
Report of the Head of Scrutiny and Member Development

Report to Scrutiny Board (Safer and Stronger Communities)

Date: 30th July 2012

Subject: Recommendation Tracking – Phase 2 Dog Control Orders

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

1. This report sets out the progress made in responding to the recommendations arising from the previous Scrutiny review of the Phase 2 Dog Control Orders.
2. The Scrutiny recommendation tracking system allows the Scrutiny Board to monitor progress and identify completed recommendations; those progressing to plan; and those where there is either an obstacle or progress is not adequate. The Board will then be able to take further action as appropriate.

Recommendations

3. Members are asked to:
 - Agree those recommendations which no longer require monitoring;
 - Identify any recommendations where progress is unsatisfactory and determine the action the Board wishes to take as a result.

1 Purpose of this report

- 1.1 This report sets out the progress made in responding to the recommendations arising from the previous Scrutiny review of the Phase 2 Dog Control Orders.

2 Background information

- 2.1 It was agreed in June 2011 that the Safer and Stronger Communities Scrutiny Board should play an active part in analysing the proposed options arising from the Phase 2 Dog Control Orders project before approval is sought from the Executive Board in December 2011 to implement further Dog Control Orders.
- 2.2 At its meeting in November 2011, the Scrutiny Board agreed a report summarising its observations, conclusions and recommendations in relation to the proposals arising from the Phase 2 Dog Control Orders project. The Scrutiny Board's report was appended to the report to Executive Board in December 2011.
- 2.3 The Scrutiny recommendation tracking system allows the Board to monitor progress and identify completed recommendations; those progressing to plan; and those where there is either an obstacle or progress is not adequate. The Board will then be able to take further action as appropriate.

3 Main issues

- 3.1 A standard set of criteria has been produced to enable the Board to assess progress. These are presented in the form of a flow chart at Appendix 1. The questions in the flow chart should help to decide whether a recommendation has been completed, and if not whether further action is required.
- 3.2 To assist Members with this task the Principal Scrutiny Adviser, in liaison with the Chair, has given a draft status for each recommendation. The Board is asked to confirm whether these assessments are appropriate and to change them where they are not. Details of progress against each recommendation is set out within the table at Appendix 2.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.1 Where internal or external consultation processes have been undertaken with regard to responding to the Scrutiny Board's recommendations, details of any such consultation will be referenced against the relevant recommendation within the table at Appendix 2.
- 4.1.2 The Executive Board Member for Environmental Services has been consulted on the response to the recommendations.

4.2 Equality and Diversity / Cohesion and Integration

- 4.2.1 Where consideration has been given to the impact on equality areas, as defined in the Council's Equality and Diversity Scheme, this will be referenced against the relevant recommendation within the table at Appendix 2.

4.3 Council Policies and City Priorities

4.3.1 This section is not relevant to this report.

4.4 Resources and Value for Money

4.4.1 Details of any significant resource and financial implications linked to the Scrutiny recommendations will be referenced against the relevant recommendation within the table at Appendix 2.

4.5 Legal Implications, Access to Information and Call In

4.5.1 This report does not contain any exempt or confidential information.

4.6 Risk Management

4.6.1 This section is not relevant to this report.

5 Conclusions

5.1 The Scrutiny recommendation tracking system allows the Board to monitor progress and identify completed recommendations. Progress in responding to those recommendations arising from the Scrutiny review of the Phase 2 Dog Control Orders is detailed within the table at Appendix 2 for Members' consideration.

6 Recommendations

6.1 Members are asked to:

- Agree those recommendations which no longer require monitoring;
- Identify any recommendations where progress is unsatisfactory and determine the action the Board wishes to take as a result.

