

Agenda Item No: 8
Report To: Cabinet
Date: Thursday 9th June 2016
Report Title: Anti-social Behaviour and Enforcement
Report Author: James Hann, Health, Parking and Community Safety Manager
Portfolio Holder: Councillor Bradford, Portfolio Holder for Highways, Wellbeing & Safety



Summary: The report proposes a change to the delegations relevant to the Anti-social Behaviour, Crime and Policing Act 2014. The Borough of Ashford has had the lowest reported anti-social behaviour in the county for the last two years.

Key Decision: YES

Affected Wards: All

Recommendations: The Cabinet is asked to:

- i. Recommend to Council the revised delegations as relevant to the enforcement provisions contained within the Anti-social Behaviour, Crime and Policing Act 2014 as set out in paragraph 10.
- ii. Agree a penalty of £100 for Fixed Penalty Notices that can be issued by authorised officers of the Council as relevant to the Anti-social Behaviour, Crime and Policing Act 2014.

Policy Overview: The Council's five-year corporate plan includes a commitment to ensuring that enforcement powers are used effectively, to strengthen the approach to enforcement and to take a tougher line on compliance.

The issuing of Fixed Penalty Notices is relevant to the Borough Council's Enforcement Policy.

Financial Implications: No significant implications

Risk Assessment No – any risk arising from enforcement activity are routinely assessed on a case-by-case basis taking into account of the particular circumstances, the Council's Enforcement Policy and with reference to legal advice where needed.

Community Impact Assessment No

Other Material Implications: None

Exemption Clauses: Not applicable

Background Papers: None

Contacts: james.hann@ashford.gov.uk – Tel: (01233) 330513

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Purpose of the Report

1. To recommend to Council the revised delegations as relevant to the enforcement provisions contained within the Anti-social Behaviour, Crime and Policing Act 2014 as set out in paragraph 10.
2. To agree a penalty of £100 for Fixed Penalty Notices that can be issued by authorised officers of the Council and police as relevant to the above legal provisions.

Background

3. The number of anti-social behaviour (ASB) incidents reported to Kent Police for Ashford Borough continues to decrease. Reported ASB dropped in 2012/13 but in 2013/14 the reduction was by as much as 42%. The latest data that is available indicates a further 35% decrease for 2014/15. Ashford now has the lowest volume and rate in the county at 1,207 incidents that equates to a rate of 15.40 incidents per 1,000 people. Kent has an average rate of 27.39.
4. While it is impressive to have the lowest ASB figures in Kent, there were still 1,207 reported incidents and each incident has an impact on our communities. Fly-tipping continues to be a concern for both the Borough and Kent. It should be noted that fly-tipping, litter and noise are not included in Kent Police's ASB figures. The proposed delegations in this report will help the Council in this area of ASB work.
5. Enforcement can involve a wide variety of actions from providing advice and issuing warning letters through to the use of formal notices and prosecution. The legislation creates the framework in which we operate but it is our responsibility as an enforcement agency to find the best ways of using the law to protect our environment. To achieve this we take into account published standards and guidelines.
6. The Council takes a balanced approach to enforcement. Guidance and assistance is given whenever possible in order to minimise regulatory burden on those who are conscientious and generally compliant. The Council does not however hesitate in taking robust action against those who act irresponsibly, be that a businesses or individuals. Enforcement action will always to be taken by appropriately qualified/experienced officers. The decisions to prosecute, issue simple cautions, take injunctive action or to seek revocation, review or suspend a licence are taken by senior managers within the lead service and not the officer directly involved in the investigation.
7. This report draws on the aspirations of the Policy and Compliance Task Board as supported by Cabinet (minute reference 38/6/15 and 127/9/15). The Board that is chaired by Councillor Dehnel aims to review our enforcement approach in order to show a firm determination, particularly where there are clear and obvious intended breaches.

8. This report also follows on from the Council's Enforcement Policy, as agreed at the Cabinet in May 2016 (minute reference 430/05/16 refers).

