

# INCREASING ENVIRONMENTAL ENFORCEMENT WITHIN PLYMOUTH

ODPH



## 1 INTRODUCTION

The Corporate Plan sets out a clear aim to ensure that Plymouth is a green and pleasant city. Unfortunately, there is evidence that achievement towards this is affected by a small proportion of people breaking the law, through activities such as littering and fly tipping. The enforcement of laws around environmental protection is therefore a necessary step to meet this aim.

This paper describes the need to increase environmental enforcement, and the potential approaches to increasing environmental enforcement activity across Plymouth.

### 1.1 Scope

This paper concentrates on environmental enforcement for issues such as;

- Dog Control (Fouling, exclusion and use of leads)
- Flyposting and Outdoor Advertisement
- Littering
- Fly tipping (simple and complex)
- Enforcement of domestic waste or recycling collection

This policy does not cover enforcement requiring specialist skills such as;

- Parking enforcement
- Dog Microchipping and dog attacks
- Tasks carried out through Planning, Parking and/or Housing enforcement

## 2 PRINCIPLES FOR ENFORCEMENT

Environmental enforcement must be carried out under the appropriate legal frameworks and in line with national guidance.

### 2.1 Legal frameworks

There is a range of legislation which provides options for the enforcement of environmental protection such as;

- Environmental Protection Act 1990
- Anti-social Behaviour Act 2003
- Anti-social Behaviour Crime and Policing Act 2014

The penalties for environmental crime can range from fixed penalty notices (FPNs) up to and including prison sentences. The type of penalty that is appropriate for offences within the scope of this paper would be FPNs.

If an FPN is not paid, offenders should be taken to court, giving at least 14 days after issue of the FPN, but within 6 month of the offence. There is no requirement for an appeals process.

## 2.2 Age of the offender

It is possible to issue an FPN to someone over the age of 10. However, specific guidance has to be followed <https://www.gov.uk/guidance/enforcement-officers-issuing-fixed-penalty-notice#juveniles>

For 10 to 15 year olds there are considerable challenges in issuing FPNs, which includes the requirement to notify the offender's parents or legal guardian at the same time. For 16 and 17 year olds, there is a requirement to share information with their local youth offending team.

## 2.3 Exceptions

It is clear that considerable litter is produced during major tourist events; this is anticipated by additional provision of bins, and additional services being in place to clean up. Whilst littering is never acceptable, the Council will want to pause enforcement activities in specific areas of the city for specific events.

## 3 ENFORCEMENT CAPACITY

### 3.1 Overview of current environmental enforcement

The Environmental Protection Service currently have 5 Enforcement Officers. These Officers carry out a wide range of activities which includes pest control and management of stray dogs, as well as enforcement activities. As described in the role profile (extract below), this is a flexible definition and allows the staff to be focussed on particular areas of work as and when required.

*To assist with the discharge and enforcement of the functions of the Public Protection Service by;*

- *investigating complaints*
- *undertaking compliance audit*
- *conducting investigations and taking relevant enforcement action*
- *issuing any relevant authorisations, permits, notices and licenses*
- *providing advice and assistance to the public and businesses*

With this small number of staff, there is limited presence on the streets; instead the service delivery model is responsive to requests and collated information from the public and other departments / organisations.

Environmental Enforcement Officers workload around these types of issues tends to be focussed on the more complex scale of fly tipping, where detailed and time consuming investigations may need to be carried out, often with the aim of identifying and enforcing against repeat offenders.

Other staff have been trained in the gathering and reporting of evidence which is used in investigations of offences such as fly tipping, which provides some compensation for this. As an example, Street Services staff have had training in identifying and preliminary investigation of a fly tip, which is then passed to the Environmental Protection Officers for more in depth investigation.

### 3.2 Benefits of increasing environmental enforcement capacity

There is a significant quantity of work that can be carried out in environmental protection at any given time. As highlighted above, there is a strategic aim for Plymouth to be a 'Clean and Pleasant City', along with a commitment to tackle litter as indicated by the Plymouth Conservative Manifesto of 2016, written for the election of May 2016.

The current available capacity has been targeted into specific areas which are important and should not be stopped and therefore there is a recommendation to increase the Environmental Enforcement capacity.

## 4 IMPLEMENTATION MODELS

There are two potential delivery models to expand the environmental enforcement capacity across the city; to employ additional staff within the current team, or to consider procuring an external company. Each is briefly described (with more information provided in Part 2 papers).

For both models, increased enforcement activity will lead to an improvement in the environment of Plymouth; and this is achieved at negligible cost to the Council by use of the income from FPNs issued to offset the operational costs.

### 4.1 Model 1; Internal expansion of EP Enforcement capacity

Through employing temporary staff, the capability and capacity of the environmental protection team could be significantly increased. This option would allow targeted enforcement activity in areas of greatest need, run in conjunction with a local focused educational campaign.