7 Background documents¹

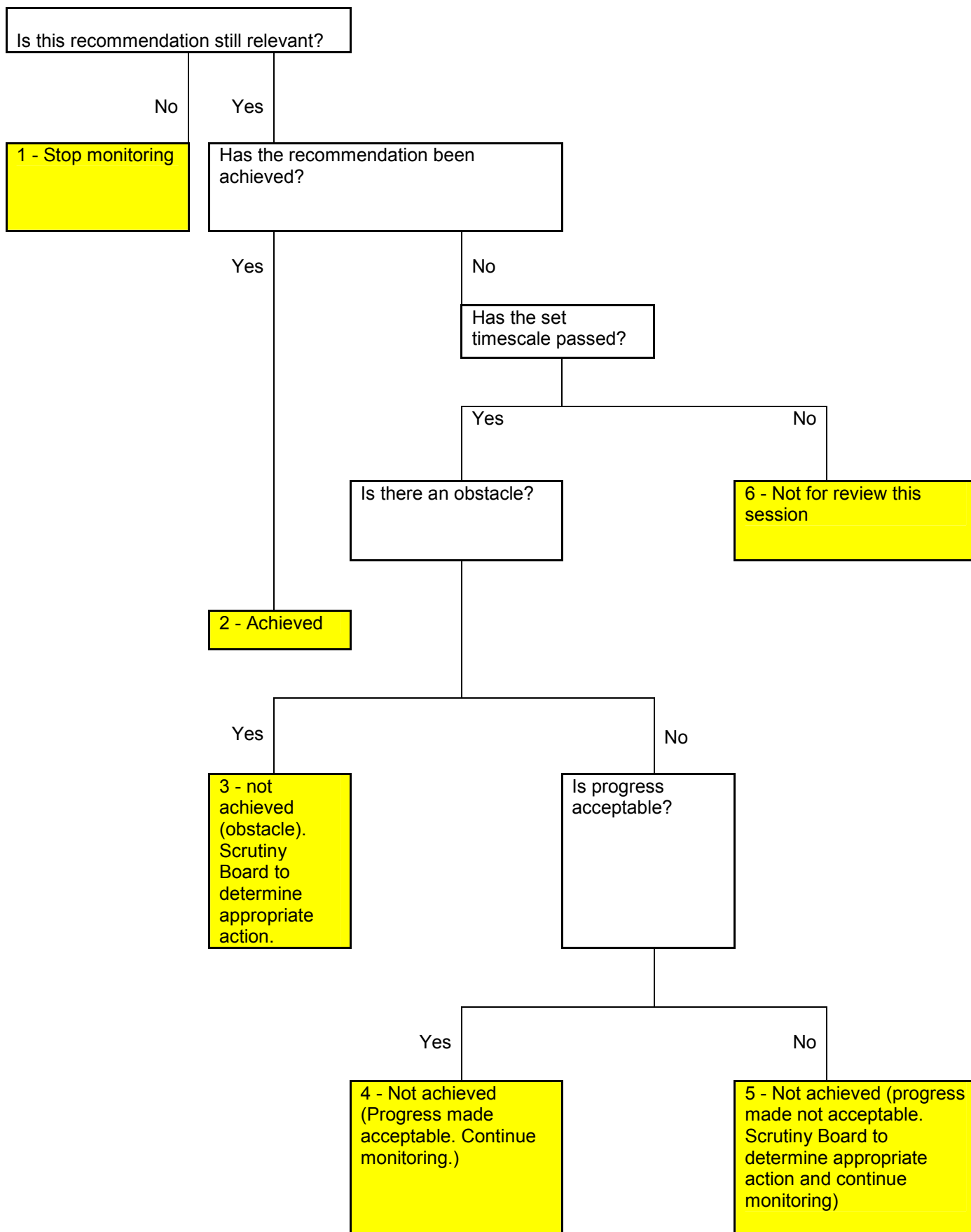
7.1 Report of the Head of Scrutiny and Member Development to the Safer and Stronger Communities Scrutiny Board 'Dog Control Orders – Phase 2 Project – Scrutiny Comments'. 14th November 2011.

7.2 Report of the Director of Environment and Neighbourhoods to Executive Board. 'Dog Control Orders – Phase 2'. 14th December 2011.

7.3 Report of the Head of Scrutiny and Member Development to the Safer and Stronger Communities Scrutiny Board 'Recommendation Tracking - Phase 2 Dog Control Orders'. 12th March 2012.

¹ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.

Recommendation tracking flowchart and classifications:
Questions to be Considered by Scrutiny Boards



Review of the Phase 2 Dog Control Orders (November 2011)

Categories

- 1 - Stop monitoring
- 2 - Achieved
- 3 - Not achieved (Obstacle)
- 4 - Not achieved (Progress made acceptable. Continue monitoring)
- 5 - Not achieved (Progress made not acceptable. Continue monitoring)
- 6 - Not for review this session

