

Agenda



Delegated Decisions - Deputy Leader/Cabinet Member for City Services

Date: Tuesday, 12 October 2021

To: Councillors Councillor R Jeavons

Item		Wards Affected
1	<u>Graffiti Policy</u> (Pages 3 - 16)	All Wards

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Date of Issue: 04/10/2021

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Report

Deputy Leader / Cabinet Member for City Services

Part 1

Date: 12 October 2021

Subject Graffiti Policy

Purpose To seek Cabinet Member approval to the graffiti removal policy attached as Appendix to this report

Author Scott Coughlan

Ward All Wards

Summary The City Services area want to improve management of graffiti across Newport and have already taken steps and increased resources to enable this, with the aim of significantly reduce current levels of graffiti, both on NCC property and property managed by third parties.

However, operations need to be backed by an official policy in place that can provide a framework for the actions to be taken to tackle graffiti. The policy sets out our response rates and the support we shall provide to third parties. It also sets out what enforcement action will be taken if graffiti is not removed voluntarily.

Proposal That the Cabinet Member approves the graffiti removal policy

Action by Head of City Services

Timetable Immediate

This report was prepared after consultation with:

- Head of Finance
- Head of Law and Regulatory Services
- Head of People and Business Change

Signed:

Background

The levels of graffiti within the city has increased significantly during the pandemic, with the vast majority of graffiti being on private land. The Cleansing department are removing graffiti on NCC Highways assets, such as road signs, street signs, bridges, underpasses, subways etc.

The waste enforcement team, primarily responsible for waste offences, has increased its remit to enforce against graffiti offenders and to support private landowners to remove graffiti from their own property in a timely manner, with the option to enforce if appropriate.

In order to effectively enforce against private landowners, a policy that sets out the enforcement process needs to be in place.

The policy also highlights how enforcement and removal processes are managed, particularly as regards to differentiating responses to non offensive graffiti compared to offensive graffiti.

The policy states our response rates to priority 1 (offensive) and priority 2 (non-offensive) graffiti and the support we can provide to private owners who have been subject to graffiti attacks, as well as the expected timescales that private property owners have to remove graffiti before enforcement action may be taken.

Priority 1 Offensive graffiti includes, but is not limited to, racist, sexist, homophobic, anti-trans graffiti, as well as graffiti of a sexual nature. Priority 1 graffiti should be removed as soon as possible (see policy for timescales)

Priority 2 graffiti includes any non-offensive graffiti, ie. random images, scribbles, tagging etc. This graffiti is not as urgent to remove, so timescales are longer.

The policy also sets out our responses, support and enforcement options for different types of property owners, ie domestic dwellings, large organisations and businesses, NCC land etc.

Enforcement, whilst a valuable tool, will only be used as a last resort, if support, education and advice is ignored and graffiti is not removed within the timescales set out in the policy.

As set out in the policy, NCC will offer to remove graffiti on certain private property, so there is potential for income into the council, however the charges offered will be cost neutral to minimise the economic impact of removal on residents and businesses.

The main method of enforcement will be the issuing of Community Protection Notices requiring property owners to remove within a reasonable timescale, but also allows NCC to add conditions to minimise likelihood of reoccurrence. The extra conditions will only be used for property where we have returned multiple times to remove new graffiti.

Financial Summary (Capital and Revenue)

This proposal does not have additional financial implications – the cleansing team already has resources to remove graffiti in Council land and the graffiti enforcement officer is already in place. Any additional services to remove graffiti from private land will incur a charge that will cover the cost of the service.

