



**ENVIRO-CRIME**

**ENFORCEMENT POLICY**

**AND**

**OPERATIONAL GUIDANCE**

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## **POLICY STATEMENT**

This policy is intended to inform the public of the Council's enforcement policy and operational guidance relating to the enforcement of environmental crime and dog control offences. It is to be used by management and staff working within the Council's enforcement services, other persons authorised by the Council such as specialist enforcement contractors, and the local Police, to help ensure that our enforcement is consistent with national policy and guidance, and the Council's Corporate Enforcement Policy.

Enviro-Crime covers a diverse range of issues such as noise, litter, waste and refuse, dogs and pests.

This policy does not seek to cover and list all the relevant offences, but is to assist officers in knowing which course of enforcement action is most appropriate. For example when a Fixed Penalty Notice (FPN) may be more appropriate than a warning or prosecution.

The policy sits under the Corporate Enforcement Policy. The Council's aim in having enforcement policies is to ensure that enforcement powers are used appropriately by all concerned, as the proper use of enforcement powers is an essential factor in achieving the Council's Corporate Priorities. This is because Hastings Borough Council is an 'Interventionist Council'. This means that it endeavours:-

*"To keep the town clean, safe and attractive, using direct actions to tackle enviro-crime, poor housing, eyesore properties, derelict land and improvements to the public realm".*

Enforcement action is not the only way of achieving this. In conjunction with its enforcement action Hastings Borough Council takes pride in educating people to clear up after their dog and, not to drop litter in the town. We have run many campaigns to encourage residents to do this, and continue to receive positive feedback from the public underlining the importance of fair and effective enforcement of enviro-crime legislation.

In resident surveys a very high percentage of residents have said that the cleanliness of the town is extremely important to them. Tackling enviro-crime by education and enforcement will help to achieve this goal.

# **PART ONE - FIXED PENALTY NOTICES FOR ENVIRO-CRIME AND DOG CONTROL OFFENCES - POLICY AND OPERATIONAL GUIDANCE**

## **1.0 INTRODUCTION**

- 1.1 Notices of opportunity to pay a fixed penalty / fixed penalty notices (referred to as FPNs) can be issued by local authority officers for certain offences where the legislation permits and where the officer is authorised to do so. These notices provide a quick, visible and effective way of dealing with low-level straightforward environmental crimes, and an alternative to prosecution.
- 1.2 The purpose of this guidance is to establish standardised fixed penalty procedures to be followed by all those with powers to issue fixed penalties, with guidance on the circumstances in which a fixed penalty notice should be issued.
- 1.3 A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of the creation of a record of criminal conviction.

## **2.0 GROUNDS FOR ISSUING A FPN**

- 2.1 A FPN may only be issued where an officer has reason to believe a person has committed a penalty offence and there is sufficient evidence to support a successful prosecution. This is important as if the alleged offender does not pay the FPN the matter is passed to Legal Services to consider prosecution.
- 2.2 An officer may only issue a FPN where the offence is suitable for being dealt with in this way. FPNs are designed to deal with low-level offending. When considering a case, officers should consider the nature and seriousness of the offence. For example, the use of a FPN is appropriate for most types of littering offences,. The specific offences and the circumstances in which an FPN is appropriate are discussed at Sections 8 and 9 of this document.
- 2.3 Normally offences resulting in a FPN will be witnessed directly by the officer. However, an officer may consider it appropriate to issue a FPN to a suspect if they have not directly witnessed the offence, but have reliable witness testimony and/or has been able to speak with the suspect and gain a confession under caution.
- 2.4 Any interview and questioning must be consistent with the practice and procedures established by the Police and Criminal Evidence Act 1984, Code C.

## **3.0 THE OFFENDER**

- 3.1 A FPN should be issued only where, the alleged offender is compliant and able to understand what is going on, and there is sufficient evidence as to his/her identity and place of residence.
- 3.2 A FPN will often be appropriate for first-time offenders and 'one-off' incidents as it is a low-level disposal, and the recipient can avoid obtaining a conviction if they pay the FPN. . A FPN is a means of changing offending behaviour and may be an appropriate response where a warning or a caution might have been considered. However, where a suspect is not co-operative, consideration should be given to prosecution.
- 3.3 FPNs must be issued to and received by the suspect. If an intended recipient of a FPN refuses, after being warned, to give a correct name and address, and identity can be established through other means, i.e. by the Police, he/she should be reported for prosecution, rather than given a FPN. In some cases it is an offence for an alleged offender to fail to provide their name and address, or give false details. In these cases, it would be appropriate to prosecute for both offences. However, please also note paragraph 9.4.
- 3.4 A FPN may not be appropriate:
- where the offence that has been committed is considered to be too 'serious' in scale or effect to merit a fixed penalty notice;
  - where the offence that has been committed is so small or trivial in its effect that action might not be in the public interest;
  - where the offence is committed by a person under the age of 18;
  - where the offender may rely on a statutory defence;
  - where no satisfactory address exists for enforcement purposes. This may be where the officer has reason to believe that the suspect is homeless or sleeping rough, or where the suspect is a non-resident foreign national (i.e. not British or Northern Irish);
  - where a penalty offence is known to have been committed in association with another non-fixed penalty offence;
  - where an offender is threatening, abusive or violent to the officer;
  - where an alleged offender becomes aggressive or violent, the officer should ensure their own safety and seek help from the Police. The offender would be dealt with by way of prosecution, either by the Police or by the Authority. Officers should refer to their specific departmental risk assessments and/or the Corporate, Health and Safety, Violence and Lone Working Policy.
  - a FPN may not be appropriate where it is known that the suspect has a previous relevant conviction or caution, or has previously been issued with an FPN (for the offence), particularly if they have not paid. The officer should inform the offender that he/she will be reported with a view

