

# DRAFT ENVIRONMENTAL ENFORCEMENT POLICY 2017

## Aim

This Policy sets out the option to be considered by the Authority when taking enforcement action against perpetrators of environment waste crime to ensure, where possible, a consistent approach is taken.

In targeting reckless behaviours, this Policy sets out the principals under which the Authority will seek to achieve compliance with relevant legislation.

This Policy relates to offences including, and associated with, Littering; Dog Fouling; Waste Management; Waste Transportation; Waste Disposal and Fly-tipping.

It is prepared having regard to the Legislation and Regulatory Reform Act 2006, the Regulators Code and the Governments Enforcement Concordat.

## Principals of Enforcement

The Policy adopts the key principals of good enforcement as detailed within Central and Local Government Concordat and Sunderland City Councils Enforcement Concordat, and include:-

**Proportionality;** all formal enforcement decision's relate to the risk to public harm, public health or community wellbeing, or are proportionate to the level of breach.

**Consistency;** not uniformity. Whilst every case is different, the same principals will be applied to all decisions made.

**Transparency;** to demonstrate proportionality, appropriateness and consistency in all enforcement decisions

**Accountability;** targeting actions in areas that pose the greatest risk, and targeting only those who are responsible.

In undertaking its duties as an enforcing authority, Sunderland City Council is committed to carrying out its obligations in accordance with the enforcement principals.

In consideration of the principals, the following is further agreed:-

- To use the minimum enforcement action required to ensure compliance, avoiding any undue burdens on businesses and individuals, and making the best use of enforcement resources.
- In exercising its powers to take formal action based upon a balanced, fair and proportionate approach.
- Available resources to be targeted where most effective and where they will have an impact on the communities which they serve.
- Enforcement decisions will balance the impact on residents, businesses and communities, against the impact of continued non-compliance on the same.

- To be flexible in the range of enforcement actions, recognising that each case is unique and will need to be considered independently.
- Officers will distinguish between 'good practice;' and legal obligation or requirement. Breaches of good practice may result in no action or informal action, guidance or support however, breaches in legal obligations or requirements will result in formal action.
- Officers will work to prevent any unnecessary delays in the investigative or decision making process.
- All Officers will follow the documented standard procedures and any statutory codes of practice
- All cases will be investigated properly, professionally and without malice or agenda
- To be fair, objective and independent and will serve the community equitably and fairly, adhering to the principals of good enforcement set out within the Code in all circumstances
- Before considering a prosecution, Officers will ensure that the Environmental Enforcement Policy, Police & Criminal Evidence Act (PACE), the Regulatory Investigative Powers Act (RIPA), the Criminal Proceedings Act, the Human Rights Act and all other relevant Codes of Practice or legislation have been considered.

## **Enforcement Activity**

Contraventions of the relevant environmental legislation by businesses or individuals who are proven to have acted irresponsibly will be dealt with resolutely. All actions will be fair, proportionate and consistently applied.

Officers will exercise judgement in individual cases and procedural arrangement will be followed to ensure consistency, and promote fairness in each case.

Enforcement actions taken may include informal advice or guidance, written warnings, Fixed Penalty Notices, formal Notices or Orders, Injunctions, Formal Cautions or Prosecution.

The aim of any action will be to:

- Change the future behaviour of the offender
- Offer an appropriate punishment for the offence
- Make good and damaged caused
- Deter further breaches
- Promote public confidence to tackle the fear of crime
- Promote confidence in public services
- Eliminate any financial burdens on Sunderland City Council for non-compliance

Where formal legal action is being deliberated, factors from the Code of Crown Prosecutors will be considered. Factors that will be considered when deciding what enforcement action to take will include, but not limited to:

- The seriousness of the offence
- Any relevant history of the location, the offender or the offence
- The co-operation and/or willingness to prevent a reoccurrence by the offender
- The public interest in prosecution

- If any other actions could be more effective.

### **Authorised Officers**

All officers will be authorised to undertake enforcement actions by Sunderland City Council and will have delegated authority to undertake enforcement functions in accordance with Sunderland City Councils delegation scheme.