Recommendation for monitoring	Evidence of progress and contextual information	Status (categories 1 – 6) (to be completed by Scrutiny)	Complete
<p>Recommendation 5 That non-payment of Fixed Penalty Notices in relation to Dog Control Orders are actively pursued and further legal action taken where required, particularly in relation to repeat offenders.</p>	<p>Position reported in March 2012:</p> <p>The Council’s Enforcement and Regulatory staff are absolutely clear that if payment of a Fixed Penalty Notice is not made the Council will actively pursue prosecutions through the Courts. Furthermore if an offender has previously had a Fixed Penalty Notice the Council will seek immediate prosecution rather than allow the discharge of the offence through an FPN. Locality Teams have reinforced this position through the recent training given to enforcement staff around Dog Control Orders.</p> <p>The new powers allow us to deal more effectively with stray dogs. When dogs are picked up and returned to their owners, unless there is clear justification why the dog was straying, the owner will now be fined for allowing the dog on the highway without a lead. In the first 4 weeks of the Order being in place the Council has issued 10 Fixed Penalty Notices for dogs not being on the lead on a public highway, the vast majority in relation to dog owners allowing their dogs to</p>		

	<p>stray.</p> <p>Current position:</p> <p>Between January and July 2012, 89 Fixed Penalty Notices (FPNs) have been issued for offences under Dog Control Orders. 73 of the offences were in relation to dogs on the Highway without a lead. 16 were for dog fouling offences.</p> <p>Of the 73 dogs on leads FPNs 30 have to date not been paid. Of the 16 dog fouling FPNs 3 have not been paid. We are pursuing legal action through the courts against these individuals. FPN action appears, by and large, to be having a deterrent effect with no repeat offenders have been observed. Any repeat offenders would be taken directly to court without an FPN being issued.</p>	<p>4 - Not achieved (Progress made acceptable. Continue monitoring.)</p>	
<p>Recommendation 6 That further work is undertaken by the Council to significantly expand the level of staff resource available to enforce Fixed Penalty Notices and also act as professional witnesses to any breaches of the Dog Control Orders.</p>	<p>Position reported in March 2012:</p> <p>All 48 enforcement staff within the Locality Teams have been trained and can now undertake enforcement action in relation to Dog Control Orders. This is a significant expansion on the 6 Dog Wardens who have been able to take action in the past.</p> <p>A form has been developed to enable PCSOs to report any environmental problems they encounter and can also act as professional witnesses to any Dog Control Order incidents. Locality Teams are working closely with partners in the ALMOs and Parks and Countryside to explore the possibilities of them becoming more involved in enforcement actions.</p> <p>Current position:</p> <p>All enforcement staff are now trained and actively undertaking dog control work on a regular basis. Of the 481 dog fouling related jobs</p>		

	<p>received between January and June this year 218 were dealt with by Locality enforcement staff rather than the dog wardens themselves (45%).</p> <p>We continue to work with the Police to encourage the reporting of dog fouling incidents by PCSOs. PCSOs in the Killingbeck division have now been given training in the legislation and this will also be rolled out to PCSOs in the Holbeck and Rothwell divisions in the next few months. Several reports of dog fouling have now been received from PCSOs and have been actioned by the service.</p> <p>We continue to work with Parks and Countryside and ALMOs for their staff to also gather intelligence or even enforce directly. The potential for enforcement activity / intelligence gathering within the wider Parks & Countryside workforce has been a particular recent focus with both service areas now reporting to the same Director.</p>	<p>4 - Not achieved (Progress made acceptable. Continue monitoring.)</p>	
<p>Recommendation 7 That any new Dog Control Orders are effectively communicated to the public, which includes the use of appropriate signage, and for the Council to reinforce the message that Dog Control Orders will be rigorously enforced.</p>	<p>Position reported in March 2012:</p> <p>A media plan has been developed and is being delivered focussing on the new powers in relation dogs on leads on the highway and the increased number of people who are able to take enforcement action in relation to dog fouling. A key message in this media work is that the Council will and is rigorously enforcing the Orders. This is being delivered in late February and early March.</p> <p>Signage for each new site is being erected throughout February and March. There is no plan to erect signage on every highway in Leeds to advertise the Dogs on Leads Order.</p> <p>Current position:</p> <p>We have continued with regular press articles about dog related issues which have been picked up within the local media. Examples include:</p>		

