



Clean
Neighbourhoods
Education and
Enforcement Policy

June 2008

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Consultation Draft

This Policy has been drafted by officers of Ashfield District Council as a mechanism for promoting environmentally responsible behaviour and co-ordinating responses to reduce environmental crime.

Views of partner agencies and interested parties are welcomed and should be forwarded to Mr Chris Parkes at the address below by 4th July 2008.

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This document will be circulated to the following:-

- All District Elected Members
- Ashfield Partnership Against Crime (A.P.A.C)
- Nottinghamshire Police – A Division
- Nottinghamshire Fire and Rescue Service
- Nottinghamshire Youth Offending Service
- Nottinghamshire Fly Tipping Forum
- Nottinghamshire County Council
- Nottinghamshire Trading Standards
- The Environment Agency
- Ashfield District Council, Neighbourhood Services
- Ashfield District Council, Environmental Health
- Ashfield District Council, Overview and Scrutiny Committee
- Neighbourhood Wardens
- National Probation Service for Nottinghamshire
- Encams – Keep Britain Tidy
- GMB and UNISON Trade Unions

Executive Summary

Responding to MORI research and a number of focus groups with local residents, Ashfield District Council has made improving the environment a key priority objective within its new Corporate Plan 2008-11. By recognising the link between environmental crime and quality of life, as well as the potential escalation to more serious criminal activity, this policy provides a framework for environmental education and enforcement to support the Council's commitment to Making the Environment Cleaner, Safer, Greener.

The draft policy sets out the Council's approach to tackling environmental crime including littering, dog fouling, fly-tipping, graffiti, abandoned vehicles, etc. through education but also where necessary enforcement. It also confirms the approach taken in the use of a number of regulatory powers, and in particular those relating to the Clean Neighbourhoods and Environment Act 2005 (CNEA), which pulled together existing legislation where previously the only option available for Local Authority enforcement action was to prosecute. The CNEA now allows Local Authorities to issue Fixed Penalty Notices for a number of offences which the District Council formally adopted in May 2006. The adoption of this type of policy is supported by DEFRA and formally aligns the Council with the Enforcement Concordat.

The Enforcement Concordat seeks to promote good practice and the principles for good enforcement, summarising how to conduct enforcement with openness, setting standards, consistency, etc. The draft policy applies to any Authorised Officer of Ashfield District Council as authorised by the Head of Neighbourhood Services and to issues FPN's where appropriate. It also suggests that Ashfield District Council employees, partner employees and members of the public should report any environmental crime that they witness to the appropriate authorities. Ashfield District Council, Enforcement Officers will also refer environmental crime at other agencies where breaches may be investigated and dealt with more appropriately.

Through Education, Publicity and Marketing the Council aim to build relationships with schools and support environmental awareness, attending community events, publicising the costs of tackling environmental crime, etc.

There are a number of Enforcement Options open to the Council if voluntary compliance cannot be achieved through education. The policy suggests that the Council can issue verbal

warnings and advice, issue formal notice, a simple caution, carryout work in default or issue a fixed penalty notice and formalises how FPN's can be paid in a number of ways either by one off payments, instalments or the option of early/discount payments.

Enforcing against young people i.e. 10 to 15 year olds is often difficult, however, following DEFRA guidance there are a number of options available to the Council which include reparation work such as litter picking on school grounds or within the community, graffiti removal, chewing gum removal, etc. , however FPN's may be issued to 16 and 17 year olds.

If a FPN is not paid the Council may instigate a prosecution for persons or companies who blatantly disregard the law, persons who refuse to achieve the basic minimum requirements for legal compliance or failure to comply with statutory notices. Prosecutions will only be initiated if there is a public interest factor with Neighbourhood Services Head of Service deciding whether or not to prosecute, the Council will always endeavour to recover reasonable costs.

Cost are applied for when prosecuting in relation to file preparation, travel attendance at interviews under caution and importantly where clean up costs have been incurred by the Council. When a prosecution is not instigated and clean up costs have been incurred by the Council methods of debt recovery may include the Sundry Debtor method or charges on the property depending on the amount of costs.

Any investigation will strictly follow the Council's Policy on regulation such as Regulation of Investigatory Powers Act 2000 (RIPA), Data Protection, Human Rights, etc.

Prosecutions will be considered against individuals responsible for the offence or employees of a company or the company itself.

Finally the policy states how persons may make a formal complaint against the Council and the different stages of communication, where the complaints should be directed to and the appropriate response times involved.

1.0 Introduction

Ashfield District Council's Corporate Environmental aim is 'to reduce the District's Carbon Footprint and raise environmental awareness, recognising that damage to the environment damages personal health, impoverishes economies and weakens communities'.

