

ENFORCEMENT POLICY

1. Introduction

Hampshire County Council will strive to ensure that:-

- a. Through patrols of the streets, public places and parks within the county, and by the direct intervention of Accredited Community Safety Officers, it will bring about an improvement regarding anti-social behaviour and the environment by positively dealing with envirocrime issues such as litter, fly-tipping, fly-posting, graffiti, abandoned vehicles and other environmental defacement and related issues;
- b. Through patrols the Council will maintain a visible presence across the county to discourage anti-social behaviour, or to gather such evidence of anti-social behaviour as it is seen to occur;
- c. Enforcement action, by the use of fixed penalty notices, penalty notices for disorder and prosecution where appropriate, will be taken against those who deliberately or recklessly contravene the law;
- d. Assistance and advice is available to help residents, businesses and others meet their legal obligations, or in helping these to combat anti-social behaviour and envirocrime;
- e. Legislation is enforced in a skilled, professional, fair, and open way.

2. Good Enforcement Practice

- 2.1 The enforcement approach that will be adopted is in line with the Cabinet Office's Enforcement Concordat, which offers best practice guidance and promotes good standards of enforcement and has been formally adopted by the County Council.
- 2.2 In addition, 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.

3. Human Rights Act 1998

- 3.1 In deciding to institute enforcement action, particularly prosecution, officers will consider 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, home and correspondence.

4. Equal Opportunities

- 4.1 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.

5. Commitment to the Policy

- 5.1 The Council is committed to ensuring that all authorised enforcement officers carrying out enforcement work are trained and fully acquainted with the requirements of this policy. All authorised officers must abide by this policy whenever making decisions on enforcement. Any departure from this policy will be exceptional, documented, justified and approved by the relevant service manager or Head of Regulatory Services unless the delay in decision-making would result in a significant risk to the public.
- 5.2 All authorised enforcement officers should be fully trained and authorised in those aspects of legislation relevant to their duties. The authority will ensure that officers are fully competent to carry out their duties and that the level of delegated authority for each officer has been approved.

6. Underlying Enforcement Principles

In enforcing any law, Hampshire County Council recognises and affirms the importance of the principles contained in the Enforcement Concordat and will seek to ensure compliance with the law but will carry out this duty in an appropriate manner according to the following principles:

- **Proportionate**

Action taken or required to achieve compliance will be in proportion to the seriousness of the breach and the risk to health, safety or the environment. The cost of compliance will be carefully considered against what is reasonably practicable, in order to ensure that unwarranted expense is not incurred.

- **Consistent**

Enforcement duties will be carried out through firm but fair use of the Authority's influence and regulatory powers. In order to achieve consistency, arrangements are in place to encourage discussion and compare enforcement decisions both within the Authority and externally, through liaison with other local authorities and enforcement bodies.

- **Transparent**

The procedures that are followed to enforce legislation and the way in which complaints are dealt with will be open. Publications such as this Policy Statement and other literature will be expressed in plain language and made easily available to all. The same principle of openness, simplicity and clarity will also apply to all written correspondence, and verbally, when giving advice, dealing with enquiries or discussing any issues. It will also be made clear what people should do if they are not happy about any action the Council has taken or is proposing to take. We will help individuals, groups, and businesses to understand what is expected of them and what they can expect from the enforcement officer.

We will distinguish between statutory requirements and what is desirable but not compulsory.

- **Targeted**

Enforcement action will be targeted at those situations that give rise to the more serious risks or least well-controlled risks. In addition to levels of risk, such factors as frequency and seriousness of accidents, new legislation, national campaigns, public concerns, etc, will also determine priorities for enforcement activity. In addition to regular patrols, we will target “special patrols” at those activities and areas ‘hot spots’ within the county that give rise to the most complaints. This will be achieved where possible through a risk-rating scheme in order to target problem areas.

- **Accountability**

We recognise our accountability to the public and have a complaints procedure that is accessible to business, 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.