Risks

Adoption of the proposal will set the steps the council can take from the moment graffiti is identified until is removed, including a collaborative approach and application of enforcement action should other approaches fail. Failure to adopt the policy would restrict the action the council can take to tackle graffiti and this could lead to increased levels of graffiti across Newport, which in turn can have a negative impact on the Council's reputation and can enhance hate crime and antisocial behaviour. All these risks are significantly reduced when the mitigating actions are in place

Risk Title / Description	Risk Impact score of Risk if it occurs* (H/M/L)	Risk Probability of risk occurring (H/M/L)	Risk Mitigation Action(s) What is the Council doing or what has it done to avoid the risk or reduce its effect?	Risk Owner Officer(s) responsible for dealing with the risk?
Increased levels of graffiti	L	L	<ul style="list-style-type: none"> - Removal team/private contractor in place - Cleaning equipment - Graffiti officer post to liaise with businesses/identify offenders - Policy in place to define procedure for removal, collaboration and enforcement elements 	Scott Coughlan
Reputational issues	L	L		
Increased hate crime/ASB	M	L		

* Taking account of proposed mitigation measures

Links to Council Policies and Priorities

The graffiti removal policy is aligned with the priorities and commitments identified as part of the Corporate Plan 2017-2022 – it will help address and tackle graffiti as an issue that has a significant impact on people’s perceptions of wellbeing and quality of life. It has links with perceived degradation in certain areas and more serious antisocial behaviour and can constitute in itself or instigate Hate Crime. Any measure to deal with all the negative aspects of graffiti will contribute to promote economic growth and regeneration whilst protecting the environment, and to improve community cohesion - all built around the main theme of building a Safer Newport.

Options Available and considered

- Option 1: To approve the graffiti removal policy
- Option 2: Not to approve the graffiti removal policy

Preferred Option and Why

To approve the graffiti removal policy to ensure the Council has a consistent approach and relevant framework to address graffiti across Newport and reduce the risks identified.

Comments of Chief Financial Officer

The removal of graffiti is already carried out by the Street Cleansing team using existing budgets, this proposal seeks to create a policy that will support officers in delivering this service and as such there will be no adverse financial impact. The proposal does allow for charges to be applied for the removal of graffiti on private land but this will merely cover the additional cost incurred.

Comments of Monitoring Officer

The proposed Graffiti removal policy is in accordance with the Council’s legal powers under the Anti-Social Behaviour, Crime and Policing Act 2014 and the Local Government Act 2003. The removal of graffiti from public and private property in order to improve the environment, is consistent with the Council’s Corporate and well-being objectives. The removal policy will provide a transparent and consistent approach to dealing with the problem. However, this should only provide a general framework for the exercise of the Council’s statutory powers and it should not be applied so rigidly as to fetter the Council’s discretion to consider the specific circumstances in each case, to ensure that it is acting fairly, proportionately and in a non-discriminatory manner.

The 2014 Act enabled the Council to serve Community Protection Notices (CPN) to deal with a range of anti-social behaviour, and replaced the previous graffiti removal notices. These CPN’s are the main

enforcement measure under the proposed new removal policy. However, before serving any CPN on the owner of any property, the Council needs to be satisfied that the graffiti is having a detrimental effect on the quality of life for those living in the locality and the conduct of the owner in not removing the graffiti is unreasonable. It should be borne in mind that defacing other people's property with graffiti is an offence of criminal damage and the perpetrator of the offence is the person who is primarily liable. The owners of the property should only be served with a CPN if they have acted unreasonably in failing to make arrangements to have the graffiti removed and this non-removal is considered to be anti-social. In addition, a fixed penalty notice should only be issued if they have failed to comply with the CPN without reasonable excuse.

The Council does not have any duty to remove graffiti from private property, but it has the power to undertake the work with the permission of the owners and it has a discretionary power to charge for that work in accordance with section 93 of the Local Government Act 2003. The Council would also have the power to enter into service level agreements with commercial operators to undertake graffiti removal of their behalf. The impact of the proposed differential charges will need to be assessed to ensure that they do not breach equalities or socio-economic duties, and the amount of the charges should be on a cost-recovery basis only because the Council is unable to make any commercial "profit" out of its discretionary charges. The terms of the proposed disclaimer/indemnity will also need to be considered, particular in relation to private householders, to ensure that these are not unfair contract terms, as the Council would have to accept some degree of responsibility for the work itself.

Finally, if the service of the CPN and any fixed penalty notices is to be delegated to the Head of City Services and his authorised officers, then a recommendation will need to be made to Council to amend his scheme of delegation in the Constitution, as all other anti-social behaviour enforcement is currently delegated to the Head of Law & Regulation.