Neighbourhood Education and Enforcement contributes to this aim through the provision of environmental education and advice, investigation of issues raised by residents, visits and inspections to regulate the activities of individuals and organisations and ultimately by ensuring adherence to legislation through the use of enforcement powers.

The council's use of enforcement will be targeted based on local priorities and to ensure maximum visual impact on the environment.

The Clean Neighbourhoods and Environment Act 2005, is the most significant piece of environmental legislation since the Environmental Protection Act 1990. It enhances a number of powers contained within existing legislation, as well as introducing a number of new powers for local Authorities. Ashfield District Council formally adopted the powers of the Act in May 2006.

1.1 The Council's Mission and Corporate Plan Priorities 2008/9 to 2011/12 – New Corporate Environmental Aim

Priority Objective

Making The Environment – CLEANER, SAFER, GREENER

Outcomes and Actions

To reduce the District's Carbon Footprint and raise environmental awareness, to enable recognition that damage to the environment damages personal health, impoverishes economies and weakens communities. We aim to do this by:-

- Limiting the adverse impact on the environment from everything the Council does
- Making best use of all green space within Ashfield District Council
- Leading by example in the management and use of our assets

- Using our influence through all of our policies
- Seeking a reduction in waste and an increase in recycling
- Improving community safety particularly through support for the police
- Improving public perception of the local environment

Giving people pride in their local environment by clamping down on litter, graffiti, fly-tipping, dog fouling, vandalism and reducing unacceptably littered sites.

1.2 Scope of the Policy

This policy supports the cleaner, safer, greener agenda by providing a framework for undertaking education and enforcement as a means of reducing environmental crime.

Research suggests that there are strong links between the environment and quality of life and it has also been acknowledged that if left unchecked, low-level environmental crime can escalate to more serious criminal activity.

Reducing environmental crime is also vital to mitigating the 'broken window' effect, where environmental issues can attract an increasing deterioration through littering, abandoned vehicles, fly tipping of wastes, fly posting, graffiti, vandalism, arson and other forms of anti-social behaviour.

Enviro-crime can also have a detrimental effect on the local economy and on tourism.

Accordingly, this policy details how the Council will address the following issues:-

- Fly tipping (illegal deposit of waste)
- Litter (on both public and private land)
- Dog Fouling
- Graffiti
- Nuisance Vehicles (Commercial sales and street repairs)
- Abandoned Vehicles (not un-taxed or poorly parked vehicles)
- Abandoned Shopping Trolleys
- Fly-posting (on buildings)
- Illegal signs (on street furniture)

- Unregulated distribution of literature (flyers)
- Accumulations of rubbish on private land
- Illegal placement of waste receptacles on Streets
- Compliance with Waste Transfer legislation and Duty of Care (commercial and domestic)
- Encouraging compliance to Voluntary Codes of Practice

2.0 Regulatory Framework

The following pieces of legislation will be used tackling the issues highlighted above:-

1. Prevention of Damage by Pests Act 1949
2. Environmental Protection Act 1990, Part II, Section 33, 34, 46, 47 and 59
3. Environmental Protection Act 1990 – Part III Control of Statutory Nuisances
4. Environmental Protection Act 1990 – Part IV – Litter
5. Environment Act 1995 – Section 108
6. Control of Pollution Act 1974, Section 91
7. Control of Pollution (Amendment) Act 1989, Section 5
8. Refuse Disposal (Amenity) Act 1978, Section 6 and 8
9. The Dogs (Fouling of Land) Act 1996
10. Public Health Act 1936, Section 79 (Noxious Matter) and 287
11. Local Government (Miscellaneous Provisions) Act 1982, Sections 16 and 29
12. Public Health Act 1961, Section 34
13. Town and Country Planning Act 1990, Section 215
14. Anti-Social Behaviour Act 2003, Section 43
15. Clean Neighbourhood and Environment Act 2005
16. Authorised to issue Fixed Penalty Notices (FPN's) for the following:
 - a. Nuisance Parking
 - b. Abandoned Vehicles
 - c. Litter
 - d. Street Litter Control Notices and Litter Clearing Notices
 - e. Unauthorised Distribution of Literature on Designated Land
 - f. Graffiti and Fly-posting
 - g. Failure to Produce Authority (Waste Transfer Note)
 - h. Failure to Furnish Documentation (Waste Carriers License)
 - i. Offences in relation to Waste Receptacles

- j. Offences under Dog Control Orders

3.0 Equalities Statement

This policy will be administered in accordance with the Council's adopted Equalities Policy. The policy states that the Council is committed to ensuring that individuals and groups are not discriminated against on the grounds of genders, gender reassignment, colour, race, nationality, ethnic or racial origins, disability, marital status, sexuality, trade union activity, age, political or religious beliefs, or because they live with HIV/AIDS.