Delegations under the Act

9. The Council agreed delegations under the Anti-social Behaviour, Crime and Policing Act 2014 in September 2014 (minute reference 117/9/14 refers). It is now proposed that as the legislation is not just about environmental crime and anti-social behaviour, delegations need to be held by all Heads of Service. This will enable them to authorise officers to serve relevant enforcement notices and take other appropriate enforcement work as applicable to their service areas
10. Delegated authority is therefore sought for the Chief Executive, Deputy Chief Executive, Corporate Directors and Heads of Service to exercise all functions of the Council under and in connection with the Anti-social Behaviour, Crime and Policing Act 2014; (including any orders or regulations made there under).

Expanding use of enforcement powers and involving staff in a wider range of enforcement work

11. The Act replaced pre-existing measures with six new measures for tackling anti-social behaviour and introduces a new absolute ground for possession of secure and assured tenancies associated with anti-social behaviour or criminality. A summary of the powers was provided in the report on the implementation of the Anti-social Behaviour, Crime and Policing Act 2014 in September 2014.
12. Two of these powers can be dealt with by Fixed Penalty Notices when this would be an appropriate enforcement option; Community Protection Notices and Public Spaces Protection Orders.
13. Community Protection Notices (CPNs) are intended to deal with particular, on-going problems, or nuisances that negatively affect the community's quality of life by targeting those responsible. The warning notices associated with CPNs have been used to tackle a wide range of problem behaviours including persistent dog fouling, ASB associated with "boy racers", nuisance parking on green spaces, and noise. They can be issued against any person over the age of 16 or a body, including a business. The Home Office notes that councils already take the lead in dealing with these kinds of issues.
14. A CPN can be issued if officers are satisfied on reasonable grounds that the conduct of the individual, business or organisation is having a detrimental effect on the quality of life of those in the locality; is persistent or continuing in nature; and is unreasonable. Therefore CPNs may be valuable enforcement tools for:
 - Area Housing Officers e.g. to deal with graffiti associated with tenants and misuse of common and green spaces

- Environmental Protection Officers e.g. to deal with an individual who regularly allows their dog to foul a communal area
 - Food and Health and Safety Team e.g. to deal with environmental health issues
 - Planning Officers e.g. to deal with amenity issues. A CPN may be appropriate to stop a person, business or organisation committing anti-social behaviour which spoils the community's quality of life.
15. The Public Spaces Protection Order (PSPO) is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of the area which apply to everyone. This could include, but is not restricted to, placing restrictions on the use of parks, alleyways, or communal areas to prevent problems with misuse of alcohol, dogs or noise. Local authorities will be responsible for making a PSPO but police officers and police community support officers can also play a role in enforcing the orders.
16. It is important that the specialist skills of officers are not diluted. It is the intention to enable the specialist enforcement officers to use the powers contained within the Act so that they have additional tools available to them that will be particularly useful for low-level anti-social behaviour.
17. In accordance with the Council's Enforcement Policy, as agreed at the Cabinet in May 2016 the action taken will be in proportion to the gravity and nature of the non-compliance. Factors that will be taken into consideration will include:
- the seriousness of the breach and the harm caused
 - the risk that the non-compliance poses to the safety or health of the public at large or to individuals
 - the actual or potential damage to economic well being or the quality of life of individuals or the community
 - where evidence suggests that the breach was pre-meditated
 - where false information has been supplied wilfully, or there has been an intent to deceive
 - where the case involves a failure to comply in full or in part with the requirements of a statutory approval, license, notice or order where there is a history of previous warnings or similar breaches
18. An operational procedure for the use of CPN will be developed for use by all officers. Officers are currently drafting the procedure and a working group of officers will review the procedures to ensure both best practice and compliance.
19. It is envisaged that officers will utilise an existing Northgate M3 database to record details of enforcement action i.e. the service of CPNs, FPNs, etc. This will enable the Council to maintain a record of all action taken using these provisions. This database is available to enforcement officers across the Council.

20. Officers are currently working on the processes so that FPNs payments can be made using existing transaction formats and checked against the Northgate software system.
21. Elected members and the public frequently report incidents of fly-tipping to the council. Fly-tipping is the illegal disposal of waste without a waste management licence and is a wide ranging offence. Serious offences committed on a commercial scale, such as the illegal disposal, contravention of permits and failure to comply with enforcement or suspension notices can attract unlimited fines and/or five years imprisonment and are dealt with by the Environment Agency.
22. Fly-tipping enforcement responsibilities in the Council fall to the Street Scene and Open Spaces Team and will be subject to a service enforcement policy.