Comments of Head of People and Business Change

The graffiti removal policy is aligned with the priorities and commitments identified as part of the Corporate Plan and will help address and tackle an issue that has an impact on people's perceptions of wellbeing and quality of life.

The FEIA completed in connection with this report shows sufficient evidence of support for the goals and the sustainable development principles of the Well Being of Future Generations Act. There are no HR implications of this report.

Comments of Non-Executive Members

Councillor Forsey:

In most cases graffiti has a negative effect on our environment and I welcome this policy to remove it. It is important that a method for tackling the graffiti on non-council owned assets, such as telephone/communications boxes is devised. An efficient method of reporting graffiti is also required.

Councillor Ferris:

I support the move to make owners responsible for the removal of graffiti on their buildings. I have had frequent approaches from residents about one of our better buildings, the Old Art College, being defaced. At present I believe all our conservation officer can do is ask the owners nicely to co-operate in getting it removed. I understand that race hate and obscenities would have priority in removal but ask that some consideration should be given to the significance and prominence of the buildings in rating the priority in removal of graffiti. Perhaps the Authority could offer its services in removal at a reasonable rate to address the problem and provide the city with a modest revenue?

Response to Councillor Ferris:

Listed building consent would be required for any stone cleaning work other than done by hand. We would however need to consider that relevant buildings are often listed, as well as getting the owner's consent, which has an impact on the response times and may even require specialist techniques/tools. Regarding removal costs, graffiti removal from domestic properties will be offered free of charge or at cost rates, depending on the type of graffiti, but removal services for other type of properties would also

be offered at very competitive rates and also short timescales, as the main aim would be to keep Newport graffiti free so we want to offer an affordable and efficient service

Scrutiny Committees

N/A

Fairness and Equality Impact Assessment:

- **Wellbeing of Future Generation (Wales) Act**
- **Equality Act 2010**
- **Socio-economic Duty**
- **Welsh Language (Wales) Measure 2011**

The FEIA has identified the policy will have a positive impact on people that share protected characteristics, as it will enable the council to identify and remove offensive graffiti quickly, and also provides the framework to seek and share intelligence to identify offenders.

It also makes a positive contribution to the sustainable development principle due to its long term, collaborative approach, contribution to regenerate the city and activities to support and engage with communities.

No impacts were identified for Welsh Language, and whereas the Socio-economic Duty does not apply to this decision is recognised that levels of graffiti can be higher in areas that also experience socio-economic disadvantage, therefore this policy is likely to have a positive impact on areas of inequality which include community safety and justice, living standards, and physical environment.

Consultation

Comments received from wider consultation, including comments from elected members should be included here.

Where a decision impacts on one or two individual wards report writer to ensure that ward members are informed of this. All members receive the report as part of the democratic process and any comments will be inserted here together with any Head of Service response in the final report.

Background Papers

Set out a list of any relevant background papers and whether they are available to the public.

Dated: 4 October 2021

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GRAFFITI/FLY-POSTING REMOVAL AND MANAGEMENT POLICY

Purpose and scope

To confirm NCC's policy and procedures regarding graffiti removal on all property throughout the city.

This policy deals with the following:

- Reporting of graffiti
- Removal of graffiti
- SLAs and partnership working
- Enforcement

Objectives

Under its overarching mission of 'Improving People's Lives', in alignment with its current Corporate Plan, Newport City Council is trying to work on longer term strategies and improved service delivery that result in a better living space where our residents feel safe and secure. One of the areas where we are focusing our efforts, especially under the post-covid recovery setting, is general cleanliness and overall improvement of our streets, with the wide aim of promoting regeneration and economic growth whilst protecting the environment.

Within this context, and alongside other measures to tackle litter and fly-tipping, the Council is currently reviewing its policies and processes on graffiti, as an issue that has a significant impact on people's perceptions of wellbeing and quality of life.

The Council is committed to improving the environmental quality throughout the city and tackling crime and antisocial behaviour. The Council does not have a duty to remove graffiti from property it does not own however it will work with property owners to offer advice and our graffiti removal services. This policy sets out the graffiti removal policy, timescales for removal and enforcement measures that could be used to manage graffiti.

