

Body: CABINET

Date: 8 February 2006

Subject: ENFORCEMENT POLICY FOR ANTI-SOCIAL BEHAVIOUR AND ENVIRONMENTAL CRIME

Report of: Director of Economy, Tourism & Environment

Ward(s): All

Purpose: To seek Cabinet endorsement to the Enforcement Policy contained within this report for use by members of the Community Enforcement Team and other authorised officers of the Council.

Contact: Mark Probyn, Assistant Director – Amenities & Contract Management, Tel: 01323 415240 or internally on extension 5240.

Recommendations: That Cabinet:

- (a) endorses the Enforcement Policy contained within this report;
- (b) authorises the Assistant Director - Amenities & Contract Management, and Assistant Director - Housing & Health, to authorise officers within their respective Divisions for the purposes of issuing fixed penalty notices further to the Clean Neighbourhoods and Environment Act 2005.
- (c) agrees that fixed penalties will be set at the 'default' rate further to which a review will be undertaken on fixed penalty charges after six months of operation.

1.0 Introduction

- 1.1 The Clean Neighbourhoods and Environment Act 2005 introduces a new range of powers which local authorities will be able to use; some of which are currently in force and others which the Government proposes to introduce in April 2006.
- 1.2 Arising from this it is necessary for the Council to develop strategies to deal with environmental crimes, such as littering, graffiti, fly-posting, nuisance vehicles and fly-tipping.
- 1.3 It is also necessary for the Council to have an Enforcement Policy relating to environmental crime.

2.0 Background

- 2.1 Section 6 of the Crime and Disorder Act 1998 as amended by the Police Reform Act 2002 requires 'responsible authorities' to work together with other agencies within the community to tackle crime and disorder and misuse of drugs and to formulate and implement 'crime reduction strategies'. Responsible authorities are local authorities and police authorities.
- 2.2 Every three years the responsible authorities are required to carry out an audit to identify the extent of these problems within their communities, consult with their communities and to develop strategies that deal effectively with such problems further to which it is necessary for local authorities to develop strategies to deal with environmental crimes, such as littering, graffiti, fly-posting, nuisance vehicles and fly-tipping..
- 2.3 Left unchecked it is shown that these crimes can blight local areas and lead to an environment where other crime and disorder can proliferate. In recognition of this the Government is currently reviewing partnership arrangements under the provisions of the Crime and Disorder Act the outcomes of which may have an effect on the future conduct of audits and strategies.

3.0 Environmental Strategy

- 3.1 The Council is yet to adopt a formal Environmental Strategy. The Council has, however worked in Partnership with others in preparing the Eastbourne Community Strategy 2005-2020.

The Eastbourne Community Strategy seeks to maintain and improve the environment which is seen as key to a sustainable future for Eastbourne.

The aspirations of the Strategy in terms of the environment are that in 2020 Eastbourne residents will:

- Enjoy a higher quality of life through having a clean, safe and accessible natural, urban and marine environment; and
- Value and protect the environment, conserving and enhancing it for future generations

Whilst recognising that we need to:

- Sustain, manage and improve the quality of our open spaces, downland, shoreline, trees and woodlands; and
- Maintain and enhance our natural greenspaces and areas of tranquillity and encourage residents to use them for relaxation, sport and recreation.

Through priorities set:

- Identifying specific areas of environmental importance in the town and forming community groups to help protect and maintain them;
- Protecting our cultural history – art, historical environment and museum collections; and
- Keeping our streets and all open spaces clear of litter and refuse

4.0 Environmental Crime

4.1 The effects of anti-social behaviour are most visible when the results of that behaviour ruin public places such as shopping precincts, parks, playgrounds, town centres or railway stations. It can also degrade local areas by allowing gardens, homes and streets to be full of litter, rubbish and abandoned cars.

4.2 Environmental crime includes littering, illegal street trading, abandoned vehicles, graffiti, fly posting, dog fouling, fly-tipping, dumped business waste, vandalism, noise nuisance and abandoned shopping trolleys. Its presence encourages a spiral of decline, which can undermine community cohesion and the efforts of public agencies.