4.0 The Enforcement Concordat - General Principles

The Enforcement Concordat has been written and developed in accordance with the Cabinet Office, Enforcement Concordat (1998).

4.1 The Enforcement Concordat

The National Enforcement Concordat seeks to disseminate good practice and the principles of good enforcement. It is, therefore, incumbent upon any enforcing officer or agency to adopt these principles during all enforcement actions.

A summary of the provisions are as follows:-

4.2 Standards

The Council will publish the standards against which it should be measured and will publish performance against these annually. Issues will be dealt with in a consistent manner.

4.3 Openness

The Council will give advice and information in plain language. Clear distinction will be made between legal requirements and recommendations on good practice.

4.4 Helpfulness

Prevention is better than cure, so actively working with business and the general public will assist with compliance as a first step before enforcement. We will give a courteous and efficient service. All requests will be dealt with efficiently, promptly receiving an initial response within ten working days.

4.5 Complaints about Service

The Council will have a well publicised, effective and timely complaints procedure and will provide a contact point and telephone number in all cases to ensure accessibility. The Council will ensure customer satisfaction by periodically conducting customer satisfaction surveys and questionnaires to ensure that client complaints have been investigated satisfactorily.

4.6 Proportionality

The Council will endeavour to minimise costs of compliance for businesses. The concept of proportionality is included in our regulatory system, through balancing the actions taken against the risks to the community and the cost of doing so, with the seriousness of any contravention of the law.

4.7 Consistency

The Council will carry out our duties in a fair, equitable and consistent manner.

Training will be provided to ensure all authorised enforcement personnel have the skills and knowledge required to undertake their enforcement duties and to ensure a consistent approach by enforcement officers.

4.8 Transparency

Transparency is important if public confidence is to be maintained and as such, enforcing officers or agencies should always make it clear why enforcement action is being undertaken.

5.0 Who Does the Policy Apply to?

This policy applies to any Authorised Officer of Ashfield District Council.

Ashfield District Council's Cabinet adopted the all the provisions of the Clean Neighbourhoods and Environment Act 2005 in May 2006.

Specifically, the Cabinet approved the following:

- delegated authority to the Head of Neighbourhood Services to authorise officers to enforce the provision of the Clean Neighbourhoods and Environment Act 2005, where appropriate:
- delegated authority to the Head of Neighbourhood Services to authorise officers to issue Fixed Penalty Notices (FPN's) as specified in Table 1.
- Furthermore, Cabinet approved that an FPN may be issued by an employee of the authority who is authorised in writing to do so by the authority. The authorised officer must be an employee of the authority and an FPN is issued by the 'authority'.
- FPN's can be issued by any person who is authorised to do so by Ashfield District Council. This includes outside bodies such as contractors, Neighbourhood Wardens, Police Community Support Officers and other accredited persons.

Additionally, all Council employees and partner agencies are encouraged to report any environmental crime they witness to the Neighbourhood Enforcement Team at the District Council. Pro forma witness templates are available on request by contacting XXXXXX. When the Council receive a complaint from a lay person, a judgement will be made by an Authorised Officer as to whether there is a Public Interest in pursuing any further action.

6.0 The Responses to Environmental Crime

The following sections will outline the various responses to tackling environmental crime.

6.1 Education, Publicity and Marketing

The Council will always seek to publicise the importance of environmental legislation to the general public and business community in order to seek compliance before taking formal enforcement action. The community must know and understand what standards are

expected of them so that they can operate to these levels. Examples of raising awareness may include:-

- direct marketing to households and businesses
- building relationships with schools and supporting environmental awareness within the curriculum
- attending community events to promote environmentally responsible behaviour
- publicising the link between environmental crime, quality of life and more serious offences (The Broken Window Effect)
- publicising the costs of tackling environmental crime
- publicising targeted campaigns, enforcement actions and prosecutions in the local media
- conducting road shows in public areas and at community events
- encouraging local residents to report environmental crime to the appropriate authority
- providing promotional 'give-a-ways' where appropriate to help reduce the potential for environmental crime – e.g. personal ashtrays, gum disposal pouches, dog 'poop scoop' bags
- liaising with County Council Officers to promote activities and initiatives across the County including Schools Waste Action Club (SWAC), Eco Schools, etc.
- work with partnership agencies within the Council to promote a co-ordinated response to environmental crime (e.g. Days and Weeks of Action)
- utilise advertising space in prominent locations
- provide up to date information on the Council's website
- provision of informal advice, guidance and support
- liaise with partners, businesses and landowners to design out areas that are repeatedly subject to fly tipping

7.0 Enforcement Options

Unfortunately, education and informal advice do not always achieve voluntary compliance. Accordingly, it may be necessary for the Council to undertake enforcement action in some cases.