Key Legislation

The main legislation and guidance to which this policy relates, but not exclusively so, is:

- Town and Country Planning Act 1990
- Anti-social Behaviour, Crime and Policing Act 2014
- Equality Act 2010

Definition and Classification of graffiti

Graffiti is the illegal or unauthorised defacing of a building, wall or other edifice or object by painting or otherwise marking it with words, pictures or symbols.

Upon an officer's confirmation of an instance of graffiti, the graffiti is classified by the inspecting officer within 2 categories;

Priority 1: Obscene or offensive graffiti which offends sectors of our community and could be seen as inflammatory or inciting hatred.

Graffiti classified as offensive may contain some or all of the following elements:

- Offensive language
- Language of a racially/religiously/gender based/sexuality based insulting/inciting nature
- A hate statement
- An image which is graphically explicit
- An image which is visually offensive or textually offensive by the message that it contains.

Priority 2: General graffiti which is not offensive e.g. tags or unauthorised murals/artwork.

The Council will consider each report of offensive graffiti on a case by case basis and the outcome will be dependent upon investigation.

Property ownership

Property for the purpose of this policy is divided into types as follows:-

- Domestic - private household
- Commercial/ Industrial, including multi-property landlords
- NCC Owned Assets, including highway/road signs
- Other: Utility company/ Public body/ Service provider e.g. Housing Associations, National Rail

Reporting of incidents

Incidents of graffiti can be reported to NCC online via the Council website or by calling 01633-656656. Residents of Newport will be encouraged to report graffiti direct to the property owner to speed up graffiti removal on private property.

Reported instances of graffiti will be managed according to property ownership and classification.

The majority of graffiti removal is undertaken by the street cleansing department, however work in parks and other specialist buildings, for example car parks and public conveniences may be cleaned by alternative departments/contractors.

Procedures for removal

Graffiti can only be removed by the Council if it is accessible from ground level and on a surface on which graffiti wipes (impregnated with graffiti removal agents) or the Council's specialised pressure washing system are suitable.

Graffiti on wooden, cement or certain utility box (e.g. telecoms) surfaces *generally* need to be painted over using paint/wood stain.

The ability to remove graffiti and the method used will be assessed on a case by case basis taking the health and safety of the operatives undertaking the work and the potential for damage to property into account.

The Council will be responsible for removing graffiti from NCC owned assets only, although it may offer the Council services depending on the circumstances for removals on private property. In those instances, graffiti will not be removed without attempting to obtain permissions. Prior to graffiti removal upon property or land not controlled by NCC, a Disclaimer Form must be completed by the property owner or managing agent and if required payment received. Without this, NCC will not remove the graffiti, except in exceptional circumstances where instances of Priority 1 graffiti have occurred.

Graffiti work undertaken on private property is chargeable in line with contents of the following section.

The use of Community Protection Notices will only be used in exceptional circumstances and where NCC have intention to carry out works in default following failure to comply with the notice. NCC will seek to recover the costs done in default.

Table 1: Response

Property Type	Priority 1	Priority 2
Domestic Property (excluding Housing Associations and HMO's)	<p>Issue of warning letter and indemnity form within 5 working hours of report and repeat contact attempts.</p> <p>NCC clean FOC within 1 working day of indemnity receipt.</p> <p>Issue Community Protection Notice if cleaning offer not accepted or indemnity form not returned within 14 days.</p>	<p>NCC clean offered for accessible locations (chargeable).</p> <p>Issue of warning letter and indemnity form within 5 working days of report.</p> <p>Clean within 5 working days of receiving indemnity and sending out invoice.</p> <p>Issue Community Protection Notice if cleaning offer not accepted or indemnity form not returned within 28 days.</p>
Commercial Property/Utility Companies/Public Bodies/Service Providers/Housing Associations/HMO's	<p>Issue of warning letter and indemnity form where applicable, within 5 working hours of report and repeat contact attempts.</p> <p>For accessible locations, NCC clean offered (chargeable).</p> <p>NCC Clean within 1 working day of receiving indemnity and sending out invoice, if offer accepted.</p> <p>Issue Community Protection Notice if graffiti still in situ, cleaning offer not accepted or indemnity form not returned within 14 days.</p> <p>NCC clean by default of initial notice and seeking recovery of costs, where applicable.</p>	<p>Issue of warning letter and indemnity form where applicable, within 5 working days of report.</p> <p>For accessible locations, NCC clean offered (chargeable).</p> <p>NCC Clean within 28 days of indemnity and payment received, if offer accepted</p> <p>Issue Community Protection Notice if graffiti still in situ, cleaning offer not accepted or indemnity form not returned within 28 days.</p> <p>NCC clean by default of initial notice and seeking recovery of costs, where applicable.</p>
NCC Property including street signage	Clean within 1 working day of incident being reported.	Clean within 28 days of report. Priority 2 work is batched together to form complete day's work to achieve better value from resources.

