Protection Notices and 3 Fixed Penalty Notices were issued as a result of town centre anti-social behaviour.

#### **4. Financial Implications**

- 4.1 None to minor adverse. Most forms of actions to achieve compliance have a cost implication. In case of prosecutions the Council will always seek to recover costs, and in the cases described above court has approved that relevant costs have been awarded to the Council.

#### **5. Corporate Implications**

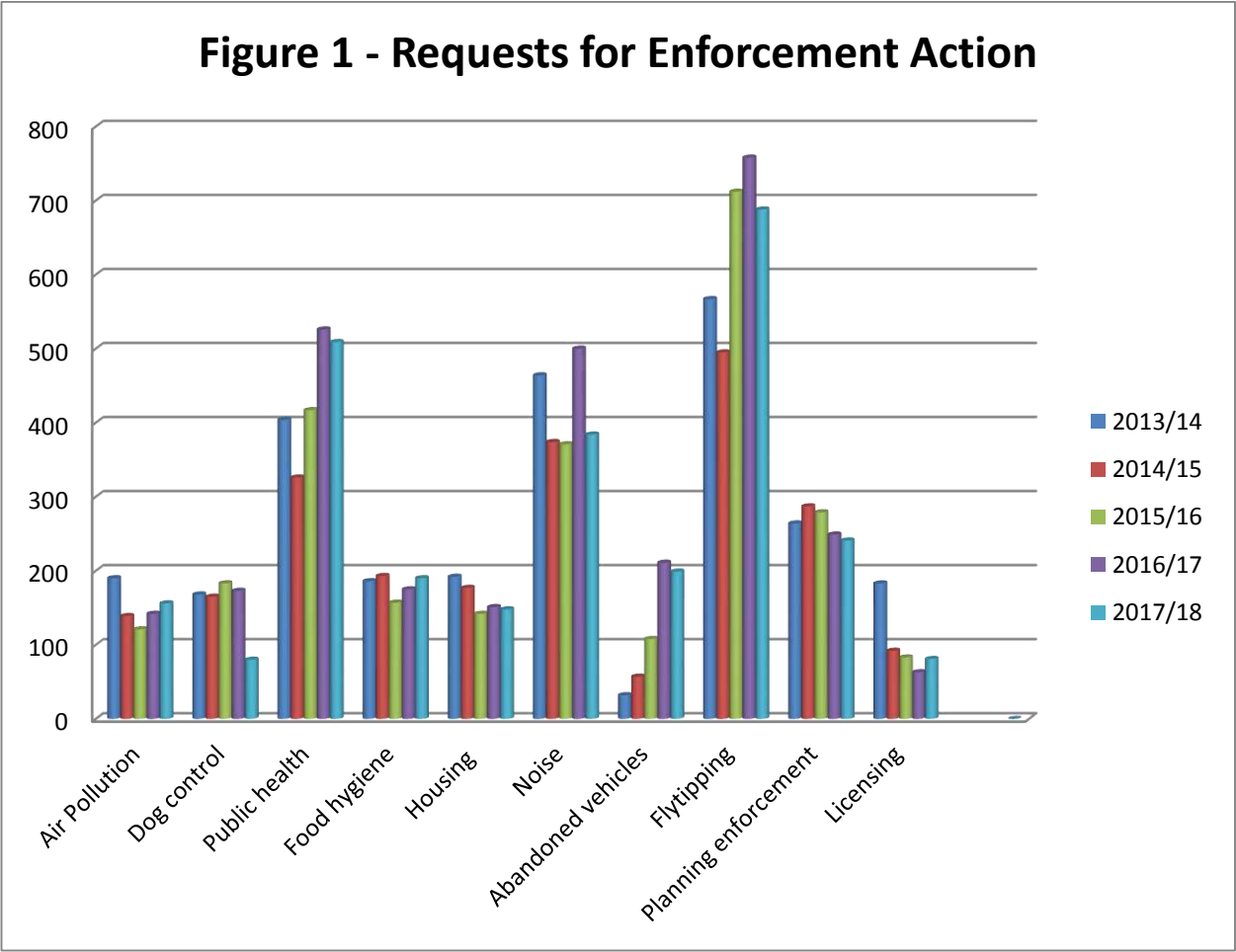
- 5.1 The report has been produced to provide the Committee with details of how officers are delivering the “People” themed objective of “Keeping Residents Safe and Happy” in the 2016-21 Corporate Plan and in particular the aim to “Use existing tools and powers to take appropriate crime enforcement action”.

