

Report of	Meeting	Date
Corporate Director (Neighbourhoods)  (Introduced by the Executive Member for Neighbourhoods)	Executive Cabinet	13 August 2009

## ENFORCEMENT POLICY – CHILDREN AND YOUNG PEOPLE

### PURPOSE OF REPORT

1. To amend the Councils Enforcement Policy in relation to the issuing of fixed penalty notices (FPN) to children and young people who commit environmental crime.

### RECOMMENDATION(S)

2. Members are asked to approve an amendment to the Councils Enforcement Policy to include a specific policy with respect to the service of fixed penalty notices on children and young people who commit environmental crimes.

### EXECUTIVE SUMMARY OF REPORT

3. The Neighbourhoods Directorate enforce a number of offences relating to littering, graffiti, fly posting and dog fouling for which a fixed penalty notice can be issued in the first instance.
4. The Council adopted an Enforcement Policy in 2001 as part of its commitment to sign up to the Governments Enforcement Concordat. The Policy is attached as Appendix A and has been reviewed regularly. The proposed amendment is in bold italic type for reference at paragraph 5.4 of the policy.
5. Since the policy was adopted in 2001, legislation and the Councils powers have developed with powers to issue fixed penalty notices for environmental crime offences and DEFRA have issued guidance on how the issue of such notices should be applied when children and young persons are identified as the offender.
6. Children and young people are within the range of 10 years of age up to 18 years of age inclusive and under the guidance issued by DEFRA in relation to juveniles local authorities are recommended to consider carefully in relation to young persons between 10 and 15 whether a fixed penalty is an appropriate sanction, rather than a warning or other measure.
7. Currently offenders who are identified aged 16 and 17 years of age are issued with fixed penalty notices and as such are treated in the same way as an adult offender under the

terms of the enforcement policy for the purposes of fixed penalty notice issue and are followed up with prosecution for non payment. The issue of the Fixed Penalty Notice will be brought to the attention of the Youth Offending Team through the Crime and Disorder Reduction Team.

8. For persons identified as offenders who are 10 years to 15 years of age inclusive the Neighbourhood Directorate currently instructs enforcement officers (including PSCO's) to serve a fixed penalty. Details of the offender are then forwarded to the Crime and Disorder Reduction Team where the case is reviewed with other agencies including the Youth Offending Team and Police. At that point a decision is made as to whether a prosecution ought to be pursued in the event of non payment of the fixed penalty. Such a decision is dependant on several factors including previous intelligence about the young person, relevant family issues and the context within which the offence was committed. Clearly this means that each FPN served on a young person is considered on a case by case basis and current volumes of FPN's served is very low with only one having been served in the last financial year.
9. This process accords current DEFRA guidance and it is proposed to amend the Councils Enforcement Policy to reflect this.

**REASONS FOR RECOMMENDATION(S)**

**(If the recommendations are accepted)**

10. To ensure the Council has regard to Government guidance on the issue of fixed penalty notices to juveniles within the Clean Neighbourhoods and Environment Act 2005.

**ALTERNATIVE OPTIONS CONSIDERED AND REJECTED**

11. To leave the policy unchanged, which may draw criticism if challenged about the Councils policy on the issue of FPN's to children and young people.

**CORPORATE PRIORITIES**

12. This report relates to the following Strategic Objectives:

Put Chorley at the heart of regional economic development in the Central Lancashire sub-region		Develop local solutions to climate change.	
Improving equality of opportunity and life chances		Develop the Character and feel of Chorley as a good place to live	
Involving people in their communities		Ensure Chorley Borough Council is a performing organization	√

**IMPLICATIONS OF REPORT**

13. This report has implications in the following areas and the relevant Corporate Directors' comments are included:

Finance		Customer Services	
Human Resources		Equality and Diversity	√
Legal	√	No significant implications in this area	

**COMMENTS OF THE CORPORATE DIRECTOR (GOVERNANCE)**

14. This report and proposed enforcement policy amendments have been drafted in consultation with the Director of Corporate Governance.

**COMMENTS OF THE CORPORATE DIRECTOR (PEOPLE)**

15. The Council is under a legal duty contained in the Children Act 2004 to discharge its functions having regard to the welfare of children. Adoption of procedures dealing with the service and enforcement of fixed penalty notices in relation to juveniles demonstrates compliance with this duty.

