

SMT Meeting		Agenda Item: X
Meeting Date	18 January 2022	
Report Title	Environmental Enforcement and Prosecution Policy	
Cabinet Member	Cllr. Julian Saunders Cabinet Member for Environment	
SMT Lead	Emma Wiggins, Director of Regeneration and Neighbourhoods	
Head of Service	Martyn Cassell, Head of Environment and Leisure	
Lead Officer	Jo Mapp, Environmental Enforcement Manager	
Key Decision	No	
Classification	Open	
Recommendations	1. That Cabinet approves the refreshed Environmental Enforcement and Prosecution policy.	

1 Purpose of Report and Executive Summary

1.1 The Environment Response Team's existing enforcement prosecution policy is now out of date and needs to be refreshed. A new corporate overarching enforcement policy was approved by Members in December 2020. The Environment Response Team document is intended to complement the corporate policy with team specific detail and information. This report seeks endorsement of the new policy.

2 Background

2.1 The Environment Response team have a wide range of enforcement tools available to resolve issues when necessary. This policy highlights some of these and explains how and when they may be used in conjunction with the principles outlined in the agreed corporate policy.

2.2 It is good practice to have a function specific policy in place that helps to promote consistent, efficient and effective approaches to regulatory inspection and enforcement as a means of improving regulatory outcomes without imposing unnecessary burdens.

2.3 The overarching corporate policy sets out the principles of good regulation (consistent, targeted, transparent, accountable, proportionate and helpful) which should be applied to all of the Council's enforcement activity.

2.4 This policy should assist with achieving consistency in enforcement. It sets out a short and succinct statement of what those who are on the receiving end of

enforcement action should expect from the Council in how it discharges its responsibilities.

3 Proposals

- 3.1 That Cabinet approves the refreshed Environmental Enforcement and Prosecution policy.

4 Alternative Options

- 4.1 The alternative option is to not have a team policy and rely on the overarching enforcement policy. This is not recommended as the umbrella policy suggests that where needed, relevant services will provide their own service specific policies. It also enables consistency across the various departments who have already produced function specific enforcement policies. The function specific policy allows the principles in the overarching policy to be delivered.

5 Consultation Undertaken or Proposed

- 5.1 Managers and Team leaders within the Community Safety Unit and Environmental Protection team have reviewed the document and provided comments.
- 5.2 Legal services have also reviewed and contributed to this final document.

6 Implications

Issue	Implications
Corporate Plan	The policy aligns with several objectives in the corporate plan, especially Priority 2 'Investing in our environment and responding positively to global challenges' and priority 3 'Tackling deprivation and creating equal opportunities for everyone (3.4 – reducing crime and antisocial behaviour)'.
Financial, Resource and Property	The Enforcement policy can be delivered with existing staff resource. Some of the environmental Fixed Penalty Notices that the Environment Response Team issue have stipulations set in law that means that any income received is to be spent in specific areas of work. See DEFRA document Part 1a – Effective Enforcement (section 11C.1)
Legal, Statutory and Procurement	The policy is intended to ensure that regulatory inspection and enforcement is carried out in a fair, practical and consistent manner. It is good practice to have this in line with the Regulators' Code, which sits under the Legislative and Regulatory Reform Act 2006. Mid Kent Legal Services have been instrumental in the development and drafting of the new policy. The DEFRA Code of Practice for 'Effective Enforcement' will also be adhered to.

	RIPA guidance and legislation may be relevant and is considered on a case by case scenario.
Crime and Disorder	The policy makes clear that enforcement activity is targeted on those whose activities give rise to the most serious offences.
Environment and Sustainability	Effective and visible enforcement is key to tackling environmental crime and fulfilling the council objectives. Reducing environmental crime will reduce council costs.
Health and Wellbeing	A cleaner borough enhances residents wellbeing and allows residents to enjoy open spaces.
Risk Management and Health and Safety	None identified at this time
Equality and Diversity	None at this stage
Privacy and Data Protection	A discussion is needed about use of social media investigation for not only this policy but wider enforcement and should be considered in the overarching enforcement plan.

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

- Appendix I: Environmental Enforcement Prosecution policy

8 Background Documents

The Regulators' Code:

<https://www.gov.uk/government/publications/regulatorscode>.