	<ul style="list-style-type: none"> • Yorkshire Evening Post (YEP) – 6th March 2012 – “Leeds dog owners are falling foul of the law on mess” • YEP on 19th March 2012 – “Consumer: Give a dog a home”; • YEP – 9th April 2012 – “Crackdown launched on irresponsible dog walkers in south Leeds town” • YEP – 8th May 2012 – “Warning as dog owner told to pay £2,100 over mess” <p>Over the summer months we are also undertaking free micro-chipping events in different locations where residents will also be given leaflets to advise on the Dog Control Orders.</p> <p>In addition to this we are planning local campaigns in priority areas as identified with Elected Members through the Locality Team’s Service Level Agreement process.</p> <p>All signage is not yet in place but is now progressing well following a delay in production of the signs themselves. The public and complainants in particular will be encouraged to place dog fouling signs in problem areas themselves, following advice given by the service.</p>	<p>4 - Not achieved (Progress made acceptable. Continue monitoring.)</p>	
<p>Recommendation 9 That the Project Board undertakes further work in relation to parks and playing pitches that are used by schools that have no on-site green space. This is to accurately assess the extent of the problems encountered in such areas in relation to dog fouling in particular and explore the best use of the full range of powers available to the Council in promoting responsible dog ownership in such areas.</p>	<p>Position reported in March 2012:</p> <p>A more detailed response was appended to the tracking report in March 2012, which concluded:</p> <p>The Project Board would acknowledge that the use of the Dogs on Leads Order on playing fields which schools use may help with enforcement action in that any dog fouling would be by definition very close to their owner and therefore easier to prosecute if observed. However, having weighed up the evidence and options the Project Board do not feel that it is appropriate to further restrict dogs on these pieces of land for the following reasons.</p>		

<p>Such work should be undertaken as a matter of urgency, with an update report brought back to the Scrutiny Board by March 2012.</p>	<ul style="list-style-type: none"> • It would likely be seen as disproportionate to enforce on safety grounds where there is no safety issue, e.g. the park was empty but for the person and their dog; • It is unlikely that a blanket restriction at all times of the day could be justified and a restriction only at times when the school is using the park is unlikely to have any impact on dog fouling; • If we consulted and changed the Dogs Exclusion or Dogs on Leads Orders to be justified on the basis of preventing dog fouling this could set a difficult precedent for other parks where fouling is also an issue; • There is no evidence to show that dog fouling has a greater impact in parks used by schools than those that are not; • There are existing powers to prosecute people who allow their dogs to foul anywhere in Leeds. Simply extending the powers is unlikely to result in any more convictions as the breach still has to be observed. <p>The Project Board's view is therefore that the way to deal with these parks is to identify them through Parks and Countryside Services and, where dog fouling is felt to be an issue, undertake targeted enforcement using the larger range of staff that are now trained to do this.</p> <p>The Executive Member for Environmental Service has been consulted on this response and is broadly supportive of this approach.</p> <p>Current position:</p> <p>In consideration of the position reported in March 2012, the Safer and Stronger Communities Scrutiny Board sought clarification of the legal advice provided to the DCO Project Board. The Scrutiny Board maintained that further action was needed as the council had a duty of care towards those school children that used these parks. The</p>	<p>4 - Not achieved (Progress made acceptable. Continue monitoring.)</p>	
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	<p>Scrutiny Board therefore agreed to continue monitoring this recommendation.</p> <p>In response to the Scrutiny Board's request, clarification of the legal advice provided to the DCO Project Board is attached for information (see appendix 3). The Legal Adviser to the DCO Project Board will also be attending the meeting of the Scrutiny Board to address any further queries.</p>		
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LEGAL ADVICE – DOG CONTROL ORDERS

This advice relates to Recommendation 9 of the Scrutiny Review Phase 2 Dog Control Orders.

Recommendation 9 reads:-

“That the Project Board undertakes further work in relation to parks and playing pitches that are used by schools that have no on site green space. This is to accurately assess the extent of the problems encountered in such areas in relation to dog fouling in particular and explore the best use of the full range of powers available to the Council in promoting responsible dog ownership in such areas. Such work should be undertaken as a matter of urgency, with an update report brought back to the Scrutiny Board by March 2012”.

Background Information

The history of Dog Control Orders in Leeds dates back to a Scrutiny Board inquiry in 2009. The inquiry was in relation to the enforcement of dog fouling and Recommendation 10 asked for the Director of Environment & Neighbourhoods to produce a dog control strategy for Leeds with a number of strands including the implications of having additional Dog control orders for Leeds.

The subsequent strategy, which was considered and approved by scrutiny, states in relation to Dog Control Orders “It is important that, before considering implementing any of the Orders, appropriate consultation is undertaken. The Council will take into account whether any Dog Controls Order suit the needs of the community and are proportionate, fair and enforceable”.

Under the heading of “Dogs on Leads Order” the strategy goes on to say that such an order can apply to the whole of Leeds or specific areas and that the application of such an order to the public highway could assist reducing the number of stray dogs in the city and make sure that dogs don’t run unexpectedly into a road causing traffic accidents and injuring the dog.

A Project Board was subsequently set up and oversaw the implementation of further Dog Control Orders including exclusion areas, dogs on leads by direction and latterly a dogs on leads at all times order. This order requires dogs to be on a lead at all time on specified land. The specified land comprises carriageways and adjacent footpaths and grass verges within the Leeds District and certain other land detailed in the appendix such as cemeteries and crematoria.