When the Council receive a complaint a judgement is made by an authorised Officer as to whether there is a Public Interest in pursuing any further action.

Where enforcement action is felt to be appropriate, the Council has the following options available:-

- Take no action
- Verbal warnings and advice
- Formal notice/warnings and advice
- Simple Caution
- Carry out work in default
- Seizures
- Issue a Fixed Penalty Notice
- Prosecution

7.1 Take No Action

In exceptional circumstances, contraventions may not warrant any action. This may be where the cost of compliance to the offender outweighs the detrimental impact of the contravention on the community, or the cost of the required enforcement action to the Council outweighs the detrimental impact of the contravention on the community.

A decision of no action may also be taken where formal enforcement is inappropriate in the circumstances, such as where a trader has ceased to trade, or the offender is elderly and frail and formal action would seriously damage their well-being. Ultimately, each case will be assessed on its own merits, with due consideration given to health, safety, environmental and nuisance factors prior to a decision being made.

7.2 No Action Continued – Extenuating Circumstances - Mental Or Physical Health

Enforcement action will not be appropriate where the person is suffering from a mental illness.

If an Officer has reasonable grounds to suspect an individual has committed an offence and the individual fits the criteria stated above they will:-

- use their professional judgement to decide which approach to undertake

- if appropriate take provisional enforcement action until further enquires have been made into the individuals mental health, medical evidence in these circumstances.
 - the offender or carer will be asked to provide any documentation which confirms this condition
 - the investigating Officer will then communicate to the offender and will consider appropriate disposal taking into account the alleged offence and medical evidence
 - in such cases, enforcement action can be withdrawn or suspended
 - where the investigating Officer deems it appropriate communication with the alleged offender will be with the assistance of an appropriate adult

7.3 Verbal Warnings and Advice

These will be used where appropriate as a means of resolving minor offences and technical infringements that are capable of immediate rectification and are unlikely to be repeated. Failure to heed verbal warnings or advice may result in more serious enforcement action being taken (see below). Verbal warning will be recorded and kept on file for a period of five years.

7.4 Formal Notice and Advice

For some contraventions, the offender will be sent a firm but polite letter clearly identifying the offence, giving advice on how to put them right and a deadline by which to do it. Failure to comply with written warnings or advice could result in more serious enforcement action being taken. Time allowed for rectifying infringements must be reasonable, but must recognise the health, safety, environmental and nuisance implications of the contravention.

7.5 Formal Notice

A Statutory Notice can be served to require offenders to cease contravening activities, or to give them reasonable time to rectify a contravention. The time allowed to put things right must be reasonable, but will depend on any health, safety, environmental or nuisance

factors. Notices may require immediate cessation of infringing activities where these are particularly aggravating.

7.6 Simple Caution

A Simple Caution can be considered as a diversion from prosecution. A Simple Caution will only be considered when all the appropriate criteria for a prosecution case are met, and the circumstances surrounding the offence are such that a more lenient approach to prosecuting is appropriate.

A simple caution must follow the criteria as laid down in the Home Office Guidelines. If a decision to offer a simple caution is rejected by the alleged offender, then the case shall be forwarded to the Head of Service with a recommendation to prosecute.

Use of Simple Cautions should be used in line with the Home Office Circular 18/1994. The Home Office Circular states the purpose of a simple caution is:-

- i) to deal quickly and simply with less serious offences
- ii) to divert less serious offences away from the Courts
- iii) to reduce the chances of repeat offences

The simple caution may be used in place of court proceedings when:-

- i) the interests of justice will not be served by court action
- ii) for offences of a minor nature not actioned following service of a Statutory Notice and where there is no risk to public health or to the environment
- iii) a 'technical offence' has been committed and there is a need for the offence to be formally recorded

To safeguard the suspected offenders interests the following conditions must be fulfilled:-

- i) there is sufficient evidence to secure a conviction
- ii) the suspected offender must admit the offence
- iii) the suspected offender must understand the significance of a simple caution and agree to being cautioned

Offenders personal data will be held by Ashfield District Council and managed in accordance with the Data Protection Act 1998.

The Simple Caution will be kept on file for five years and may be shared within Ashfield District Council and other Local Authorities in accordance with the above act.

