

**REPORT TO:** Safer Halton Policy & Performance Board

**DATE:** 16 June 2009

**REPORTING OFFICER:** Strategic Director Environment

**SUBJECT:** Update on Enforcement of the Smoke free Provisions of the Health Act 2006

**WARDS:** Borough Wide

## **1.0 PURPOSE OF THE REPORT**

- 1.1 At the January meeting the board resolved that a report be submitted to a future meeting on the enforcement of the smoking ban.
- 1.2 To inform the Board of enforcement activity undertaken in the Borough since the introduction of the Smoke Free legislation.
- 1.3 To inform the Board of the proposed future funding of continuing Smoke Free enforcement from the Healthy Communities funding within the Primary Care Trust.

## **2.0 RECOMMENDATION: That**

That the requested report be noted

## **3.0 SUPPORTING INFORMATION**

- 3.1 Introduction  
The smoke free provisions of the Health Act 2006 came into force in England on July 1<sup>st</sup> 2007. The Government provided funding to Environmental and Regulatory Services of Halton BC of £11,951 in 2006/07 and £58,338 in 2007/08 to ensure compliance.
- 3.2 A smoke free legislation Action Plan was produced in association with the Primary Care Trust and a major publicity campaign was launched in November 2006 including local radio news coverage, press coverage in local media, dissemination of free posters, stickers and information packs for both the public and businesses in the Borough. Free breakfast presentations were made to businesses, *Proud to be Smoke Free* banners were given out to local schools and a series of publicity events all over the Borough were organised in a 100 day countdown.
- 3.3 In June 2007 two smoke free enforcement officers were appointed. The smoke free enforcement officers commenced visits immediately, to all

premises considered to be high risk according to guidance produced by the Government, the Department of Health and LACORS (Local Authority Coordinators of Regulatory Services). Officers visiting businesses in the Environmental Health Department as part of their programmed inspections and response to complaints, also informed about the requirements of the legislation from November 2006.

3.4 By July 1<sup>st</sup>, as a result of the comprehensive campaign programme and schedule of visits, there was reasonable knowledge of the legislation throughout the Borough. Discussions at breakfast meetings and at licensing forums showed that businesses supported firm and consistent enforcement to ensure that a level playing field was available to all businesses. Enforcement intelligence and strategy was also shared with our neighbouring Merseyside and Cheshire authorities to this end.

### 3.5 Enforcement

The Health Act and associated legislation create the following main offences:

- Failure to display no-smoking signage
- Smoking in a smoke free place
- Failure to prevent smoking in a smoke free place

Where advice, guidance and written warnings fail to secure compliance the following actions may be taken:

1. **Fixed Penalty Notices (FPN)** may be issued for

- Failure to display no smoking sign
- Smoking in a smoke free workplace

A person may request to be tried for the offence in court instead of paying the fixed penalty.

2. **Prosecution** Where all other enforcement approaches fail to secure compliance legal proceedings may be instigated for:

- Failure to display no smoking signage
- Failure to prevent smoking in a smoke free place
- Intentional obstruction of an authorised officer
- Failure to give an authorised officer facilities, assistance or information.

The decision to prosecute is not taken lightly, but in accordance with the Departmental Enforcement Policy, the Crown Prosecution Services 'Code for Crown Prosecutors' and the Environmental Health Merseyside Enforcement Protocol.

A total of **3,352** visits have been made since June 2006 to a total of **1,650** premises.

**829** of these premises are enforced by the Health & Safety Executive, not by Halton BC Environmental Health Department and represent the number of additional visits made by this authority.

**658** visits were to public houses and clubs

**126** visits were to restaurants and cafes

**39** to hotels and guest houses

**60** visits to work vehicles

A total number of **207** service requests relating to smoke free were addressed. These may be complaints or requests for advice.

A total of **9 fixed penalty notices** were served: 2 to taxi drivers, 3 to works drivers, 3 to members of the public, 1 to HGV driver.

A total of **5 cases** have been referred to the Magistrates court, 4 to publicans allowing smoking on their premises and one to a wagon driver for both smoking and litter offences.

- 3.6 One of the smoke free enforcement officers left the post in October 2007 for an external post. The remaining officer, was appointed to another post within The Environment and Regulatory Services Department in August 2008. Smoking enforcement is now undertaken in the main by officers within Environmental Health as part of their day to day duties. It is fortunate the former smoke free enforcement officer has been able to work occasionally with officers and with Community Police to maintain our Smoke free enforcement, but the government funding for this work has now been exhausted.
- 3.7 The relatively low number of formal legal action taken over nearly two years since the introduction of the legislation is testament to the effective and comprehensive publicity campaign run before July 1<sup>st</sup> 2007 and the firm approach taken by officers in the initial six months. The public have also been largely supportive of the legislation and in many cases have been self- policing.
- 3.8 However, officers have reported that in recent months there has been a spate of complaints about premises allowing smoking in e.g. pubs. There is concern that in the current economic climate and possible intelligence about the absence of dedicated smoke free officers working in the Borough, some businesses are seeking to gain advantage.

### **3.9 Smoke Free Halton Programme**

- 3.9.1 *Smoke Free Halton* is a programme that links communities with high levels of health inequalities into key local and government priorities around smoking cessation and tobacco control.

- 3.9.2 Smoking prevalence in England in 2007 (General Household Survey) was 22% for men and 20% for women. For Halton the figure is 25% for men and 27% for women. Smoking prevalence in Halton's Super Output Areas is even higher. Marsh & McKay (1994) demonstrated that the single most effective measure to reduce hardship amongst low income people in the UK would be to free them from their smoking habit.
- 3.9.3 The Smoke Free Halton Programme currently being planned the Primary Care Trust (PCT), recognises the significant role that smoke free enforcement will play in ensuring 100% compliance with smoke free legislation and therefore normalising smoke free lifestyles in the Borough.
- 3.9.4 The smoke free enforcement officer would also lead in a number of smoke free public health projects such as 'Smoke Free Homes' and the establishment of a 'Healthy Workplace Award' in Halton that will encompass other public health issues such as obesity, physical activity & positive mental health.
- 3.9.5 By appointing a smoke free enforcement officer within Environmental Health, we can utilise the experience built up here from 2006 and take advantage of the daily contact officers here have with all businesses in Halton. Some of these relationships have developed over many years with trust & personal guidance to long standing businesses.
- 3.9.6 Funding is now being finalised for an enforcement officer in Halton by the PCT under the Smoke Free Halton Programme.

#### **4.0 POLICY IMPLICATIONS**

- 5.1 This will contribute to National Indicator 123: Rate of self reported quitting smoking age 16 years and over per 100,000 increased to 2,400 by 2011 and to the local PCT target of 2,600 adult quit smoking in 2013. In addition enforcement will strengthen the normalising of smoke free lifestyles
- 5.2 There are no additional financial implications as a result of this report

#### **5.0 OTHER IMPLICATIONS**

**None as a result of this report**

#### **6.0 RISK ANALYSIS**

- 7.1 Any potential negative impact upon the Councils reputation from poor or misdirected enforcement has not materialised.

## **7.0 EQUALITY AND DIVERSITY ISSUES**

The enforcement concordat and existing enforcement policies have been subject to an equality impact assessment and if applied correctly and monitored should not have nor are intended to have any differential effects.

## **8.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972**

**There are no background papers within the meaning of the Act**