Tackling environmental crime goes beyond keeping streets and estates clean, it is a vital part of building community confidence.

4.3 Effective enforcement action against environmental crime requires commitment from all concerned to take action against every case. Evidence suggests that if graffiti, litter and other environmental damage is cleaned rapidly and persistently, it is less likely to come back. This should be accompanied by strong enforcement action using all available legislation.

Enforcement against environmental crime can also complement other enforcement action. For example, housing officers addressing nuisance neighbours on an estate may wish to consider the impact they are having on the quality of the environment. Fixed penalty notices for dog-fouling or flytipping, for example, may be used alongside such action.

5.0 Enforcement

5.1 Officers within a number of Divisions of the Council currently take enforcement action against environmental crime using available legislation.

5.2 To assist Council's the Government has recently introduced legislation and proposes to introduce further new and improved powers for dealing with environmental crime.

- 5.3 The new powers are concerned with:
- Litter
 - Fly-tipping
 - Graffiti
 - Fly-posting
 - Abandoned cars
 - Dog Fouling; and
 - Shopping and Luggage Trolleys
- 5.4 It is therefore proposed that subject to the endorsement of Cabinet, officers will use these new powers, which include the issue of 'fixed penalty notices' for relevant offences. Further information is given on the legislation, procedure and penalties for these crimes at Appendix A.
- 5.5 Prior to using these powers, however, it is proposed that wide publicity will be given to their proposed usage, particularly for fixed penalties; and their purpose to ensure that residents and the relevant communities are made aware of the risks of committing anti-social behaviour and environmental crime within the Borough.

Further information comprising Enforcement Statements concerned with the offences will be widely publicised through local media and local the Council's website and will give details of legislation and what powers the Council intend to use and explain why.

This information would remain permanently on the Council's website and would be reaffirmed through subsequent promotional activities.

It is also anticipated that Community Enforcement Officers will visit schools, colleges and community meetings and distribute leaflets to households to advertise the fixed penalty notices.

- 5.6 The content of this Report focuses mainly on the work which is, or will be undertaken by the Council's Community Enforcement Team. It is also relevant to other officers of the Council, particularly in Environmental Health and the Cleansing Group where officers currently use available legislation to deal with this nature of crime.

It is also intended, therefore, that the endorsement of Cabinet to this Report would also give rise to the opportunity for officers within these working groups also to use the new powers including the issue of fixed penalties.

6. Fixed Penalty Amounts

- 6.1 The Government has made provision within the legislation for local authorities to set their own level of penalty for the various offences within fixed parameters, which may include a discount for early payment. Alternatively the authority may use the default penalty set by the Government relating to each offence.

- 6.2 By way of example, the default penalty for dropping litter in a street is £75.00. Legislation provides that a Council may set its own rate between £50.00 and £80.00.
- 6.3 Arising from this, Officers would propose that default penalties are used by the Council which would be reviewed six months after the commencement date of issuing fixed penalties at which time it would be appropriate to measure the impact of their success. Cabinet is therefore recommended to agree the resolution on this.

7. Enforcement Policy

- 7.1 Key to the success of any enforcement is an enforcement policy which is widely promoted within the Communities.
- 7.2 The Council has enforcement policies relating specifically to the work of Environment Health, Planning and Benefit Fraud.
- 7.3 It therefore follows that an Enforcement Policy should be adopted by the Council for the work undertaken by the Community Enforcement Team, which can also be used by other authorised officers of the Council concerned with anti-social behaviour and environmental crime. The draft Policy is at Appendix B.

8.0 Consultation

- 8.1 A wide consultation has taken place through which priorities have been included in the Eastbourne Community Strategy 2005-2020 that seek to maintain and to improve the environment.
- 8.2 Corporate Management Team, Assistant Directors, Strategic Development Manager, the Police and those officers directly involved in responding to anti-social behaviour and environmental crime have been consulted on this Report.

9.0 Financial Implications

- 9.1 All costs arising from Report will be contained within existing Revenue Budgets.