A Simple Caution can be taken into account when investigating the same offender for further offences. If necessary and may be cited in a court of law should the offender be prosecuted in the future.

7.7 Works in Default

Local authorities have delegated powers from Parliament to enforce Statutory Notices. If they have failed to comply with it, one of these powers allows the authority to carry out works "in default" of the person(s) on whom the Notice has been served.

If the works necessary to comply with the Notice are not being carried out within reasonable time, or to a high enough standard, the Council can arrange for the works to be undertaken. The authorised Officer will specify the work needed, and then obtain a quote for the work to be undertaken.

The Officer will then make all necessary arrangements to have the work carried out. Once the work is satisfactorily completed, the Council will serve a demand (a bill) on the person or persons responsible. The Council will pursue non payment through the courts if necessary.

7.8 Fixed Penalty Notices

The issuing of a Fixed Penalty Notices (FPN) for an offence represents an opportunity for the offender to discharge any liability of conviction for the offence alleged once it is paid.

In the majority of cases, where an authorised officer witnesses an offence for which an FPN can be issued, this will be done in the first instance.

FPNs can be issued by any person who is authorised to do so by Ashfield District Council. This includes bodies such as Neighbourhood Wardens, Police Community Support Officers as well as Council Officers themselves.

A decision to issue an FPN is at the discretion of the authorised officer. Offences with aggregating features may not be appropriate for an FPN.

7.8.1 Timescales

After an FPN has been issued the offender has fourteen days to pay in full, unless a payment by instalments has been agreed with the Council (see 7.8.3 below for details). If the Council does not receive payment within fourteen days then a final seven day warning letter is sent to the offender. Allowances will be made for Bank Holidays and other extenuating circumstances.

If the FPN remains unpaid the case will be sent to the Council's Legal Section who may initiate proceedings to prosecute for the original offence. The Council will always seek to pursue non-payment of FPN's through the courts where possible.

7.8.2 Repeat Offenders

FPN's are not appropriate for persistent offending. The Council may seek to prosecute repeat offenders through the courts.

7.8.3 Instalments

If payment by instalment is agreed then the first instalment for a payment on an FPN must be paid within one month after the FPN has been issued. Two further instalments are then required in the two subsequent months. A letter will be sent to the offender stating what is expected and the dates by which instalments must be paid.

All FPN's paid by instalments must be paid in full within three calendar months of the date of issue.

Late payment on ANY of the three instalment dates will result in no payments being accepted thereafter. The matter will then be passed over to the Council's legal section,

who may initiate court proceedings to prosecution, a criminal record, a fine and court costs.

7.8.4 Fixed Penalty Notice Levels

For eight offences (listed in Table 1) the various Acts enable the Council to specify the amount of a fixed penalty. The Council have set the standard default amount of either £75 or £100 for these offences.

7.8.5 Early/Discount Payments

The Clean Neighbourhoods and Environment Act 2005 introduces a power for authorities to offer a discount for early payment of an FPN. This power is available for all the offences listed in Table 1, and may be exercised by all authorities authorised to issue FPNs.

There is a standard period for payment of fixed penalties, set in the legislation at fourteen days. Once an FPN has been issued, an authority cannot prosecute for the alleged offence if the FPN is paid within this period, and is stated on the notice itself. For this reason, the period during which a discount for early payment is offered will be up to ten days in line with guidance from DEFRA.

Discounts for early payments are listed in Table 1 and are set at default amounts as stated in DEFRA Guidance.

7.8.6 Issuing Fixed Penalties on Private Land

Authorised officers are required to gain the permission from the landowner or occupier before they can enter private land. Upon consented entry FPN's may be issued. This also applies in respect of privately-owned land to which the public are entitled to have access.

Ashfield District Council are not permitted to issue FPN's on private land where permission has not been granted or has been refused.

8.0 Enforcement and Young People

8.1 Overview

Under the Clean Neighbourhoods and Environment Act 2005, an FPN can be issued to anyone over the age of ten. However, in accordance with Defra guidance the Council will adopt special procedures for enforcing against young people.

This will ensure that the Council are acting in accordance with their duty under the Children Act 2004; which requires children's service authorities, including local authorities and police, to discharge their functions having regard to the need to safeguard and uphold the welfare of children.

Different procedures are recommended by DEFRA for 16 and 17 year olds, and for children between 10 and 15 years of age. The Council acknowledge this advice and have included an age-specific approach within this Education and Enforcement policy.

