

ENVIRONMENTAL CRIME – AN ENFORCEMENT AND EDUCATION STRATEGY

SUMMARY

- 1.1. Derby is not the worst city for environmental crime. However, there are areas of the city with significant problems. Tackling environmental crime is an important factor in improving the quality of life for communities. If left unchecked, these crimes can blight areas and lead to conditions where other crime and disorder happens.
- 1.2 Local environmental crime includes littering, fly tipping, abandoned vehicles, fly posters, graffiti and other nuisance behaviour that affects the local environment.
- 1.3 The Council needs an enforcement and educational strategy to tackle these problems. In particular, council officers need to be fully trained in all aspects of enforcement and then authorised to carry out the various enforcement actions needed.
- 1.4 Enforcement action which is carried out must be proportionate to the offence committed. All enforcement staff will be accountable to the Council and the Public for any action they take.
- 1.5 Subject to any issues raised at the meeting, I support the following recommendations

RECOMMENDATIONS

- 2.1 To approve the Environmental Crime Enforcement and Education Strategy (Appendix 2).
- 2.2 To recommend to Council the delegation of authority to the
 - Assistant Director – Local Environment
 - Assistant Director – Regeneration
 - Assistant Director – Environmental Health and Trading Standards
 - Assistant Director – Highways and Transportationto authorise competent and trained staff to take action on environmental crime and amend the Constitution to reflect the new powers.
- 2.3 Subject to approval of 2.1, allow officers to consult with other city agencies and the public in order to agree a Derby City Partnership Environment Crime Strategy. In particular, seek commitments to multiple agency joint action to tackle environmental

crime. The final strategy will be brought back to Cabinet for approval.

- 2.5 To recommend that the Council adopts the power to issue fixed penalty notices by appropriately authorised staff. The use of fixed penalties will be in accordance with current guidance and advice.
- 2.6 To recommend that decision making powers are given to the Assistant Director - Environmental Health and Trading Standards, the Assistant Director – Regeneration, the Assistant Director – Local Environment and the Assistant Director – Highways and Transportation to make decisions on whether persons should face legal prosecution for non payment of Fixed Penalty fines. Therefore it is recommended that the proposed fixed penalty amounts shown in table one of the report are implemented. It is recommended that the opportunity for discount for early payment within 10 days is adopted and the fixed penalty amounts be set at the default rates in cases where the amount is not fixed.
- 2.7 To recommend that a study be undertaken to establish the feasibility of non-Council employees issuing Fixed Penalty notices.
- 2.8 To agree that any emerging details relating to this strategy are delegated for agreement between the appropriate Cabinet Member and the Director of Environmental Services or Director of Community and Regeneration.

REASONS FOR RECOMMENDATIONS

- 3.1 At present limited action is taken to tackle environmental crime. For instance, the Anti Social Behaviour Team and the Police target those responsible for graffiti. Environmental Health has a good record of dealing with abandoned vehicles. However, the majority of environmental crime is only cleared up and no action is taken against the culprits. This is very costly to the City Council and has a major impact on the cleanliness of the City.

SUPPORTING INFORMATION

- 4.1 Derby is not the worst city for environmental crime. However, there are areas of the city with significant problems. Tackling environmental crime is an important factor in improving the quality of life for communities. If left unchecked, these crimes can blight areas and lead to conditions where other crime and disorder happens.
- 4.2 Environmental crime is broadly defined as:
 - fly tipping
 - littering
 - graffiti
 - fly posting
 - abandoned vehicles
 - attachments to highway assets
 - some forms of vandalism