Charges

Graffiti removal is offered free of charge to all domestic properties where the graffiti is offensive in nature (Priority 1) and where a signed indemnity form is received within 2 attempts of requesting. Services will be offered at cost for removals of priority 2 graffiti from domestic properties.

For graffiti on commercial properties/other organisations, removal works will only be offered if there is easy access without the requirement for road closures or specialist equipment. Prior to any work being carried out, the relevant fee and an Indemnity Form must be completed by the land/property owner giving permission for the works to be carried out.

Where a charge is to be made, this fixed fee must be agreed in writing between NCC and the landowner prior to any work being undertaken.

Where repeated instances of graffiti occur the application of anti-graffiti coatings may be offered if appropriate. This service is chargeable.

Removal methods

Anti graffiti coated surfaces: Where surfaces have been treated with an anti graffiti coating, The Council shall remove the graffiti using low water pressure, graffiti wipes and where Required, reapply the appropriate coating or paint.

Bare brickwork: A mix of chemicals and high pressure washing will be appropriate for most cases.

On listed buildings / monuments advice should be sought from the conservation officer in planning before removal commences. Suitable chemicals / low pressure washing should be used and a test area may need to be undertaken.

Painted surfaces: Painting using a best colour matched paint. Colour matching is not guaranteed. Only the actual graffiti and close surrounding area will be painted. The structure in entirety will not be painted. Property owners will be approached to supply paint in the first instance.

The Council will assess the most appropriate method of removal for each case if it has not been previously specified or agreed.

Service Level Agreements

In order to minimise the need for enforcement against large organisations and partner agencies, the Council will seek agreements to gain commitments from these organisations to remove graffiti within set timescales depending on priority types.

This would be achieved by one of two methods:

- Deploying their own resources as per agreed timescales
- Committing to fund NCC to carry out such works on their behalf (for locations that are at ground level and accessible, and do not require traffic management).

Partnership Working

NCC will aim to work in partnership with others such as the police, and housing associations to seek to identify offenders. The Council is committed to partnership working to address Community Safety, Crime and Disorder and Environmental Crime issues.

The Council will work with the Police to seek to identify offenders by providing photographs of offensive and racially motivated graffiti or where a 'Tag' has been identified at three or more sites.

Tolerated Graffiti

NCC recognise the importance of encouraging street Art projects within Newport and will work with communities, schools and businesses to develop and co-ordinate pre-approved street art projects. The Council understands the benefits that street art can bring to a community in reducing anti-social behaviour and creating a sense of community ownership and togetherness

Enforcement

In the interests of swiftly removing graffiti, NCC will issue Community Protection Notices in accordance with the Antisocial Behaviour, Crime and Policing Act, 2014 and any subsequent Regulations. A written formal warning notice must be issued first giving a reasonable timescale (Priority 1: 14 days, Priority 2: 28 days) to remove.

Enforcement Stages:

- Issue Community Protection Warning Letter
- Issue Community Protection Notice
- Issue Fixed Penalty Notice for breaching CPN

The waste enforcement team will be responsible for issuing any relevant notices and taking subsequent action in consultation with the Service Manager – Waste & Cleansing and the Council legal department. .

For further advice contact:
Service Manager – Waste & Cleansing

Created: June 2021

To be reviewed no later than: June 2024 or if relevant legislation changes

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