

<b>Committee:</b>	<b>Date:</b>
Port Health and Environmental Services Committee (For Decision)	11 March 2014
Licensing Committee (For Information)	28 April 2014
<b>Subject:</b>	<b>Public</b>
Report on Port Health and Public Protection Out of Hours Noise Service	
<b>Report of:</b>	<b>For Information</b>
Director of Markets and Consumer Protection	
<p><b>Summary</b></p> <p>The City Corporation currently provides a noise complaints enforcement service 24 hours a day, 7 days a week primarily to respond to noise complaints at night and weekends, but also to occasional reports of accidents, notifiable diseases including food poisoning and other urgent environmental health matters.</p> <p>For noise problems arising in the evening, at night and weekends there are two providers, Westminster City Council Noise Service and the Street Environment Officers of the Department of Built Environment.</p> <p>This arrangement achieves a better service than previously available with responding officers now based in and near the City. Further improvements are now being suggested to respond to customer feedback and provide more efficient use of resources, including skills enhancement of the City's Street Enforcement Officers Team.</p> <p><b>Recommendation</b></p> <p>Members are asked to note the proposals set out in paragraphs 27 to 32 which were agreed by the Port Health and Environmental Services Committee on 11 March 2013.</p>	

## Main Report

### **Background**

1. The Port Health and Public Protection Service (PH&PP) of Markets and Consumer Protection Department provides an Out of Hours service (OOH), primarily to respond to noise complaints at night and weekends, but also to occasional reports of accidents, notifiable diseases including food poisoning and other urgent environmental health matters.

2. This report aims to give information on the current position and report on proposals to update and improve the service for the future.

### **Current Position**

3. The City Corporation provides a noise enforcement service 24 hours a day, 7 days a week through two providers, Westminster City Council Noise Service (WNS) and the Street Environment Officers (SEOs) of the Department of Built Environment (DBE).
4. WNS provides the statutory nuisance element of the service on behalf of the City outside normal working hours, this being 1700 – 0800 weekdays, weekends and public holidays. A simple service level agreement (SLA) has been in place for this since inception in January 2013 until it finishes on 31 March 2014. The service responds to complaints about noise from licensed premises, domestic premises and other commercial premises.
5. The cost of this has been agreed at £20,000, consisting of a fixed fee of £5,000 per quarter although an additional contribution of £1,000 for the supply of an extra driver to help maintain response times in the busiest quarter (between July and September 2013) was agreed.
6. Some of the response is also provided through the SEOs from City Corporation's DBE primarily for issues of construction, demolition and street works noise as they are available to provide 24/7 cover. No formal SLA or similar has been put in place to date. The annual cost is £10,000. This part funding of the SEO Team has enabled their service to move to 24/7 cover on all weekend nights, previously not available on all Saturdays or at all on Sunday nights, for responding to noise problems and other cleansing matters that arise.

#### Standards agreed and achieved

7. The SLA with Westminster City Council requires WNS to respond to noise complaints communicated to them by the Walbrook Wharf Weighbridge (complainants contact the City using the Guildhall Security number – 020 7606 3030) within 45 minutes by:
  - a. Prioritising, investigating and assessing noise complaints including visits to site and complainants' properties in accordance with the City Corporation's prioritisation guidelines;
  - b. Where justified, the WNS will take the most appropriate enforcement action, including serving, and if necessary enforcing statutory notices, and, where appropriate, undertaking works in default;
  - c. Liaising and communicating with the complainant and others as necessary in order to resolve complaints and keep parties informed of progress and outcomes 'on the night';
  - d. Providing written reports to the City Corporation of responses to complaints, including details of communications and response times,

investigation, and any enforcement carried out, by 0930 the next working day.

8. The Key Performance Indicator's (KPI's) are:
  - a. Response (by telephone, email or visit) to complaints received within 45 minutes in 90% of cases.
  - b. Provision of reports on responses to complaints to be sent to the Client by 0930 the next working day.
  
9. Subsequent to the SLA being drawn up an additional standard has been agreed:-
  - Where a visit is necessary, the visit will be carried out within 75 minutes of the referral
  
10. Although DBE's SEOs were not working to a formal SLA, for the purposes of comparison the WNS KPIs have been used to monitor performance (see Table 1 below).