- some forms of anti-social behaviour

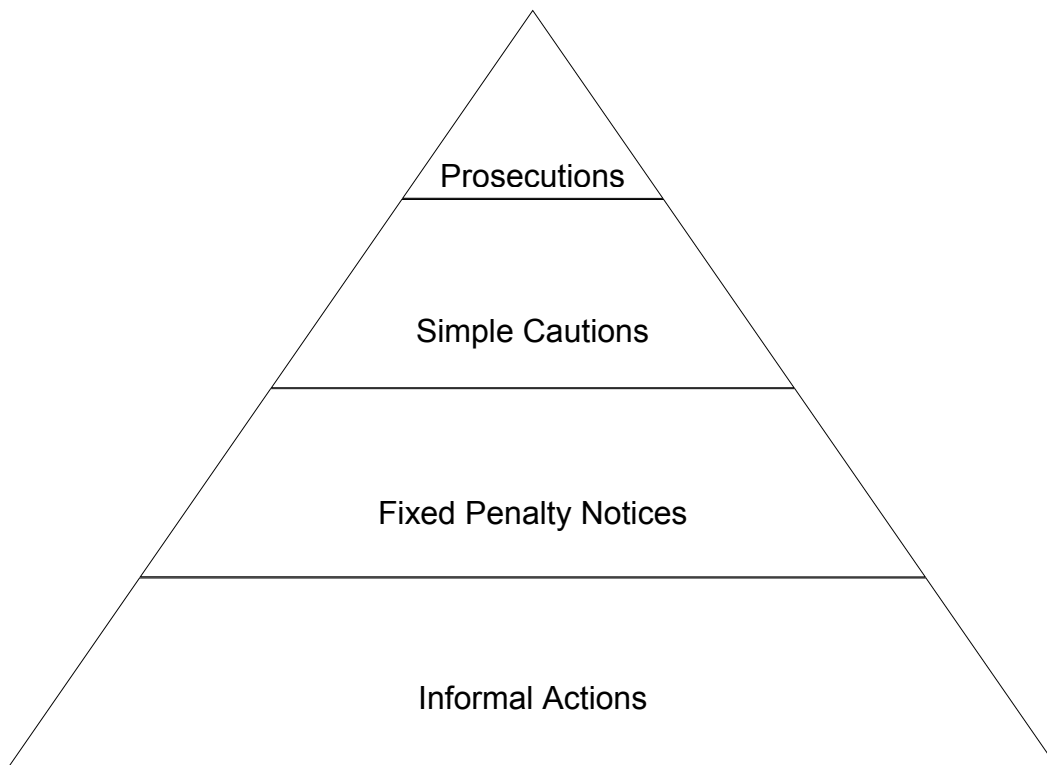
4.3 A review has been carried out of environmental crime enforcement and education activity. Across the City Partnership, apart from some work done by the Anti-Social Behaviour team and Police on graffiti. Highways Inspection and Planning Enforcement staff take action which contributes to Environmental Improvements. The majority of the rest of the enforcement is taken by Environmental Health staff. It is clear that in comparison to other cities there is limited action being taken in Derby.

4.4 There is a range of legislation to tackle environmental crime. New powers have also been introduced in the Clean Neighbourhood and Environment Act 2005. Appendix 3 lists the relevant laws.

4.5 The main issues which need to be resolved before effective enforcement can be carried out are:

- authorise officers to use legal powers including issuing Fixed Penalty Notices
- define areas of enforcement responsibility
- agree enforcement priorities, in particular targeting action
- set out a training programme for staff to ensure a correct approach to legal action
- draft an education programme
- setting standards to ensure officers are competent
- agreement to diverting officers from existing duties to carry out enforcement
- understanding of everyone involved that enforcement action must be proportionate and reasonable.

4.6 The legal options available are set out in the Enforcement and Education Strategy in Section 3 (Appendix 2)



Action Pyramid

The diagram illustrates the escalation of action. It is expected that there will be large numbers of informal or education action carried out. There will be fewer Fixed Penalty Notices and simple cautions. It is not expected that many prosecutions will be taken each year.

- 4.8 The diagram also illustrates how enforcement officers' time will be spent. For instance, informal education activities will be large numbers of short interviews, whilst a prosecution may take about 5-10 days to prepare and process. We need to get the balance right, for example, large numbers of prosecutions will take staff away from being on the streets as a visible deterrent.
- 4.9 In parallel to an enforcement action, a programme of education activities will be developed. These will be aimed at explaining to residents and businesses their responsibilities. This will engage the community in supporting our actions on environmental crime.
- 4.10 The Council's constitution will need to be amended to delegate to Senior Managers the ability to authorise staff. At present, officers can be authorised for some legislation by the Deputy Chief Executive and the Director of Regeneration and Communities. However, there will be considerable work checking and validating competency and skills of staff, so delegation to Assistant Directors is appropriate.