8.2 Procedure for Enforcing Against 10-17 Year Olds Without Formal Action

Where a young person is observed committing an offence, their name, address, age and date of birth will be requested, together with the name and address of their parents or legal guardian. If the offence has been committed within school hours, Enforcement Officers will contact the young person's school and request that the Head Teacher administers a suitable punishment proportionate with the offence that has been committed. See 8.2 Restorative Justice for examples of reparation work. Any reparation work will have to be agreed between the Head Teacher and the Enforcement Officer.

If the offence has been committed outside school hours, the young person's name, address, age and date of birth will be requested, together with the name and address of their parents or legal guardian. The investigating Enforcement Officer will then contact the child's parent or guardian and agree a suitable punishment to be carried out proportionate with the offence committed within the area to where the offence was committed. Reparation work can be supervised by authorised Ashfield District Council employees or the parents/guardians of the young offender. The amount of reparation work and timescales to which work should be conducted will be agreed by all parties including the young person.

If the young person is witnessed offending a further time for a similar offence the police will be notified and the young person will be asked to attend a Community Panel at the local police station with their parents or guardians. The Enforcement Officer and local Police Sergeant will then issue a reprimand or warning to the offender. The offender will then be asked to conduct an appropriate level of reparation work. Determined by the Youth Offending Team.

In the exceptional circumstances that a young person is witnessed committing an offence for the third time or more the police will be called and asked to arrest the young person and proceedings may be initiated against the young person to obtain a conviction through the courts.

Alternatively, the young person may be asked to attend a PACE Interview Under Caution at the Council Offices in order to determine the next line of approach.

Upon conviction the young offender may then be supervised by their local Youth Offending Team for further reparation work to be conducted within their local community (Community Payback).

8.3 Restorative Justice

As outlined in section 8.2, in conjunction with schools, restorative justice will be considered as an alternate to issuing FPN's to children and young people under the age of 18. Examples of such action include:

- litter pick school grounds, supervised by the school
- attend detention
- litter picking outside school boundaries supervised by parents outside school hours
- other forms of cleansing i.e. removal of graffiti or chewing gum, painting, desk scrubbing, etc... supervised by parent or school

8.4 Procedure for Enforcing Against 10-15 Year Olds Using FPNs

The Council may also initiate formal enforcement action and has the power to issue FPNs to offending juveniles.

In straightforward cases, for example where the officer knows the child, or where for example agreement has been reached with a school to tackle pupils dropping litter during their lunch hour, FPNs may be issued on the spot. In such cases the Council will make every effort to notify the parents, legal guardian or school as soon as possible.

If there is any doubt that an offence took place, an FPN should not be issued. The officer should obtain the child's details, and the name of their parents or legal guardian. If on enquiry it is decided that an FPN is suitable, it is recommended that the FPN be issued to the offender personally with a parent or legal guardian present. If for any reason it is issued in writing, a responsible adult should be notified at the same time.

In deciding whether an FPN is appropriate, the Council will take into account personal circumstance, ability to pay and other factors relating to their vulnerability. If the offender has received an FPN previously the Council will consider actions for repeat offenders as per section 8.2.

8.5 Procedure for Enforcing Against 16 and 17 Year Olds Using FPNs

Once the age of the offender has been ascertained, FPN's will be issued to an offender within this age group, adopting the same procedure as for adults. If there are doubts as to whether the offender is 16 or 17, the procedures for 10 to 15 year olds will be followed.

An FPN will not normally be issued where the young person has (or is suspected to have) a mental illness or where a young person appears to be distressed or confused, impairing their understanding of what is happening, the Enforcement Officer may consider it to be inappropriate to issue a FPN (as per section 7.2). In this situation the Council will make best efforts to contact the parent/guardian.

It is recommended that the procedures and principles for reaching these decisions should form part of the protocols described in section 9.1.

9.0 Prosecution

9.1 Purpose

The use of the Criminal Justice System to instigate a prosecution is an important part of enforcement. It aims to punish criminal activity, to avoid a recurrence and to act as a deterrent to others.

The Council recognises that the initiation of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. The Council adopts the Crown Prosecution Service's Codes of Practice when considering a case. Such decisions about whether to prosecute will be taken after full consultation with the Council's Legal Section.

Prosecution should in general (though not exclusively) be restricted to:-

- those persons or companies who blatantly disregard the law or previous warnings
- those persons who refuse to achieve the basic minimum requirements for legal compliance or where there are grossly inadequate conditions especially where previous warnings or advice had been given
- obstruction of Officers
- as a result of a serious breach of legislation
- when there is unwillingness on behalf of the company to adequately deal with identified legal contravention's
- failure to comply with statutory notices

9.2 Sufficiency Of Evidence

A prosecution will not be commenced or continued by the Council unless it is satisfied that there is a realistic prospect of conviction. If the case does not pass this evidential test, the case will not go ahead to prosecution.

