

Dog Control and Dog Fouling

Report by Ian Johnson, Head of Communities & Economy (remitted from Cabinet on 28 February 2017)

1 Purpose of Report

- 1.1 To provide an update to Cabinet on the enforcement of legislation relating to out of control dogs and dog fouling, and to inform Members of the outcome of the review of the current arrangements for dog control.

2 Background

- 2.1 The Control of Dogs (Scotland) Act 2010 (The Act) concentrates on tackling irresponsible dog ownership. The Act came into force in 2010 to complement the dangerous dogs legislation which is enforced by the Police. It focuses on the "deed not the breed" approach and is designed to highlight the responsibilities of dog owners and those in charge of dogs, by identifying out of control dogs at an early juncture and providing measures to change the behaviour of such dogs and their owners, before the dogs become dangerous. The Act states it is an offence to fail to keep a dog under control so as to cause alarm or apprehensiveness to a reasonable person.
- 2.2 Dog fouling legislation makes it an offence to fail to immediately pick up and correctly dispose of dog fouling in public areas.
- 2.3 In addition to these specific matters there is also legislation relating to stray dogs, micro-chipping and animal welfare matters i.e. dog breeding or dog boarding at commercially designed premises and home boarding, on a smaller scale, at residential properties.
- 2.4 Members will recollect that on 12 January 2016 the Cabinet considered an update paper concerning the activities associated with dog control matters in Midlothian and agreed:
- to note progress made by the Environmental Health Service in addressing the issues of out of control dogs and dog fouling;
 - to endorse the approach of seeking to use preventative measures to ensure that all dog owners recognise dog fouling as socially unacceptable; and
 - to refer this report to the Performance, Review and Scrutiny Committee for information.
- 2.5 The report was considered by the Performance Review and Scrutiny Committee on 8 March 2016 who agreed:
- to continue with the zero tolerance approach;
 - that an update be brought back to the Performance, Review and Scrutiny Committee within 6 months on the progress of increasing the number of staff who have the authority to serve fixed penalty notices; and
 - to endorse the decisions of the Cabinet.

- 2.6 As a result Environmental Health, in conjunction with other services in the Authority, undertook a review of current enforcement arrangements and their fitness for purpose. Given the desire to provide robust findings the review required longer than anticipated to enable the matter to be reported back to both Cabinet and the Performance, Review and Scrutiny Committee.

3 Current Enforcement

- 3.1 Currently all Environmental Health staff (16 officers) across both the Food & Safety Team and the Public Health Team are trained and authorised to undertake the service of Fixed Penalty Notices under the Dog Fouling (Scotland) Act 2003. Within this number, the Environmental Wardens, (FTE 2), have specific duties to investigate and deal with dog fouling, including through the operation of covert and overt patrols. The remaining Environmental Health staff are authorised to enable them to respond if they witness events likely to constitute an offence under the dog fouling legislation.
- 3.2 In terms of the legislation as regards out of control dogs the local authority must appoint at least one “authorised officer” for the purposes of the Act and the Authority must satisfy themselves that such an officer is skilled in the control of dogs and has the capacity to instruct and advise others in matters relating to the control of dogs. In fulfilment of this requirement one of the above listed Environmental Wardens is an authorised officer under this Act.
- 3.3 Before authorisation of an officer to undertake enforcement duties can take place, suitable training must be undertaken that ensures officers are:
- fully conversant with the legislation;
 - trained in general legal principles including the collection of evidence, the cautioning of alleged offenders and the taking of statements; and
 - trained in the preparation of cases for the courts in line with the principles outlined in the document “Guidance for Non-police Reporting Agencies” and suitably experienced to attend court and present information if the situation arises.

4 Review of Current Enforcement Practices and Resources

- 4.1 In establishing the terms of the review it was determined that only those matters enforced by the Environmental Wardens were to be included i.e., dog fouling, out of control dogs, strays and microchipping with the licensing aspects of boarding and breeding of dogs excluded. The review undertook to establish:
- (i) whether an adjustment in the levels of enforcement resource is required and if so,
 - (ii) how such an adjustment could be delivered.

- 4.2 The current level of engagement with the service was reviewed.

