

SWALE BOROUGH COUNCIL
ENVIRONMENTAL
ENFORCEMENT AND
PROSECUTION POLICY

1. INTRODUCTION

This policy shall be read in conjunction with the Swale Borough Council overarching corporate enforcement policy <https://services.swale.gov.uk/assets/Strategies-plans-and-policies/Enforcement%20Policy/Enforcement%20Policy.pdf>

This policy covers the principal environmental offences regulated by the Environment Response Team (and other teams from time to time), including (but not restricted to) aspects of anti-social behaviour, public space control orders, fly tipping, littering, graffiti, flyposting, breaches of the duty of care for householders and businesses, dog fouling, canine control, pest control, noise abatement, making property secure, abandoned vehicles, animal licensing and welfare requirements.

The aim of this policy is to assist Environment Response Team officers in the decision-making process in taking enforcement action against offenders for environmental and anti-social offences. Alongside the corporate enforcement policy, these documents set out a consistent approach regarding the use of tools available to achieve effective and efficient compliance with the legislation.

In particular the Legislative and Regulatory Reform Act 2006, Part 2 and the Regulators Code having statutory effect from 2014 requires Local Authorities to have regard to the principles of good regulation when exercising enforcement powers.

The Council will exercise regulatory activities in a way which is:

- Proportionate – when taking action in respect of non-compliance when this is identified
- Accountable – The Council's activities will be transparent with clear policies in respect of enforcement procedures
- Consistent – Each case will be considered on its merits, however a consistent approach will be taken where circumstances are similar
- In respect of this we will as part of any regulatory prosecution have regard to the Code for Crown Prosecutors and the enforcement concordat.

2. ENFORCEMENT WITHIN THE ENVIRONMENT RESPONSE TEAM

If applicable (and in addition to the legislation listed in the corporate policy) the requirements of the Regulation of Investigatory Powers Act 2000 shall be considered during investigations. The Act works in conjunction with existing legislation e.g., Human Rights Act 1998. The Council's RIPA procedures must be always complied with and the authorisation must be formally recorded within the corporate systems.

Enforcement options for the function will be considered on a case-by-case basis, but examples may include:

- Providing advice and support to achieve compliance
- Written warning
- Serving legal enforcement Notices, Orders, Community Protection Notices
- Refusal, suspension, or revocation of licences
- Injunctions
- Issuing persons with Fixed Penalty Notices
- Carrying out work in default/cost recovery action
- Seizure/application for forfeiture
- Issuing persons with a simple caution
- Prosecution or other legal proceedings
- Proceeds of Crime Applications

NB – The legislative Acts for which enforcement can be taken are listed within the Swale BC Constitution.

Consistency

Officers will be given the necessary training to undertake their investigative tasks. This will include training new starters; refresher training for experienced officers; and training on new legislative requirements when necessary.

Internal procedures and some standard letters will be provided for routine investigations. Officers will update the corporate electronic case management system with the actions undertaken in a timely manner. Case reviews may be undertaken on an ad hoc basis between officers and the manager in order to ensure consistency between officers and enforcement outcomes. Cases which have been recommended for a 'simple caution' or prosecution will be approved by the relevant manager and then the Head of Service to ensure that the recommendation is appropriate. The Legal team will also review these cases prior to the recommendation being enacted.

Statutory Notices

Certain legislation gives Swale Borough Council the powers to issue statutory notices. These notices may require the persons served to take specific action or cease certain activities in accordance with legislation. A statutory notice will clearly set out actions which must be taken and the timescale within which they must be taken. It is likely to require that any breach is rectified and/or safeguards have been put in place to prevent future breaches. Where a statutory notice is issued, an explanation of the appeals process will be provided to the recipient.

Some notices issued in respect of premises may be affixed to the premises for public inspection, and/or registered as a local land charge. Swale Borough Council reserves the right in some circumstances, and in particular in the most serious of cases, to prosecute, in addition to the use of a statutory notice to gain compliance.

Fixed Penalty Notices

In order to streamline enforcement processes, Fixed Penalty Notices (FPNs) have been introduced as a common sanction for low level environmental crime. Due to the increase in the use of FPN's some information has been provided on them.

FPN's may be issued for environmental offences, where prescribed by legislation. Examples include littering, dog fouling, fly posting, graffiti, abandoned vehicles, refuse left out inappropriately, failure to produce waste carrier documents or duty of care documents, fly tipping/ illegal disposal of waste, duty of care offences by the public, smoke free offences, Public Space Protection Order breaches, breaching a Community Protection Notice, anti-idling, working on/selling vehicles on a road or for noise offences.