#### Risks and Opportunities

##### Risks

Some of the technological solutions (e.g. for issuing fines on the spot) are not currently in place within the Council and setting these up requires an initial outlay and delay in time.

There may be less interest from the media in this approach, which may reduce potential communications to the public.

##### Opportunities

Full ability to flex the workforce, the type of intervention being carried out, and areas being targeted therefore more responsive to other internal work being undertaken and sensitive to public opinion.

### 4.2 Model 2; External Company

An external company would be licensed to operate within the Local Authority, under certain conditions specified in the service level agreement. The income from any FPNs issued (and costs awarded for any subsequent prosecution for non-payment) is then used to offset the operational costs. For any additional in excess of costs, a profit share agreement can be agreed.

#### Risks and Opportunities

##### Risks

Councillors should be aware that enforcement companies have created adverse press in the past where they have been used. This appears to be due to the lack of flexibility in the method of intervention; issuing an FPN is the default position, rather than advice and information.

##### Opportunities

This is likely to generate media interest which gives opportunities to reinforce the messages that littering is illegal and will not be tolerated.

Companies might be expected to demonstrate expertise and proven track record of successful implementation and achievement of outcomes.

### 4.3 Suitability of types enforcement by a private company

In both models, staff would be similarly trained in the relevant legislation and the issuing of FPNs.

The differences between these two models primarily relate to;

- the extent that judgement is required on whether to enforce
- the amount of information that is required to take the most appropriate action.

For example, there may be specific extenuating circumstances which may mean that a lower level of enforcement such as warning and advice is given rather than an FPN. Or the offence may be connected to other offences already under investigation, meaning that a higher level of enforcement such as prosecution may be more appropriate.

Further detail around each area of environmental enforcement is set out below, along with a recommendation of whether this might be appropriate for an external company to enforce.

### **Dog Control (Fouling, exclusion and use of leads)**

Currently evidence is collated from the public, enforcement is carried where sufficient intelligence is gained, but this is not a focus of current PPS activities. New procedures have been introduced asking for residents to provide evidence which will be investigated.

It should be noted that it is rare for owners to fail to pick up after their dogs when uniformed officers are present.

*This is a potentially suitable area of work for an external enforcement company.*

### **Flyposting and Outdoor Advertisement**

Evidence is collated from the public, enforcement is carried where sufficient intelligence is gained, but this is not a focus of current PPS activities.

*This is a potentially suitable area of work for an external enforcement company.*

### **Littering**

Current litter enforcement focusses on cigarette butts (particularly from cars) and bags of waste (below the threshold used for fly tipping).

Dropping litter in the street is not currently a focus of enforcement through PPS, and there is evidence of scope to enforce this city-wide.

*This is a potentially suitable area of work for an external enforcement company.*

### **Fly tipping**

Fly-tipping is defined as the 'illegal deposit of any waste onto land that does not have a licence to accept it'. This definition can cover a wide range of different offences from a single bag of rubbish to truckloads of construction and demolition waste. PCC have a 'working definition' that guides decisions around whether an FPN for littering or fly tipping is issued and this would form part of any contractual agreement with an external company.

Side waste is connected closely to domestic waste and recycling collections and it is therefore recommended that side waste be retained in house (see next section 'Enforcement around domestic waste and recycling collections').

There may be ongoing cases of complex fly tipping, which are under active investigation by the PCC Enforcement team. These should be retained in-house to enable detailed investigation to take place.

*Fly tipping, with the exclusion of waste associated with domestic waste or recycling collections and the exclusion of ongoing cases, is a potentially suitable area of work for an external enforcement company.*

### **Enforcement around domestic waste and recycling collections**

Whilst the principles and legislation used are the same as for other environmental offences, the enforcement around domestic waste and recycling collections has been highlighted as a specific issue due to the recent changes in arrangements within Plymouth.

Any enforcement actions taken on or around the day of collection should only be taken through close working with Waste and Street Scene and therefore it is recommended that enforcement around AWC is retained in house.

*Litter associated with domestic waste or recycling collections is NOT a suitable area of work for an external enforcement company.*

## **5 BUSINESS CASE**

A business case is provided in Part II paper.

## Appendix I

### Key Features of a contract for enforcement activity

- Enforcement would be carried out in line with legal frameworks
- Age range – issuing FPNs to young people has additional complexity; through the procurement process, the approach to this would be assessed and agreed
- National Living Wage should be used
- Branding – employees issuing FPNs should be in a company uniform (not PCC provided or branded)
- Delivery model –the times / days of operation would be open to the enforcer to decide
- Prosecutions – Failure to pay the FPN would (usually) result in prosecution since there is no right of appeal (for individuals, or for Councillors on behalf of residents).
- Court location for prosecutions – individuals are able to ask for a hearing in a local court; the location of the base of the provider is not relevant
- This would place no restriction on the ability of PCC to issue FPNs
- There will a considerable requirement for the sharing of information, particularly around fly tipping where information may be required daily