DEFRA Code of Practice on Effective Enforcement

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907500/part1a-enforcement-guidance1.pdf

Swale Borough Councils overarching enforcement policy

<https://services.swale.gov.uk/assets/Strategies-plans-and-policies/Enforcement%20Policy/Enforcement%20Policy.pdf>

December 2021

Version 1.4

**SWALE BOROUGH COUNCIL
ENVIRONMENTAL
ENFORCEMENT AND
PROSECUTION POLICY**

1. INTRODUCTION

This policy shall be read in conjunction with the Swale Borough Council overarching corporate enforcement policy <https://services.swale.gov.uk/assets/Strategies-plans-and-policies/Enforcement%20Policy/Enforcement%20Policy.pdf>

This policy covers the principal environmental offences regulated by the Environment Response Team (and other teams from time to time), including (but not restricted to) aspects of anti-social behaviour, public space control orders, fly tipping, littering, graffiti, flyposting, breaches of the duty of care for householders and businesses, dog fouling, canine control, pest control, noise abatement, making property secure, abandoned vehicles, animal licensing and welfare requirements.

The aim of this policy is to assist Environment Response Team officers in the decision-making process in taking enforcement action against offenders for environmental and anti-social offences. Alongside the corporate enforcement policy, these documents set out a consistent approach regarding the use of tools available to achieve effective and efficient compliance with the legislation.

In particular the Legislative and Regulatory Reform Act 2006, Part 2 and the Regulators Code having statutory effect from 2014 requires Local Authorities to have regard to the principles of good regulation when exercising enforcement powers.

The Council will exercise regulatory activities in a way which is:

- Proportionate – when taking action in respect of non-compliance when this is identified
- Accountable – The Council's activities will be transparent with clear policies in respect of enforcement procedures
- Consistent – Each case will be considered on its merits, however a consistent approach will be taken where circumstances are similar
- In respect of this we will as part of any regulatory prosecution have regard to the Code for Crown Prosecutors and the enforcement concordat.

2. ENFORCEMENT WITHIN THE ENVIRONMENT RESPONSE TEAM

If applicable (and in addition to the legislation listed in the corporate policy) the requirements of the Regulation of Investigatory Powers Act 2000 shall be considered during investigations. The Act works in conjunction with existing legislation e.g., Human Rights Act 1998. The Council's RIPA procedures must be always complied with and the authorisation must be formally recorded within the corporate systems.

Enforcement options for the function will be considered on a case-by-case basis, but examples may include:

- Providing advice and support to achieve compliance
- Written warning
- Serving legal enforcement Notices, Orders, Community Protection Notices

- Refusal, suspension, or revocation of licences
- Injunctions
- Issuing persons with Fixed Penalty Notices
- Carrying out work in default/cost recovery action
- Seizure/application for forfeiture
- Issuing persons with a simple caution
- Prosecution or other legal proceedings
- Proceeds of Crime Applications

NB – The legislative Acts for which enforcement can be taken are listed within the Swale BC Constitution.

Consistency

Officers will be given the necessary training to undertake their investigative tasks. This will include training new starters ; refresher training for experienced officers; and training on new legislative requirements when necessary.

Internal procedures and some standard letters will be provided for routine investigations. Officers will update the corporate electronic case management system with the actions undertaken in a timely manner. Case reviews may be undertaken on an ad hoc basis between officers and the manager in order to ensure consistency between officers and enforcement outcomes. Cases which have been recommended for a 'simple caution' or prosecution will be approved by the relevant manager and then the Head of Service to ensure that the recommendation is appropriate. The Legal team will also review these cases prior to the recommendation being enacted.

Statutory Notices

Certain legislation gives Swale Borough Council the powers to issue statutory notices. These notices may require the persons served to take specific action or cease certain activities in accordance with legislation, A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises for public inspection, and/or registered as a local land charge. Swale Borough Council reserves the right in some circumstances, and in particular in the most serious of cases, to prosecute, in addition to the use of a statutory notice to gain compliance.

Fixed Penalty Notices

In order to streamline enforcement processes, Fixed Penalty Notices (FPNs) have been introduced as a common sanction for low level environmental crime. Due to the increase in the use of FPN's some information has been provided on them.