to prosecution. Although all cases should be assessed by their own facts and in line with the Council's Corporate Enforcement Policy. It is normal practise that after an offender has been issued two FPN's for the same offence and subsequently offends again that the matter is dealt with by prosecution.

- where the suspect's behaviour suggests they have learning disabilities or mental disorder, or where the suspect is under the influence of drugs. The officer should question whether issuing a FPN prosecution is in the public interest.
- where a suspect appears to be unable to understand what is being offered to them (for example if there is doubt about their ability to understand English, or perhaps if they are deaf). Where such circumstances arise every effort should be made to solicit / impart the required information.

#### **4.0 ISSUING THE FPN**

- 4.1 The officer will approach the alleged offender, identify him/herself and tell the person, in simple terms that they have been seen committing an offence. It is the Council's policy always to **caution** the person before asking them questions about the offence. The person will then be asked their name, address and date of birth. If appropriate, the FPN will then be issued. Documentary evidence of identity and place of residence will be requested, but not demanded, and will be preferable to non-physical checks such as the electoral register. Failure to identify a suspect prior to issue could invalidate enforcement. Police assistance will be sought where necessary. The officer must record the suspect's forename, surname, address, post-code and date of birth on the FPN.
- 4.2 When the FPN is issued, the officer should explain that it provides an opportunity to avoid liability to prosecution, and draw the person's attention to the relevant points about making payment. The officer will advise the recipient of the FPN that in the event of non-payment, a file will be passed to the Council's Legal Services Team for consideration of prosecution in the Magistrates Court.
- 4.3 A person who refuses to accept a FPN from the officer must be informed that he/she will be reported for the offence in question, and a file will be passed to the Council's Legal Services Team for consideration of prosecution in the Magistrates Court.
- 4.4 Payment of a FPN can be made in person at the Community Contact Centre, by phone by ringing 01424 451076 or 451066 (for debit/credit cards) or by post for payment by cheque. The postal address is Hastings Borough Council, Environmental Admin Support Team, Muriel Matters House, Breeds Place, Hastings TN34 3UY.

#### **5.0 DISPUTES ABOUT ENFORCEMENT**

- 5.1 Once a FPN has been issued the recipient may decide to phone or write in pleading mitigation or contesting the fact that a FPN was issued. An alleged offender contesting a FPN should be advised that there is no obligation to pay a fixed penalty and there is no formal appeal procedure. In exceptional circumstances, such as hardship, it may be possible to extend the time for payment on proof of financial circumstance. Decisions on extension of time for payment and cancellation of a FPN must be made by the appropriate Manager . Payment of a fixed penalty by instalments will not be accepted.
- 5.2 Whilst the Authority should review the facts of a particular case when invited, the opportunity to challenge the allegation and plead not guilty to the alleged offence at an independent court hearing is open to the recipient of the FPN. This will be by way of prosecution, on summons, and trial in a magistrates' court. Any person wishing to complain about the FPN should do so in writing to the Enforcement Manager within Operational Services at Muriel Matters House (formerly Aquila House) Breeds Place, Hastings, East Sussex, TN34 3UY . Such letters may help identify any issues that need resolving or investigating before a case comes to court. Arguments over the law, the amount of the fixed penalty, etc. will not be relevant, but claims that a defence applies will. Only in occasional circumstances will it be appropriate to withdraw a FPN or not proceed to summons on non-payment. This may be when information that was not available at the time the FPN was issued becomes available and it is determined that the offence to which the notice relates was not committed, that it would not be in the public interest to prosecute, or that the notice should not have been issued to the person who is named in the notice.
- 5.3 In cases of demonstrable hardship, consideration may be given by a senior officer to extending the suspended enforcement period and delaying the issue of summons, although there is no legal basis for this. See paragraph 5.1 above.

## **6.0 ISSUING FIXED PENALTY NOTICES TO YOUNG PERSONS AGED 10 TO 17**

- 6.1 It is the policy of Hastings Borough Council not to issue FPN's to under 18's. The Enforcement Manager will periodically review this approach to dealing with minors. If it is concluded that a significant number of offences are being committed by minors, it may be appropriate to consider amending this part of the policy, perhaps in conjunction with the introduction of a youth reparation scheme.
- 6.2 Sometimes the behaviour of someone under 18 years of age may warrant more than a warning. Examples may include being abusive or antagonistic to the authorised officer, smashing a bottle into the road, drinking alcohol and discarding cans into a river, or throwing cans at traffic. The Police may be aware of the youth offender and take their own action. The Council could consider applying to the Court for a Civil Injunction in appropriate circumstances.