Where there is a realistic prospect of conviction, a prosecution will not be commenced or continued by the Council unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute and will usually depend on the seriousness of the offence and/or the circumstances of the offender.

9.3 Public Interest Factors

The Council will consider the following factors in deciding whether or not to prosecute:-

- environmental effect of the offence
- foreseeability of the offence or the circumstances leading to it and the offenders ability to understand the factors involved
- intent of the offender, individually and/or corporation
- history of offending
- attitude of the offender
- the deterrent factor as a result of prosecution
- personal circumstances of the offender

The factors are not exhaustive and those which apply will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

9.4 Instigating Legal Proceedings

The Head of Service can instigate legal proceedings and issue simple cautions. Prior to initiating a prosecution, the Head of Service will consult with the appropriate Portfolio Holder. The matter will then be passed to the Principle Solicitor for consideration.

9.5 Regulation of Investigatory Powers Act 2000 (RIPA)

This policy will adhere to the Councils RIPA Policy.

9.6 Recovery of Costs

9.6.1 Recovery of Costs Upon Conviction

The Council will endeavour to recover reasonable costs through cases prosecuted. A schedule of cost will be prepared by the Enforcement Officers. Costs will normally include file preparation, travel, attendance at interviews under caution and clean up costs.

9.6.2 Notices and Orders

The Council is entitled to make such charge as is considered appropriate to recover reasonable costs incurred in respect of certain formal enforcement actions for the making of notices and orders.

9.6.3 Emergency Remedial Action (Work in Default)

Work in default is a power given to the Council, to ensure that work is carried out to a property. If the recipient of a statutory notice does not do the work required by the notice, the Council is able to employ a contractor to enter the property and carry out the work itself. If the Council has to do this, it will charge the appropriate person for the cost of the works together with the costs involved in arranging for the work to be done.

It should be noted that carrying out work in default does not preclude the Council from further formal action including issuing a simple caution or prosecuting the offender.

9.6.4 Methods of Recovery of Costs

There are various methods by which the Council can recover the costs, including interest, incurred in serving notices or orders or carrying out work in default including:

a) Sundry Debtor Method

Using this method the Council will send the appropriate person an invoice requesting payment. If this is not paid within three weeks, a reminder invoice is sent requesting payment immediately. If the invoice is not paid within two weeks of the reminder being sent, the matter, depending on the size of the debt, will be referred to a Debt Agency or to the Council's Legal Services Section for the consideration of County Court action.

b) Charge on the Property

In certain circumstances the Council will seek to put a charge on the property. This means that when the property is sold, the Council will expect to be paid the amount of the debt. This is not generally a preferred method as it is slow and depending on the equity in the property, the Council may not get its money back at all. Interest may also accrue on the

outstanding debt. This method of debt recovery may be instigated when the debt is in excess of £1000.

9.7 Levels Of Enforcement Action To Take

9.8 Companies and Individuals

Prosecutions will be considered against an individual responsible for the offence. Where a Company is involved, it will be general practice to prosecute the Company where the offence took place as a result of the Company's activities. However, the Council will also consider any involvement of the Company employee.

Action may also be taken against such companies (as well as their employees) where it can be shown that the offence was committed with their consent, was due to their neglect and / or they 'turned a blind eye' to the offence or the circumstances leading to it.

9.9 Referrals To Another Agency

On occasion an investigation may be more appropriately dealt with by means of referral to another agency, e.g. The Environment Agency.

10.0 Partnership Working

Key to successfully reducing enviro-crime is partnership working. Through partnership working the aims of this Policy can be shared and awareness raised, through consistent information and advice.

In order to seek the most effective operation of this Policy, the Council's Officers will work in partnership with, amongst others:-

- All District Elected Member
- Nottinghamshire Fly Tipping Forum
- National Probation Service for Nottinghamshire
- Neighbourhood Wardens
- Ashfield Homes Housing Management
- Local Schools

- Youth Offending Team
- Youth Services
- Ashfield Partnership Against Crime (APAC)
- Nottinghamshire Police
- Nottinghamshire Fire and Rescue
- Nottinghamshire Drugs and Alcohol Team
- Nottinghamshire Social Services
- Nottinghamshire County Council
- Local Parish Councils and Residents Groups
- Trading Standards Team
- Community Safety Team
- Safer Neighbourhood Teams
- Neighbouring Local Authorities
- ENCAMS (Environmental Campaigns)
- Environment Agency
- Driving Vehicle Licensing Association (DVLA)
- Vehicle Operating Standards Association (VOSA)
- NET – Nottingham Executive Travel
- Network Rail
- Registered Social Landlords

11.0

ADC Corporate Safety Policy

Level 5

ALL Employees

The Health and Safety at Work etc. Act 1974 and subsequent legislation places certain responsibilities upon each employee. Accordingly, in addition to any specific duties and responsibilities set out in the Divisional Safety Policy, each member of staff of the Council shall be responsible for:-

- Taking reasonable care for the health and safety of themselves and of other persons who may be affected by their acts or omissions at work.

