

Report to Cabinet

22 November 2018

By the Cabinet Member for Waste, Recycling and
Cleansing



**Horsham
District
Council**

DECISION REQUIRED

Not Exempt

Environmental Enforcement Policy 2018

Executive Summary

Horsham District Council ('the Council') has a wide range of powers to employ officers authorised to investigate environmental crime and undertake the appropriate enforcement action in relation to breaches of legislation and environmental criminal offences. The sanctions may vary between administering simple cautions and warnings, Fixed Penalty Notices ('FPN') or prosecution in the criminal courts.

This policy has been drafted to incorporate the Legislative and Regulatory Reform Act 2006 which is a Statutory Code of Practice enacted on 6th April 2008. The code sets out the way in which compliance and enforcement actions must be undertaken, including the publication of an enforcement policy. The policy also covers investigatory powers related to the Environmental Protection Act 1990 and Cleaner Neighbourhoods Act 2006 under relevant sections therein.

The policy also takes into account the Principles of Good Enforcement as outlined in the Enforcement Concordat: Good Practice Guide for England and Wales, produced by the Department of Trade and Industry (DTI) 2003.

Recommendations

That the Cabinet is recommended:

- i) To note the contents of this report and approve the Environmental Offences Enforcement Policy ('the Enforcement Policy').
- ii) To grant authority for the adoption of the all relevant enforcement powers by the Council contained in the Enforcement Policy.

Reasons for Recommendations

The Council requires an enforcement policy to ensure that Authorised officers can investigate environmental crimes and undertake the appropriate enforcement action where subsequent evidence proves that an environmental offence has taken place.

In addition the policy outlines:

- Standards: the principles that will be used
- Openness: clear and open provision of information
- Helpfulness: helping by advising on and assisting with compliance
- Complaints about the service: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved in the process
- Consistency: ensuring consistent enforcement practice

Background Papers

Clean Neighbourhoods (Prevention/Enforcement) Strategy 2007 – 2012.

Wards affected: All Wards

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BACKGROUND INFORMATION

1. Introduction and Background

- 1.1. The purpose of this report is to introduce a policy relating to the general principles and outcomes related to the Council's enforcement powers in investigating and tackling environmental crime. The policy specifies the procedures to be followed by officers in taking enforcement action and the standards that they will adhere to.
- 1.2. Environmental offences are criminal offences which can be tried in the criminal courts. Each Authorised Officer is responsible for his or her decision regarding enforcement action and as such, there is a clear need to demonstrate that decisions are taken in an objective and responsible way in order that there is confidence in the fairness of those decisions. The Council does hope to influence behaviour through education and the clear communication of information. Should this approach fail or a significant breach of legislation has been committed, the Council's Authorised Officers will then take enforcement action as necessary and proportionate.

2. Relevant Council policy

- 2.1. The Council's Policy for issuing FPN's was adopted in 2017, the policy in conjunction with the Enforcement Policy will ensure that the Council has a uniform approach to issuing FPN's for environmental offences.

3. Details

- 3.1. The policy is attached as Appendix A
- 3.2. The introduction of a dedicated Enforcement Officer within Operational Services enables the Council to investigate environmental crimes in a proactive manner in line with The Legislative and Regulatory Reform Act 2006 which is a Statutory Code of Practice which as such requires a policy that clearly outlines how and when any action should be taken.
- 3.3. The revised policy specifies under which circumstances an FPN can be issued together with the actions to be taken by officers duly authorised to issue such notices.
- 3.4. The policy allows officers to offer advice on compliance, issue cautions and fixed penalties as well as producing evidence files for prosecution. This will increase the Council's ability to tackle environmental issues.

4. Next Steps

4.1. The Enforcement Policy is being submitted to Cabinet for approval. If it is approved it will then be communicated as appropriate.

5. Views of the Policy Development Advisory Group and Outcome of Consultations

5.1. The policy was reviewed by the Policy Development Advisory Group on 22 October 2018. The Policy Development Advisory Group fully endorsed and supported the introduction of the Enforcement Policy.

5.2. The Monitoring Officer and Director of Corporate Resources have been consulted with regard to the Enforcement Policy.

5.3. The Director of Community Services and the Cabinet Member for Waste, Recycling and Street Scene have also been consulted.

6. Other Courses of Action Considered but Rejected

6.1. There are no other realistic courses of action if the Council wishes to take appropriate action against those who do not comply with relevant legislation. Without the Enforcement Policy, the Council is at risk of challenge to acting disproportionately or unreasonably.