ISHBEL MURRAY  
CORPORATE DIRECTOR (NEIGHBOURHOODS)

There are no background papers to this report.

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S Clark	5732	5 June 09	FPN

## Appendix 1

### **NEIGHBOURHOODS DIRECTORATE ENFORCEMENT AND PROSECUTION POLICY**

#### **1. INTRODUCTION**

- 1.1 It is the aim of Chorley Council Neighbourhoods Directorate to protect and promote health, safety and welfare and enhance the quality of life of all residents, workers and visitors to the Borough. It will achieve much of this through education, by providing advice and by regulating the activities of others. Securing compliance with legal regulatory requirements, using enforcement powers including prosecution, is an important part of achieving this aim.
- 1.2 The Directorates functions are extensive. They include domestic refuse and recycling collections, litter control and other waste enforcement, food safety, pollution and noise control, health and safety, infectious disease control, pest control, recycling, licensing and animal welfare.
- 1.3 The Neighbourhoods Directorate staff work with Central Government and other Regulators on matters such as food safety, air pollution, waste management and contaminated land and health and safety to ensure coherent regulation. They may also work with many voluntary groups and non governmental organisations in order to achieve common goals.
- 1.4 The Neighbourhoods Directorate regards prevention as better than cure. It offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy or excessive cost. It encourages individuals and business to put the safety first and to integrate good working practices into normal working methods.
- 1.5 This Policy sets out the general principles which the Directorates intends to follow in relation to enforcement and prosecution. The Policy will be reviewed in line with the Council's overall Enforcement Policy.

#### **2. PURPOSE AND APPROACH TO ENFORCEMENT**

- 2.1 The purpose of enforcement is to ensure that preventative or remedial action is taken to protect the public or to secure compliance with a regulatory system. The need for enforcement may stem from a failure to comply with statutory obligations and the likely risk to health. Enforcement action will not, therefore, constitute a punitive response to minor technical contraventions of legislation. Although the Neighbourhoods Directorate expects full voluntary compliance with relevant legislative requirements, it will not hesitate to use its enforcement powers where necessary.
- 2.2 Chorley Council will have regard to Central Governments Regulators' Compliance Code when developing policies or principles or in setting

standards or giving guidance. This Code supports the Government's better regulation agenda and is based on the recommendations in the Hampton Report. Its purpose is to promote efficient and effective approaches to regulatory inspection and enforcement which improve regulatory outcomes without imposing unnecessary burdens on business, the Third Sector and other regulated entities.

- 2.3 The powers available include verbal warnings, the issue of written warnings, service of informal notices (where a contravention needs to be remedied), emergency/prohibition notices (where there is an imminent risk of danger), formal notices, fixed penalties, cautions or prosecution, direct action and the carrying out of remedial works. Where the Directorate has carried out remedial works, it will seek to recover the full costs incurred from those responsible.
- 2.4 Where a criminal offence has been committed, in addition to any other enforcement action, the Neighbourhoods Directorate will consider instituting a prosecution or administering a simple caution.

### 3. PRINCIPLES OF ENFORCEMENT

- 3.1 We operate a policy of firm but fair regulation with the principles of; **proportionality** in the application of the law and in securing compliance; **consistency** of approach, **transparency** about how the Neighbourhoods Directorate operates and what those regulated may expect from the Neighbourhoods Directorate, and **targeting** of enforcement action.

#### 3.2 Proportionality

- 3.2.1 In general, the concept of proportionality is included in much of the regulatory system through the balance of action to protect the employee or the public against risks and costs.
- 3.2.2 Some incidents or breaches of regulatory requirements cause or have the potential to cause serious environmental health damage. Others may interfere with people's enjoyment or rights, or the Neighbourhoods Directorate's ability to carry out its enforcement activities. The Neighbourhoods Directorate's first response is to prevent harm from occurring or continuing. The enforcement action taken by the Neighbourhoods Directorate will be proportionate to the risks posed and to the seriousness of any breach of the law.