Table 1

Period	Total Complaints (Westminster)	KPI (response) %	KPI (visit) %	No required visit %	Additional SEO visits on complaint
Jan-June	65	100	83	0	95
July-Oct	103	93	82	11.6	98
Nov-Jan	47	94	80	25	44

SEO Statistics (data not collected prior to November 2013)

Period	Total Complaints (SEO)	SEO KPI (response) %	SEO KPI (visit) %	No visit required %
Nov-Jan	44	94	88	16

11. It can be seen that responses have been good although they have dropped from the initial 100% from WNS. Customer feedback surveys have been introduced for the service emailing a sample of the customers who had contacted the Out of Hours Number on a quarterly basis. This is now carried

out monthly and will be extended to all customers each month to maximise the response rate asking for their rating on the service and general comments. Whilst the response from customer feedback is that for most recipients the service has been good there have been occasional problems with:-

- a. Perceived speed of response
- b. Delays in arriving on site
- c. Communication and call handling

### Benefits of WNS

12. The service was instigated as a pilot to ensure that there was a 24/7 response available out of (normal) working hours from a fully qualified Environmental Health Officer (EHO) within easy reach of the City in a position to take enforcement action if necessary and this has been achieved.
13. This is a significant improvement and much more effective than the previous arrangements where EHOs were on 'stand by' and responded from their home address with some attendance in the City on Friday and Saturday nights. SEOs provided observations and some evidence gathering at all other out of hours. The cost for this was approximately £50,000 p.a. This new arrangement also addressed a concern of the City Solicitor that an officer with a recognised qualification for serving legal notices or judging compliance, such as an EHO, should be providing evidence for nuisance legal action. The SEO's did not meet this criterion initially.
14. For the small number of legal notices served by Westminster (10) we have good evidence either to take legal action or pursue this in the future. Given the relative small numbers of complaints WNS has also carried out planned observations, particularly of licensed premises where we are aware of residents being disturbed. These were primarily related to the night time economy and were in support of the licensing objective 'Prevention of Public Nuisance'. Both notices and reports from WNS have been provided to a good professional standard.

### Problems of WCC

15. Understandably, WNS does not have knowledge of the previous enforcement histories of premises they are responding to and for the purpose of the pilot it was too expensive to provide access to the City Database.
16. Despite the improved response times for getting an officer on site in the City complaints have been received by service users about response times by WCC, despite these being within the agreed SLA. Some service users perceive 75 minutes as an excessive response time to night time noise.
17. The WNS officers and their drivers do not have detailed geographical knowledge of the City and have, on occasion had problems locating complaint addresses.

18. In addition the contact number for the service remains the main City number 020 7606 3030. There has been no customer care training of either the security at Guildhall or the Weighbridge at Walbrook Wharf (who then contact either Westminster or our Street Environment Officers on receipt of complaints). Feedback has been received that some standards of customer care have fallen below customers' expectations via this system of treble handling.

#### Benefits and Problems of SEOs

19. The SEOs have proved much more effective in responding very quickly (on site within 30 minutes normally) to construction, demolition and street works noise complaints with their detailed knowledge of the City and working relationship with City Pollution Team.
20. The City Solicitor has expressed concern that the SEO Team does not meet the competency requirements for statutory nuisance work, particularly around assessing statutory nuisances and the professional judgement that is required for appeals against notices and any prosecution work. The officer is, in effect, the City's expert witness and would be pitted against a qualified noise pollution expert in the courtroom. This is explored further below.

#### SEO Competency

21. Legal opinion has been sought from the City Solicitor on the SEOs' suitability to conduct statutory nuisance assessments, a competency that is usually fulfilled by being a qualified and experienced EHO. The risk being the success of an appeal against a statutory notice or indeed a prosecution being successfully defended. Many defendants will employ an acoustic consultant to assist with appeals or defence cases and such instances it will be this expert witness evidence against the City's SEO evidence in any court proceedings. There is an obvious risk to the City in such circumstances. It is accepted that the first year of the service running will hold the most risks.
22. If all the safeguards are in place, as detailed below, then the City should be in a stronger position to defend any appeals or defended court proceedings. This will also need to be backed by careful case management, and in cases where legal proceedings are likely, the EHO may be required to work out of hours alongside the SEO when witnessing nuisance or the EHO will be required to judge likely recurrence based on SEO evidence.
23. The Department must ensure that officers deployed will be adequately qualified and experienced in investigating and assessing noise complaints, and taking appropriate enforcement action. The level of training will be aimed at SEO's, in most instances being able to gather admissible evidence that can be effectively interpreted by EHOs who would be able to interpret such evidence and, if necessary, provide an expert opinion. It is expected that the staff will be qualified with a minimum level of achieving the Institute of Acoustics Certificate of Competence in Environmental Noise Measurement.