#### **6. Community Implications**

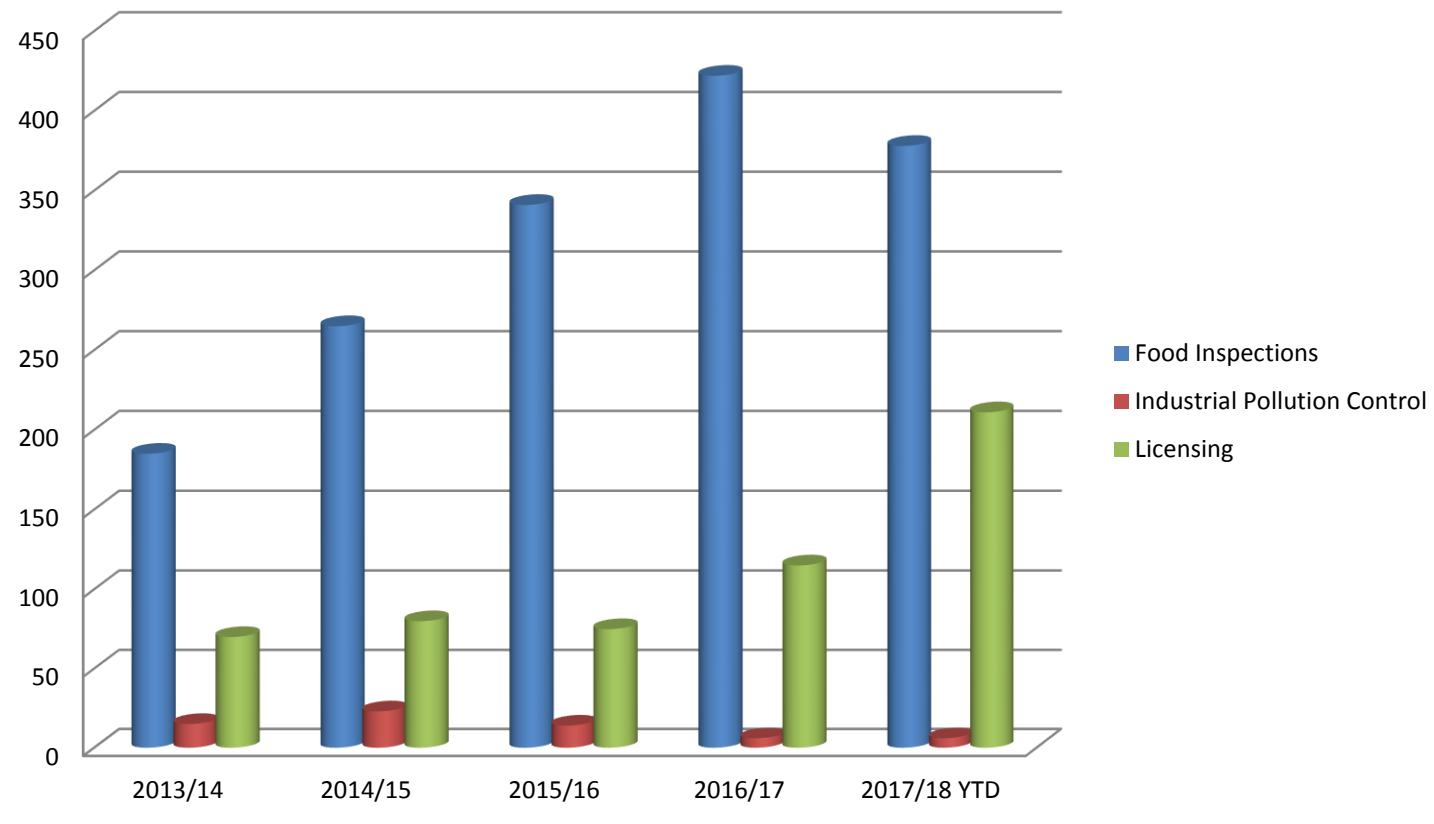
- 6.1 Beneficial. Proportionate regulation is an important feature of ensuring community cohesion and economic growth.

#### **7. Conclusion**

- 7.1 That Members note and endorse the work that officers are undertaking, using the tools and powers available, to take appropriate enforcement action where necessary.



**Figure 2 - Proactive Inspections of Businesses**



**Figure 3 - Enforcement Notices Served**