4.2.1 Dog Fouling

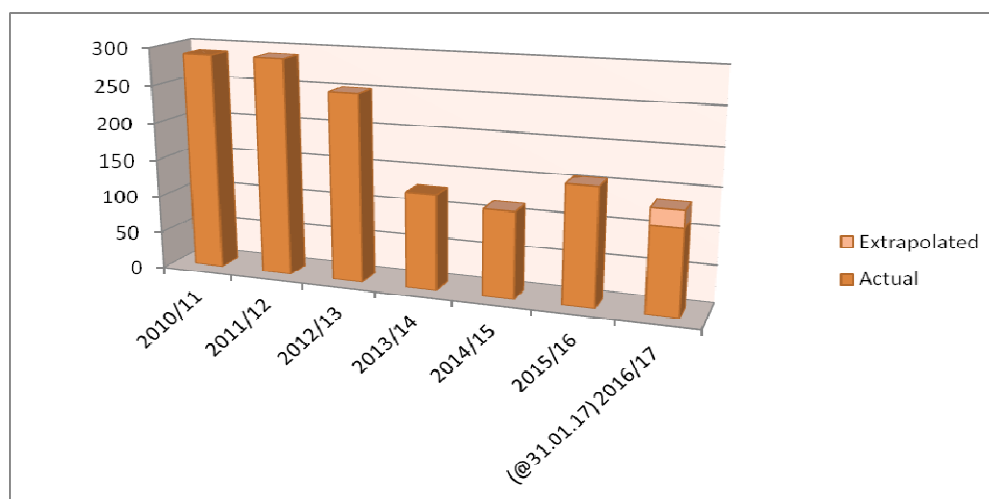
Since the adoption of the zero tolerance approach to fouling, and in conjunction with the Green Dog Walkers scheme and the provision and placement of bins at strategic locations, the number of complaints received regards dog fouling has declined.

Figure 1 below provides information on the trend in complaints from 2011/12 to date. During the four year period between 2011/12 and 2014/15 there was a steady decline with an overall 60% reduction in complaint numbers.

The overall decline in the number of reported incidents of dog fouling does not lead to complacency on behalf of the Environmental Health Service, which remains firmly committed to the education of the population, particularly early education and intervention to attain a shift in cultural behaviour. Community consultations conducted to date continue to raise concerns regards dog fouling on paths, footways and grassed areas and the public remain concerned for a variety of reasons including the unpleasantness of coming into contact with dog dirt and also the potential health risks associated with it.

The Service continues to seek and undertake all opportunities to continue with the zero tolerance approach.

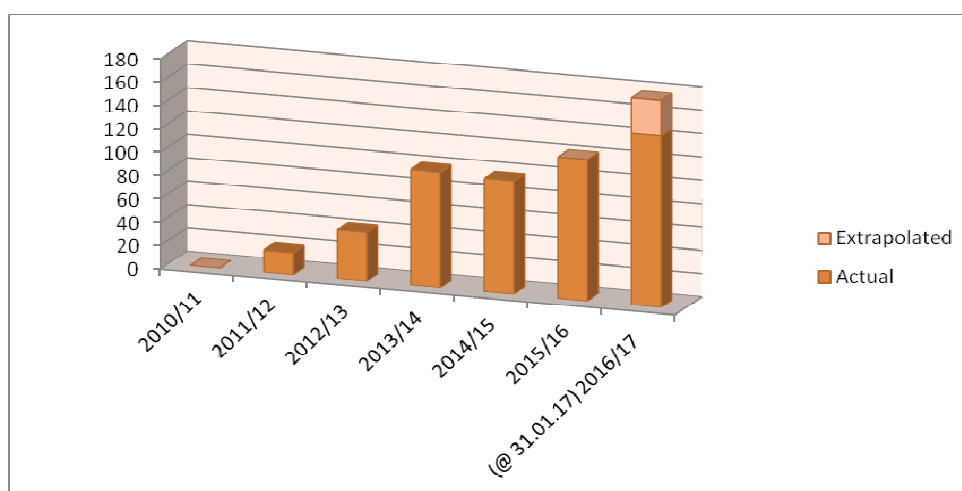
Figure 1: Dog Fouling Complaints (by Year)



4.2.2 Dog Control

Since the introduction of the dog control legislation in 2010 the recorded number of incidents in which out of control dogs have been reported to the local authority has increased significantly. Figure 2 below indicates the trend in complaints. Investigations into complaints as regards out of control dogs causing alarm or apprehensiveness can be complex and time consuming. A reported incident, inadequately investigated, could have serious repercussions in the case of a failure to identify a potentially out of control dog which enables its behaviour to decline such that it becomes a dangerous dog.