Staff will also be expected to complete training to a level set out by the Better Regulation Delivery Office (BRDO) for persons involved with noise control. It is anticipated this will include:-

- a. New Officers to achieve the Institute of Acoustics Certificate of Competence in Environmental Noise Measurement,
  - b. Completion of general courses on familiarity with statutory nuisance (including noise nuisance) as required by client and/or the competency standards indicated by BRDO,
  - c. Regular attendance and participation in peer review of cases handled with managers and the Pollution Team,
  - d. Shadowing work with Pollution Team officers to a committed minimum of two hours per month.
  - e. Training as necessary for familiarisation with practices and procedures.
24. Training of the SEOs to the above standards in basic noise competency has been started. Five SEOs have undertaken the Institute of Acoustics Certificate in Environmental Noise Measurement. The remaining officers will undertake this certificate in April / May 2014.
25. A two day statutory nuisance training course has been developed to meet the upcoming BRDO competency criteria for noise regulatory officers; this is bespoke to the City using our internal procedures and applicable case studies and was carried out with PH&PP Officers and the SEO Team on 18 and 19 February - 2014.
26. Each SEO has been designated a partner EHO who will assist with any technical queries and arrange site visits and mentoring.

## **Proposals**

27. The PH&PP Service wish to vary the arrangements from March 2014. It is anticipated that a faster response can be achieved for less money by using the SEO's. Training and peer review is being carried out to ensure experience is acquired in dealing with common issues and protocols revised to deal with these. This will require on-going training outlined above between the Pollution Control Team and SEO's to make this effective and overcome the concerns of the City Solicitor regarding legal process.
28. The City Corporation's Out of Hours Noise Response Service is to be provided by the SEO's from City Corporation's DBE from 1<sup>st</sup> April 2014 with some initial support to continue from WNS to provide robust legal advice/call out experience and availability for support where required. The cost for this will be £20,000 p.a. and a response fee to be agreed with WNS (see paragraph 30).
29. It is expected that there will be the need for some initial back up for complex problems (e.g. raves/large parties, dealing with noise from fire alarms, service of notices) which Westminster may be willing to provide, particularly in the first year of using SEOs as primary responders.

30. This has been discussed with Westminster and they are considering what support they may offer and at what cost.
31. An internal SLA has been agreed with DBE for supply of this service and this will require response within ten minutes from receipt of complaint to the SEO and a visit within a maximum one hour. It is anticipated that these targets will be refined and improved through monthly monitoring with DBE as in practice these have been significantly improved upon in the majority of complaints handled so far.
32. The handling of calls through the main Guildhall number is to be reviewed as part of a larger project; PH&PP will liaise with City Police, our contact Centre, and other stakeholders about this matter.

### **Corporate & Strategic Implications**

33. The proposed changes for the Out of Hours Noise Service fits with one of the City Corporation's three aims of the Corporate Plan 2013 – 2017 in that it seeks to evolve a service 'to provide modern, efficient and high quality local services and policing within the Square Mile for workers, residents and visitors with a view to delivering sustainable outcomes'. It also meets one of the five key policy priorities KPP2 in that it seeks to 'maintain the quality of our services whilst (reducing our expenditure and) improving our efficiency'.

### **Financial and Legal Implications**

34. Financing of this change will remain within the local risk budget of the PH&PP Service. The changes are anticipated to be more resource efficient. The comments of the City Solicitor have been reflected in the text of this report.

### **Conclusion**

35. The shared service with Westminster and DBE has been successful in improving the service available to users of the OOH Service. To provide further improvements in speeding up visit times to site, reflecting on comments made through feedback to the service, the balance of work between WNS and DBE SEOs is being changed. We anticipate retaining Westminster as a back up to calls if they are willing to do so but the use of City Corporation Officers based in the City should provide a faster response to those affected by noise problems.

### **Appendices**

- None

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