- 4.11 Appendix 3 sets out the legislation which we will be using. It is suggested that the Assistant Director - Environmental Health and Trading Standards, the Assistant Director – Regeneration, the Assistant Director – Local Environment and the Assistant Director – Highways and Transportation are delegated to authorise staff who they are satisfied are trained and competent.
- 4.12 It is expected that about 30 staff will be initially trained and then authorised when competent. It is not expected that taking on enforcement duties will have major implications for those involved. However, the Trade Unions will be consulted.
- 4.13 Progress to date:
- a Neighbour Environmental Action (NEAT) teams are based on the successful model establishment by Derwent New Deal for Communities. In Derwent a rapid reaction squad cleared up fly tipping, graffiti etc. Over time it was able to be more proactive. The NEAT teams have now been established in the five priority neighbourhoods. There has been immediate success with large numbers of jobs being carried out to tackle fly tipping, graffiti, fly posting and drug waste including needles. However, the NEAT teams need backing up by enforcement and education action to stop people regularly causing problems.
 - b The Environment Agency has offered resources to tackle fly tipping by targeted enforcement activities. The BREW project is expected to deliver short term results.
 - c Short term funding has been found to second an environmental health officer to implement the enforcement strategy and coordinate enforcement action.

Clean Neighbourhood And Environment Act 2005

- 4.14 On 7 April 2005 the Clean Neighbourhood and Environment Act 2005 received royal assent. Whilst some elements of the Act were introduced in June 2005, the main provisions of the Act came into force in April 2006.
- 4.15 The Act introduces a range of powers to improve the legislative provisions for dealing with nuisance vehicles, litter and refuse, graffiti, fly posting, waste management, fly tipping, noise, dog control and general nuisance.
- 4.16 One of the additional powers included in the Clean Neighbourhood and Environment Act 2005 is the ability to issue Fixed Penalty Notices for specific offences such as nuisance vehicles, waste offences and litter related problems.
- 4.17 Whilst most of the Act amends existing legislation, the Act has created new offences which are as follows:
- powers to deal with businesses who repair vehicles on the road, or who leave vehicles on the road for sale
 - powers to create dog control areas with the local Authority to control issues such as dog fouling, or keeping dogs on leads and excluding dogs
 - allowing local authorities to designate alarm notification areas.

- 4.18 The Clean Neighbourhood and Environment Act 2005 significantly extends the use of Fixed Penalty notices. The majority of the offences relating to Fixed Penalty notices are for summary offences only. The local authority therefore has a timescale of six months to commence proceedings at the magistrate's court. Incidents may take several months to investigate. Cases are then in danger of running out of time. The delegation of powers to the Assistant Directors would overcome this risk and enable the efficient administration of the enforcement powers.

Fixed Penalty powers are now available under the provisions of the Environmental Protection Act 1990, the Anti-social behaviour Act 2003 and a number of other pieces of legislation, as amended and extended by the Clean Neighbourhoods and Environment Act 2005. It allows for the fixed penalty amount to be specified at local level. In addition, discounts may also be offered for early payment of fixed penalties.

Fixed penalty notices may be issued when an enforcing officer believes that an offence has been committed. They give the offender an opportunity to avoid prosecution by payment of the penalty. It is essential therefore that they are only issued where there is adequate evidence to support a prosecution if the notice is not paid and that unpaid notices are followed up. It is not acceptable for the Council to decide after a fixed penalty notice has been issued that it does not have the resources or will to prosecute if the notice is unpaid.

It is recommend that the following fixed penalty amounts are adopted

Table 1. Fixed Penalty Amounts for Derby City

	Description of offence	Legislation relating to offence	Penalty
	Depositing of litter	Sections 87/88 – Environmental Protection Act 1990	£75
	Failure to comply with a street litter control notice	Sections 94/94A – Environmental Protection Act 1990	£100
	Failure to comply with a litter clearing notice	Sections 92C/94A	£100
	Unauthorised distribution of free printed matter	Schedule 3A, paragraphs 1(1) and 7 – Environmental Protection Act 1990	£75
	Failure to comply with a waste receptacles notice	Sections 46/47/47ZA/47ZB – Environmental Protection Act 1990	£75
	Failure to furnish documentation (waste transfer note)	Sections 34(5) and Regulations made under it/34(6)/34A – Environmental Protection Act 1990	£300
	Failure to produce	Section 5/5B – Control of	£300

	authority to transport waste (waste carriers licence)	Pollution (Amendment) Act 1989	
	Abandoning a vehicle	Section 2/2A Refuse Disposal (Amenity) Act 1978	£200
	Nuisance Parking	Sections 4/5/6/7/8/9 Clean Neighbourhoods and Environment Act 2005	£100
	Graffiti and Fly-posting	Section 43 Anti-social Behaviour Act 2003	£75
	Failure to comply with a Dog Control Order		£75

Discounts for early payments

The Clean Neighbourhoods and Environment Act 2005 introduces a power for authorities to offer a discount for early payment of a fixed penalty. It is recommended that this should be less than 10 days. The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 specify amounts below which the discounted penalties may not fall. It is recommended that these are adopted.

