

COMMITTEE REPORT – APPENDIX 1

Community Protection Team Enforcement Protocol

1. Summary

This protocol should be read in conjunction with the Herefordshire Council Enforcement Concordat (March 1998) and the Environment and Culture Directorate Enforcement Policy (July 2006).

Environmental crime, for example, abandoned vehicles, fly-tipping and litter, dog fouling, graffiti, and fly posting, affects many communities across the County. The Community Protection Team is committed to playing its part in making these communities and therefore Herefordshire a cleaner, safer and greener County for all those who live in, work in and visit it.

To help achieve our aims and objectives, the team will use the range of enforcement measures outlined in this protocol. We will also initiate and take part in campaigns and projects designed to raise awareness of environmental issues, thus balancing enforcement with education. This is important as it is acknowledged that sustainable success will not be achieved solely by enforcement, but by changing attitudes and promoting personal responsibility and pride in the County.

2. Aims and Objectives

The overarching aim of the Community Protection Team is to reduce the level of environmental crime and encourage respect and responsibility by all.

In delivering this the team will:

- ◆ seek to raise awareness of the effects of environmental crime;
- ◆ seek to promote respect, responsibility and compliance through partnership working, initiating and taking part in activities designed to raise awareness and educate;
- ◆ seek to deliver a timely and effective response to reported incidents;
- ◆ use an intelligence led problem solving approach to tackle hotspot areas;
- ◆ investigate offences and take proportionate and effective enforcement action.

3. Scope of Protocol

The scope of the protocol at this time is informed by the size of the Community Protection Team and the geography of the County. It is important not to falsely raise expectations either within the Council, or externally with our partners and communities. As such the key areas that the team seeks to address are:

- ◆ Abandoned vehicles
- ◆ Fly tipping
- ◆ Litter
- ◆ Dog fouling and other offences associated with Dog Control Orders
- ◆ Fly posting
- ◆ Graffiti.

Priority tasking for the team will be as follows:

- Reactive response to reported incidents by the public through available Council channels;
- Through multi-agency tasking using National Intelligence Model methodology;
- Through Partners and Communities Together (PACT) meetings, thereby addressing issues of local concern.

Additional tasking will be considered when capacity allows. Notwithstanding this, where the team is unable to agree to take the lead investigative role on matters, it will nevertheless always seek to provide support, guidance and advice.

4. Principles of Enforcement

In delivering its statutory enforcement responsibilities the Community Protection Team will:

be proportionate in the application of legislation;

target enforcement action, ensuring that resources are directed towards those incidents that have the greatest risk of serious environmental and/or community impact;

be consistent in its approach, which does not mean uniformity but rather taking a similar approach in similar circumstances to achieve similar ends;

be transparent in its processes and procedures, reporting achievements and outcomes;

be accountable for its actions.

All enforcement investigations will be carried out in accordance with the Police and Criminal Evidence Act 1984 and the related Codes of Practice, and the considerations required by the European Convention on Human Rights when using powers:

- every action must have a legal basis, i.e. there must be a power;
- the action must be proportionate;
- the action must be relevant and necessary.

The Council will also consider the rights of individuals under Protocol 1 (Article 1), entitlement to 'peaceful enjoyment' of property and possessions, and Article 8, right to respect for private and family life, of the Human Rights Act 1998.

These rights will be balanced against the rights of communities, quality of the environment and the seriousness of offences committed.

5. Enforcement Options

Formal prosecution is not always the most appropriate way of dealing with offending behaviour. In reaching disposal decisions consideration will be given to:

- the nature of the offence;
- the impact on the local environmental quality and community;
- the evidence available;
- the success or otherwise of any other actions;
- the antecedent history of the alleged offender.

Nothing within this protocol takes away an individual officer's discretion to deal with offending behaviour in appropriate circumstances by way of immediate and informal advice/warning aimed at education or raising awareness.

However, in all circumstances, when offences are committed and the suspected offender is known an early intervention will invariably be required. An exception may be when early intervention would compromise an ongoing investigation against an offender, or where the investigative strategy indicates early intervention is not the favoured tactic. In such cases advice must be taken from a supervisor or manager.

To facilitate such early intervention in circumstances where an immediate formal sanction may not be appropriate a Notice of Environmental Crime should be issued.

Following intervention and investigation a number of options are available as disposal methods.

No Further Action

The most likely disposal method when there is insufficient evidence to support formal action.