## **7.0 UNPAID OR CHALLENGED FIXED PENALTY NOTICES**

- 7.1 If the person either refuses to accept a FPN or, having accepted such a notice, does not pay before the end of suspended enforcement period (14 days), a reminder letter will be issued giving a further seven days' notice. If the fixed penalty remains unpaid a further reminder letter will be issued, and if it still remains unpaid the matter will result in prosecution (unless there is good reason otherwise). To ensure the credibility of a FPN scheme, the assumption will be that all cases involving non-payment will be referred to court.
- 7.2 Where a fixed penalty is refused, not paid, or challenged, the process defaults to a standard prosecution and the officer who issued the FPN will be notified.
- 7.3 It is the responsibility of the officer who issued the FPN to ensure that all witness statements and exhibits, including any record of interview, are sent to Legal Services. Wherever possible this should be done within two months of non-payment of the FPN.
- 7.4 Each case will be reviewed by senior officers. The file will then be sent to Legal Services with the appropriate delegated authority to consider the evidential and public interest tests before a prosecution is commenced.

## **8.0 AMOUNT OF FIXED PENALTY**

- 8.1 The Clean Neighbourhoods & Environment Act 2005 and the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 (as amended) enable a local authority to specify the amount of some fixed penalties. Historically the council has charged the lowest rate for FPNs if paid within 10 days and the default amount afterwards. The reason for charging the lowest rate was that Hastings is an area of high multiple deprivation with many low-income households. However for some offences such as littering and dog fouling there has not been any tangible reduction in offending. To increase the deterrent effect of the FPN, from 3<sup>rd</sup> July 2017 offences involving litter and dog fouling are set at the maximum level with no discounted period.

Description of offence	Act	Hastings Borough Council Policy on amount of FPN	
		Amount	Amount with discount if applicable
Nuisance parking	Clean Neighbourhoods and Environments Act 2005	£100	£60
Abandoned vehicles	Refuse Disposal (Amenity) Act 1978	£200	£120
Littering	Environmental Protection Act 1990	£80	No discount to be applied
Fly-tipping	Environmental Protection Act 1990	£200 to £400 see section 9.2 of this policy	No discount to be applied
Unauthorised distribution of literature on designated land	Environmental Protection Act 1990	£75	£50
Failure to produce waste transfer note	Environmental Protection Act 1990	£300	£180
Failure to produce waste carrier registration documents	Environmental Protection Act 1990	£300	£180
Presentation and management of waste receptacles	Environmental Protection Act 1990	£80	No discount to be applied
Dog Control Offences such as fouling	Anti-social Behaviour, Crime and Policing Act 2014 through Hastings Public Spaces Protection Orders	£100	No discount to be applied
Graffiti and fly posting	Anti-social Behaviour Act	£80	No discount to be applied

	2003 as amended by the CNEA 2005		
Failure to comply with a Community Protection Notice	Anti-social Behaviour, Crime and Policing Act 2014	£100	No discount to be applied
Failure to comply with the Hastings Public Spaces Protection Orders	Anti-social Behaviour, Crime and Policing Act 2014	£100	No discount to be applied

## 9.0 FIXED PENALTY OFFENCES AND SPECIFIC GUIDANCE

Reference should be made to the offence creating statutes and appropriate guidance as well as to this policy. As with any area of enforcement, it is essential that officers are aware of their powers under the relevant statutes.

### 9.1 Environmental Protection Act 1990, Section 87 – Littering

In cases of littering, the normal course of action will be to offer a FPN, providing the person is co-operative and is not a habitual litter offender.

The offence under Section 87 of the Environmental Protection Act 1990, as amended in 2005, applies to all places that are open to the air, including private open land, and land covered by water. A place is treated as open to the air if it is open to the air on at least one side, if the public have access to it, on payment or otherwise.

A person does not commit a littering offence if they leave litter on their own land or if they have the permission of the landowner to leave litter.

Litter is not defined, but includes cans, bottles, confectionary wrappers, food and drink containers, chewing gum, plastic bags, till receipts, left over food, cigarette and cigar ends and flyers. Litter often overlaps with fly tipping and the offence can include black bags of waste.

Issuing FPNs for food litter can be contentious and the following examples should assist officers:

- excessively feeding birds, warn in first instance;
- fruit peelings or apple core dropped on pavement - this requires cleaning, may lead to staining and is a slipping hazard, so issue FPN;
- apple core thrown into any hedge, no action.

The authorised officer must be satisfied that the two elements of the offence have been committed a person is guilty of an offence if he throws down, drops or otherwise deposits any litter in any land or water open to the air and leaves it.. The

offence is committed when a person discards something (e.g. puts an empty bottle on a wall, screws up a bus ticket and drops it, spits out gum, removes a sandwich from a bag and drops the bag, or throws a can into a side street) and walks away or otherwise leaves it. There is no need to prove intention. The offence may be committed by reason of the person's behaviour (i.e. ripping or screwing something up and dropping it and not making any attempt to retrieve it), or because of where the item was thrown (i.e. into a river or fenced area or from a car or bridge). To help establish the second element of the offence, the officer should note how long someone has left something before being approached or how far they have walked before being stopped.