The amounts are:

- for offences with a default rate of £75, early payment of £50
- for offences with a default rate of £100, early payment of £60
- for offences with a default rate of £200, early payment of £120
- for offences with a default rate of £300, early payment of £180

- 4.19 Under Best Value Indicator 199 the Council are required to monitor Local Environmental Quality. In particular litter, detritus, fly posting and graffiti must be graded to establish an overall cleanliness rating. The new powers aim to enable local authorities to take further enforcement action and in turn this should have a positive impact on the city's cleanliness rating.
- 4.20 Recent research has shown that the local Environment Quality in a person's living environment has a significant impact on their health and well-being. Residents in areas which have a low environmental quality often have an increased 'fear of crime'. Evidence also supports the view that the onset of environmental crime in an area acts as a precursor for more serious anti-social behaviour and crime
- 4.21 The new powers introduced by the Act should have a positive impact in reducing the levels of crime and anti-social behaviour relating to the environment. Environmental crime is a key aspect of the Community Safety Strategy 2005.2008/
- 4.22 Failing to adopt these powers and authorise our officers could lead to a number of court cases being lost. This would have a financial impact on the local authority as it would not only lose its own costs but may be required to pay costs to the other side.

4.23 There are a number of functions (for example issuing Fixed penalty notices) that could also be carried out by our partners. Enforcement functions have normally been restricted to Council Officers. We would therefore ask the Cabinet to consider this and give consent for your officers to explore this option further. If the Cabinet agreed to the suggestion, a further report would be presented to Cabinet following the result of feasibility study to authorise non-council partners.

For more information contact:	Andrew Hopkin 01332 715212 email: andrew.hopkin@derby.gov.uk
Background papers:	None
List of appendices:	Appendix 1 - Implications Appendix 2 - Derby City Council Environmental Crime Enforcement and Education Strategy Appendix 3 - Environmental Crime Legislation

IMPLICATIONS

Financial

1. The cost of the proposals in the report will depend on the amount of Environmental Crime Enforcement that is expected will take place. It is suggested that detailed discussions form part of the budget process.

Legal

2. The report sets out the legal implications in detail.

Personnel

3. Carrying out enforcement work may change the responsibilities of staff involved. The Trade Unions will be consulted as appropriate.

Equalities impact

4. The Public of Derby are all entitled to a clean and safe environment. Initially the enforcement work will be targeted at the priority neighbourhoods.

Corporate objectives and priorities for change

5. Improve the quality of life in Derby's neighbourhoods by:
 - reducing crime and anti-social behaviour
 - reducing inequalities between neighbourhoods
 - reinvigorating the city centre and river areas
 - making Derby cleaner and greener
 - providing greater opportunities for people to participate in decisions about the area they live in.

DERBY CITY COUNCIL ENVIRONMENTAL CRIME ENFORCEMENT AND EDUCATION STRATEGY

1 INTRODUCTION

- 1.1 The City Council's aim is to protect the people and the city of Derby by seeking a living, working and trading environment that is health, safe and fair. Enforcement and regulatory control plays an essential role in achieving this aim.
- 1.2 Derby City Council will, in partnership with other agencies:
- help to build safer communities by positively dealing with anti-social behaviour and environmental crime issues such as litter, fly-tipping and graffiti
 - take enforcement action using fixed penalty notices and prosecutions against those who deliberately or recklessly contravene the law
 - give assistance and advice to help residents, businesses and others to meet their legal obligations and help them to combat anti-social behaviour
 - educate and campaign to raise the awareness of environmental issues and the effects of environmental crime as appropriate
 - ensure that the law is enforced in a skilled, professional, proportionate and open way.
- 1.3 Environmental crimes broadly defined as:
- fly tipping
 - littering
 - graffiti
 - fly posting
 - abandoned vehicles
 - attachments to highway assets
 - some forms of vandalism
 - some forms of anti-social behaviour.
- 1.4 Good Enforcement Practice
- The Council has adopted the Cabinet Office's "Enforcement Concordat" which offers best practice guidance and promotes good standards of enforcement. All officers will consider and follow the Code of Practice for Crown Prosecutors, issued by the Crown Prosecution Service, when taking decisions on whether to prosecute.
- 1.5 The following strategy incorporates the Principles of Good Enforcement set out in the Concordat and makes additional statements relating to our enforcement duties. How these principles will be observed and put into practice by officers of the Division is also explained.

