



# ENVIRONMENTAL PROTECTION

## ENFORCEMENT POLICY

### 1.00 INTRODUCTION

- 1.01 The Environmental Protection Team Enforcement Policy compliments the Corporate Enforcement Policy approved by the Council's Policy and Resources Committee on 29<sup>th</sup> October 2001.
- 1.02 This Policy extends and explains the operation of the Corporate Policy in relation to the following service areas: -
- Pollution Control (Noise, Air, Water and Land)
  - Anti-Social Behaviour
  - Animal Welfare, including the control of dogs and dog fouling
  - Pest Control
  - Green Team (Environmental cleanliness and safety)
  - Environmental permits and licenses
- 1.03 The Policy helps ensure compliance with the Statutory Code of Practice for Regulators and with the performance indicators applicable to the services of the Environmental Protection Team.
- 1.04 All enforcement action will be carried out by duly authorised staff in accordance with this Policy. We will apply the principles of good enforcement as set out in the Statutory Code of Practice for Regulators and other guidance issued by Central Government. The Policy is available to interested parties in order to help ensure that the Council's approach to enforcement is as open and fair as possible.

### 2.00 AIMS

- 2.01 The Policy conforms with the Council's corporate aims and objectives as set out in the Council's Strategic Plan, in particular those relating to excellence, quality of life and safeguarding the environment.

### 3.00 LEGAL PROVISIONS

- 3.01 The following legislation and guidance will be taken into account in the enforcement activities of the Section: -
- a) Statutory Code of Practice for Regulators.
  - b) Regulation of Investigatory Powers Act.
  - c) Police and Criminal Evidence Act.
  - d) Freedom of Information Act.
  - e) Human Rights Act.
  - f) Data Protection Act.
  - g) Environmental Information Regulations.
  - h) Local Government Acts.
  - i) Race Relations Act.

- j) Crime and Disorder Act.
- k) Guidance on the Creation and Maintenance of Effective Noise Management Policies and Practice for Local Authorities and their Officers (CIEH).
- l) The Code for Crown Prosecutors.
- m) Home Office Guidance on Use of Formal Cautions.
- n) Anti-social Behaviour Act.
- o) Anti Social Behaviour Crime & Policing Act 2014.
- p) Clean Neighbourhoods and Environment Act 2005.
- q) Any Other Relevant Governmental or Professional Advice.

## **4.00 ENFORCEMENT OPTIONS**

### **4.01 What Is Enforcement?**

Enforcement is any action taken to prevent or rectify infringements of legislation. The Enforcement options will differ where different pieces of legislation are used, but the principles of application should remain constant. Enforcement includes visits, verbal and written advice on legal requirements and good practice, assistance with licensing compliance, written warnings, the service of statutory and fixed penalty notices, prohibitions, formal cautions, works in default, injunctions and liaison and co operation with other enforcement authorities where appropriate. See also section 5 on anti-social behaviour.

4.02 The general principles contained in the Corporate Enforcement Policy will be adhered to, including those of proportionality, consistency, transparency and targeting.

### **4.03 Enforcement Options**

The following steps are typical of the enforcement options.

- a) Routine inspections of a process or activity to determine compliance with permits, licences and the associated Legislation. Inspections will be risk based unless otherwise required for example, by specific legislation.
- b) Investigation of any observed, reported or suspected contraventions.
- c) Consideration of appropriate action proportionately to the contravention, the hierarchy being as follows: -

H1 *Verbal Observation or Warning* - this is to be used for minor contraventions especially when they are isolated incidents, which are remedied immediately with the full co-operation of the responsible person. All verbal observations or warnings must be fully recorded against the property file. For an offence such as dog fouling, where offenders may reasonably be expected to know the law and comply with it, warnings will not normally be given prior to the issue of Fixed Penalty Notices (see below).

H2 *Written Observation or Warning* - this is appropriate for contraventions, which are more than minor, but are less than severe. To include a detailed account of the contravention, under which provision that contravention occurred, guidance on how to remedy or avoid the contravention and setting acceptable timescales, and the consequences of non-compliance. Intended further enforcement actions must be stated.