In the case of a black bag the offence does not necessarily have to be witnessed. If there is identification within the bag then questioning under caution of the suspect may well prove the offence. If more than one black bag is proven then the offence should be treated as fly tipping. The offence does not rely on any requirement to ask a person who has deposited litter, to pick it up. However, where it appears that someone has dropped something inadvertently, or the officer cannot reasonably conclude that the litter has been left, he/she should consider asking the person to pick it up. If the person then refuses, it would constitute leaving, and there may be grounds to issue a FPN.

If a person only chooses to return to the litter and pick it up following the intervention of an officer, a FPN should be issued. Such action would be recorded by the officer and noted in the event of a subsequent prosecution.

Aggravated littering such as smashing glass bottles may be more appropriately dealt with by summons.

## **9.2 Environmental Protection Act 1990, Section 33 Fly Tipping**

The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016 were made on 7th March 2016, in force 9th May 2016. The regulations insert a new section 33ZA into the Environmental Protection Act 1990: Fixed penalty notices for contravention of section 33(1)(a):-

Where an authorised officer of a waste collection authority has reason to believe that a person has committed a waste deposit offence (in the area of the authority), the officer may give the person a Fixed Penalty Notice offering the opportunity of discharging liability to conviction for the offence.

“Waste deposit offence” means an offence under section 33 in respect of a contravention of subsection (1). The fixed penalty payable is an amount not less than £120 and not more than £400, as specified by the waste collection authority. If no amount is specified, the default amount is £200. Within the legislation we are able to charge a different amount depending on the circumstances of the offence.

Anyone found to be disposing of large items, builders' waste, cardboard/boxes of waste, and multiple bags (including recycling bags) on the public highway is fly-tipping.

Although FPNs may be issued for fly tipping offences, Officers should consider whether prosecution is more appropriate and proportionate to the nature of the offence. For example Officers will generally consider prosecution rather than issuing an FPN if fly tipping involves large volumes and/or very hazardous materials.

As there is case law overlapping offences of littering and fly tipping the following table summarises which offence the Council deem appropriate for different scenarios.

<b>General description of offence</b>	Type of enforcement action when committed by a <b>resident</b> and level of charge if FPN issued	Type of enforcement action when committed by a <b>business/trader</b> and level of charge if FPN issued
Discarded items such as cigarette, drinks can etc.	Treat as littering under EPA S87 £80 FPN with no reduction for early payment	N/A
1 <sup>st</sup> offence of single black bag of non-hazardous waste  2 <sup>nd</sup> offence of single black bag of non-hazardous  Subsequent offences	Treat as littering under EPA S87 £80 FPN with no reduction for early payment for S87 Treat as fly tipping EPA S33 £200 FPN with no reduction for early payment Prosecution	Treat as fly tipping EPA S33 £400 FPN with no reduction for early payment Prosecution  Prosecution
1 <sup>st</sup> offence for more than one black bag or large items such as white goods or furniture  2 <sup>nd</sup> offence for more than one black bag or large items such as white goods or furniture  Subsequent offences	Treat as fly tipping EPA S33 FPN £200 with no reduction for early payment  Treat as fly tipping EPA S33 FPN £400 with no reduction for early payment  Prosecution	Treat as fly tipping EPA S33 FPN £400 with no reduction for early payment  Prosecution  Prosecution
1 <sup>st</sup> offence for hazardous material such as chemicals and asbestos waste  2 <sup>nd</sup> offence for hazardous material such as chemicals and asbestos waste  Subsequent offences	Treat as fly tipping EPA S33 FPN £200 with no reduction for early payment  Treat as fly tipping EPA S33 FPN £400 with no reduction for early payment  Prosecution	Treat as fly tipping EPA S33 FPN £400 with no reduction for early payment  Prosecution  Prosecution

### 9.3 Dog Control in Hastings

From 12 June 2017 dog controls in Hastings are enforceable under the provisions of the new Public Spaces Protection Order (No 1) Hastings Borough Council 2017. This Public Spaces protection Order (PSPO) replaced the Fouling of Land by Dogs

(Borough of Hastings) Order 2008, the Dogs on Leads (Borough of Hastings) Order 2008, the Dogs on Leads by Direction (Borough of Hastings) Order 2008, and the Dogs Exclusion (Borough of Hastings) Order 2008.

Authorised persons enforcing the PSPO must familiarise themselves with the various provisions as they are not all the same as those contained in the superseded Dog Control Orders. However, the Council's approach to enforcement remains the same as before, except that the FPN is set at £100.

**Dog Fouling** - for persons who fail to clear up forthwith after a dog in their charge has fouled on land within the Borough of Hastings which is open to the air and to which the public have access, the normal course of action will be to offer a FPN, providing the person is co-operative and is not someone who has failed to be deterred by previous FPNs, in which case prosecution should be pursued.