10.0 Human Resource Implications

- 10.1 There are no immediate human recourse implications arising from this report. Training needs for officers involved with these procedures will be addressed prior to implementation.
- 10.2 Risk assessment will be undertaken for staff involved in any new procedure.

11.0 Environmental Implications

- 11.1 This report is concerned with deterring and responding appropriately to anti-social behaviour and environmental crime.

12.0 Summary

- 12.1 The Government has provided local authorities with improved powers that may be used against those who commit crimes of anti-social behaviour and environmental crime.
- 12.2 The Council would propose to use these new powers for which it is necessary to endorse their usage and to agree an enforcement policy that will provide for a consistency of approach in application of the legislative provisions.
- 12.3 This report is concerned mainly of work to be undertaken by the Council's Community Enforcement Team which will involve the issue of fixed penalties. It is accepted however that the enforcement policy will be applicable for any other officer of the Council who is authorised by the appropriate person to use these powers.

Mark Probyn

Assistant Director – Amenities & Contract Management

Background Papers:

The Background Papers used in compiling this report are as follows:
Draft Guidance on the Clean Neighbourhoods and Environment Act 2005

Cabinet Reports:-

Cabinet 31st October 2005

Eastbourne Crime Reduction Partnership Annual Report – Report 2004 to 2005

Evaluation of Crime and Disorder Reduction Strategy 2002-2005

Eastbourne Community Strategy 2005-2020

Tackling Environmental Crime (Ref: www.together.gov.uk)

APPENDIX A

ENVIRONMENTAL CRIME

ENFORCEMENT STATEMENT

The effects of anti-social behaviour are most visible when the results of that behaviour ruin public places such as shopping precincts, parks, playgrounds, town centers or railway stations. It can also degrade local areas by allowing gardens, homes and streets to be full of litter, rubbish and abandoned cars.

Environmental crime includes littering, illegal street trading, abandoned vehicles, graffiti, fly posting, dog fouling, fly-tipping, dumped business waste, vandalism, noise nuisance and abandoned shopping trolleys. Its presence encourages a spiral of decline, which can undermine community cohesion and the efforts of public agencies.

Tackling environmental crime goes beyond keeping streets and estates clean, it is a vital part of building community confidence.

ENFORCEMENT

Effective enforcement action against environmental crime requires commitment from all concerned. Evidence suggests that if graffiti, litter and other environmental damage is cleaned rapidly and persistently, it is less likely to come back. It is desirable that this should be accompanied by strong enforcement action using all available legislation.

Enforcement against environmental crime can also complement other enforcement action. For example, housing officers addressing nuisance neighbours on an estate may wish to consider the impact they are having on the quality of the environment. Fixed penalty notices for dog-fouling or flytipping, for example, may be used alongside such action.

Flytipping - which may include private individuals disposing of an unwanted bag of rubbish, mattress or fridge or individuals taking cash in hand to remove a load of waste and also the large scale disposal of builders' rubble.

For minor littering Council Officers may use powers relating to littering. The Environment Agency, Local Authority and police have powers to stop, search and seize vehicles suspected of being used to fly tip waste. They also have powers to investigate incidents to help track down and prosecute those responsible for dumping waste under the Control of Pollution Act.

Persons consigning waste to another person who fly-tips may also be in 'breach of the duty of care' in respect of waste. The current penalty for failing to comply with the duty of care is, upon conviction in a Magistrates' court, a maximum fine of £5,000.

Serious breaches may result in conviction in Crown Court where the penalty is an unlimited fine under the Environmental Protection Act.

The deliberate abandonment of any matter on land, in the open air or on any other land forming part of a highway is an offence, punishable by fine of up to £2,500 and/or 3 months imprisonment under the Refuse Disposal Act.

Transporting controlled waste without a waste carrier registration is an offence punishable currently by a fine of up to £5,000.

Similarly, fly-tipping or consigning waste to someone who the consignee knows or ought to know is going to fly-tip is disposal of controlled waste without a license. Fines can currently be up to £20,000 or six months imprisonment (or both) if convicted in a Magistrates court. If prosecuted in the Crown Court, the fine may be unlimited or two years imprisonment.