- H3 *Enforcement Notice* - to be considered for serious contraventions involving harm, repeated contraventions where previous warnings have been given, or where undertakings have not been honoured or timescales have been exceeded. Prior to service of Enforcement Notices consideration will be given to reporting to the Service Committee. In relation to Environment Protection Act Part 3 Abatement Notices, the Council has the duty to serve such Notices upon being satisfied of the existence of a statutory nuisance. However, this does not preclude informal action in advance of service of a Notice where there is a reasonable expectation that the matter can be resolved by those means.
- H4 *Fixed Penalty Notices* – Fixed penalty notices are one tool that we will use to achieve a cleaner and safer Environment in Torridge. They offer a simple and effective way for the swift application of justice, without the need to involve the courts. Fixed Penalty Notices will normally be issued without the need for warnings or previous offences to have occurred. This strategy covers the offences that are identified in the Clean Neighbourhoods and Environment Act 2005 that may be dealt with by way of fixed penalty notice. These are:
- Nuisance Parking
  - Abandoning a vehicle
  - Littering
  - Breach of a Community Protection Notice
  - The Unauthorised Distribution of Free Printed Matter
  - Graffiti and Fly-posting
  - Failure to produce a Waste Carriers Licence when required to do so
  - Failure to furnish Waste Transfer documentation when required to do so
  - Offences in relation to waste receptacles
  - Failure to comply with a Dog Control Order
  - To commit any night time noise offence from a dwelling
  - To commit any night time noise offence from a licensed premises
- H5 *Carry out Works in Default* - parts of the legislation give powers for the Council to carry out works in default, when a Notice has not been complied with. Examples are statutory nuisances and defective drainage. The decision to carry out works in default will be made by the Service Manager or the Head of Service normally under delegated authority without reference to the Service Committee.
- When works of an immediate nature are required, such as the silencing of an intruder alarm, the decision to carry out works in default may be made by the Investigating Officer if so authorised. The officer will follow up such action by investigating the recovery of costs where the legislation allows this.
- H6 *Revocation* - in relation to authorisations, permits, licences and registrations, where the legislation or scheme gives the power of suspension or revocation to the Council or its Officers, this option must be considered in relation to all the other enforcement options, and the principle of proportionality will be applied. Where powers of suspension or revocation are delegated to Officers, the Head of Service will consider whether the contravention is serious enough to warrant suspension or

revocation. If so, the reasons for such revocation will be fully documented and explained. In exceptional cases the Head of Service may decide to refer the matter to the Service Committee for a decision.

H7 *Simple Cautions* - to be considered for prosecutable offences when the criteria in the Home Office Guidance are met. Typically, the reason for choosing this option would be that the offence did not result in real harm or that there was full co-operation. A simple caution will not be used simply because the evidence is insufficient to give a reasonable prospect of prosecution success. If a caution is refused prosecution will normally follow. Use of a simple caution will be decided by the Head of Service after consultation with the Council's solicitor.

H8 *Prosecution* - in circumstances where the Head of Service is of the opinion that prosecution is warranted by virtue of the seriousness of the offence, or because of its repeated nature, or for non-compliance with an enforcement notice or for non payment of a Fixed Penalty Notice, or for other reasons which can be justified and are recorded in writing, a decision will be taken on whether to prosecute. This decision shall address the issue of whether a simple caution is appropriate and shall refer to the Tests of the Code for Crown Prosecutors under the following headings: -

The evidential test  
The public interest test  
The charges  
The mode of trial

## **5.00 ANTI-SOCIAL BEHAVIOUR**

Environmental Protection plays an important role in addressing anti-social behaviour (ASB), working in partnership with key agencies such as the police, Safer North Devon, Registered Social Landlords, social services and youth services. A range of approaches are available when tackling anti-social behaviour and Environmental Protection works with its partners to identify and make use of options that suit the circumstances of each individual case.

### **5.01 Definition**

Anti-social behaviour is defined in section 1 of the Crime and Disorder Act 1998 as a person or persons acting in such a way that:

“causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household.”

### **5.02 ASB Enforcement**

The main enforcement options for anti-social behaviour are contained within the Anti-Social Behaviour Crime & Policing Act 2014, Housing Act 1996, Crime and Disorder Act 1998, Anti-Social Behaviour Act 2003 and Clean Neighbourhoods and Environment Act 2005.

### 5.03 Introduction to the Anti-Social Behaviour, Crime & Policing Act 2014

The ASB, Crime & Policing Act 2014 introduces a new approach to anti-social behaviour that emphasises Partnership working and introduces a formal role for Police and Crime Commissioners. The approach is designed to put victims at the heart of any response to anti-social behaviour and gives Councils, Police, and Registered Social Landlords wider and more flexible enforcement powers to deal with any given problem.