If a person decides to clear up the dog faeces after the intervention of an officer, a FPN will still be issued. Such action would be recorded and noted in the event of a subsequent prosecution. The requirement is to remove the faeces forthwith, i.e. immediately.

The offence does not apply to a person who is registered blind or who has the need for an assistance dog. Being unaware of the defaecation is not a defence. A person who habitually has a dog in his/her possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog.

**Dogs on leads** - This applies to specified areas of Hastings at prescribed times, and to all Roads within the Borough of Hastings at all times (as defined by Section 142 of the Road Traffic Regulation Act 1984), with the exception of those which do not have a right of passage for motor vehicles.. A FPN would be appropriate for a first offence.

Dogs on leads by direction - this applies borough wide to all land which is open to the air and to which the public has access with or without payment. A person in charge of a dog shall be guilty of an offence, at all times, if he/she does not comply with a Direction given to him / her by an authorised officer of Hastings Borough Council, to put and keep the dog on a lead. An authorised officer of the Authority may only give a direction under this order, to put and keep a dog on the lead, if such restraint is reasonably necessary to prevent a nuisance or behaviour by the dog likely to cause annoyance or disturbance to any person or the worrying or disturbance of any animal or bird. A FPN for a first offence would be appropriate.

**Dog exclusion areas** - a person shall be guilty of an offence if he/she is in charge of a dog during specified times on land to which the Order applies if he/she permits the dog to enter or to remain on any land to which the Order applies.

The offence does not apply to a person who is registered blind or who has the need for an assistance dog. Or to a person who has the landowners consent. A FPN for a first offence would be appropriate.

#### **9.4 Dealing with offenders who refuse to give details or who give false details**

Offences involving obstruction of officers are normally dealt with by way of prosecution. In terms of fixed penalty offences, officers should note the following guidance:

Offender refuses to give details or gives false details, but provides correct details after being warned, or before Police arrive – it is considered appropriate to offer and issue an FPN.

Offender gives correct details only after being required to do so by a Police Officer – report for summons for the original offence and for the offence of failing to give details or giving false details.

Offender gives false/inaccurate details, FPN is issued at the time, and is subsequently paid – no further action in respect of giving false details as the offender has not pursued the objective of the offence.

Offender gives false/inaccurate details, FPN is issued at time and not paid, and enquiries identify the offender – report for summons for the original offence and for the offence of giving false details.

Note that section 61 of the Clean Neighbourhoods and Environment Act 2005 has been repealed. Local authority officers can no longer insist upon an offender providing their name and address in relation to dog control offences. However, the power remains with respect to littering offences.

#### **9.5 Rules for Issuing Fixed Penalties**

1. Ensure you have all the proof necessary for the offence.
2. Be presentable, in full uniform with name badge (where appropriate).
3. Be alert, active and prepared (i.e. carry a tape measure, black ballpoint pen, camera, etc.).
4. Be fair, equitable, courteous and cooperative.
5. Be firm and self-confident but not over officious.
6. Be consistent.
7. Be accurate; ensure your writing is legible and that the notice is complete.
8. Be tactful whilst maintaining a respectful and pleasant attitude.
9. Use discretion and approach each situation on its merits.
10. If you cannot resolve any doubts through discussion with a senior officer or lawyer, do not issue a notice.

## **9.6 Rules for issuing Cautions and Interviewing under the Police and Criminal Evidence Act 1984 (Code C – questioning)**

**A person whom there are grounds to suspect of an offence must be cautioned before any questions about an offence**, or further questions if the answers provide the grounds for suspicion, are put to them if either the suspect's answers or silence, (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution. **A person need not be cautioned if questions are for other necessary purposes, e.g.:**

- (a) **solely to establish their identity** or ownership of any vehicle;
- (b) to obtain information in accordance with any relevant statutory requirement.

**Guidance Note 10G states that a caution need not be given when informing a person not under arrest that they may be prosecuted for an offence. However, it is the Council's policy to caution an offender so that Legal Services can use any answer or comment that the offender makes at Court.**

**If the investigation of an offence results in a formal tape recorded interview an accurate record must be made of each interview**, which must state the place of interview, the time it begins, and ends, any interview breaks and the names of all those present.

The interview should be recorded in the officer's pocket notebook.

## **PART TWO - NON-FIXED PENALTY NOTICE OFFENCES – POLICY AND OPERATIONAL GUIDANCE**

There is a range of offences that do not provide for a Fixed Penalty Notice to be issued. These offences are to be considered for a Warning, Formal Caution or Prosecution in line with the Council's Corporate Enforcement Policy.

These are just a selection of powers that Hastings Borough Council has to tackle Enviro-Crime and dog control.

