

Report of the Director of PLACE / Cabinet Member for Environment and Transportation

Cabinet Advisory Committee – 20 July 2016

**REVIEW OF FLYTIPPING
Current Protocols and Procedures in place within the City and County of Swansea**

Purpose	This document is not intended to be a policy document, it is a summary of the current procedures in place to deal with fly tipping.
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FOR INFORMATION

1. Introduction

- 1.1 The Waste Management Section has a duty to enforce a wide range of legislation including the Environmental Protection Act 1990 and the Clean Neighbourhood Act 2005. This covers aspects such as waste management duty of care, (flytipping) litter and dog fouling. Waste Management regards prevention as better than cure, it offers information and advice to those it regulates and seeks to secure co-operation avoiding bureaucracy and excessive cost. The 3 E's, Education, Engagement and Enforcement.
- 1.2 The purpose of this protocol and procedure document is to promote the enforcement message and to secure efficient compliance with legislation whilst minimising the burden to Parks & Cleansing, individuals, organisations and businesses. The information within this document is intended to be applied in a wide range of situations and it explains in general terms the approach adopted by Waste Management when carrying out the Council's enforcement duties.

2. Good Enforcement Practice

- 2.1 The City and County of Swansea, Waste Management section has adopted the Enforcement Concordat and looks to promote good standards of enforcement.
- 2.2 In addition, all officers will consider and follow the Code of Practice for Crown Prosecutors, issued by the Crown Prosecution Service, when taking decisions on whether to prosecute.

3. Human Rights Act 1998

- 3.1 In deciding to instigate enforcement action, particularly prosecution, officers will consider the rights and freedoms given to individuals under the Human Rights Act 1998, in particular taking account of Article 6, the right to a fair trial and Article 8 the right to respect for private and family life, home and correspondence.

4. Equal Opportunities

- 4.1 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. Equalities issues associated with enforcement will be monitored to ensure fairness.

5. Commitment to the Protocols and Procedures

- 5.1 The City and County of Swansea is committed to ensuring that all authorised enforcement officers carrying out enforcement work are trained and fully acquainted with the requirements of this document. All authorised officers must abide by this procedural document whenever making decisions on enforcement. Any departure from these protocols and procedures will be exceptional, documented, justified and approved by the Head of Service unless the delay in decision making would result in a significant risk to the public.
- 5.2 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.

6. Enforcement Principles

- 6.1 In enforcing any law, the City and County of Swansea recognises and affirms the importance of the following principles:

6.1.1 Standards

Waste Management's approach to litter, dog fouling, graffiti, and breaches in waste management duty of care (flytipping) is that prevention is better than cure. This involves actively working with residents, 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 or information from us, or a solicitor.

- 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.

6.2 Consistency

6.2.1 We will carry out 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.

6.3 Proportionality

6.3.1 We will ensure that action taken relates directly to the actual or potential risk to health, safety, the environment or significant economic disadvantage to the consumer or business.

6.4 Transparency

6.4.1 We will ensure that the enforcement action taken by the City and County of Swansea is easily understood by individuals, organisations and businesses having to comply with legislation, and that clear distinctions are made between legal requirements and advice or guidance about what is desirable, but not compulsory.

6.5 Objectivity

6.5.1 We will ensure that decisions are not influenced by the gender, ethnic origin, religious or political beliefs or sexual preferences of the offender, victim, witnesses or any other person in receipt of the department's services. Sensitive consideration will be given where persons involved are children, elderly, infirm or suffering from a mental disorder.

7. Enforcement Options

7.1 The Authority recognises and affirms the importance of achieving and maintaining consistency in its approach to making decisions that concern standards of enforcement action.

7.1.1 In making a decision officers will consider:

- The seriousness of the offence
- Any explanation offered by the defendant
- Any mitigating circumstances
- 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

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

- Promotion
- No action
- Informal action
- Formal action which may include: Fixed penalty notice, statutory (legal) notices, Simple (formal caution), prosecution

7.2 **Promotion**

7.2.1 To raise awareness of documentation regarding anti social behaviour, and about legal standards and good practice. This is typically achieved by issuing of press releases, leaflets, and other forms of written guidance available to the public and businesses, authority web site and by face to face contact.

7.3 **No Action**

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

7.4 **Informal Action**

7.4.1 This will be used to reinforce promotional activities and instances where, although the law may have been broken or a minor offence has been committed, it is not thought appropriate to take any other action. An informal action can be oral or written. In these instances, the enforcement officer will use their discretion but will be called upon to justify the exercise of that discretion.

7.4.2 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 explain that they are not legal requirements

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

7.4.4 If it is believed that such a warning is inappropriate or unjustified, then this procedure allows for the decision to be reviewed by a senior officer.

