

Report on	Graffiti under the Clean Neighbourhood programme
Date of Meeting	13 th November 2018
Reporting Officer	Fiona McClements

Is this report restricted for confidential business? If 'Yes', confirm below the exempt information category relied upon	Yes	
	No	X

1.0	Purpose of Report
1.1	To inform Members on options in respect of graffiti treatment, and to determine a consistent approach to graffiti related complaints received.
2.0	Background
2.1	<p>Part 4 of the Clean Neighbourhoods and Environment (Northern Ireland) Act 2011 provides limited enforcement powers to Council in respect of graffiti. The legislation refers to a number of different pieces of legislation but the understanding is that there is no legal duty on Council to remove graffiti in its district. Legislation provides the details of the circumstances where Council have discretionary powers to remove graffiti under the provisions of Article 18 of the Local Government (Miscellaneous Provisions) Order 1985 (Art 18).</p> <p>Applicable legal provisions</p> <p>Part 4 of the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011, deals with graffiti and other defacement. It provides two main enforcement provisions to deal with graffiti.</p>
2.2	<p><u>Fixed Penalty Notices</u></p> <p>Council can issue a Fixed Penalty Notice (FPNs) only in certain circumstances where a "relevant offence" has been committed and only against the individual who has committed the offence. There are 3 relevant offences, two under Road traffic legislation and one under Planning legislation</p> <ul style="list-style-type: none"> • Interference with or damage to traffic signs • Painting, making marks or displaying advertisements on roads • Displaying advertisement in contravention of certain planning legislation <p>Fixed penalty Notices cannot be issued if the offence was motivated by racial or religious hostility towards a person or members of a racial or religious group.</p>
2.3	<p><u>Art 18- Graffiti Removal/ Obliteration</u></p> <p>Under Article 18 of the Local Government Miscellaneous Provisions (Northern Ireland Order 1985, a District Council may remove or obliterate any graffiti which is detrimental to the amenity of any land in its District.</p>

	<p>Under this Article, Council can issue a 2 Day Notice on any person identified as causing the graffiti, or any person whose goods/ services are publicised by the graffiti requiring the graffiti to be removed or obliterated. Where a 2 Day Notice is served and the graffiti is not removed, Council may remove the graffiti and recover costs as a civil debt from the person issued with the notice.</p> <p>Art 18 does not authorise the Council to remove or obliterate any graffiti within a building where there is no public access or on land occupied by a body established by a statutory provision.</p> <p>Compensation can be claimed by a person if their property is damaged by Council in their exercise of this power. Compensation cannot be claimed by the person who displayed the graffiti.</p> <p>2.4 Defacement removal notices(DRN)</p> <p>This provision applies only to graffiti on relevant surfaces in certain circumstances where planning legislation has been contravened.</p> <p>Under this provision Council may serve a Defacement Removal Notice (DRN) on the person responsible for “Relevant surfaces” which have been defaced by certain graffiti that is offensive or detrimental to the amenity of the area.</p> <p>“Relevant surfaces” are defined in the legislation and includes:</p> <ul style="list-style-type: none"> • The surface of any street or of any building, structure, apparatus, plant or other object in or on a street furniture, structures in or on a street, <p>The surface of any land is linked to ownership by a statutory undertaker or educational institution. In such cases the graffiti must be visible from public land. This covers property such as cable boxes, telephone Kiosks, bus stops and shelters. A privately-owned building facing onto a street such as a shop will not normally be covered. Neither will parks nor open spaces off the street.</p> <p>Defacement Removal notices, where issued, would require the removal of the defacement with a specified period not less than 28 days. Where DRNs are issued and not complied with Council may remove the graffiti. Councils may also remove graffiti in circumstances where the owner of the relevant surface cannot be identified.</p> <p>Guidance which Councils are required to have regard to, indicates that DRNs should only be used as a last resort. Working in partnership with owners and occupiers is the preferred option. Where it is permissible to issue a DRN, it should only be issued where it can be demonstrated that reasonable attempts to contact the owner have been made to achieve removal through constructive partnership. DRNs are not intended to deal with new cases of graffiti, they are meant to enable District Councils to address situations where relevant surfaces have been defaced by graffiti over a period of time.</p>
<p>3.0</p>	<p>Main Report</p>
<p>3.1</p>	<p>The current practice within MUDC Environmental Health is to endeavour to deal with complaints of graffiti informally by requesting the person responsible for the property the graffiti is on, to remove it. On a few previous occasions where graffiti has been offensive, Council has arranged for its removal. Complaints of Graffiti in the District have been relatively low with a total of 7 complaints received last year by the Environmental Health Department.</p>

3.2

An agreed Council approach to graffiti will support the actions of the Vibrant and Safe Communities Short Term delivery plan and the Environmental Health Clean Neighbourhood Plan.

- *Interagency Working Protocol to ensure a rapid response to issues of graffiti, extreme littering, negative environmental issues impacting on the area that could be prone to Fear of crime* (Vibrant and Safe Communities Short Term delivery plan)
- *Procedure to be devised and implemented for dealing with graffiti and flyposting complaints* (Environmental Health Clean Neighbourhood Plan)

Procurement of services deemed necessary for removal of graffiti/flyposting as deemed necessary and within budget. (Environmental Health Clean Neighbourhood Plan)

Proposed Approach for consideration

It is recommended that Members consider the following approach to dealing with complaints of graffiti.