The issue raised under recommendation 9 relates to land within a public park which is not covered by the Dogs on Leads at All Times Order. Such land is used by local schools which have no separate green space provision.

Such land is sometimes used under a formal agreement between the school and the Parks and Countryside Service and sometimes on an informal and ad hoc basis.

Where schools have their own green space provision they were able to opt in during the Dog Control Order consultation to have a Dog Exclusion Order preventing dogs from being on the land at all.

Where the schools make use of open green space in parks this option was not given to them and therefore it could be seen that they have been disadvantaged compared to schools with green space provision.

The Scrutiny Board expressed a strong view that such land should be subject to a Dogs on Leads at All Times Order on the basis that better control on such land would help to reduce dog nuisance and fouling potential and support stronger enforcement.

Where the schools have a formal agreement with Parks and Countryside to use parks and playing pitches in lieu of on site green space, the agreement should describe the hours and scope of usage. Throughout Leeds where parks are used under such formal agreements the proportion of time dedicated to school use compared to the primary purpose of the park for public recreation has been calculated and is relatively small.

All schools head teachers have been asked whether they wanted a Dogs on Leads at All Time Order in parks where they used the space for recreation. No school responded asking for a restriction to be put in place.

The guidance given to councils by DEFRA states

“The authority needs to balance the interests of those in charge of dogs against the interests of those affected by the activities of dogs, bearing in mind the need for people, in particular children, to have access to dog free areas and areas where dogs are kept under strict control, and the need for those in charge of dogs to have access to areas where they can exercise their dogs without undue restrictions. A failure to give due consideration to these factors could make any subsequent Dog Control Order vulnerable to challenge in the Courts.”

Advice

The Council needs to balance the needs of the children using the area against the need for responsible dog owners to have space to exercise their dogs appropriately there would need to be strong evidence of a problem caused by dogs who were off leads in that particular location. Parks and Countryside have checked their records of complaints and to date we have no evidence that there is a greater problem caused by dogs not on leads in such parks.

Because the Council already has an Order that relates to dog fouling across the whole of Leeds the evidence required would need to show a problem caused by dogs being off their lead rather than a problem of dogs fouling in general. That evidence would need to be significant in order to outweigh the need for responsible dog owners to have space to exercise their pets.

It might be possible to argue that where children play on a park at weekends in addition to school use during the week that there is a greater need for control and that the proportion of time for which the park is used for the recreation of children would justify an order. The problem with that approach is it is impossible to delineate which areas of the park that applies to and it is impossible to put in place the appropriate signage. Without the appropriate signage the ability to enforce the orders effectively is significantly diminished. The benefit of any doubt is given to the person against whom the offence is alleged.

Whilst an Order could be put in place that restricted dogs at the times when the school/sports club was using the park there are still significant difficulties with this. The

offence committed is that a person cannot 'knowingly' breach the Orders. Any confusion about the times or days the restrictions apply would be used to provide justification that the owner did not 'know' that the Order was in place and could leave us open to challenge and make the Order unenforceable.

It is also unlikely that the times when dogs would be excluded would coincide with the times that irresponsible dog owners let their dogs foul meaning that it is unlikely that the powers would lead to any increased in enforcement action taken.

Any change to the Dog Control Orders currently in place would require the Orders to be re-made and would therefore require public consultation. The justification for the original order (as set out in the strategy and public consultation) was to assist in reducing the number of stray dogs in the city and make sure that dogs don't run unexpectedly into a road causing traffic accidents and injuring the dog. We would therefore need to amend the strategy and consult on a different basis. If we justify such orders as being to assist in dealing with problems of dog fouling then we would need to consider whether that justification also applies to parks used by sports clubs etc.

We should also consider whether it is appropriate at this time to use our resources to change the existing Orders when the benefit of doing so is not clear. We did intend to review the orders every 12 months although that was more in relation to changing the schedules of land than changing the justification for the Orders. I would now be recommending that we hold off on such a review in any case. In May 2012 the government published a White Paper 'More effective responses to anti-social behaviour'. That paper is to be followed by a draft bill and legislation in the next Parliamentary Session. The proposals include replacing Dog Control Orders with Community Protection Orders. At this stage it is not clear whether the existing Orders will remain in force, change over under some transitional provisions to the new Orders or will need to be made again from scratch under the new arrangements. I would suggest we hold off any review until the draft bill which will help us to answer that question.

GILL MARSHALL
LEGAL SERVICES