The use of FPN's will be in accordance with any relevant legislation and guidance. For example, litter and fly tipping FPN's will be issued in accordance with Part 1A of the DEFRA Code of Practice for litter and refuse

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/907500/part1a-enforcement-guidance1.pdf

FPN payment amounts will be set through the annual fees and charges process. The amounts will be published on the Swale BC website within the latest fees and charges document.

If a FPN is not paid in full within the prescribed period legal proceedings may be considered.

The use of FPN's provides the opportunity for an offender to discharge their liability for prosecution by accepting and paying a set amount. We cannot accept payments in instalments. If paying the whole amount of a fixed penalty is a problem, we can offer a 30-day extension of time to pay if requested in writing. This is from the date of the original offence. If there is a particular case of hardship, the recipient can request a longer extension. This must be made in writing and must be supported by evidence of hardship, such as income details.

There are no formal grounds of appeal against a Fixed Penalty Notice. This is because a Fixed Penalty Notice is an invitation/opportunity to avoid prosecution. In essence this means that whilst not an admission of guilt, it is an agreement that an offence has been committed and that by paying the sum of money specified no further action will be undertaken by the Borough Council.

The council accepts that occasionally information that was not made clear at the time of the offence may have a bearing on whether the council should or is able to pursue non-payment of fixed penalty notices. Representations may be made by the person upon whom a FPN is served. **This is not an appeal system against the FPN**, but an opportunity for information to be presented to the authority whilst considering whether to proceed to prosecution. Representations must be made in writing before the payment period expires. These representations can be made by others, on behalf of alleged offenders with their permission. This could be via our Customer Service Centre (CSC), or front desk at the Council Offices.

Deciding whether to prosecute

Officers will comply with the corporate enforcement policy and consider all factors listed within.

A FPN will not be appropriate where:

- despite the best efforts of the Authorised Officer to inform the offender, the offender appears unable to understand the action being proposed.
- the suspect is a non-resident foreign national, as the penalty will not be enforceable
- no satisfactory address exists for enforcement purposes, for example where the officer has reason to believe that the suspect is homeless or sleeping rough.
- where it is known that the offender has previous convictions or a caution for the offence, or has been previously issued with a number of FPNs, particularly if they have not been paid, where acting through the Courts will be the appropriate action.

Issuing FPN's to, or prosecuting anyone under the age of 18 will only take place once a thorough investigation has taken place. In the cases where a decision has been made in accordance with this policy (and the relevant guidance) to proceed with taking enforcement action against a person under the age of 18, a further review of the case will be made. Depending on the age of the person this may involve Children's Services, Youth Offending teams or other agencies as appropriate. The investigation may also involve engagement with the parents or guardians of the individual. If an FPN is issued to a person under 18 that can't prove it at the time, this can be retracted at a later date if such identification is provided.

In circumstances where none of the other form of enforcement action are appropriate a prosecution will be considered following 'The Code for Crown Prosecutors', identifying if there is enough evidence to bring the prosecution and whether it is in the public interest to do so,

Recovery of costs

The Council will normally seek to recover all costs incurred through investigation and legal action, works in default, waste clearance, waste stabilisation, waste disposal, graffiti removal, pollution control, site remediation, environmental monitoring, damage to council property or land, etc. The recovery of costs will be pursued by any available means.

Working with partners

The Council will work with other agencies including Social Housing providers, The Environment Agency, RSPCA, Kent Fire and Rescue Service and other local authorities such as Kent County Council and the Police in taking enforcement action. In cases where both the Council and another agency have jurisdiction, an opportunity will be given to that agency to investigate. As an example, the Environment Agency is most likely to investigate incidents of major fly tipping, or organised commercial fly tipping.

The Environmental Response Team will also work with other internal departments such as the Community Safety Unit, the Planning Department and Environmental Health.

8. REVIEW OF POLICY

The implications and effectiveness of this policy will be continually monitored with a full review in five years.

This Policy will be reviewed regularly to reflect changes indicated by internal monitoring, by legislation or by guidance.

Appendix II – Equalities Impact Assessment

Equality Impact Assessment

An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in decision-making.

When to assess

An EIA should be carried out when you are changing, removing or introducing a new service, policy or function. The assessment should be proportionate; a major financial decision will need to be assessed more closely than a minor policy change.

Public sector equality duty

The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:

- 1) Eliminate discrimination, harassment and victimisation;
- 2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- 3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

These are known as the three aims of the general equality duty.

Protected characteristics

The Equality Act 2010 sets out nine protected characteristics that apply to the equality duty:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership*
- Pregnancy and maternity
- Ethnicity
- Religion or belief
- Gender
- Sexual orientation

*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

We also ask you to consider other socially excluded groups, which could include people who are geographically isolated from services, with low literacy skills or living in poverty or low incomes; this may impact on aspirations, health or other areas of their life which are not protected by the Equality Act, but should be considered when delivering services.