3.3

Graffiti on Council owned property.

- Reported cases will be referred to Environment and Property Services for action/removal as considered necessary by that department.

Enforcement where there is evidence of a “relevant offence”

- Where there is evidence of a relevant offence e.g. graffiti on traffic signs and the individual who committed the offence can be identified, Council may issue a Fixed Penalty Notice in consultation with the authority responsible.
- Fixed penalty notices will not be issued where graffiti is motivated by hostility towards persons or members of racial or religious groups. Prosecution for the “relevant offence” is the only option applicable in such cases.
- Environmental Health will have regard to the Environmental Health enforcement policy when enforcement options are being considered.

3.4

Graffiti on “relevant surfaces” in certain circumstances e.g. street furniture

- Where complaints of graffiti are offensive or detrimental to the amenity, Environmental Health will endeavour to identify the owner/occupier of the surface the graffiti is on and contact the owner informally requesting its removal.
- DRNs can only be issued as a last resort and only after consultation with the property owner, where relevant surfaces have been defaced by graffiti that is offensive or detrimental to the amenity of the area over a period of time as per Guidance issued by the Department, Guidance for District Councils and the Clean Neighbourhoods and Environment Act (Northern Ireland) 2011.
- Where a DRN is issued and not complied with, Council may remove, clear or remedy the defacement and may engage the services of specialist contractors to do so. (Specialist contractors may be required due to the nature of the equipment to which this power applies i.e. street cabinets, telecommunication cabinets etc.). As previously stated, compensation can be claimed by a person if their property is damaged by Council in their exercise of this power.

3.5 **Graffiti that is detrimental to the amenity.**

- In certain circumstances, Council may use powers under Art 18 to remove or obliterate the graffiti which it considers to be detrimental to the amenity
- This option does not apply to graffiti on buildings where there is no public access or on land occupied by a body established by a statutory provision.
- Any removal/obliteration of graffiti by Council will have cost and resource implications and are subject to budget being made available. As previously stated, compensation can be claimed by a person if their property is damaged by Council in their exercise of this power.

The following options are subject to the provisions of Art 18.

3.6

Option 1.
Informal approach

Where complaints of graffiti in a public place are received, and the person who displayed the graffiti has been identified, an informal approach will be made to the offender to request the removal of the graffiti. Where complaints of graffiti are received, and the person who displayed the graffiti has not been identified, Environmental Health will attempt to identify the owner of the surface on which the graffiti is displayed and request the owner to remove it. Where graffiti is not removed on request, no formal action will be taken.

In such cases where graffiti is considered offensive, Council will only remove the graffiti where consent and a signed disclaimer has been provided by the owner/occupier of the surface on which the graffiti is displayed. Offensive applies where graffiti is or is perceived to be racially offensive, hostile to a religious group, sectarian in nature, sexually offensive, homophobic, depicts a sexual or violent act or is defamatory.

3.7

Option 2
Use of Art 18 powers in cases where Graffiti is detrimental to the public amenity

Where complaints of graffiti in a public place are received, and the person who displayed the graffiti has been identified, an informal approach will be made to the offender to request the removal of the graffiti. If the graffiti is not removed then Environmental Health will issue a 2 day notice on the offender requesting its removal. Where graffiti is not removed on request through the notice, Council will remove /obliterate the graffiti and attempt to recover costs as a civil debt against the person issued with the notice.

Where complaints of graffiti are received, and the person who displayed the graffiti has not been identified, Environmental Health will attempt to identify the owner of the surface on which the graffiti is displayed and request the owner to remove it. Where graffiti is not removed on request, the Council will seek to remove /obliterate the graffiti at a cost to Council as soon as practicable .

The Council will seek to obtain consent and a signed disclaimer from the owner of the surface on which the graffiti is displayed ,where possible. This option would include all types of graffiti , but budget priority would be given to the removal/

	<p>obliteration of offensive graffiti in particular. Offensive applies where graffiti is or is perceived to be racially offensive, hostile to a religious group, sectarian in nature, sexually offensive, homophobic, depicts a sexual or violent act or is defamatory.</p> <p>As previously stated, compensation can be claimed by a person if their property is damaged by Council in their exercise of this power.</p>
4.0	Other Considerations
4.1	Financial, Human Resources & Risk Implications
	Financial: Cost for graffiti removal depending on number and type of complaints received.
	Human: Staff resource time for investigation
	Risk Management: N/A
4.2	Screening & Impact Assessments
	Equality & Good Relations Implications: None
	Rural Needs Implications: None
5.0	Recommendation(s)
5.1	It is recommended that Members give consideration to the approach to be adopted for removal of Graffiti deemed to be detrimental to the public amenity in either Option 1 or Option 2.
6.0	Documents Attached & References
6.1	Appendix 1 - Extract from the Clean neighbourhood plan
6.2	Appendix 2 - Community Planning short term actions