7.5 Formal Action

7.5.1 Authorised officers will consider the use of formal action as appropriate and this action could be:

- (i) Fixed Penalty Notices – These may only be served/cancelled by authorised officers who are deemed to be competent, suitably qualified and experienced.

The following circumstances are likely to warrant the use of a fixed penalty notice:

- Officer has witnessed the offence
- Officer believes 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 fixed penalty notice before, or has previously received no more than two notices in the previous twelve months
- At present, in Wales, there is no fixed penalty notice option for dealing with flytipping

- (ii) Statutory Legal Notices – Many Acts of Parliament enforced by the Authority provide for the service of statutory notices, which require a person, business or organisation to comply with specific legal requirements. When a formal notice is served, the method of appealing against the notice (i.e. if you feel that the notice is unjustified or excessive in its requirements) will be provided in writing at the same time. The notice will explain what is wrong, what is required to put things right and what will happen if the notice is not complied with satisfactorily.

In general, failure to comply with a properly written and served statutory notice makes the recipient liable to prosecution. In some cases the Authority is able to carry out works to comply with the notice and recover the costs of doing so from the recipient of the notice. In such cases, works will be carried out in default. In certain circumstances, it is possible to prosecute as well as serve a notice; failure to comply with the notice would be an additional offence.

- (iii) Simple (Formal) Cautions – Under certain circumstances, a Simple caution may be an alternative to prosecution and this will be considered prior to any decision to prosecute. A Simple caution is a serious matter and it is recorded on the Central Register of Convictions. It may be used to influence any decision, to determine whether or not to instigate proceedings, if the person should offend again and it may be referred to in any subsequent court proceedings. It will not be considered in respect of any offence committed more than three years prior to the caution.

The purposes of Simple (formal) cautions are:

- (a) To deal quickly and simply with less serious offenders

- (b) To avoid unnecessary appearance in criminal courts
- (c) To reduce the chance of offenders re-offending

Before issuing a caution, which will usually be administered by letter, the following conditions must be satisfied:

- (a) All cautions will be issued in accordance with Council procedures
 - (b) There must be evidence of guilt sufficient to give a realistic prospect of conviction
 - (c) The suspected offender must admit the offence, usually by signing a declaration
 - (d) The suspected offender must understand the significance of a formal caution and given an informal consent to the caution
 - (e) Should the offer of a formal caution not be accepted by a possible defendant, prosecution will be recommended to the Authority's Legal Department
- (iv) Prosecution – The Authority will use discretion in deciding whether to initiate Prosecution, but where the circumstances warrant it, prosecution without prior warning and recourse to alternative sanctions may take place.

7.5.2 Any decision to recommend prosecution will be the subject of peer review of all relevant evidence and information to enable a consistent, fair and objective decision to be made by the appropriate Head of Service.

The Authority will consider prosecution when:

- It is appropriate in the circumstances, as a way to draw attention to the need for compliance with the law and the maintenance of standards required by law, especially where there would be a normal expectation that a prosecution would be taken, or where, through the conviction of offenders, others may be deterred from similar failures to comply with the law: or
- Where there is the potential for considerable harm arising from the breach: or
- The gravity of the offence, taken together with the general record and approach of the offender warrants it.

7.5.3 The decision to prosecute will always take account of the criteria set down in the Code for Crown Prosecutors.

7.5.4 The Authority will also identify and prosecute or recommend the prosecution of individuals, including company directors and managers, if they consider that such a conviction is warranted and can be secured.

7.5.5 Before deciding to prosecute, there must be sufficient evidence for a realistic prospect of conviction, taking account of any defence that may be available, and it must be in the public interest.

7.5.6 The following public interest criteria will be taken into account when deciding on the relevance of legal proceedings, although this list is not exhaustive:

The prevalence of the type of offence:

- The need for a suitable deterrent
- The risk of danger or injury to the public
- The failure to comply with a statutory notice or respond to advice about legal requirements
- The disregard of legal requirements for financial reward
- Significant financial loss, potential or actual, to a third party
- Was the investigation the result of a complaint by a third party?
- A history of similar offences
- Persistent breaches of legislation
- Where fraud, gross negligence or guilty knowledge is a factor
- Minor breaches of a number of statutes

7.5.7 Where possible, an offender will be told as soon as sufficient evidence is obtained that a prosecution may follow.

7.5.8 All prosecutions will be brought without unnecessary delay.

8. Fixed Penalty Notices (as previously mentioned, there is no facility at present, to issue FPNs for flytipping in Wales).

8.1 On issue of the notice the recipient are given the opportunity of discharging any liability to conviction for the offence by payment of the fixed penalty notice within 14 days from the date of issue.