### **1.0 DANGEROUS DOGS**

- 1.1 Officers are reminded that matters involving either a dog attack on a person or other animal must be dealt with as a priority. It is in the public interest to do so. Prompt liaison with the Police is essential as generally they investigate cases involving attacks by dogs on people, whereas the Council investigates attacks by dogs on other animals. Cases must be submitted to Legal Services as soon as the evidence is available.
- 1.2 Experience of seeking Dog Control Orders in the Magistrates Court in recent years, has shown that the Court is reluctant to issue an Order relating to a dog on dog attack unless there is clear evidence of at least one previous attack by the same dog.
- 1.3 It is therefore likely that the Council will issue a Community Protection Warning and/or Notice for a first attack, under the provisions of the Anti-Social Behaviour Crime and Policing Act 2014. However, each case must be assessed on its merits and discussed with Legal Services at the earliest opportunity.
- 1.4 If a Community Protection Warning or Notice is issued, it will form part of the Council's evidence, if there is another attack and the Council will consider prosecuting the owner and applying for a Dog Control Order or a Criminal Behaviour Order.

### **2.0 Dangerous Dogs Act 1991**

- 2.1 Section 1 prohibits the ownership of certain types of dogs, unless they are exempted on the Index of Exempt Dogs. Prosecutions can be brought before a Court based on the physical characteristics of a dog. In any incidents dealing with a potential prohibited dog it may be worth contacting the Index of Exempted Dogs for advice and guidance on 07000 783 651 or 07721 036 354.
- 2.2 Section 3 creates a criminal offence of allowing any dog to be dangerously out of control in a public place or a place to where it is not allowed. A dog can be regarded as being dangerously out of control on any occasion where it causes fear or apprehension to a person that it may injure them. If that dog does injure that person then the offence is aggravated.

### **3.0 Dogs Act 1871**

3.1 section 2 is particularly effective when dealing with attacks by dogs on other domestic pets or livestock. Section 2 requires that the owner is brought before a Magistrates' court on a complaint and if the Magistrates are satisfied that the complaint is justified they will make an Order. In extreme cases, the dog can be destroyed. However, the Dogs Act 1871 was amended to give magistrates more options to keep a dog under control, such as muzzling, to be kept on a lead whilst in public places, neutering etc..

### **4.0 Dangerous Dogs Act 1989**

4.1 This allows a Magistrate to disqualify an owner from having custody of a dog for any period the Court thinks fit. It also provides enforcement provisions for breaches of any control order imposed on an individual under the 1871 Act.

### **5.0 Town Police Clauses Act 1847 Section 28**

5.1 Provides for an offence for anyone to allow an unmuzzled ferocious dog to be not under control in a public place and attack, worry or to put in fear any person, horse or other animal on any street in a town.

### **6.0 LITTER, REFUSE AND WASTE**

6.1 In addition to the litter and fly tipping enforcement measures outlined in Part One of this enforcement policy and operational guidance, there are other enforcement tools available for dealing with litter and waste on land, which may be considered in cases where an FPN is either not deemed appropriate, or cannot be issued due to the nature of the waste and/or the status/ownership of the land where it is located. Consideration of such cases will generally involve discussions between the Council's Waste Team, Wardens, Environmental Health and Legal Services.

6.2 Examples include provisions of the Environmental Protection Act 1990 such as:-

- Section 33 – which allows for the prohibition of an unauthorised or harmful deposit, treatment or disposal of waste. Hastings Borough Council will consider a prosecution for these offences commonly known as fly tipping.
- Section 34 – which places a duty of care on individuals disposing of waste even when doing so through a third party such as a waste contractor (or person purporting to be a waste contractor). If the individual has failed to act reasonably to ensure that their waste is disposed of appropriately (for example by paying a person cash to take away their waste and/or not making reasonable enquiries to check that the contractor is a bona fide waste contractor), Hastings Borough Council will consider a prosecution for these offences.
- Section 80 – which is generally enforced by the Council's Environmental Health Service, provides for an abatement notice to be served if an accumulation or deposit is considered prejudicial to health or a nuisance. Reasonable costs can be recovered by the authority in abating or preventing the recurrence of a statutory nuisance for which a notice has been served.

6.3 There are also several other provisions that can be considered, including:-

- Section 22 of the Control of Pollution Act 1974 – under which the Council can arrange with the agreement of the person owning or occupying the land, for cleaning of land in the open air (other than a highway) to which the public have access. Charges will be paid by the occupier or owner.
- Section 34 of the Public Health Act 1961 – under which the Council can require that any rubbish that is seriously detrimental to the amenity of the area, to be removed from any land in the open air. Rubbish is defined as including rubble, waste crockery and metal.
- Section 6 of the Refuse Disposal (Amenity) Act 1978 – under which the Council can require that anything that has been abandoned without lawful authority (other than a motor vehicle) from land open to the air or on a highway to be removed. If the land is occupied the Council must give notice of their intention to remove. Costs can be recovered.
- Section 4 of the Prevention of Damage by Pests Act 1949 – under which the Council can serve a notice requiring an owner to remove, at his expense, accumulated waste for the purpose of keeping land free from rats and mice. Costs can be recovered if the Council have to remove it.