1.6 The effectiveness of legislation depends crucially on compliance by those it seeks to regulate. We recognise that most of the public and businesses want to comply with the law. We will, therefore, help businesses and others meet their legal obligations without causing unnecessary expense or hindrance. Those who deliberately, irresponsibly or recklessly fail to comply with the law will be met with firm action, including prosecution where appropriate.

1.7 By acting in accordance with this strategy we will:

- protect the public and the environment
- help the local and national economy to thrive
- benefit citizens through better information, choice and safety
- contribute to Best Value in the delivery of our services.

2 **ENFORCEMENT PRINCIPLES**

In enforcing any law, the City Council recognises and affirms the importance of the following principles.

2.1 Openness

We will provide clearly stated information and advice on the rules that we apply and we will make this widely available. We will be open about how we set about our work, including any charges that we set in consultation with those who receive our services. We will discuss general issues, specific compliance failures or problems with anyone experiencing difficulties.

2.2 Helpfulness

We believe that prevention is better than cure and that our role therefore involves actively working with our customers to advise on and assist with compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage business to seek advice/information from us. Applications for approval of establishments, licenses, registrations, etc, will be dealt with efficiently and promptly. We will ensure that, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

2.3 Complaints About Service

We will provide well-publicised, effective and timely complaints procedures easily accessible to business, the public, employees and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be clearly explained, with details of the process and the time-scales involved.

2.4 Proportionality

We will minimise the costs of compliance by ensuring that any action we require is proportionate to the risks. As far as the law allows, and as far as is practicable, we will take into account the circumstances of each case when considering action.

We will take particular care to work with individuals, small businesses and voluntary and community organisations so that they can meet their legal obligations without unnecessary expense, where practicable.

2.5 Commitment to the Strategy

The City Council will ensure that all authorised officers carrying out enforcement work are fully trained and authorised in those aspects of legislation relevant to their duties. We will ensure that officers are fully competent to carry out their duties. All authorised officers must abide by this strategy whenever making decisions on enforcement. Any departure from this strategy will be exceptional and approved by the relevant manager, unless the delay in decision making would result in a significant risk to the public.

2.6 Consistency

We will carry out our duties in a fair equitable and consistent manner. Whilst our officers are expected to exercise judgement in individual cases, we will have arrangements in place to promote consistency. These include effective arrangements for liaison with other authorities and enforcement bodies through schemes such as those operated by the Local Authorities Coordinating Body on Food and Trading Standards (LACOTS), The Chartered Institute of Environmental Health and The Trading Standards Institute.

2.7 Targeting

We will be proactive in inspecting and monitoring the local environment. We will target those activities and areas that give rise to the most complaints by the public. We recognise that any action required must be proportionate to the risks.

We will also work with small businesses and community groups, so that they can meet their legal responsibilities without unnecessary expense where practicable.

2.8 Transparency

We will help individuals, groups and businesses to understand what is expected of them and what they can expect from the City Council. We will clearly distinguish between legal requirements and what is desirable but not compulsory.

2.9 Human Rights Act 1998

Our enforcement duties will recognised the spirit of the European Convention on Human Rights and we recognise the obligations placed on this authority by the Human Rights Act 1998. Of particular relevance to our activities are:

Convention Rights and Freedoms;

Article 6 – Right to a Fair Trial

Article 8 – Right to Respect for Private and Family Life

First Protocol;

Article 1 – Protection of Property

2.10 Standards

We believe that prevention is better than enforcement. Therefore, the City Council's role involves actively working with the community to advise and assist with understanding the law.

We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us. We will encourage recipients to seek advice/information from us. We will ensure, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays. We will provide information and advice in plain language on the rules that we enforce. We will be open about how we set about our work. We will publish our level of service and the performance we achieve.