### 5.04 Involving Victims

The ASB, Crime & Policing Act 2014 includes two measures that are specifically designed to give victims and communities more say in the way ASB is dealt with:

- i. **The Community Trigger** offers victims an avenue to demand a Multi-Agency review of their case once a locally defined threshold has been passed. This may also be used by a person acting on behalf of a victim, for example, a family member, Councillor, carer, etc.
- ii. **The Community Remedy** gives victims a say in how perpetrators of anti-social behaviour should be dealt with. Where appropriate, victims will be invited to choose from a list of possible punitive, reparative, or rehabilitative actions drawn up by the PCC (Police and Crime Commissioner), Police and others. This choice will then be taken account of, in any out-of-Court settlement.

### 5.05 Formal Enforcement Options

In many cases anti-social behaviour can be addressed by simply making the person/s responsible aware that their behaviour is causing harassment, alarm or distress. Giving a clear warning that specific behaviour is unacceptable is often enough to resolve matters. Where formal enforcement action is required there are now new powers available to The Council, Police and others and they include:

**Civil Injunction** (Delayed until January 2015)

**Criminal Behaviour Order**

**Dispersal Power**

**Community Protection Notice** (see appendix 1 – Devon & Cornwall CPN Procedure)

**Public Spaces Protection Order**

**Closure Power**

**Absolute Ground for Possession** (for social and private landlords)

The Home Office has published statutory guidance entitled, “Anti-Social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance for frontline professionals. July 2014” This document sets out the nature of the new powers and how Government intends for them to be used.

## **6.00 CONSISTENCY**

Enforcement staff will carry out their duties in a fair, and consistent manner, we will liaise with other Authorities and enforcement bodies when appropriate to ensure consistency and to explore and develop best practice.

## **7.00 KEY POLICIES**

### **7.01 Second and subsequent offences**

Fixed Penalty Notices for offences falling within such legal provisions will normally be offered initially as an opportunity to discharge responsibility for offences that otherwise would be taken to court. They are normally a “one time” offer. In cases where the offender has a history of committing the same or similar offences, or the offence is particularly serious or blatant, or where the offender refuses co-operation with the Council, then prosecution will normally follow without serving Fixed Penalty Notices.

### **7.02 Vulnerable adults**

If there is any doubt in the enforcement officer’s mind that the person who has committed the offence is not capable of understanding what they have done, or are mentally or physically impaired in any way, or are clearly unable to pay, for example if they are homeless, or that otherwise the issue of the Fixed Penalty Notice would not be in the public interest, then other alternative action will be considered. In any event the evidence should be brought to the attention of the line manager for decision.

### **7.03 Under ten year olds**

In the case of children under the age of criminal responsibility i.e 10 years, we will not take any formal enforcement action. Where we consider it appropriate, we will report the event to the child’s parents or guardians.

### **7.04 Between ten and fifteen years old**

For offenders between the age of 10 and 15, we will normally issue a warning for a first offence. We will report the event to the child’s parents or guardians. Repeat offenders can be dealt with by way of fixed penalty notices, however consideration must be given to ensure that the offenders understand the offence and understand the difference between right and wrong. All offences to be reported to The Youth Offending Team.

### **7.05 Sixteen and seventeen year old**

To be dealt with as adults but all offences are to be reported to the Youth Offending Team.

## **8.00 POWERS OF ENTRY**

- 8.01 Powers of Entry of Officers vary depending upon which legislation is being applied. In some instances, there is immediate right of entry and in others notice must be given. There may be either option depending on circumstances.
- 8.02 When the legislation allows, an officer may examine premises and articles, take photographs, remove articles, take samples or require information and may in some instances be accompanied by other persons.
- 8.03 An officer will be expected to explain both the justification for his requests and the legal basis for them upon demand.

## **9.00 APPOINTMENT OF OFFICERS AND IDENTIFICATION**

- 9.01 All field Officers who have an investigatory or regulatory role are required to carry an identification badge bearing their photograph, name and service department. If an Officer does not show their identification, they may be asked to show it by anyone who is requested to allow entry. If no identification is produced, entry may be legitimately refused. If there is any doubt about identity the Council may be contacted by telephone to confirm same, and the officer must explain this if his or her identity is questioned.

## **10.00 CO-ORDINATED RESPONSES, PARTNERSHIPS AND SHARED RESPONSIBILITIES : CONFIDENTIALITY**

- 10.01 In some instances Environmental Protection Officers work closely with Officers of other Departments, the Police, Safer North Devon, the Fire and Rescue Service, the medical profession and others. Officers will respect confidentiality so far as it is appropriate to do so, and will not divulge any information, which is not relevant to the case in question.

## **11.00 REQUESTS FOR SERVICE**

- 11.01 Each of the main services of the team is covered by performance targets relating to speed of response and service quality. Feedback surveys are undertaken on a frequent basis to improve service delivery.