Graffiti is criminal damage; where it is racially motivated. In such cases it is a hate crime and should be dealt with accordingly. There are a number of individuals who specialise in graffiti and have special signs that identify them known as 'tags'. Fly-posting is the posting of stickers, posters and other advertising without the consent of the owner of the property and contrary to Regulations made under the Town and Country Planning Act 1990.

Principal approaches to tackle these problems: Penalty notices for minor acts of graffiti and fly-posting. From 31 March 2004 the Anti-social Behaviour Act 2003 allows local authority officers, community support officers and those persons accredited under a community safety scheme to issue fixed penalty notices of £50.

Prosecution for criminal damage. Graffiti is criminal damage under the Criminal Damage Act 1971. In the magistrates' court the maximum sentence is currently a fine of £5,000. For serious criminal damage the maximum penalty in the Crown Court is 10 years custody.

Fly-posting - Although it is important to prosecute any individual who fly-posts, it is also effective to take action against those people or organisations who benefit from the advertising. It is an offence to display an advertisement in contravention of regulations and authorities have the power to remove posters without notice. Currently fines of up to £1,000 can be issued and, in the case of a continuing offence, £100 for each day during which the offence continues after conviction. (Town and Country Planning Act 1990 and Highways Act 1980)

Section 43 of the Anti-Social Behaviour Act 2003 gives local authorities the power to issue fixed penalty notices for Fly-posting and unauthorized distribution of free literature. The amount of the fixed penalty can be set at a local level, and the Default amount is £75.00.

Abandoned cars - Nuisance vehicles – untaxed and abandoned
– increase the sense that an area is run down and attract arson and vandalism. Signs that a vehicle is abandoned include: no valid tax disc, no number plate, general state of disrepair, flat tyres, etc.

Principal approaches to tackle the problem: swift removal needs to be backed up by prosecution wherever possible. The deliberate abandonment of any vehicle is an offence, punishable by fine of currently up to £2500 and/or 3 months imprisonment. (Refuse Disposal (Amenity) Act 1978, s.2).

Local authorities, the DVLA and the police all have different powers with regard to removing nuisance vehicles, depending on the nature of the nuisance caused. The Borough Council participates in Operation Crackdown, a multi action joint working initiative which leads to the removal of an abandoned vehicle off street, normally within 24 hours on confirmation of abandonment.

The Council is also involved with multi-agency joint initiatives which include the Police and DVLA which lead to the removal not only of abandoned vehicle but also those without current tax.

Dog Fouling - It is an offence under the 1996 Dogs (Fouling of Land Act) to fail to clean up after your dog. Local authorities can issue £50 fixed penalty notices or prosecute (maximum fine currently £1,000).

Abandoned Shopping and Luggage Trolleys – Schedule 4 of the Environmental Protection Act 1990 allows a local authority to seize, store and dispose of abandoned shopping or luggage trolleys found in its area. This is an adoptive Schedule under Section 99. The provision allows for costs to be recovered from the owner of the trolleys, and the Clean Neighborhoods and Environment Act 2005 has improved the ability for local authorities to reclaim these charges.

APPENDIX B

AN ENFORCEMENT POLICY FOR THE COMMUNITY ENFORCEMENT TEAM AND OTHERS INVOLVED IN ENFORCEMENT AGAINST ANTI-SOCIAL BEHAVIOUR AND ENVIRONMENTAL CRIME.

1. Purpose and Method of Enforcement.

The purpose of Enforcement is to ensure that preventative action is taken to protect the public and secure compliance with a regulatory system. Enforcement action will be taken against those who deliberately or recklessly contravene the law, whether this is the issuing of a Fixed Penalty Notice or Prosecution.

Good Enforcement Practice. All Enforcement Officers will consider and follow the Codes of Practice for Crown Prosecutors, issued by the Crown Prosecution Service, when taking decisions on whether to prosecute.