2.11 Accountability

We are accountable for our actions to the public. We have a complaints procedure that is accessible to businesses, the public, employees, and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with details of the process and the likely time-scales involved.

2.12 Liaison

The City Council will, where practicable, aim to coordinate its enforcement activity to maximise the effective enforcement and reduce the impact on individuals or businesses.

Where an enforcement issue involves one or more external authorities or agencies, or extends beyond the geographical area administered by the Council, all other relevant bodies will be informed of the matter in an appropriate manner as soon as is practicable. Any enforcement activity undertaken by the City Council in these circumstances will be coordinated with those bodies.

2.13 Equal Opportunities

All officers undertaking enforcement duties will ensure that all recipients of the service receive fair and equitable treatment irrespective of their race, ethnicity, gender or disability.

2.14 Interests of Service Customers

Our enforcement activity will, where practicable, be arranged to:

- take account of particular local circumstances
- minimise any adverse effects, both on those individuals or businesses to which the activity is directed and those it may otherwise affect

Levels of legal compliance and examples of good practice will be monitored where practicable and appropriate. This information may be used to direct enforcement activity and to scale the level of enforcement action.

2.15 Sharing of Information derived from enforcement activity

In some circumstances we have an obligation to share information obtained as a result of enforcement activity. We will ensure that any information we make available in these cases is accurate and appropriate to the purpose for which it is being sought. We will not share information where the purpose for doing so is unclear, is likely to be misused or used for commercial advantage.

3 ENFORCEMENT OPTIONS

Derby City Council recognises the importance of consistency in making decisions on enforcement action.

In making a decision the officers will consider:

- the public interest or benefit
- the seriousness of the offence
- any explanation offered by the defendant
- the age of the defendant
- the previous relevant history, if any
- the likelihood of the defendant being able to establish a defence
- the ability of any important witnesses and their willingness to co-operate
- whether other action such as the issue of a fixed penalty notice would be more appropriate or effective
- the advice contained in the Code for Crown Prosecutors.

Having considered all relevant information and evidence, one or more of the following actions will be taken:

- no action

- informal action
- formal action

3.1 No action

Where an investigation reveals that no actual offence has occurred or an offence has occurred but no offender can be identified.

3.2 Informal Action

3.2.1 Informal action to ensure compliance with the law includes the offering of advice and recommendations for action, either verbally or by letter.

Informal action may be appropriate in the following circumstances:

- the offence committed was by a genuine mistake or accident
- the details of offence were witnessed by a person who wishes to remain anonymous and is not prepared to give a witness statement
- where the offence has been committed by a child or young person (although in certain cases such as repeated offences it may be appropriate to consider formal action)
- where the offender has been or is genuinely impeded from preventing commission of the offence e.g. a wheelchair user unable to reach and clear up litter.

3.2.2 There may be circumstances in which informal action will be more effective than the formal approach. In these instances the enforcement officer will use his or her discretion but may be called upon to justify the decision.

3.2.3 When an informal approach is used, officers will ensure that any written documentation provided must:

- contain all information necessary to identify the breach of legislation
- indicate specific legislation contravened
- clearly indicate any recommendations of good practice and to explain that they are not legal requirements.

- 3.2.4 Officers should always make clear, even when giving verbal advice, what are legal requirements as opposed to recommendations of good practice. As far as possible, advice and information should be in plain language and be free from jargon.

3.3 Formal action

3.3.1 Fixed Penalty Notice

Fixed Penalty Notices may only be served by authorised officers who are deemed to be competent, suitably qualified and trained. The following circumstances are likely to warrant the use of a Fixed Penalty Notice:

- Officer has witnessed the offence.
- Officer believes there are “reasonable grounds” to consider an offence has been committed.
- there is a suitable witness or witnesses to the offence and the offender can be clearly identified.
- the alleged offender has not received a Fixed Penalty Notice before, or has previously received no more than two Fixed Penalty Notices in the previous twelve months.

3.3.2 Simple Cautions

Simple cautions may be considered as an alternative to prosecution in accordance with Home Office Circular 30/2005 on Cautioning of Adult Offenders. The purpose of the formal caution is:-

- to deal quickly and simply with less serious offences.
- to divert less serious offence away from the Courts.
- to reduce the chances of repeat offences.