## **12.00 RISK BASED INSPECTION AND SAMPLING PROGRAMMES**

- 12.01 All services of the team that involve inspection, sampling and surveillance programmes have such programmes assessed on the basis of risk, priority and legal requirements. Examples are: -

Drinking water sampling  
Licensed premises  
Caravan and Camping Sites  
Animal Welfare premises  
Authorised Processes (Environmental Protection Act 1990)

### **13.0 VISITS OUT OF NORMAL HOURS**

13.01 Routine and complaint visits will be made at relevant times. For example, in relation to a night-club, visits will be arranged at night to ensure compliance and to offer advice. Where there is a request for service at night in relation to an enforcement issue, arrangements will be made to visit at an appropriate time, subject to Officer availability. There is no 24-hour standby or call out system for Environmental Protection staff, although calls may be made 24 hours a day to the Council's central standby system, which identifies emergency situations and may attempt to contact Service Officers if necessary in an emergency, or by prior arrangement.

### **14.00 STATUTORY NOTIFICATIONS**

14.01 Statutory notifications from third parties, for example those holding an Authorisation to Operate a Prescribed Process, or notifications or requests from the emergency services, may be made to the Council's central standby system available at all times outside of standard office hours. The central standby officer will attempt to contact Service Officers in an emergency or by prior arrangement.

### **15.0 APPEALS**

15.01 In the hierarchy of enforcement, formal appeals are built in from Enforcement Notice stage through to prosecution and suspension/revocation (as applicable). The Council will advise the offender of the appeal provisions relating to any particular enforcement action they take.

### **16.0 COMPLAINTS AGAINST OFFICERS**

16.01 The Council has a written complaints procedure available on request but it is open to any person to take up their complaint with the Service Manager or Head of Service in the first instance, should they wish. Guidance is available in the leaflet "Suggestions, compliments and complaints procedure", available on request. An aggrieved person may also complain to the Local Government Ombudsman. Advice on making a complaint is available from Corporate Services, Riverbank House, Bideford, EX39 2QG, telephone 01237 428700.

### **17.00 DOCUMENTATION**

17.01 For each contravention or collective contraventions that are likely to result in service of a notice, an "Enforcement Checklist" will be completed by the case Officer and placed on file.

17.02 All enforcement action will be fully documented on file including copies of any letters, memoranda, Committee Reports, Officer decisions, or other relevant information.

17.03 A summary of enforcement action will be included in the computerised records of the Department.

## **18.00 MONITORING**

18.01 The Service Manager will monitor each element of the Enforcement Policies relevant to the Team. Where statutory action is being considered the case will be reviewed by the Service Manager and this review will include reference to Enforcement Policy and the Checklist.

## **19.0 CONSULTATION WITH STAKEHOLDERS**

19.01 Consultation occurs through customer surveys, client feedback, use of the Citizens panel and analysis of data relating to National and local indicators. Such information will be taken into account when this policy is reviewed.

## **20.00 REFERRAL TO OTHER AGENCIES**

20.01 When appropriate, enforcement issues are referred to other agencies. For example:-

Health and Safety Executive  
Environment Agency  
Devon County Council  
Emergency Services  
The Drinking Water Inspectorate  
South West Water  
Royal Society for Prevention of Cruelty to Animals  
Adjoining Local Authorities  
Department of Environment, Food and Rural Affairs  
Department of Health  
Department of Trade and Industry  
Department of Transport, Local Government and Regions  
Ministry of Defence

## **21.00 PUBLICATION**

21.01 This Policy is published in association with the Corporate Enforcement Policy and is available on request, free of charge. It is also available on the Council's website: [www.torridge.gov.uk](http://www.torridge.gov.uk).

## **22.0 REVIEW**

22.01 This policy will be reviewed when there is any significant change in the legislation or other circumstances which affect the Policy, but will also be reviewed at regular intervals.

Regulatory Services Manager – November 2014

Revision April 2005  
Reviewed April 2006  
Revised May 2007  
Revised June 2008  
Revised July 2009 (Committee Approved)  
Revised November 2011  
Revised March 2013  
Revised November 2014

## APPENDIX 1

### COMMUNITY PROTECTION NOTICE PROCEDURE AND FLOW CHART (As adopted by Devon & Cornwall Councils)

#### ADDITIONAL DOCUMENTS TO REFER TO

- 1) Community Protection Notice template including notes and appeal
- 2) Warning letter template

#### SCOPE

The Community Protection Notice (CPN) can be used to stop anti social behaviour – it might include graffiti, rubbish, feeding birds excessively or general noise which negatively affects the community's quality of life. 'Quality of Life' can be assessed by considering the characteristics of the area without the behaviour. It can be used to deal with particular, ongoing problems or nuisances and can be used on individuals aged 16 or over, businesses or organisations.