#### 3.3 Consistency

- 3.3.1 Consistency means taking a similar approach in similar circumstances to achieve similar ends. The Neighbourhoods Directorate aims to achieve consistency in, advice given, the response to complaints and other incidents, the use of enforcement powers and decisions on whether to prosecute.
- 3.3.2 However, the Neighbourhoods Directorate recognises that consistency does not mean simple uniformity. Officers need to take account of many variables; the scale of environmental health impact, the attitude and actions of management, individuals and the history of previous

incidents or breaches. Decisions on enforcement action are a matter of professional judgement and the Neighbourhoods Directorate, through its officers, needs to exercise discretion. The Neighbourhoods Directorate will continue to develop arrangements to promote consistency including effective arrangements for liaison with other enforcing authorities.

### **3.4 Transparency**

3.4.1 Transparency is important to maintain public confidence in the Neighbourhoods Directorate's ability to regulate. It means helping those regulated and others, to understand what is expected of them and what they should expect from the Environmental Health Service. It also means making clear why an officer intends to, or has taken enforcement action.

3.4.2 Transparency is an integral part of the role of the Neighbourhoods Directorate's Officers and we will continue to train our staff and to develop our procedures to ensure that:

- where remedial action is required, it is clearly explained (in writing, if requested) why the action is necessary and when it must be carried out; a distinction being made between legal requirements and best practice advice;
- opportunity is provided to discuss what is required to comply with the law before formal enforcement action is taken, unless urgent action is required, for example, to protect environmental health or to prevent evidence being destroyed;
- where urgent action is required, a written explanation of the reasons is provided as soon as practicable after the event;
- written explanation is given of any rights of appeal against formal enforcement action at the time the action is taken.

### **3.5 Targeting**

3.5.1 Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to or risk of serious risk to environmental health or where the risks are least well controlled. Action will be primarily focused on lawbreakers or those directly responsible for the risk and who are best placed to control it.

3.5.2 The Neighbourhoods Directorate has systems for prioritising regulatory effort. They include guidance contained in Codes of Practice, the response to complaints from the public about regulated activities, the assessment of the risks posed by a person's operations and the gathering and acting on intelligence about illegal activities.

3.5.3 In the case of regulated business, management actions are important. Repeated incidents or breaches of regulatory requirements which are related may be an indication of an unwillingness to change behaviour, or an inability to achieve sufficient control and may require a review of the regulatory requirements, the actions of the business operator and additional investment. A relatively low hazard activity poorly managed has potential for greater risk to environmental health than a higher hazard activity where proper control

measures are in place. There are, however, high hazard activities (for example, some major food industries or other industrial processes with the potential to cause significant harm) which will receive regular visits so that the Neighbourhoods Directorate can be sure that remote risks continue to be effectively managed.

## 4. PROSECUTION

### 4.1 Purpose

4.1.1 The use of the criminal process to institute a prosecution is an important part of enforcement. It aims to punish wrongdoing, to avoid a recurrence and to act as a deterrent to others. It follows that it may be appropriate to use prosecution in conjunction with other available enforcement tools, for example, a prohibition notice requiring the operation to stop until certain requirements are met. Where the circumstances warrant it, prosecution without prior warning or recourse to alternative sanctions will be pursued.

4.1.2 The Neighbourhoods Directorate recognises that the institution of a prosecution is a serious matter that should only be taken after full consideration of the implications and consequences. Decisions about prosecution will take account of the Code for Crown Prosecutors.

### 4.3 Sufficiency of Evidence

4.3.1 A prosecution will not be commenced or continued by the Neighbourhoods Directorate unless it is satisfied that there is sufficient, admissible and reliable evidence that the offence has been committed and that there is a realistic prospect of conviction. If the case does not pass this evidential test, it will not go ahead, no matter how important or serious it may be. Where there is sufficient evidence, a prosecution will not be commenced or continued by the Neighbourhoods Directorate unless it is in the public interest to do so. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the offender.

### 4.4 Public Interest Factors

4.4.1 The Neighbourhoods Directorate will consider the following factors in deciding whether or not to prosecute:

- **flagrant breach of the law;**
- **foreseeability** of the offence or the circumstances leading to it;
- **intent** of the offender, individually and/or corporately;
- **history** of offending;
- **attitude** of the offender;
- **deterrent effect** of a prosecution, on the offender and others;
- **personal circumstances** of the offender.

4.4.2 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

Neighbourhoods Directorate will decide how important each factor is in the circumstances of each case and go on to make an overall assessment.