To safeguard the defendants interests, the following conditions will need to be fulfilled before a formal caution is administered:

- there must be evidence of the suspected offender’s guilt sufficient to give a realistic prospect of conviction.
- the suspected offender must admit the offence.
- the suspected offender must understand the significance of a formal caution and give informed consent to being cautioned.

If there is insufficient evidence to consider taking a prosecution, then by implication, the conditions are not satisfied for the use of a formal caution. It will also be inappropriate to use a formal caution where the suspected offender does not make a clear and reliable admission of the offence. There is no legal obligation for any person to accept the offer of a formal caution and no pressure should be applied to the person to accept a caution. Failure to accept a caution will normally result in prosecution for the offence.

Assistant Directors and Heads of Service in consultation with the Assistant

Director - Legal Services are authorised to issue formal cautions.

3.3.3 Prosecution

The City Council recognises that fair and effective prosecution is essential to the maintenance of law and order. However, the decision to prosecute is a serious step and may have severe implications for those involved – defendants, victims and witnesses.

Any decision regarding enforcement action will be impartial, objective, proportionate and fair. It will not be influenced by any view with regard to the race, gender, sexual orientation or religious beliefs of any offender, victim or witness. Improper or undue pressure from any source will be similarly disregarded.

To ensure consistency and fairness, in deciding whether to prosecute consideration will be given to guidance from Central Government, in particular the Code of Practice for Crown Prosecutors issued by the Director of Public Prosecutions. Other relevant sources will also be taken into account, such as case law and the recommendations of national co-ordinating bodies.

The City Council recognises that most people and businesses wish to comply with the law and prosecution will be generally restricted to those who deliberately or recklessly disregard the law. The following circumstances are likely to warrant prosecution:

- the offence involves a breach of the law and there is a realistic prospect of conviction
- the alleged offender has refused to supply their details
- the alleged offender has refused to accept a fixed penalty notice
- a fixed penalty notice has not been paid after the expiry of 14 days after issue
- there is a history of similar offences which have previously resulted in two Fixed Penalty Notices being issued to the same offender over a period no longer than 12 months
- an Officer of the Council has been assaulted or obstructed in carrying out their duties in respect of the offence.

Where circumstances have been identified which may warrant a prosecution, all relevant evidence and information will be considered, to enable a consistent, fair and objective decision to be made by the authorised manager to proceed.

4 APPLICATION OF THIS STRATEGY

- 4.1 **All officers will refer to this strategy when making enforcement decisions.** It must be read in conjunction with relevant approved guidance on enforcement action. This strategy takes precedent on environmental crime over existing policies.

Deciding Whether Or Not To Institute Proceedings

Some of the factors which are taken into account, both for and against prosecution, are given below.

Prosecution will normally only be considered when one or more of the following public interest criteria are present:

- Conviction is likely to result in a significant sentence
- There is significant danger to health, safety or well-being of persons, animals or the environment.
- Fraudulent, reckless or negligent practice with the likelihood of causing significant economic disadvantage to persons or business.
- The offence involves, or is directed at victims from vulnerable groups such as children, the elderly or infirm.
- Violence or threat of violence against any person is involved.
- The offence relates to wilful obstruction of an officer of the division acting in the course of their duties.
- History of the party, or parties, to an offence including relevant previous convictions, cautions, warnings or advice.
- There are grounds for believing that the offence is likely to be continued or repeated
- Evidence that the offence was deliberate or premeditated
- The offence, although not serious in itself, is widespread in the area where it was committed

A prosecution is less likely to be needed if:

- A court is likely to impose a nominal penalty;
- The offence was committed as a result of a genuine mistake or misunderstanding, balanced against the seriousness of the offence;

- Any loss or harm can be considered minor and resulted from a single incident, particularly if caused by misjudgement;
- There has been undue delay between the date of offence and trial, unless;
 - The offence is serious
 - The delay is caused in part by the defendant
 - The discovery of the offence is recent; or
 - Investigation of the offence has, out of necessity, been lengthy and complex;
- A prosecution is likely to have a serious adverse effect on the physical or mental health of a victim, bearing in mind the seriousness of the offence;
- The defendant is, or was at the time of the offence, suffering from significant mental or physical ill health, bearing in mind the seriousness of the offence or a real possibility it may be repeated
- The defendant has put right the loss or harm caused (but defendants must not avoid prosecution solely because they have paid compensation)

Consideration Of Evidence

Where prosecution is under consideration, no decision to institute proceedings will be taken without an assessment of the evidence relating to each offence. In every case regard will be had to the following factors:

- Whether there is sufficient evidence to prove each offence.
- Whether the evidence available is reliable and acceptable.
- Whether a defendant can satisfy a statutory defence provision available to them.
- Suitability, availability, credibility and willingness of witnesses.