### **Enforcement Actions**

The following actions are available to the Officers undertaking enforcement investigations

### **No Action / Provision of Advice**

When investigating complaints, an Officer may find that there is insufficient evidence to justify any action, or after considering the circumstances decide that formal enforcement is inappropriate. Examples of where it could be inappropriate would be for a minor breach of waste presentation that was not causing any harmful effects and is resolved immediately upon engagement with the Officer.

In these cases the decision and reason will be recorded; the complainant informed; and the investigation recorded as closed. The investigating officer will only re-open the investigation if the circumstances of the case change sufficiently to warrant further action.

In recognition that prevention is better than cure, Officers will work to support individuals to ensure compliance with all relevant legislation.

### **Informal Action**

Officers have the discretion to deal with minor breaches of the law that are trivial or due to minor lapses, by issuing informal warnings when they judge the circumstances to be suitable. Officers will always document the circumstances which have resulted in this decision being made and advise that further breaches will not be dealt with in the same way. Any Informal warnings will be followed up in writing, detailing the relevant legislation and the circumstances resulting in a breach as well as the potential consequences of future non-compliance.

Generally, informal action should be considered where:

- the case is not serious and the previous history is good and;
- the offender(s) understand and admits the error and the company or individual has remedied the situation forthwith

### **Written Warning**

Officers will use formal written warnings when the decision has been taken not to continue legal action. Formal written warnings provide a strong warning telling the offender he has narrowly avoided a prosecution and will differentiate between contraventions and advice. Failure to comply with the terms laid out in formal warning may lead to legal action.

The courts do not usually allow past written warnings as admissible evidence, but formal written warnings can be used to support the decision to prosecute on a particular occasion.

Formal written warnings will be considered:

- In circumstances when prosecution is a disproportionate response;
- When the offence is serious but a further offence is unlikely and the issue of a fixed penalty notice is not an option.

The Officer will also take into account the likely response of the offender to a warning. Following a written warning or verbal warning an Officer may revisit to check the offence has been corrected depending upon the health, safety, environmental damage or nuisance implications of the contravention. Failure to respond to a formal written warning and continued non-compliance could result in formal legal proceedings being taken.

## Fixed Penalty Notices

A fixed penalty notice is a formal document served on an offender, providing the date, time and details of the particular offence and the penalty charge amount due. Fixed penalty notices are available for a variety of offences including littering, dog control, fly-tipping, illegal waste transfer and transport and other associated offences.

Before issuing a fixed penalty notice the investigating officer must gather sufficient evidence to present a prosecution case to the criminal standard of proof. The investigating officer will not proceed where sufficient evidence is not available.

Fixed penalties will be considered where available legislation allows for a Fixed Penalty Notice as an alternative to court proceedings however, issuing a Fixed Penalty Notice is not a quick fix and requires a full and thorough investigation.

Fixed Penalty Notices will not be served unless sufficient evidence exists to prosecute for the offence, and all factors relevant to prosecutions have been considered.

Fixed penalty notices are available for the following offences

Offence	Legislation	£FPN	Discount	Fine on conviction
Depositing Litter	s87 Environmental Protection Act 1990	£75	£50	Level 4 £2,500
Dog Control Order Breach	s59 Clean Neighbourhood & Environment Act 2005	£75	£50	Level 3, £1000
Vehicles for sale or repair on a highway	s. 3 Clean Neighbourhood & Environment Act 2005	£100	£80	Level 4 £2,500
Failure to produce waste documentation	s.34(5) Environmental Protection Act 1990	£300	£200	Level 5, £5,000
Fail to produce Authority to transport	s.5b Control of Pollution (Amendments Act) 1989	£300	£200	Level 5, £5,000
Fail to comply with commercial waste Notice	s. 47 s.34(5) Environmental Protection Act 1990	£100	£80	Level 4 £2,500
Depositing waste on land without authority	s.33(ZA) Environmental Protection Act 1990	£400 (TBC)	£300 (TBC)	Up to £50,000

or permission				
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Payment of a Fixed Penalty Notice within 14 days concludes the matter entirely.