7. Resource Consequences

7.1. The approach of issuing FPN's for environmental offences allows an offender to discharge their criminal liability and avoid prosecution through the courts. This must not be seen as a way to raise revenue; indeed the way in which the Council makes use of receipts from any FPNs issued is governed by the relevant legislation. Similarly, awards made by the Court with regard to costs allows the Council; to recoup reasonable costs related to bringing any case. Therefore changes will have no impact on the council's budget.

8. Legal Consequences

8.1. The Environmental Protection Act 1990 imposes duties under Sections 89(1) and (2) on certain landowners and occupiers to keep specified land clear of litter and refuse, and on local authorities and the Secretary of State to keep clean public highways for which they are responsible. Under Section 88 of the Environmental Protection Act 1990, Authorised Officers of the Council can issue FPN's as an alternative to prosecution.

8.2. The Council can as the Principle Litter Authority set the amount of penalty in the FPN dependent in accordance with the maximum amount prescribed in legislation for that particular offence, for a serious waste related offence such as fly tipping the Council has set the maximum penalty at £400 and £75 for depositing litter.

8.3. The points below cover legislation and policy that is applicable:

- The Clean Neighbourhoods and Environment Act 2005
- The Environmental Protection Act 1990
- The Police reform Act 2002
- Council Policy for issuing Fixed Penalty Notices 2017.

9. Risk Assessment

9.1. If the Enforcement Policy is not adopted, then the Council is at significant risk of challenge whenever enforcement action is undertaken, for example when FPN's are issued for environmental offences or when a prosecution is undertaken in line with the Enforcement Policy, it will be clear in defending a challenge that the Council has acted in accordance with the Enforcement Policy.

9.2. To ensure that the Enforcement Policy is kept up to date, the Head of Waste, Street Scene & Fleet Service will review the Policy annually.

10. Other Considerations

10.1. The Council has a duty under Section 17 of the Crime and Disorder Act 1998 to prevent crime and disorder, including anti-social behaviour and behaviour that adversely affects the environment. The adoption of this policy increases the Council's ability to meet this requirement and improve the quality of life for residents across the district.

10.2. Any enforcement activity undertaken will be done so in line with Articles 6, 7 & 8 of the Human Rights Act 1998.

10.3. Equalities Impact Assessment completed

Appendix A



NOVEMBER

2018

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1. Introduction

- 1.1. This policy has been developed for use by officers who are authorised ('Authorised Officers') by Horsham District Council ('the Council') to investigate Environmental Offences and take any action considered appropriate in the circumstances.
- 1.2. This policy sets out what members of the public can expect from the Council and its Authorised Officers in the enforcement of Environmental Offences. It also establishes the framework within which enforcement action will be taken and the procedures to be followed when the Council's Authorised Officers are taking such action.
- 1.3. The Legislative and Regulatory Reform Act 2006 introduced a Statutory Code of Practice on 6th April 2008 which sets out the way in which compliance and enforcement actions must be undertaken, including the publication of the enforcement policy.
- 1.4. This policy document is available to members of the public via the Horsham District Council website and copies can be made available in larger print and other formats upon request.

2. The Principle of Good Enforcement

- 2.1. This policy takes into account the Principles of Good Enforcement as outlined in the Enforcement Concordat: Good Practice Guide for England and Wales, produced by the Department of Trade and Industry (DTI) 2003.
- 2.2. The outlined principles include:
 - Standards: Setting clear standards;
 - Openness: clear and open provision of information
 - Helpfulness: helping by advising on and assisting with compliance
 - Complaints about the service: having a clear complaints procedure
 - Proportionality: ensuring that enforcement action is proportionate to the risks involved in the process
 - Consistency: ensuring consistent enforcement practice

3. Enforcement Action

- 3.1. Environmental offences are criminal offences which can be tried in the criminal courts, being the Magistrates' Court and the Crown Court. Each Authorised Officer is responsible for his or her decision regarding enforcement action and as such, there is a clear need to demonstrate that decisions are taken in an objective and responsible way in order that there is confidence in the fairness of those decisions. The aim of this policy is to change the behaviour of the offender and to improve the quality of life and

the environment of the District. This can be achieved through education as well as enforcement. Should this approach fail or a significant breach of legislation has been committed, it is legitimate for Authorised Officers to then take enforcement action as necessary.

In making decisions in relation to enforcement, Authorised Officers will consider:

3.1.1. **NO ACTION**

- If an investigation reveals that no offence has been committed or that an offender cannot be identified then no further action shall be taken

3.1.2. **INFORMAL ACTION**

- To facilitate compliance with the legislation, informal action may be used to address issues in the form of offering advice and recommendations for action, either verbally or by letter. Such action may be appropriate in the following circumstances:
 - When an offence was committed by genuine mistake or accident
 - Where the offence has been committed by a child or young person
 - When there is insufficient evidence for formal action
- In addition to the above circumstances, Authorised Officers will assess each case individually and use their own discretion as to the required course of action.
- When giving verbal advice, Authorised Officers will ensure that breaches of legislation are made clear and understood by recipients.
- Authorised Officers will ensure that when writing advisory enforcement letters that they contain all information necessary to identify any breach of legislation, indicating specific legislation contravention.