8.2 In the event of non –payment of a fixed penalty an offender will be notified in writing that if at the expiry of a further 14 days payment is not received, the matter will be referred to the local authority’s legal services and may result in a prosecution.

8.3 At present in Wales there is no FPN available for dealing with issues of Flytipping, however this is currently under review as the legislation has been made available in England in early 2016.

9. Application of procedures and protocols

9.1 All officers will refer to this document when making enforcement decisions.

9.2 It must be read in conjunction with relevant approved guidance on enforcement action. Regard must also be given to any relevant internal procedures. An easily accessible appeals procedure, including detailed guidance and a hotline for members of the public as detailed on fixed penalty notice forms and web site.

9.3 Any departure from this procedural document must be exceptional, capable of justification and be fully considered by the Head of Service before a final decision is taken. This proviso shall not apply where a risk of injury or to health is likely to occur due to a delay in any decision being made.

10. Review

10.1 It is intended that this procedural document will be subject to regular review, and changes introduced to accommodate new legislation and local needs.

OPERATIONAL PROCEDURES FOR THE REMOVAL OF FLYTIPPING

As previously discussed for the purpose of this review fly tipping is defined as “the illegal deposit of any waste onto land i.e. waste dumped or tipped on a site with no licence to accept waste”. Fly tipped waste generally consists of large items of rubbish dumped illegally on land instead of being disposed of properly at a landfill site or tip. The Law it states that “It is also an offence to permit or authorise fly tipping on land where a Waste Management Licence is not held. Where fly tipping involves the use of a vehicle, the driver can be prosecuted, as can the owner of the vehicle. The police have powers to seize vehicles used for fly tipping”. This applies whether it is publicly or privately owned land.

The Authority investigates waste on both registered private land and publicly owned land.

Private land owners have to remove the waste on their land but costs may be retrieved through the courts upon conviction of an individual. However the procedure for dealing with flytipping on unregistered land is currently under review due to the cost implications of the removal of the waste.

Domestic and commercial waste that is placed out for collection on the wrong day, time, week, coloured bag, is also classed as flytipping or littering but dealt with under the Environmental Protection Act 1990 Section 46 and section 47 respectively.

At present there are 3 primary ways in which flytipping is recorded and dealt with across the Authority.

FLARE is the authority’s recording procedure for dealing with complaints and service requests across the former Environmental Health Department.

1. Calls are received and logged onto FLARE via the Customer Call Centre
2. Information is received via email/telephone to Supervisors and/or Enforcement Officers from Councillors/public then added to FLARE
3. Flytipping is removed by operatives during the course of their working day and recorded on paper for administration to update FLARE

Daily Operational Activity

Calls that relate to flytipping are received and logged onto FLARE via the Customer Call Centre are automatically printed out in the enforcement office and allocated to area supervisors on a daily basis.

Supervisors then allocate the work according to the areas that staff are working in on that particular day.

Operatives are deployed from various sites across Swansea at present, these include, Clydach depot, Pipehouse Depot and Home Farm Depot.

Cleansing Operatives deploy to various designated areas across the authority on a daily basis to carry out their statutory duties of street cleansing. Statutory work tends to be Monday – Friday, unless we receive a call for essential work to be undertaken on the weekend. Such working patterns will be considered during the current Parks & Cleansing commissioning review

Calls that are received regarding flytipping via FLARE throughout the working day are given to area supervisors for them to allocate to operatives accordingly.

Where area supervisors are not based at Pipehouse Wharf depot, these calls are placed into area filing drawers, to be collected by supervisors or operatives throughout the day.

There are cleansing operational teams that carry out manual cleansing across 6 designated areas throughout the Authority, this includes the City Centre. There are 6 area supervisors.

There are 3 enforcement officers at present and 1 team leader. Enforcement officers rely on the removal and retrieval of evidence from flytipping, to be collected by the cleansing operatives.

Whilst carrying out their cleansing duties, where operationally possible:-

- operatives examine and remove domestic waste bags that have been incorrectly left out for collection
- Operatives open the bags to see if there is any evidence left in the bag from a householder
- Operatives make a note of the date, time and place of where the waste was found. They also sign the relevant paperwork should a witness statement be required for court proceedings
- If evidence is found this is then brought into the enforcement office, either by the area supervisor or the operative, at the end of the working day.

The enforcement office then write to the householder advising them of the correct day of collection etc. and advise what action may be taken in the future should problems persist. See Appendix 1 (section 46 EPA 1990 letter), Statutory Notice (21 days appeal time), Fixed Penalty Notice (£100 or early repayment £60), court action.

Larger scale flytipping on the highway that has been reported in the area, is also examined for evidence and removed. This evidence is brought into the enforcement office. Enforcement officers then carry out investigations as to

- where the waste has come from
- who removed the waste from the householder
- why it was flytipped.