FPN's may be issued for environmental offences, where prescribed by legislation. Examples include littering, dog fouling, fly posting, graffiti, abandoned vehicles, refuse left out inappropriately, failure to produce waste carrier documents or duty of care documents, fly tipping/ illegal disposal of waste, duty of care offences by the public, smoke free offences, Public Space Protection Order breaches, breaching a Community Protection Notice, anti-idling, working on/selling vehicles on a road or for noise offences.

The use of FPN's will be in accordance with any relevant legislation and guidance. For example, litter and fly tipping FPN's will be issued in accordance with Part 1A of the DEFRA Code of Practice for litter and refuse

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907500/part1a-enforcement-guidance1.pdf

FPN payment amounts will be set through the annual fees and charges process. The amounts will be published on the Swale BC website within the latest fees and charges document.

If a FPN is not paid in full within the prescribed period legal proceedings may be considered.

The use of FPN's provides the opportunity for an offender to discharge their liability for prosecution by accepting and paying a set amount. We cannot accept payments in instalments. If paying the whole amount of a fixed penalty is a problem we can offer a 30 day extension of time to pay if requested in writing. This is from the date of the original offence. If there is a particular case of hardship, the recipient can request a longer extension. This must be made in writing and must be supported by evidence of hardship, such as income details.

There are no formal grounds of appeal against a Fixed Penalty Notice. This is because a Fixed Penalty Notice is an invitation/opportunity to avoid prosecution. In essence this means that whilst not an admission of guilt, it is an agreement that an offence has been committed and that by paying the sum of money specified no further action will be undertaken by the Borough Council.

The council accepts that occasionally information that was not made clear at the time of the offence may have a bearing on whether the council should or is able to pursue non-payment of fixed penalty notices. Representations may be made by the person upon whom a FPN is served. **This is not an appeal system** but an opportunity for information to be presented to the authority whilst considering whether to proceed to prosecution. Representations must be made in writing before the payment period expires.

Deciding whether to prosecute

Officers will comply with the corporate enforcement policy and consider all factors listed within.

A FPN will not be appropriate where:

- despite the best efforts of the Authorised Officer to inform the offender, the offender appears unable to understand the action being proposed.
- the suspect is a non-resident foreign national, as the penalty will not be enforceable
- no satisfactory address exists for enforcement purposes, for example where the officer has reason to believe that the suspect is homeless or sleeping rough.
- where it is known that the offender has previous convictions or a caution for the offence, or has been previously issued with a number of FPNs, particularly if they have not been paid, where acting through the Courts will be the appropriate action.

Issuing FPN's to, or prosecuting anyone under the age of 18 will only take place in extenuating circumstances. In the cases where a decision has been made in accordance with this policy (and the relevant guidance) to proceed with taking enforcement action against a person under the age of 18, a further review of the case will be made. Depending on the age of the person this may involve Children's Services, Youth Offending teams or other agencies as appropriate. The investigation may also involve engagement with the parents or guardians of the individual. If an FPN is issued to a person under 18 that can't prove it at the time, this can be retracted at a later date if such identification is provided.

In circumstances where none of the other form of enforcement action are appropriate a prosecution will be considered following 'The Code for Crown Prosecutors', identifying if there is enough evidence to bring the prosecution and whether it is in the public interest to do so,

Recovery of costs

The Council will normally seek to recover all costs incurred through investigation and legal action, works in default, waste clearance, waste stabilisation, waste disposal, graffiti removal, pollution control, site remediation, environmental monitoring, damage to council property or land, etc. The recovery of costs will be pursued by any available means.

Working with partners

The Council will work with other agencies including Social Housing providers, The Environment Agency, RSPCA, Kent Fire and Rescue Service and other local authorities such as Kent County Council and the Police in taking enforcement action. In cases where both the Council and another agency have jurisdiction, an opportunity will be given to that agency to investigate. As an example, the Environment Agency is most likely to investigate incidents of major fly tipping, or organised commercial fly tipping.

The Environmental Response Team will also work with other internal departments such as the Community Safety Unit, the Planning Department and Environmental Health.

8. REVIEW OF POLICY

The implications and effectiveness of this policy will be continually monitored with a full review in five years.

This Policy will be reviewed regularly to reflect changes indicated by internal monitoring, by legislation or by guidance.