## **7.0 VEHICLE RELATED ENFORCEMENT ISSUES**

- 7.1 The Council has enforcement powers relating to abandoned vehicles, nuisance associated with vehicles being repaired on the highway, and vehicles being sold from the highway.
- 7.2 Abandoned vehicles are primarily dealt with through Operation Crackdown which is a long standing Sussex wide initiative led by the Police and Crime Commissioner for Sussex (PCC) to enable the public of Sussex to report cases of suspected vehicle abandonment. The Council's Warden Service operates the scheme in the borough and liaises with the other agencies involved.
- 7.3 The primary legislation for abandoned vehicles is the Refuse Disposal (Amenity) Act 1978, which defines a motor vehicle as "a mechanically propelled vehicle intended or adapted for use on roads, whether or not it is in a fit state for such use, and includes any trailer intended or adapted for use as an attachment to such a vehicle, any chassis or body, with or without wheels, appearing to have formed part of such a vehicle or trailer and anything attached to such a vehicle or trailer".
- 7.4 Where the land is privately owned, the Council can serve a Notice on the occupier or owner, informing them that the authority intends to remove the vehicle. If the occupier/owner objects to the removal, the authority cannot remove it. A notice is not required to be issued where a vehicle is abandoned on a road (within the meaning of the Road Traffic Regulation Act 1984) that is, any length of highway or of any other road to which the public has access.

In this case the vehicle can be removed immediately. If the cost of removing the vehicle, not on a carriageway, is unreasonably high, an authority can decide not to remove it.

- 7.5 Section 3 allows the Council to destroy a vehicle if in its opinion it is in such a condition that it is fit only for destruction. (The requirement to serve a Notice stating details of destruction of a vehicle is revoked under section 11 of the Clean Neighbourhoods & Environment Act 2005).
- 7.5 Section 4 allows the Council to dispose of any vehicle (removed under section 3) in any way they see fit. It is no longer necessary to wait for the expiration of a valid license or current registration mark before disposing of such a vehicle. This enables the Council to destroy immediately any vehicle, which, in the opinion of the authority, is in such a condition that it ought to be destroyed.
- 7.6 Section 5 refers to any removal, storage and disposal costs which can be passed onto any person responsible (registered owner of the vehicle at time of removal) for an abandoned vehicle.
- 7.7 The deliberate abandonment of any vehicle, or part thereof, on land in the open air or on any other land forming part of a highway, is an offence, punishable by a fine of up to £2500 and/or three months imprisonment.
- 7.8 The Clean Neighbourhoods and Environment Act 2005 includes offences related to 'nuisance parking'. It enables the Council to tackle those who persistently cause a nuisance by selling or repairing their vehicles on the road, thus affecting other residents.
- 7.9 Section 3 makes it an offence for a person to park vehicles on a road or roads, where the vehicles are parked merely in order to be sold. There must be two or more vehicles within 500 metres of each other for the offence to be committed.
- 7.10 Section 4 addresses the nuisance caused by people repairing their vehicles on a road or public highway, by making it an offence to carry out "works for the repair, maintenance, servicing, improvement, or dismantling of a motor vehicle". It is not intended to penalise those carrying out minor works or a breakdown repair at a roadside, but rather those incidences where repairs are carried out in the course of a business.
- 7.11 Section 5 relates to the liability of directors, requiring that directors of companies and corporate bodies must act responsibly in the course of their business. A director can be found guilty of offences under sections 3 and 4 above if it is proved that activities relating to the offence(s) were carried out with the knowledge and consent of that director, or due to that director's neglect.

7.12 Any item appearing to have been abandoned is deemed to be intentionally abandoned unless evidence is shown to the contrary. There is no actual definition of an abandoned vehicle and it is for the authorised officer of the local authority to determine if a vehicle is deemed to be abandoned. The officer investigating should have regard to all the surrounding circumstances and ancillary evidence, including (Defra guidance):

- Is the vehicle untaxed i.e. no tax disc present at all or past the expiry date? (This should not be the sole consideration, but should be taken into account with the other points below.)
- Are any of the tyres flat or have any of the wheels been removed?
- Is there litter or any other signs under the vehicle, indicating that it has not moved for some time?
- Is the windscreen or any of the windows broken?
- Is there any mould on either the inside or outside of the vehicle?
- Does the vehicle contain items of waste e.g. tyres, old newspapers, general rubbish?
- Does the vehicle have number plates?
- Has the vehicle been 'hot-wired ' i.e. driven without keys by connecting ignition wires together? (If it has, there will be wires hanging from the dashboard.)
- Has the vehicle been vandalised? Exterior vandalism might include dents in bodywork, graffiti, bumpers/spoilers being removed; interior vandalism might include radio being stolen, seat covers being slashed.
- Has a vehicle that you and your neighbours have never seen before suddenly appeared in your road and no-one is claiming ownership?
- A vehicle may be considered to be abandoned even if displays current road tax or has been declared SORN.

