

# **Public Space Protection Orders**

## **An Operational Policy**

### **Overview**

This policy covers the process that should be followed for reporting alleged offenders who have committed offences under the council's Public Space Protection Orders (PSPOs).

All officers are required to abide by this Policy. Any departure from the policy would be exceptional and must be approved by the Assistant Director of Operations, Development and Environment. Deviations may also require the authorisation of the Director, Executive Member or Head of Legal and Democratic Services depending on the scale and necessity. The policy is to be read in conjunction with the Process Map for Reporting Offenders (Appendix A)

### **Working Practices**

Officers must always carry their authorisation when on duty and must also be clearly identifiable by means of a uniform or a visible identity badge. Offenders will be reported using the Anti-social behaviour (ASB) report form which can be found in Appendix B of this document.

### **When to report offenders**

Offenders can only be reported where an officer has reason to believe a person has committed the offence and there is sufficient evidence to support a successful prosecution.

For some offences, for example, failing to put a dog on a lead in a dog control area, it may be appropriate to ask the offender to correct their behaviour first prior to reporting them for the offence.

In cases involving a failure to pick up dog faeces or littering it may not be appropriate to ask the offender to correct their behaviour and the offender will be reported for the offence unless an exemption applies.

### **How to report offenders**

The officer will approach the alleged offender and identify him/herself using their officer authorisation. Where appropriate the offender will be given an opportunity to correct their behaviour. If this is unsuccessful then the person will be informed of the offence that they have committed and will be asked to provide their name, address and date of birth. These details will be verified as far as practicable and

documentary evidence of identity will be requested, but not demanded, and will be preferable to other checks such as the electoral register.

Remember that officers from the council have no powers to detain a suspect therefore police assistance should be requested where necessary. Failure by a person to provide a PCSO, PC or CSAS accredited officer with their name and address, or to give false details is also a specific offence under sections 41, 50 and Schedule 5 and of the Police Reform Act 2002.

Any interview and questioning must be consistent with the practice and procedures established by the Police and Criminal Evidence Act 1984, Code C.

It is very important that the officer keeps a detailed account of their actions in their notebook so that in the event of a later prosecution these notes can be referred to.

### **Dealing with false details**

If a suspect is non-compliant or refuses to give a correct name and address the form should still be completed as far as reasonably practicable and returned to the Civil Enforcement Team. Identity can then be established through other means, i.e. by the police or vehicle registration check. Images of the offence from bodycams, CCTV and photographs can all be used to identify the offender.

### **Procedure for dealing with juveniles**

The name, address, age and date of birth of the young offender should still be obtained, together with the name and address of his or her parents or legal guardian. The young offender should be informed that his or her parents will be contacted and the ASB report form will also be shared with their local Youth Offending Team. To be read in conjunction with Juvenile Enforcement Procedure Environmental Crime Offences Juveniles 10 -17 years of age (Appendix C and associated appendices D to F

### **Disputes about enforcement**

Once an offender is reported for an offence they may decide to plead mitigation on the spot or decide to phone or write in contesting the fact that they have been reported for the offence. An alleged offender contesting the fact that they have been reported should be advised to refer to the details on the reverse of the ASB report form and told that they do not need to do anything until they have received further communication from the council.

## **What happens after an alleged offenders has been reported**

The officer's copy of the ASB report form shall be returned to the Civil Enforcement Team together with a completed section 9 statement on the reverse. The details will be entered into the chipside database.

A decision will then be made by an authorised officer as to whether the offender should receive a warning, a Fixed Penalty Notice (FPN) or should be referred for consideration for prosecution. This decision will depend on the specific circumstances of the case and also on the following factors: -

- Whether this is a first time offence or there is no record in the database of a similar offence in the last 12 months – in which case a warning may be sufficient
- Whether a warning has already been issued within the last 12 months – in which case an FPN may be appropriate.
- Whether an FPN has already been issued for this offence – in which case a prosecution may be appropriate.
- Whether the behaviour was so serious as to warrant a summons
- The age of the defendant

In all cases the decision will be taken in line with the councils Enforcement Policy <http://www.n-somerset.gov.uk/wp-content/uploads/2015/11/regulatory-services-enforcement-procedure-pdf.pdf>

### **Warnings**

If it is decided that a warning is sufficient, then a letter can be sent to the person, a template can be found in Appendix G

### **FPNs**

If it is decided that an FPN is appropriate, then a letter can be sent to the person, a FPN template and covering letter can be found in Appendix H.

FPNs provide a quick and effective way of dealing with low-level environmental crime offences by offering the offender an opportunity to pay a fixed penalty as an alternative to prosecution. Payment of a fixed penalty discharges an offender's liability for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of a prosecution case being pursued for the offence. Acceptance of a FPN does not create a criminal record.

A FPN may only be issued where the authorised officer believes a person has committed a fixed penalty offence and there is sufficient evidence to support a successful prosecution. FPNs are designed to deal with low-level offending, so

the nature and seriousness of an offence must be considered before a FPN is issued.

A recipient of a FPN can contest a FPN in writing by pleading mitigation or questioning why a FPN was issued. Although there are no statutory appeal procedures for contested FPNs, an independent senior officer will review the facts of the case when asked to do so by a recipient of a FPN.

There may be circumstances where it will be appropriate to withdraw a FPN. For example when information becomes available that was not available at the time the FPN was issued and it is determined that no offence has been committed or, that the notice has been issued to the wrong person. There may also be circumstances where it will be appropriate not to prosecute for non payment, for example it would not be in the public interest to prosecute.

A statutory appeal process exists for recipients of a FPN only in a Magistrates' Court on summary prosecution.

### **Failure to pay a FPN**

If the fixed penalty remains unpaid beyond the seven day extension the matter should be considered for prosecution.

### **Prosecution**

If it is decided that a prosecution is appropriate or an FPN has not been paid in respect of the offence then a [new instruction for legal services](#) will be completed and a file submitted.

The designated officer issuing the FPN should ensure that relevant witness statements and exhibits, including records of interviews, are contained in a prosecution file in accordance with the local authority's enforcement procedures, prior to review by a senior officer.

Legal Services will apply the principles of the enforcement policy and the evidential and public interest tests contained within the Code for Crown Prosecutors before a prosecution is commenced. The results of these considerations should be documented.

### **Appendices**

Appendix A – Process map for reporting offenders

Appendix B – ASB report form

Appendix C - Juvenile Enforcement Procedure Environmental Crime Offences

Juveniles 10 -17 years of age

Appendix D – Warning letter template to be sent to parent/guardian of persons aged 10 -15

Appendix E – Letter template inviting parents to a meeting to discuss the behaviour of a juvenile aged 10 – 15

Appendix F – Letter template to be sent to Parent/Guardian of juvenile aged 10-17 with FPN

Appendix G – Warning Template for persons aged 16 or over

Appendix H – Letter template to be sent to adults with FPN

Appendix I – Back Office Process

FOR APPROVAL