7. OUR OFFICERS' BEHAVIOUR

7.1 The following rules will govern the way in which enforcement officers carry out their work. Officers will:

- **identify themselves** by name, organisation and produce their means of identification;
- **act** with courtesy, competence, honesty and integrity and be open about how they go about their work;
- **impartially** exercise their independent professional judgement to the best of their skill and understanding;
- **treat the views** of all persons/organisations in breach of regulations and of complainants with due care and sensitivity;
- **liaise** with colleagues, other departments and agencies where necessary to ensure that others are aware of their actions;
- **respect** commercial confidentiality.

7.2 When undertaking any investigation the Council and its officers will have due regard to, and carry out their duties in accordance with the requirements of the Regulation of Investigatory Powers Act 2000 (as amended) (RIPA).

8 Enforcement Options

8.1 Hampshire County Council recognises and affirms the importance of achieving and maintaining consistency in its approach to making decisions that concern standards of enforcement action.

8.2 In making a decision the officers will consider:-

- the seriousness of the offence;
- any explanation offered by 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.

8.3 Having considered all relevant information and evidence, one or more of the following choices for action are available to officers:-

- no action;
- informal action;
- formal action which may include:
 - fixed penalty notice
 - penalty notice for disorder
 - formal caution
 - prosecution

a. No Action

Where an investigation reveals that, at the time of the patrol or visit an offence has occurred but no offender can be identified.

b. Informal Action

Informal action to facilitate compliance with legislation 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 (i.e. a wheelchair user unable to clear up accidental litter).

Even where some of the above criteria are not met, 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 will be called upon to justify the exercise of that discretion.

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 a legal requirement.

Officers should always make clear, even when giving verbal advice, what are legal requirements as opposed to recommendations of good practice.

As far is possible, advice and information should be in plain language and be free from jargon.

c. Formal Action

Accredited Community Safety Officers will consider the use of formal action in accordance with the service's quality system or working procedures, Codes of Practice and guidance.

Where appropriate, owners and/or head offices will be advised of the action and its outcome.

d. Prosecution

The authority recognises that most people and businesses wish to comply with the law and prosecution will be generally restricted to those who appear to blatantly disregard the law. The following circumstances are likely to warrant prosecution:

- The offence involves a breach of the law and there is prima-facia evidence to support this;
- 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 or any extension agreed by the Head of Regulatory Services;
- 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 Service Manager and Head of Regulatory Services.

e. Fixed Penalty Notice

Fixed Penalty Notices [FPN's] may only be served by Accredited Community Safety Officers (ACSO) who are deemed to be competent, suitably qualified and experienced.

The following circumstances are likely to warrant the use of an FPN:-

- ACSO has witnessed the offence.
- ACSO believes there is "reasonable grounds" to consider an offence has been committed.
- The alleged offender has not received a FPN before, or has previously received no more than two FPN in the previous twelve months.

f. Formal Cautions

Formal cautions may be considered as an alternative to prosecution in accordance with Home Office Circular 18/1994. The purpose of the formal caution is:-

- To deal quickly and simply with less serious offences.
- To divert less serious offences 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. It should be noted that 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.

Formal cautions will only be used in accordance with the Home Office Circular and relevant guidance.

Failure to accept a caution will normally result in prosecution for the offence.

The Service Manager and Heads of Regulatory Services are the officers duly authorised to issue formal cautions in respect of anti-social behaviour and envirocrime legislation.

9. Application Of This Policy

- 9.1 All officers will refer to this policy when making enforcement decisions. It must be read in conjunction with the Regulatory Services generic Enforcement Policy, and any relevant approved guidance on enforcement action. Regard must also be given to any relevant internal procedures.
- 9.2 Any departure from this policy must be exceptional, capable of justification and be fully considered by the Service Manager, and appropriate Head of Regulatory Services officer before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.
- 9.3 In cases of emergency or where exceptional conditions prevail, the Service Manager or a Head of Regulatory Services Officer [responsible for all the enforcement services applying this policy] may suspend all or part of this policy 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.

10. Review

- 10.1 It is intended that this document will be subject to an annual review, and changes introduced to accommodate new legislation and local needs.

11. Comments

- 11.1 Comments are invited on this policy and should be sent to
Regulatory Services
Mottisfont Court
High Street
Winchester
SO23 8ZE