3.1.3. **FORMAL ACTION**

- Authorised Officers will consider the use of the following formal action as outlined in points 3.1.4 to 3.1.7 in accordance with the relevant legislation, working practices and guidance.

3.1.4. **FORMAL ACTION - STATUTORY NOTICES**

- Notices served by Authorised Officers of the Council can require offenders to cease contravening activities, or give offenders reasonable time to rectify a contravention. Notices may require contravening activities to cease immediately where circumstances relating to health, safety or environmental damage demand. In other circumstances, the offender will be provided with a reasonable time to comply with the requirements of the notice. Where the offender fails to comply with a notice, the Council may consider prosecuting the offender.

3.1.5. **FORMAL ACTION - FIXED PENALTY NOTICES (FPN)**

- FPNs are available as an alternative to prosecution for some low-level environmental offences. FPN's will be issued under specified legislation. In order to ensure that FPN's are issued in an equitable, practical and consistent manner, Authorised Officers shall adhere to the procedure as set out in the Council's Policy for issuing Fixed Penalty Notices 2017.
- The offences where an FPN can be issued are:
 - Littering
 - Littering from vehicles
 - Fly-tipping
 - Failure to produce a waste transfer note
 - Domestic waste receptacle offences
 - Industrial and commercial waste receptacle offences

3.1.6. **FORMAL ACTION - FORMAL CAUTION**

- Formal Cautions may be considered as an alternative to prosecution. According to the Home Office Circular 18/1994, the purpose of a formal caution is to:
 - Deal quickly and simply with less serious offences
 - Divert less serious offences away from the courts
 - To reduce the likelihood of repeat offences

3.1.7. **FORMAL ACTION - PROSECUTION**

- Where the circumstances warrant it (such as the failure to pay the FPN) and alternative action such as informal action are considered inappropriate, considerations for prosecution taken into account will be:
 - Flagrant Breach of Law – When an offence has been committed and the environment has been affected
 - Failure to comply with a Statutory Notice – When officers have issued notices and given advice but the offenders behaviour persists
 - Failure to pay or accept a Fixed Penalty Notice
 - When an Authorised Officer is deliberately obstructed from carrying out their duties
 - When circumstances have been identified warranting prosecution, all details regarding the incident will be considered in a consistent, fair and objective manner. Any decisions will be made in conjunction with the Street Scene Services Manager and the Council's Head of Legal and Democratic Services.

4. Authorisation

- 4.1. Only an Authorised Officer who is authorised by the Council may undertake environmental enforcement action. Such action will only be taken by Authorised Officers who are trained and authorised to do so.
- 4.2. Each Authorised Officer must carry with them at all times their Authorisation Card, signed by the Chief Executive, which displays their photograph, name and title together with the wording:

AUTHORITY TO ISSUE FIXED PENALTY NOTICES

This is to certify that the Officer whose photograph is shown overleaf has been authorised by Horsham District Council to issue fixed penalty notices for environmental offences; breaches of a PSPO; to enforce District Byelaws; & require the name & address of persons believed to be committing a relevant offence.

5. The Regulation of Investigatory Powers Act 2000

- 5.1. The Regulation of Investigatory Powers Act 2000 (RIPA) governs the use of covert surveillance by various public bodies, including local authorities. In circumstances where it is deemed appropriate and the circumstances justify such an approach, officers may apply for authority to undertake covert surveillance in accordance with the Horsham District Council RIPA policy. No form of covert surveillance or enforcement must be undertaken without prior approval in line with this policy.
- 5.2. Further guidance should be sought from the Legal Services Department prior to any activity that could be deemed to be covert surveillance under the terms of the Act.

6. The Human Rights Act 1998

- 6.1. In deciding whether to undertake enforcement action, particularly a prosecution, the rights and freedoms given to individuals under the Human Rights Act 1998, in particular taking account of Article 6, the right to a fair trial and Article 8 the right to respect for private and family life, homes and correspondence, will be considered. In taking enforcement action, officers must ensure that their actions are Proportionate, Legal, Accountable and Necessary

7. Equalities and Diversity

7.1. The Council recognises there is diversity within the community and care will therefore be taken to ensure its enforcement actions are clearly understood by providing written information in an appropriate language whenever necessary and possible. The Council can provide an interpreter service or translation covering many languages if those involved have difficulty in speaking or writing English.