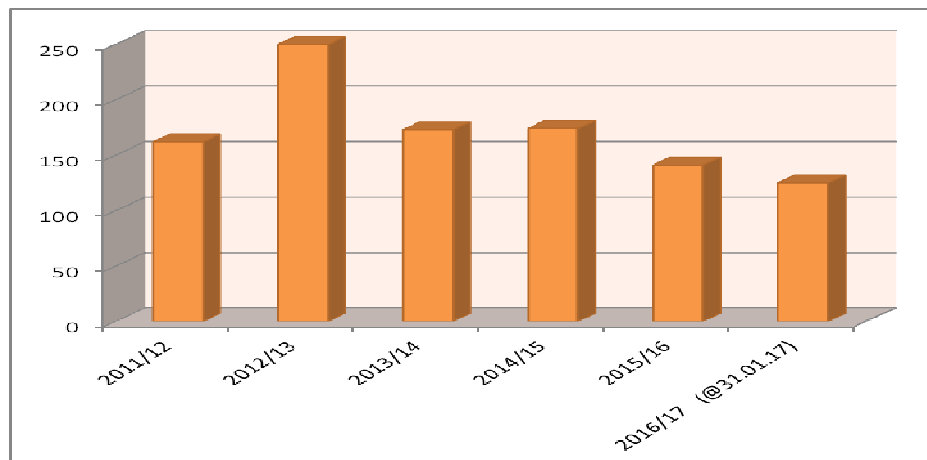
Figure 2: Out of Control Dog Reports (by Year)



4.2.3 Stray dogs

Reported incidents of stray dogs have fallen steadily over the past five years.

Figure 3: Stray Dog Reports (by Year)



Where repeat offenders are identified, steps are taken to educate so as to prevent recurrence.

4.2.4 Micro-chipping

Legislation requiring dogs to be micro-chipped was introduced in April 2016. Prior to the introduction, Midlothian Council, in conjunction with the Dogs Trust, undertook a very successful campaign which saw a significant number of dogs chipped. The day to day enforcement demands regards micro-chipping are not significant. The majority of cases of failure to microchip are identified during investigation of complaints as regards out of control dogs.

4.3 Staff Resource

Having identified the significant level of dog control matters that are raised with Midlothian Council the review undertook to establish which mechanisms are available to investigate these and to determine if appropriate response to protect public health and safety can be delivered in all incidents. It concluded that two officers who spend approximately 50% of their time on dog control and also undertake investigations into flytipping, pest control and littering, are significantly stretched.

4.4 As a result three principal mechanisms of increasing the numbers of authorised officers were identified, namely;

- i) officers employed elsewhere within the Authority to be authorised, in addition to their current roles, to undertake dog related enforcement roles,
- ii) the realignment of tasks within the Environmental Health service to divert resources to dog control matters or
- iii) the provision of additional staff to undertake dog control matters.

4.3.1 In reviewing the numbers of staff who could potentially be trained and authorised to issue fixed penalties and undertake the enforcement duties of the Dog Fouling (Scotland) Act it was necessary to identify Services across the Local Authority where their duties place them in locations where dog

fouling is known or likely to occur. The two services identified were Waste Management and Land and Countryside Services.

In the case of Waste Management Services it was concluded that given the enforcement nature of the role it would not be appropriate for all levels of staff within Waste Management Services to be trained to undertake such a role. In addition for those levels of staff where it may be considered appropriate there is potential for a significant detrimental effect on the performance of their primary roles in the delivery of an already tightly scheduled operation.

With regards to Land and Countryside Services a pilot study was conducted for a period of three months to determine the numbers of incidents where employees of the Land and Countryside Service witnessed incidents of dog fouling such that the service of a fixed penalty notice may have been possible. The study took place between April and August 2016 and recorded zero occasions where it was considered that dog fouling had been witnessed by Land and Countryside Services staff such that a fixed penalty could be served.

In addition to officers being unable to identify appropriate incidents the following matters were raised by both Services:

- i) Each service already has an extensive commitment and workload as regards their Service's core duties and there is no capacity to add additional duties for which training would be required.
- ii) The possibility of having to engage in potentially confrontational situations with members of the public and / or attend court to present evidence caused significant anxiety amongst certain tiers of staff such that the opinion was expressed that even if increased payment was to be awarded for work of this nature there would be reluctance to undertake such enforcement work.
- iii) It was established that due to the requirements of the Act in relation to the authorisation of officers to deal with out of control dogs that no alternative service within the Authority could offer assistance.