2. Enforcement Concordat.

Eastbourne Borough Council believes in firm but fair regulation. The Council has formally adopted the Government's Enforcement Concordat on good enforcement. This sets out principles and procedures for enforcement of Regulations, based on best practice.

The principles underlying the Concordat require a policy of firm but fair regulation. This includes **proportionality** in the application of the law and in securing compliance, **consistency** of approach, **targeting** of enforcement action, **transparency and openness, helpfulness** in offering advice and assistance in a courteous manner so that those regulated know what to expect from Enforcement Officers as well as **accountability** for actions.

Commitment to the principles of the Concordat will be demonstrated by:

- Taking all enforcement decisions in a proportionate manner
- Striving for high standards of consistency
- Ensuring that all enforcement staff are helpful, courteous and efficient
- Measuring its performance against agreed standards, where appropriate

3. Human Rights Act 1998.

The Human Rights Act 1998 places everyone under a duty to interpret all legislation compatible with the Convention Rights incorporated by the Act and requires Eastbourne Borough Council, as a public Authority, to act in accordance with the Convention Rights. Authorised Officers will, ensure that respect for human rights is at the core of their day-to-day work.

4. Equal Opportunities.

All officers undertaking enforcement duties will ensure that all recipients of the service receive fair and equitable treatment irrespective of their race, ethnicity, gender or disability.

6. Commitment to the Policy.

The Council is committed to ensuring that all authorised enforcement officers carrying out enforcement work are trained and fully acquainted with the requirements of this policy. All authorised officers must abide by this policy whenever making decisions on enforcement.

Any departure from this policy will be exceptional, documented, justified and approved by the relevant service manager or Head of Service unless the delay in decision-making would result in a significant risk to the public.

All authorised enforcement officers should be fully trained and authorised in those aspects of legislation relevant to their duties. The authority will ensure that officers are fully competent to carry out their duties and that the level of delegated authority for each officer has been approved.

7. Enforcement Principles

In enforcing any law, Eastbourne Borough Council recognises and affirms the importance of the following principles:

A: Standards

We believe that prevention is better than cure and that our role therefore involves actively working with other agencies, residents associations, community groups and business, to advise and assist with understanding the law.

We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number for further dealings with us and we will encourage recipients to seek advice/information from us, or a solicitor. We will be open about how we set about our work, we will ensure, wherever practicable, our enforcement services are effectively co-ordinated to minimise unnecessary overlaps and time delays.

We will provide information and advice in plain language on the rules that we enforce. We will be open about how we set about our work, and we will discuss general issues.

We will publish our level of service and performance we achieve.

B: Consistency

We will carry out our duties in a fair, equitable and consistent manner. Whilst officers necessarily exercise judgement in individual cases, we will have arrangements in place to promote consistency, including liaison with other authorities and enforcement bodies.

C: Targeting

In addition to the regular patrols, we will target "special patrols" at those activities and areas that give rise to the most complaints. This will be achieved where possible through the use of a risk-rating scheme to enable complaints to be 'scored' following any patrol.

D: Transparency

We will help individuals, groups and businesses to understand what is expected of them and what they can expect from the enforcement officer. We will distinguish between statutory requirements and what is desirable but not compulsory.

E: Accountability

We will recognise our accountability to the public.

We will adopt a complaints procedure that is accessible to business, the public, employees, and consumer groups. In cases where disputes cannot be resolved, any right of complaint or appeal will be explained, with the details of the process and likely time-scales involved.

Enforcement Options

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

In making a decision the officers will consider:

- the seriousness of the offence
- any explanation offered by the defendant
- the age of the defendant
- the previous relevant history, if any
- the likelihood of the defendant being able to establish a defence
- the ability of any important witnesses and their willingness to co-operate
- whether other action such as the issue of a fixed penalty notice would be more appropriate or effective
- the advice contained in the Code for Crown Prosecutors.

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

- no action
- informal action
- formal action which may include
- fixed penalty notice
- formal caution
- prosecution

A: No Action

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

B: Informal Action

Informal action to facilitate compliance with legislation includes the offering of advice and recommendations for action, either verbally or by letter.