Enforcement – where evidence is available every effort is made to gather enough evidence to proceed to court, however, in many cases, the waste is removed but no traceable evidence is available and no further action can be taken.

As flytipping is a criminal offence and can result in a criminal conviction officers carry out investigations in accordance to the PACE 2000 regulations. This includes officers obtaining further evidence, gathering witness statements, carrying out recorded interviews under caution (PACE 2000) and compiling prosecution case files.

On completion of the prosecution case file. These files are then forwarded to the Head of Service who in accordance with the Council's Enforcement Concordat approves the case file for legal action.

The files are then forwarded to our legal department for their review and subsequent court summons.

Flytipping offences can be heard at either a Magistrates court or Crown Court. Upon conviction, fines can be unlimited and result in a prison sentence of up to 5 years.

In reality however, fines at either court, usually rely on information from means testing and include legal and court costs.

All cases regarding flytipping are reported to our public relations department.

Use of Cameras

There are restrictions on the use of cameras for surveillance purposes. The Regulations of Investigatory Powers Act (RIPA) requires magistrates court permission, with stringent criteria to be met and reviewed regularly and Closed Circuit Television Surveillance (CCTV).

Where operationally possible, limited use, covert cameras are used for monitoring areas that have been highlighted as flytipping 'hot spots'. Due to the poor quality of evidence retrieved there are no cases pending court action.

Additional operational information

Welsh Government Performance indicators currently state that all reported flytipping is to be removed from relevant land within 5 working days.

Removal of flytipping is not carried out weekdays 'out of hours' or on Saturday or Sunday, unless there is an imminent public safety issue. Specific teams are in on weekend and will be re-directed to any emergency work

Removal of flytipping is carried out as part of cleansing operations daily duties. This may result in flytipping being left down for longer than 5 working days if anything of a larger scale takes longer due to arrangements of all logistics.

Cleansing operatives often have to return to Pipehouse Wharf depot to retrieve additional work, which could be avoided if work could be electronically sent to operatives.

Failure to complete the necessary paperwork at all stages of investigation and removal may result in no further action being taken. Again, electronic means of logging actions on the ground would assist.

At present only some waste is segregated for disposal. Most of the flytipped waste collected goes to landfill at a cost of approximately £100 per tonne.

The service level agreement with Housing will come to an end in August 2016 and waste on housing land will be removed by housing staff only. However, individual flytips could be addressed upon request at a fee, with additional resources.

There could be an income generated if the opportunity to work with public health and housing regarding house clearances under statutory notice were explored. This would prevent waste being flytipped by householder in order to comply with the statutory notice that had been served.

There could also be an opportunity for the Authority to deal with the removal of flytipped waste on private land on a commercial basis if resourced appropriately. This is something which will be raised during the current commissioning review process.

Appendix 1

The Occupier (s)
Address

P Manley

01792 635600

FAW/PM/

2016

Dear Sir / Madam

Re: ENVIRONMENTAL PROTECTION ACT 1990, SECTION 46

You have been sent this letter to inform you of the correct methods of waste disposal. The Council has to advise you that it provides a kerbside collection for your domestic waste and recycling provided you use:

- 3 Black sacks for domestic refuse.
- Green recycling sacks for paper and card.
- A separate green sack should be used for glass and cans.
- **Do not use Green recycling sacks for domestic waste.**
- Food waste should be placed in the green plastic bins.
- Garden waste should be placed in the council issued garden waste sack.
- Pink sacks for plastics.

The Council also provides a chargeable service to collect up to three bulky items provided prior arrangements are made by phoning 635600.

- Black sacks and Pink sacks are collected **fortnightly** on **Wednesday**.
- Green sacks and White garden waste are collected **fortnightly** on the alternate **Wednesday**.
- The green food waste bin is collected every **Wednesday**.

Your next fortnightly collection for green sacks and garden waste is on **2016 and fortnightly thereafter.**

Your next fortnightly collection for pink and black sacks is on **2016 and fortnightly thereafter.**

N.B. Collections for the Bank holiday weeks will run one day behind indicated from the dates above.

You are asked to present your waste for collection:

- On the kerbside at the front of **your** property.
- **No earlier than 7.00pm** the evening before and **no later than 7.00am** on the morning of collection.

I am writing to inform you that in future officers of the authority will be in the area monitoring the situation and serving enforcement notice specifying refuse and recycling collection arrangements. Failure to comply with the requirements of the notice may bring a fine of up to £1,000.

Please help us to keep your local neighbourhood clean.

If you are not sure about what you have to do or need any information and advice or want to discuss this matter further, **please contact me on Tel. No: (01792) 635600.**

Yours faithfully