Where a Fixed Penalty Notice is not paid within 14 days, perpetrators will be prosecuted for the original offence. Fixed Penalty Notices offer the offender the opportunity to deal with the matter **without acceptance of guilt or liability and without the possible expense of court proceedings.**

Arrangements for instalment payments can be made in some circumstances however, where a Fixed Penalty Notice is not paid in full within the agreed timescale, perpetrators will be prosecuted for the original offence.

## **Statutory Notices**

In some circumstances the Council may serve a notice on a person specifying the action required to remedy an environmental concern, within a specified timescale. Notices provide an effective way of identifying a concern, detailing the remedial works required and the timescales for compliance.

Officers will consider at an early stage the serving of a Notice and the requirements within the notice to secure compliance or remedy the community concern.

Details of the method of appealing against the requirements of the Notice will be served, in writing, at the time of the Notice.

Where the requirements of a Notice are not met, a decision to prosecute or take another form of action will be taken

Prosecution for non-compliance with a Notice will generally be considered as the norm, unless other significant facts indicate another line of action is more appropriate or the Crown Prosecution Guidelines suggest otherwise.

Work in default of the Notice is a formal legal procedure allowing the Council to correct the defect following non-compliance with a Notice. Work in default ensures completion of essential works when other means have failed and where non-compliance is having a detrimental effect on the community, however the expense lays with the Council and therefore works in default will be balanced between the impact on the Community and impact on the relevant service provider.

Where works in default have been undertaken, the Council will try to recover all reasonable costs incurred as a result and, where the legislation allows, will attempt to recover these costs by placing a charge on a property whenever it cannot recover them by other means.

## **Prosecution**

The decision to pass a file to legal services with a view to prosecution will be taken by the relevant Manager in conjunction with the Portfolio Holder. The decision to prosecute will be with the City Solicitor or suitable delegate within legal services.

There are two stages in the decision to prosecute.

The first stage is the evidential test. There must be enough evidence to provide a realistic prospect of conviction. If the case does not pass the evidential test, it must not go ahead, no matter how important or serious it may be.

If the case meets the evidential test, the public interest test is then applied.

The Council's Solicitor will review the case before commencing proceedings.

Factors that could influence the decision to recommend prosecution would include:

- The offence, although not serious in itself, is widespread in the area where it was committed.
- A prosecution could have a significant positive impact on maintaining community confidence;
- A conviction is likely to result in a sentence.
- There are grounds for believing that the offence is likely to be continued or repeated.
- The offence was premeditated.
- The defendant's previous convictions, or cautions, are relevant to the present offence.

Factors against prosecution could include:

- The Court is likely to impose a small financial penalty, using the national sentencing guidelines, and may not award costs (whilst the Council is aware that persons claiming benefits frequently receive smaller fines compared to those who are in employment in accordance with the sentencing guidelines. It should not therefore be assumed that a prosecution could not proceed purely based on this factor alone)
- Defendant has already been made subject to a sentence and further conviction is unlikely to result in an additional sentence.
- Offence was the result of genuine mistake or misunderstanding.
- Long delay between the offence taking place and the date of the trial (unless the offence is serious; the delay was caused by defendant; the offence only recently came to light; or the complexity of the offence meant a long investigation)

For each defendant Officers will select offences that reflect the seriousness of the offending and thereby give the court adequate and appropriate sentencing powers.

The investigation and case file documentation should be completed as soon as possible and referred to the relevant Manager to consider the case file and recommendations of the case officer.

Once the decision to proceed with the prosecution has been agreed, the defendant will be informed in writing.

The Council's Solicitor will be responsible for prosecuting the case.

The Council will seek to recover as much as possible of the total costs involved in its enforcement work whenever the legal opportunities exist to do so.

## **Court Injunction**

An Officer may consider the use of an injunction when:

- the law allows it and there is immediate risk to environment, health or safety; or
- there is gross nuisance to a large section of the population and the event could finish before the Council could launch a normal prosecution; and/ or
- the person has made it clear he sees the benefits of continuing to offend as outweighing any penalty against him resulting from a normal prosecution.

## **Review**

This Enforcement Policy will be reviewed annually and as appropriate. Where amendments are required, which reflect legislative, administrative or operational changes, the Policy will be referred to the Portfolio Holder and/or Cabinet for approval.