A CPN can be issued once an officer is satisfied, on reasonable grounds, that the conduct of the individual, business or organisation:

1. Is having a detrimental effect on the quality of life of those in the locality
2. Is persistent or continuing in nature; and
3. Is unreasonable

#### PROCEDURE

1. Complaints that are received will vary in nature and may not specifically mention the Community Protection Notice procedure. It is essential that all staff are aware of what can be dealt with and who is the most appropriate Service Area or Officer to initiate the action.
2. The receipt of the complaint may come from a number of agencies. It is important that the details of the person reporting the information are recorded as they will need to be kept informed throughout the duration of this procedure.
3. The complaint should then be entered onto CAPS and a Environmental Protection Service Request / Complaint form produced.
4. Dependent upon the nature of the complaint, the officer will carry out an investigation into the complaint. This may involve a visit to the perpetrator's property, for issues such as litter/refuse on private property. Alternatively the officer may choose to send diary sheets to the complainant so that they can record any ongoing incidents.
5. When the officer is satisfied that they have sufficient evidence a visit to the property shall be made. When visiting the property the officer must have due regard to the "test":

- a) Is the behaviour having a detrimental effect on the quality of life of those in the locality?
- b) Is the behaviour persistent or continuing in nature; and
- c) Is it unreasonable?

In deciding whether the behaviour is having a detrimental effect on the quality of those in the locality, officers should consider speaking to potential victims to understand the wider harm to individuals and the community.

The officer must also make a judgement on whether the behaviour is unreasonable, e.g. a crying baby may have a detrimental effect on people living next door and is likely to be persistent in nature, however it would be unreasonable to issue the parents with a CPN as they may not be able to control or effect the behaviour.

Following the investigation there are three possible options for the officer to consider.

- If the criteria for the test are not met the person or organisation who reported the issue should be contacted, provided with feedback and the case closed.
- If the behaviour is considered to be a statutory nuisance a CPN should not be issued. Instead the statutory nuisance procedure should be used as this is the specific power and the Authority has a duty to serve an abatement notice when a statutory nuisance is in existence.
- If the Officer is satisfied that the "Test" is met, a written warning must be issued first to the person committing the offence prior to a CPN being served.

6. Information to be included in the written warning should include:

- An outline of the behaviour that is considered to be anti-social and a description of what needs to be done to avoid the CPN being issued
- The time by which the behaviour is expected to have changed so that the alleged perpetrator has a clear understanding of when the CPN might be served;
- The potential consequences of being served with CPN and the consequences of any breach.

It is accepted in the guidance that where a written warning is required more quickly, it could be a standard form of words issued by the officer on the spot.

At this stage it is considered good practice to inform relevant bodies that a Warning Letter has been sent and ask them if they witness behaviour contrary to the warning letter, to inform you.

Depending on the nature of the behaviour a planned revisit may be required or the complainant may contact to state that the behaviour continues. If the warning letter is not being complied with a Community Protection Notice may be issued. Prior to the notice being issued other agencies involved may also be informed.

7. The CPN must be issued to the person causing the behaviour or, in the case of a business, the person able to stop or control the behaviour or take remedial action. The Notice should be handed to the person, or if that is not possible the Notice can be posted, or fixed to the premises.
8. The CPN should be issued outlining the behaviour and what must be done, and a timescale. The requirements should ensure that ASB will not recur.

9. If a breach of the Community Protection Notice is notified to the investigating officer they should consider what action should be taken from a range of options available. At this stage it is important to involve all relevant agencies and to consider the wishes of the person or persons being impacted by the behaviour. Consideration should then be given to the following:

- Fixed Penalty Notice Procedure
- Prosecution (On conviction to include Remedial order or Forfeiture order)
- Remedial Action

## ENFORCEMENT CHECKLIST

<b>PREMISES/LOCATION:</b>	
<b>OCCUPIER:</b>	

OBSERVATIONS : ( & CONTRAVENTIONS)	RATING 1= MINOR 5=VERY SEVERE
<b>TOTAL:</b>	

<b>PREVIOUS HISTORY:</b>

<b>CONCLUSIONS:</b>

<b>ACTION TAKEN &amp; PROPOSALS:</b>

<b>RECOMMENDATIONS &amp; COMMENTS:</b>

Service Officer \_\_\_\_\_ Date \_\_\_\_\_