## **PART THREE - POLICY AND OPERATIONAL GUIDANCE RELATING TO THE ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

### **1.0 Introduction**

- 1.1 The Anti-Social Behaviour Crime and Policing Act 2014, introduced a range of flexible enforcement tools to address ongoing and persistent antisocial behaviour, some replacing existing enforcement tools, such as for dog control. From a street scene perspective the new enforcement tools include Community Protection Notices (CPNs), Public Space Protection Orders (PSPOs), and civil injunctions and criminal behaviour orders.
- 1.2 The Home Office have issued statutory guidance on the provisions of the Act and all persons authorised to enforce the Act in Hastings should familiarise themselves with the appropriate sections of the guidance. It is called "Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers - Statutory guidance for frontline professionals – July 2014".

### **2.0 Community Protection Notices**

- 2.1 Aim to stop a person aged 16 or over, or a business or organisation from committing anti-social behaviour (ASB) which spoils the community's quality of life. The test is behaviour that has:-
- a detrimental effect on the quality of life of those in the locality;
  - is of a persistent or continuing unreasonable nature.
- 2.2 It can be issued by Council officers, Police, and by designated Registered Social Landlords. In Hastings CPNs are most likely to be issued by the Council, although there is also likely to be input from the Police when gathering evidence of the ASB, as well as support when the CPN is served on the person causing the ASB.
- 2.3 The Council's Legal Services have developed a Community Protection Notice template, and all CPNs issued must conform to this template. Where a CPN is being considered to address ASB of a type that has not previously been dealt with through a CPN, the enforcement officer must discuss the case with Legal Services, to ensure that a CPN is the most appropriate course of action. Close liaison between the Council's enforcement teams and Legal Services will ensure that CPNs are used correctly and consistently.
- 2.4 Generally prior to a CPN being issued, the perpetrator will have been issued with a written warning informing them of the problem behaviour and requesting them to stop, and of the consequences of not doing so.

2.5 A CPN can:-

- include a requirement to stop things, do things or take reasonable steps to prevent further anti-social behaviour.
- allow the Council to carry out works in default on behalf of a perpetrator.
- deal with a wider range of behaviours for instance, it can deal with noise nuisance and litter on private land open to the air
- be used against a wide range of perpetrators

2.6 Breach of A CPN is a criminal offence. With a FPN notice issued of up to £100 or a fine of up to level 4 (for individuals), or £20,000 for businesses. In Hastings the value of the FPN is set at £100 in order to provide the maximum deterrent effect possible.

2.7 The terms of a CPN can be appealed by the perpetrator within 21 days of issue, and they can also challenge the cost of works undertaken on behalf of the perpetrator by the Council, if they think they are disproportionate.

### **3.0 Public Spaces Protection Orders (PSPOs)**

3.1 From 12<sup>th</sup> June 2017 2 PSPOs came into effect in Hastings. As mentioned in part one of this enforcement policy and operational guidance, one relates to dog controls such as fouling and dogs on leads. The other relates to ASB often associated with the wider street community.

3.2 The ASB PSPO restricts ASB in specified parts of the borough such as:-

- Drinking alcohol;
- Taking psychoactive substances;
- Shouting and screaming such as to cause harassment and alarm;
- Aggressive begging;
- Sleeping in vehicles overnight.

3.3 The ASB PSPO is to be primarily enforced by the Council and the Police, although other competent persons may also be authorised to do so from time to time. For examples Wardens employed by the Business Improvement District and specialist enforcement contractors employed by the Council. The Council will issue persons other than the Police who are authorised to enforce the ASB with a suitable identification and authorisation card.

3.4 Given the nature of the ASB this PSPO seeks to restrict, and the nature of the potential perpetrators, it is unlikely that FPNs will immediately be issued when authorised officers witness non-compliance. Authorised officers will initially approach the perpetrators to tell them that their behaviour is in breach of the ASB PSPO, and to request that they stop the anti-social behaviour. Generally only if they refuse to do so should the issue of an FPN be considered. However, if the perpetrator is known to have committed a similar offence in that area before, an FPN may be appropriate straight away, or other enforcement action.

- 3.5 Authorised officers should assess each case on its merits, and consider whether or not the perpetrator understands what they are doing wrong, and isn't under the influence of drugs or alcohol, or affected by mental health issues, to the extent that they are incapable of understanding what is required of them. The detailed guidance on issuing FPNs set out in part one of this enforcement policy and operational guidance should be considered.
- 3.6 Due to the chaotic lifestyle of some of the potential perpetrators who will be drink and/or drug dependent, multi-agency case conferences are likely to be required to determine how best to address the ASB. This could include consideration of Civil Injunctions including a requirement for the offender to engage positively with support services.
- 3.7 Some offenders will be under 18 and in such cases the multi-agency approach should include East Sussex County Council Youth Services. Again Civil Injunctions including a requirement for the offender to engage positively with support services may be considered.
- 3.8 So far as begging is concerned, it is aggressive begging that is prohibited. Officers must assess each case individually and apply a common sense interpretation to whether or not it is aggressive begging. The actual ASB PSPO gives the example of a person loitering around cash machines and shop entrances for the purposes of begging. But a person physically approaching passers-by and demanding money and/or following people down the street haranguing them for money could also clearly be construed as aggressive begging.