Informal action may be appropriate in the following circumstances:

- the offence committed was by a genuine mistake or accident
- the details of the offence were witnessed by a person who wishes to remain anonymous and is not prepared to give a witness statement
- where the offence has been committed by a child or young person (although in certain cases such as repeated offences it may be appropriate to consider formal action)
- where the offender has been or is genuinely impeded from preventing commission of the offence e.g. a wheelchair user unable to reach and clear up litter.

Even where some of the above criteria are not met, there may be circumstances in which informal action will be more effective than the formal approach. In these instances the enforcement officer will use his or her discretion but will be called upon to justify the exercise of that discretion.

When an informal approach is used, officers will ensure that any written documentation provided must:

- contain all information necessary to identify the breach of legislation
- indicate specific legislation contravened
- clearly indicate any recommendations of good practice and to explain that they are not legal requirements

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

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

C: Formal Action

Authorised officers will consider the use of formal action in accordance with the relevant services quality system or working procedures, codes of practice and guidance.

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

D: Fixed Penalty Notice

Fixed Penalty Notices (FPN's) may only be served by authorised accredited officers who are deemed to be competent, suitably qualified and experienced.

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

- Officer has witnessed the offence.
- Officer believes that there are "reasonable grounds" to consider an offence has been committed.
- there is a suitable witness or witnesses to the offence and the offender can be clearly identified.
- the alleged offender has not received a FPN before, or has previously received no more than two FPN in the previous twelve months.

E: Formal Cautions

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

- to deal quickly and simply with less serious offences.
- to divert less serious offence away from the courts.
- to reduce the chances of repeat offences.

To safeguard the defendant's interests, the following conditions will need to be fulfilled before a formal caution is administered:

- there must be evidence to consider taking a prosecution, then by implication, the conditions are not satisfied for the use of a formal caution.

It will also be inappropriate to use a formal caution where the suspected offender does not make a clear and reliable admission of the offence. It should be noted that there is no legal obligation for any person to accept the offer of a formal caution and no pressure should be applied to the person to accept a caution.

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

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

The Assistant Director – Amenities & Contract Management is duly authorised to issue formal cautions.

F: Prosecution

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

The following circumstances are likely to warrant prosecution:

- the offence involves a breach of the law and there is prima-facia evidence to support this
- the alleged offender has refused to supply their details
- the alleged offender has refused to accept a fixed penalty notice
- a fixed penalty notice has not been paid after the expiry of 14 days after issue
- there is a history of similar offences which have previously resulted in two fixed penalty notices being issued to the same offender over a period no longer than 12 months
- an officer of the council has been assaulted or obstructed in carrying out their duties in respect of the offence.

Where circumstances have been identified which may warrant a prosecution, all relevant evidence and information will be considered to enable a consistent, fair and objective decision to be made by the service manager in consultation with the Head of Legal Services.

8. Appeals.

If any person is unhappy with the action taken, or the information or advice given by the Councils Community Enforcement Team, they will be given the opportunity of discussing the matter with the Head of the relevant Team Manager.

This process is without prejudice to the Council's "Getting it Right" complaints procedure or any formal appeals mechanism.

9. General Issues.

The Council adopted the Enforcement Concordat in January 2001. This policy reflects the principles of good enforcement set out in the Concordat.

Officers will comply with Codes, B, C and E of the Police and Criminal Evidence Act 1984 as it relates to local authority enforcement.

If enforcement action is being considered which the Council believes may be inconsistent with that adopted by other authorities or with nationally recognised guidance, or when the council is informed of a possible inconsistency, the matter will be referred to the relevant local co-ordinating body or the home authority, etc. However, where circumstances could result in a serious risk to health, officers may continue to take enforcement action prior to any referrals.

Before formal enforcement action is taken, officers will provide an opportunity to discuss the circumstance of the case and, if possible, resolve points of difference, unless immediate action is required, (for example, in the interests of health and safety or environmental protection or to prevent evidence being destroyed).

Mark Probyn

Assistant Director – Amenities & Contract Management

January 2006