- Reporting all accidents and incidents to the appropriate senior officer.
- Co-operating with the Ashfield District Councils' health and safety arrangements so far as is necessary to enable the Council to comply with its' legal duties or other requirement imposed upon the Council.
- Not intentionally or recklessly interfering with or misusing anything provided by the Council in the interests of health, safety or welfare in pursuance of any relevant statutory provisions.
- Not operating machinery or carrying out any work unless authorised, trained and instructed as necessary to do so safely and using tools and equipment in a safe manner and in following local codes of practice.
- Wearing and using protective clothing correctly where it is required.
- Any specific duties and responsibilities set out in individual Job Descriptions relating to health and safety.

Each employee is responsible for undertaking work in a manner which is safe to him or herself, other employees, and to members of the public and for obeying the advice and instructions on safety and health matters issued by the Council. Failure to do so will result in action under the Council's Disciplinary Procedure.

11.1 Site Visits

During the course of employment employees may well attend other commercial premises or sites:-

- They should make themselves known to the person in charge of those premises or activity in order to be made aware of any item, condition, substance or activity that may adversely effect their health and safety.

- Anyone in charge of a site or premise should inform you of any standards or conditions that must be adhered to and any hazards that may place you at risk that you may or may not be aware of.
- It is an Officers responsibility to make him/herself known and request this information, their responsibility to supply it with those persons that may be affected by their activities such as visitors, contractors and neighbours. This may be in the form of a risk assessment but not necessarily so.

Health and safety is everyone's responsibility. If any Officer has concerns the issue should be brought to the attention of a Senior Officer no matter how trivial the item may seem at the time.

12.0 Human Rights

This policy will be administered with due regard to the requirements of the Human Rights Act 1998. Please see Ashfield District Council's Equalities Policy for further information.

Should you feel dissatisfied with the way you have been treated by the Council, or the way this policy has been implemented, you should initially complain in writing to:

Customer Services
Ashfield District Council
Urban Road
Kirkby-in-Ashfield
Notts.
NG17 8DA.

Tel: 01623 450000

Fax: 01623 437530

13.0 Complaints

Making a Formal Complaint

Stage 1

There may be times when you want to make a more formal complaint. You can do this in the following ways.

Fill a complaints form (one is included with this information) and send back to us at:

Customer Services Manager
Ashfield District Council
Council Offices
Urban Road
Kirkby-in-Ashfield
Nottingham
East Midlands
NG17 8DA

[Download the Customer Complaints Form Stage One \(pdf\)](#)

Send us an e-mail at customerservices@ashfield-dc.gov.uk

Telephone Customer Services on **01623 457284**

An acknowledgement letter will be sent to you within five working days and we will send you a full written response within fifteen working days.

If your complaint is going to take longer than fifteen working days to sort out, we will send you a letter telling you this and when you can expect to receive a full reply.

What to do if you are not happy with our response to Stage 1

Stage 2

The response to your complaint will give details of who to contact if you remain unhappy. This will usually be the appropriate Head of Service.

They will investigate your complaint and write to you within fifteen working days. However, if your complaint is complicated, they will write to you and let you know when you will be given a full response.

What to do if you are not happy with our response to Stage 2

Stage 3

If you think you have been unfairly treated by the Council, and are not completely satisfied after complaining, you can ask the Local Government Ombudsman to investigate. You can contact them at:

Local Government Ombudsman
Beverley House
17 Shipton Road
York
YO30 5FZ

Phone 01904 380200

Fax 01904 380269

However the Local Government Ombudsman will only investigate the issues after it is satisfied that the Council has had the opportunity to deal with the matter first.

Website

Further information on services provided by Ashfield District Council can be found on our website at www.ashfield-dc.gov.uk.

Data Protection Act



The personal information that you provide will be handled by Ashfield District Council in accordance with the Data Protection Act 1998. It will be used for the development and improvement of services only. Your information will not be

disclosed to any other parties and will not be used for any other purpose without your permission.

Appendix

Table 1 - Fixed Penalty Notice Offences

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