Verbal Warning/Advice

Enforcement Officers have the discretion to issue verbal warnings to offenders for minor and/or first time offences, particularly those which are easily or immediately remedied by the offender. A verbal warning will invariably be accompanied by advice with the aim of educating and preventing similar offending behaviour in the future. For example, a person dropping litter could be given a verbal warning for the offence, required to dispose of the debris in a waste bin or in another suitable manner, and given advice on the impact of their offending on others and on the environment. Where a verbal warning is given, brief details of the incident, and where practicable of the offender, should be recorded. An admission by the offender is not required to issue a verbal warning.

Written Warning

A written warning may be given where it is considered that a more formal sanction than a verbal warning is required. A written warning might include advice on responsibilities. A record of written warning will be kept for a period of twelve months and taken into consideration should a further environmental offence be committed by the same offender. An admission by the offender is not required to issue a written warning. **The decision-maker for a written warning is the Community Protection Team Leader or Service Manager.**

Caution

A caution may be appropriate and can often best meet the public interest for first time, low-level offences. An admission to committing the offence, and an agreement to accept a caution, is needed from the offender. A caution can be cited in court in any future court proceedings. **The decision maker for a caution is the Community Protection Team Service Manager.**

Fixed Penalty Notice

(Refer to Fixed Penalty Notices Policy for full details).

Enforcement Officers can offer a Fixed Penalty Notice (FPN) for certain environmental crimes. FPN's are an alternative to prosecution. They provide

an opportunity for an offender to dispose of any liability for an offence that they have committed and avoid prosecution. In the majority of cases individuals will only be offered this course of action once; should they re-offend, cases will always be considered for prosecution. FPN's must only be issued where sufficient evidence is available to support a prosecution. The Council will offer discounts for early payment of FPN's. Unpaid notices will generally be progressed to prosecution for the original offence.

A FPN can either be issued at the time or retrospectively following engagement with the offender and the issuing of an incident report that gives brief details of the offence and advises the recipient that further formal action is being considered.

Anti Social Behaviour Orders

In certain circumstances Anti-Social Behaviour Orders may be considered to effectively challenge behaviour, which is or has caused significant harassment, alarm or distress to persons not of the same household. Orders can contain specific conditions preventing the subject from committing specific acts or from entering specific areas. Where appropriate a post conviction anti-social behaviour order (CRASBO) may also be considered. Either option should be discussed with the Team Leader and legal advice taken.

Statutory Notices

Certain offences will require the serving of a formal Statutory Notice on individuals, businesses and organisations requiring them to carry out specific legal obligations or requirements. **The service of a notice must be sanctioned by the Team Leader or Service Manager and after legal advice if considered necessary.**

Injunctions

Where an officer considers it appropriate an injunction may be sought to stop certain actions or to ensure actions are undertaken. Advice should be taken from Legal Services if this is a consideration.

Prosecution

Where circumstances indicate that a prosecution is appropriate the investigating officer will liaise with the Team Leader to agree what investigative actions are required. Once the investigation has obtained the necessary evidence a file will be completed. Where a guilty plea is indicated or anticipated an abbreviated file will be sufficient. In all other cases a full file will be required. (See Appendix 2 for guidance).

Where prosecution is the proposed disposal method the investigating officer should where necessary make an appointment with Legal Services to discuss the offence(s) being investigated and the evidence available to support

possible charges. Any additional work will be identified at this stage, and appropriate 'charges' agreed with Legal Services/Team Leader or Service Manager.

A quality system will be adopted to ensure a consistent and proportionate approach is taken with all offences. Once completed the file will be submitted through the Team Leader or the Service Manager, and reviewed by the Head of Service prior to being presented to legal for prosecution.

6. Juveniles and Mentally Disordered or otherwise Mentally Vulnerable People

Whilst all disposal methods are available in respect juveniles and people who are mentally disordered, particular care will be taken when dealing with either of this category of offender.

Although often capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care must always be taken when questioning such a person, and an appropriate adult should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.

Mindful of this, liaison with other agencies and engagement with the offender and their appropriate adult will often be the best way forward, and /or sanctions at the lower end of the intervention options. Prosecution will generally be considered in only serious cases or where other options have been tried and failed to stop offending behaviour. In the case of people with mental disorders a medical view is likely to be necessary prior to any decision to prosecute.

Shane Hancock
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