4.2 Any departure from this strategy must be exceptional, capable of justification and be fully considered by the manager before a final decision is taken. This provision shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

In cases of emergency or where exceptional conditions prevail, the managers responsible for all enforcement services applying this strategy may suspend all or part of this strategy where necessary to achieve effective running of the service and/or where there is a risk of injury or to public health of employees or members of the public.

5 REVIEW

It is intended that this document will be subject to regular reviews, and changes introduced to accommodate new legislation and local needs.

Approved by Council Cabinet on 3 October 2006.

To be reviewed by Officers within 12 months.

ENVIRONMENTAL CRIME LEGISLATION

1. Graffiti

Section 1(1) Criminal Damage Act 1971 – damaging property which involves only the painting or writing on, or the soiling, marking or other defacing of, any property.

Section 131(2) Highways Act 1980, which involves the act of obliteration of a traffic sign.

Section 132(1) Highways Act 1980, which involves the painting or affixing things on highway or on any tree, works or structure on a highway.

These are linked to section 43 Anti Social Behaviour Act 2003 – as they are relevant offences for the purposes of issuing Fixed Penalty Notices under section 43. Need to authorise officers under section 47 ASBA 2003.

Section 48 Anti Social Behaviour Act 2003 also gives the power to serve graffiti removal notices.

2. Flyposting

Section 224 (3) Town and Country Planning Act 1990, which involves displaying advertisements in contravention of Regulations.

Can serve notice under section 225 to remove or obliterate unlawful advertisement.

Section 132(1) Highways Act 1980, which involves the painting or affixing things on highway or on any tree, works or structure on a highway.

These are linked to section 43 Anti Social Behaviour Act 2003 – as they are relevant offences or the purposes of issuing Fixed Penalty Notices under section 43. Need to authorise officers under section 47 ASBA 2003.

A new power inserted (by the Clean Neighbourhoods and Environment Act) into section 48 of the Anti Social Behaviour Act 2003 will give the power to serve defacement removal notices. This is not yet in force.

3. Dog Fouling

Section 3 Dog (Fouling of Land) Act 1996 contains the offence of failing to remove faeces deposited by a dog from designated land.

Section 4 gives the power to issue Fixed Penalty notices.

Section 55 to 67 in Part 6 of the Clean Neighbourhoods and Environment Act 2005 introduce new powers to enable local authorities to make dog control orders, issue fixed penalty notices and require names and addresses.

4. Flytipping/ Litter

Section 2 Refuse Disposal (Amenity) Act 1978, which involves the abandoning of any thing on land.

Section 148 Highways Act 1990, which involves depositing rubbish within 15 feet of the centre of the highway. Under Section 149 the local authority can serve notice to require its removal.

Section 34 in Part II of the Environmental Protection Act 1990 – duty of care as respects waste. Breach of duty of care is an offence. Now extends to domestic waste as well as trade waste.

Part IV Environmental Protection Act 1990 which includes:

Section 87 – offence of leaving litter;

Section 88 – power to issue fixed penalty notices for offences under section 87;

Section 90 – power to designate land as a Litter Control Area (Due to be replaced with Litter Clearing Notices by Clean Neighbourhoods etc Act)

Section 92A – power to issue Litter Clearing Notice; (not yet in force)

Section 92B – appeals against Litter Clearing Notice; (not yet in force)

Section 92C – offence of failing to comply with Litter Clearing Notice; (not yet in force)

Section 93 – power to issue Street Litter Control Notices

Section 94A – power to issue fixed penalty notices for offences under section 92C and 93 (not yet in force)

Section 94B and Schedule 3A – power to control distribution of free matter on designated land (not yet in force). It is an offence to distribute material on designated land without the consent of the local authority. (not yet in force)

Section 215 Town and Country Planning Act 1990, which involves the power to serve notice where amenity of area is adversely affected by the condition of land.

Section 216 makes it an offence to fail to comply with such a notice.