7.2. All Authorised Officers undertaking enforcement duties will ensure that all persons dealt with will receive fair and equitable treatment irrespective of their background or protected characteristic in the Equality Act 2010. These characteristics are:

- Age;
- Disability;
- Race;
- Religion or belief;
- Sex;
- Sexual orientation;
- Gender Reassignment
- Marriage/Civil Partnership Status; or
- Pregnancy/Maternity Status

7.3. In accordance with the Council's Policy for issuing FPN's, they will not be issued to persons under the age of eighteen, however a warning letter may be issued and with the young person's parents or guardian informed of the offence. Depending upon the seriousness of the offence other interventions (including court action) will be considered by Legal Services.

8. The Investigation of Offences

8.1. When the Council becomes aware that an Environmental Offence may have taken place, an Authorised Officer will begin an investigation.

8.2. Whilst gathering evidence, Authorised Officers will be governed by the Police and Criminal Evidence Act 1984 ('PACE'). If any questioning takes place, over and above, establishing the identity, address, date of birth (and in the case of dog fouling establishing if a dog is with a particular person) then the suspected offender **must** be cautioned if any of his/her answers are to be admissible in court. The Caution is worded below:

“You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence”

8.3. When an offence has been committed and a person to be questioned is not suspected as the possible offender for that offence, the Caution would not be given prior to asking any questions. The Caution will be given if the person being questioned subsequently says anything that may indicate that they are the offender or may have participated in the offence.

8.4. Authorised Officers may ask questions to find out whether an offence has been committed, whether anyone saw it being committed and whether anyone has any other information that might be useful in the investigation. Having determined that an offence has been committed, Authorised Officers may wish to question all those who might have been involved.

8.5. Police assistance may be requested in the following circumstances:

- 2.1.1. where an offender is being questioned by an Authorised Officer and the offender refused to give their details
- 2.1.2. Suspicion that the offender has given false details
- 2.1.3. The offender become abusive or physically aggressive

Further action can be taken against an offender for the failure to give their details, or provide false details.

8.6. Where possible, pocket notebook entries should be completed by the Authorised Officer and signed by the offender.

8.7. The Council operates a zero tolerance policy on abuse and aggression towards its staff and will take all action necessary against offenders who assault our staff.

Appeals against a Fixed Penalty Notice

8.8. Authorised officers of the Council will only issue a FPN where they consider that there is adequate evidence of an offence that will support a prosecution in court. However, if it is believed that the offence in question did not take place or that the issue of the FPN was incorrect, a challenge to the Director of Community Services can be made along with opting not to pay the FPN and attending court, if summonsed, to present the case. Should the case proceed to court the Council will, in addition to any fine imposed, seek to recover its costs associated with the prosecution. The Council retains the right to review any FPN issued before prosecuting. However, in most cases the Council will proceed to prosecute for the non-payment of FPNs.

8.9. Regulation 14 of The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 ('the 2018 Regulations') allows a person whom a penalty notice is given may make written representations to HDC if it appears to the person that one or more of grounds A to L of Regulation 14 applies. A copy of the 2018 Regulations can be provided upon request.

9. Prosecutions and the Code for Crown Prosecutors

9.1. When a prosecution is being considered, a request will be made by the Street Scene Manager to the Head of Legal and Democratic Services to consider the tests required under the Code for Crown Prosecutors.

9.2. The required tests, which govern the decision making process can be found at: https://www.cps.gov.uk/sites/default/files/documents/publications/code_2013_accessible_english.pdf, are as follows:

10. Prosecutions in Court

10.1. Once a decision is made to prosecute an offender for an Environmental Offence, the Legal Services Department will obtain a Summons from the Magistrates' Court.

10.2. The Summons legally requires the offender to appear at Court to answer to a formal charge for the offence committed.

10.3. If the offender fails to attend Court as summoned, the Council may proceed in the offender's absence by either proving the matter in absence or obtaining a warrant for their arrest, which is executed by the Police.

11. Complaints Procedure

11.1. The Council has a formal complaints procedure which ensures that any complaint is dealt with quickly, consistently and helpfully. Complaints can be conducted in writing, by telephone, email or completing a complaint/suggestion form online to the Council.

12. Document Review

12.1. The Environmental Offences Enforcement Policy will be reviewed at annually by the Head of Waste, Recycling, and Street Scene & Fleet Services in consultation with the relevant Cabinet Member and Head of Legal and Democratic Services. Reviews will also take place periodically as necessary following legislative changes. Views on the Policy and its implementation will be sought to ensure it continues to meet the principles of good enforcement.

The Environmental Offences Enforcement Policy to be adopted by the Council at the meeting of the Cabinet held on November 22nd 2018.