Fixed Penalty Notices

23. The recommendation is that the penalty is set at the maximum level permitted by the Act. It is considered that the higher the fine, the greater deterrent effect it will have. A lower level could be set if members felt appropriate.
24. The Public Space Protection Orders and CPNs are specifically aimed at dealing with behaviour detrimental to others and a discounted penalty is not considered appropriate in either case. They would be an enforcement option in appropriate circumstances.
25. Payment of a FPN would discharge liability for a conviction for an offence and could be issued if appropriate in the circumstances. They would be issued by suitably authorised officers.
26. Under section 52 of the Act, a FPN may be offered to anyone who is believed to have committed an offence under section 48 of the Act. No proceedings may be taken for the offence before the end of the period of 14 days following the date of notice. The maximum fine for an offence under section 48 is £2,500 for an individual or not exceeding £20,000 in case of a body.
27. There are similar provisions under section 68 of the Act in relation to offences of breach of Public Space Protection Orders under sections 63 or 67 of the Act. The maximum fines for offences under these sections are £500 and £1000 respectively.

Financial Considerations

28. It is not envisaged that a large number of CPNs will be issued and the revenue it likely to be minimal. It is proposed that any income is used to offset training and personal protective equipment costs.
29. If a fine is unpaid or not paid in full within the required timescales, the Council will normally prosecute the perpetrator. This process takes significantly longer to recover the costs as the court determines the amount of costs payable to the council and over what period.

30. While some training may be required for individual staff it is anticipated that these will come from within existing budgets.

Risk Assessment

31. Legal advice has been taken and advises the delegation of authority be addressed as suggested paragraph 10.
32. The use of the powers contained within the Act are already covered within existing job descriptions, either explicitly or implicitly as part of an officers wider duties to deal with anti-social behaviour.

Impact Assessment

33. Any risk arising from enforcement activity are routinely assessed on a case-by-case basis taking into account of the particular circumstances and with the benefit of legal advice where needed.

Other Options Considered

34. Another option would be to leave the delegations as they currently stand. This would result in senior officers in Health, Parking and Community Safety authorising all CPNs issued by officers across the whole organisation. It is likely that this would artificially restrict awareness and indeed use of the provisions to just one service and therefore lose out on the opportunities of this enforcement tool being used for other important areas.

Consultation

35. Officers from the Corporate Enforcement Support and Investigations Team, Health, Parking and Community Safety Service, Legal and Democratic Services, Street Scene and Open Spaces and Planning and Development have been consulted or have contributed to the development of this report.

Implications Assessment

36. It is intended that the implementation and expansion in the use of enforcement powers across a range of services will provide a more flexible and responsive approach to anti-social behaviour in a balanced manner.
37. The delegations would enable Heads of Service to authorise the issuing of notices and other relevant enforcement action under the provisions of the Act. Heads of Service will need to ensure their staff are appropriately trained to issue the warnings/notices prior to authorising them. Several officers have undertaken training on issuing CPNs and FPNs and more training will be provided.
38. Initially any enforcement action will be checked with Corporate Enforcement Support and Investigations Team or Legal Services to ensure they are correctly drafted and they are the appropriate enforcement measure for the issue identified.

39. The principles of the Council's Enforcement Policy will be followed when implementing these enforcement provisions.
40. The Act provides a person or business receiving CPN at the magistrates' court.

Conclusion

41. This enforcement approach will provide a more flexible and responsive approach to dealing with anti-social behaviour as defined in its broadest sense. It will assist the Council in delivering its object of making Ashford an attractive place for those visiting, working and living here.

Portfolio Holder's Views

42. The Council and its community safety partners have made significant improvements in how they respond to issues of anti-social behaviour over the past three years, contributing to the Borough of Ashford having the lowest levels of ASB in the county. There is however, the need to continually improve and provide mechanisms which provides extra deterrent. Setting the fixed penalty notice fine at the highest level will clearly signal our position on enforcement and achieve this. Further delegating these powers to the Council's Heads of Service will make this process and future enforcement, more effective across our enforcement spectrum.

Contact: James Hann

Email: james.hann@ashford.gov.uk