4.3.2 Option two proposed the realignment of tasks within the Environmental Health service to divert resources to dog control matters.

A review of Environmental Health staffing has concluded that the service is operating on the limit of the statutory duties and has no capacity to divert any additional resources to dog control matters without the potential for serious detriment.

4.3.3. The third identified option is to recruit suitably qualified staff to undertake dog control matters. Such an option could not be funded from within the existing Environmental Health resource and would require an increase in budget. Having regard to the Council's overall financial position this option, whilst costed, is not being recommended

5 Report Implications

5.1 Resource

At present the dog control activities, including the continued support and promotion of the Green Dog Walkers scheme, is being managed within the current Environmental Health resources.

5.2 Risk

In terms of dog fouling there is a risk that failure to continue with the current programme may allow the situation to deteriorate and thereby lead to an increased number of complaints, potential for exposure to pathogens by those coming into contact with fouling and the associated health implications

With regards to dog control matters a failure to adequately identify and undertake appropriate enforcement action regards an out of control dog could result in deterioration in behaviour of the animal such that it becomes dangerous.

5.3 Single Midlothian Plan and Business Transformation

Themes addressed in this report:

- X Community safety
- X Adult health, care and housing
- X Getting it right for every Midlothian child

5.4 Key Priorities within the Single Midlothian Plan

Continued commitment to the dog control programme plays a significant part in the quality of the local environment.

5.5 Impact on Performance and Outcomes

In 2011, at the commencement of the current campaign against dog fouling, the Council set out to change the mindset of dog owners and walkers in Midlothian from “everyone else leaves their dogs poop so why not me?” to ‘everyone else clears up and so will I’. The continued reduction in the overall numbers of complaints received as regards dog fouling evidences the positive impact of the campaign to date. The proposals in this paper would allow that position to be maintained.

5.6 Adopting a Preventative Approach

Environmental Health will continue with its schools education programme and promotion of the Green Dog Walkers Scheme as enforcement alone will never fully resolve the dog control issues; rather, early education for future prevention is the key.

In terms of dog control the ability to fully investigate and subsequently have frequent assessment of progress in response to the requirements of a dog control notice is anticipated as achieving a significant shift in the behaviour of an animal and often in the knowledge and ability of an owner thereby reducing the likelihood of dog attack.

5.7 Involving Communities and Other Stakeholders

There is ongoing engagement with all interested parties, particularly local communities. A number of community based groups has provided suggestions and ideas for how the service may be improved and where possible these have been incorporated. Where incorporation of the suggestions has not been possible, for legal or other reasons, that fact has been fed back. In terms of the Green Dog walkers a number of community groups are very active in promoting responsible ownership.

5.8 Ensuring Equalities

This report is not proposing any changes to strategy or policy and does not therefore need to be assessed for equalities impact.

5.9 Supporting Sustainable Development

The dog control programme is designed to ensure the well-being of our population and visitors and seeks to provide a better quality of life for people in Midlothian through improvement in environmental conditions.

5.10 IT Issues

Environmental Health staff are regularly subjected to significant verbal abuse or other threatening behaviour as a result of investigating dog control matters and other environmental offences. Progress is currently being made to secure the provision of personal security cameras, similar to those used by Police Scotland or traffic regulators, in conjunction with IT colleagues and the Data Protection Officer.

6. Summary

There is legislation in place providing local authorities with powers to enforce dog fouling and dog control. Data for Midlothian over the past five years shows a declining number of complaints over dog fouling, but a steady rise in reported cases of out of control / dangerous dogs. On both matters the Council needs to reaffirm its commitment to appropriate enforcement measures. Current staffing levels will enable enforcement to continue, with an increased emphasis on dog control, although the existing resource is fully occupied.

7 Recommendations

It is recommended that Cabinet,

- i) notes that the current number of officers authorised to issue fixed penalty notices under the Dog Fouling (Scotland) Act is being maintained;
- ii) notes the continued overall reduction in the numbers of complaints regards dog fouling received by Environmental Health and the increasing numbers of complaints regards out of control dogs;
- iii) notes the outcome of the review to examine the level of resource to provide the service; and
- iv) remits this report to the Performance, Review and Scrutiny Committee for information.

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Report Contact:

Edel M Ryan
Environmental Health Manager

Telephone 0131 271 3742
edel.ryan@midlothian.gov.uk