#### 4.5 Companies and Individuals

4.5.1 Criminal proceedings will be taken against those persons responsible for the offence. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. However, the Neighbourhoods Directorate will also consider any part played in the offence by the officers of the company, including business proprietors, Directors, Managers and the Company Secretary or employees of the company. Action may also be taken against such officers (as well as the company) where it can be shown that the offence was committed with their consent, was due to their neglect or they 'turned a blind eye' to the offence or the circumstances leading to it. In appropriate cases, the Neighbourhoods Directorate will consider seeking the prohibition of the business proprietor under the specific regulations.

#### 4.6 Choice of Court

4.6.1 In cases of sufficient gravity, for example serious breaches of food safety or health and safety, where circumstances allow, consideration will be given to requesting the magistrates to refer the case to the Crown Court. The same factors as listed in paragraph 4.4.1 (above) will be used, but including consideration of the sentencing powers of the Magistrates' Court.

#### 4.7 Penalties

4.7.1 The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Neighbourhoods Directorate will continue to raise the awareness of the courts to the gravity of many environmental health offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain offences are:

- Magistrates' Courts; up to six months imprisonment and/or £20,000 fine.
- Crown Court; up to two years imprisonment and/or an unlimited fine.

4.7.2 The Neighbourhoods Directorate will always seek to recover the costs of investigation and Court proceedings.

#### 4.8 Presumption of Prosecution

4.8.1 Where there is sufficient evidence, the Neighbourhoods Directorate will normally prosecute in any of the following circumstances:

- Where the alleged offence involved **a flagrant breach of the law** such that public health, safety or well being is or has been put at risk;
- Where the alleged offence involves **a failure by the suspected offender to correct an identified serious potential risk to food or safety** having previously been given a reasonable opportunity to comply with the lawful requirements of an authorised officer;



- Where the offence involves **a failure to comply in full or in part with the requirements of a Statutory Notice**;
- Where there is **a history of similar offences** related to risk to public health.
- **Obstruction of Environmental Health staff** in carrying out their powers. The Council regards the obstruction of, or assaults on, its staff while lawfully carrying out their duties as a serious matter.

## 5. ALTERNATIVES TO PROSECUTION

- 5.1 In cases where a prosecution is not the most appropriate course of action, the alternatives of a simple caution, fixed penalty notice or seizure will be considered, depending on the factors referred to above.
- 5.2 A Simple Caution is the written acceptance by an offender that they have committed an offence and may only be used where a prosecution could properly have been brought. It will be brought to the Court's attention if the offender is convicted of a subsequent offence.
- 5.3 As with a prosecution, additional enforcement mechanisms may also be used in conjunction with a simple caution.
- 5.4 Fixed penalty notices will be issued in accordance with the relevant legal provision as an alternative to a direct prosecution in the first instance where:
- The offence is known to be a first offence
  - The offence is of a minor nature
  - Issue of a fixed penalty notice will have the same deterrent effect as a prosecution.

Fixed penalty notices will only be issued where there is evidence and information to identify an offender sufficient to satisfy the pursuit of any subsequent prosecution.

**\*\* The issue of fixed penalty notices to children and young people will have regard to current national government Guidance issued by DEFRA. Young people age 16 to 18 years inclusive will be treated in the same manner as other adults with regard to the service of fixed penalty notices, although the issue of the fixed penalty notice will be notified to the Youth Offending Team via the Crime Reduction Team.**  
**Young people aged between 10 and 15 years inclusive will be, initially, served with a fixed penalty notice which will be subject to review following a case meeting between the Council, Youth Offending Team and the Police.**  
**Children below the age of 10 years will not be served with a fixed penalty notice but may be subject to parental contact by a case officer if appropriate. \*\***

## 6. WORKING WITH OTHER REGULATORS

- 6.1 Where the Neighbourhoods Directorate and another enforcement body both have the power to prosecute, the Neighbourhoods Directorate will liaise with that other body, to ensure effective co-ordination, to avoid inconsistencies, and to ensure that any proceedings instituted are for the most appropriate offence. For the purposes of health and safety at work enforcement the Unit will liaise with local authorities in the Lead Authority Partnership Scheme (LAPS) where appropriate.

July 2009