Due regard

To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations.

How much regard is 'due' will depend on the circumstances and in particular on the relevance of the aims in the general equality duty to the decision or function in question. The greater the relevance and potential impact, the higher the regard required by the duty. The three aims of the duty may be more relevant to some functions than others; or they may be more relevant to some protected characteristics than others.

Collecting and using equality information

The [Equalities and Human Rights Commission](#) (EHRC) states that 'Having due regard to the aims of the general equality duty requires public authorities to have an adequate evidence base for their decision making'. We need to make sure that we understand the potential impact of decisions on people with different protected characteristics. This will help us to reduce or remove unhelpful impacts. We need to consider this information before and as decisions are being made.

There are a number of publications and websites that may be useful in understanding the profile of users of a service, or those who may be affected.

- The Office for National Statistics Neighbourhoods website <https://www.ons.gov.uk/>
- Swale in 2016 <https://archive.swale.gov.uk/assets/About-us/Summary-of-Key-Data-for-Swale.pdf>
- Kent County Council Facts and Figures about Kent <http://www.kent.gov.uk/about-the-council/information-and-data/Facts-and-figures-about-Kent>

- **Health and Social Care data**
[http://www.kpho.org.uk/search?mode=results&queries_exclude_query=no&queries_exclud
efromsearch_query=yes&queries_keyword_query=Swale](http://www.kpho.org.uk/search?mode=results&queries_exclude_query=no&queries_exclud
efromsearch_query=yes&queries_keyword_query=Swale)

At this stage you may find that you need further information and will need to undertake engagement or consultation. Identify the gaps in your knowledge and take steps to fill these.

Case law principles

A number of principles have been established by the courts in relation to the equality duty and due regard:

- Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty
- Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
- A public authority cannot satisfy the duty by justifying a decision after it has been taken.
- The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
- The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
- The duty is a continuing one.
- It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.
- The general equality duty is not a duty to achieve a result, it is a duty to have due regard to the need achieve the aims of the duty.
- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

Lead officer:	Jo Mapp
Decision maker:	Cabinet
People involved:	Jo Mapp, Martyn Cassell
Decision: <ul style="list-style-type: none"> • Policy, project, service, contract • Review, change, new, stop 	A review of the Environmental Response team's Environmental Enforcement and Prosecution Policy
Date of decision: The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	SMT on 22 February Cabinet on 16 March 2022
Summary of the decision: <ul style="list-style-type: none"> • Aims and objectives • Key actions • Expected outcomes • Who will be affected and how? • How many people will be affected? 	<p>The Environmental enforcement and prosecution policy aims to;</p> <p>Assist Environment Response Team officers in the decision-making process in taking enforcement action against offenders for environmental and anti-social offences</p> <p>This policy should assist with achieving consistency in enforcement. It sets out a short and succinct statement of what those who are on the receiving end of enforcement action should expect from the Council in how it discharges its responsibilities.</p> <p>The Council will exercise regulatory activities in a way which is:</p> <ul style="list-style-type: none"> • Proportionate – when taking action in respect of non-compliance when this is identified • Accountable – The Councils activities will be transparent with clear policies in respect of enforcement procedures • Consistent – Each case will be considered on its merits, however a consistent approach will be taken where circumstances are similar • In respect of this we will as part of any regulatory prosecution have regard to the Code for Crown Prosecutors and the enforcement concordat. <p>Members of the public that commit an offence will be affected by this policy. They are not necessarily Swale residents. This EIA focusses on how we deliver the proportionate levels of enforcement, making sure we do not specifically target those within the protected characteristics.</p> <p>The number of residents affected does entirely depend on the enforcement levels or offences committed in that particular time period.</p> <p>There are multiple layers of oversight in the delivery of this policy. Officers take enforcement action following suitable</p>

	<p>investigations, following department procedures, recording information on our case management system, sharing case information with colleagues and movement to formal action is signed off by senior managers. This allows checks and balances all throughout the process. Any anomalies are quickly corrected and enforcement is removed.</p> <p>Officers conduct randomly selected reviews of litter enforcement penalty notices to ensure contractors are not targeting vulnerable residents. This is particularly relevant to younger and older people who may not understand the laws, those with a disability or those who may have language difficulties.</p> <p>Enforcement notices are explained to the individual at the time of issue and contact details are shown to enable people to check what has happened. Where there is a lack of understanding, all efforts are made to convey what is happening and can be referred back to office for additional support.</p> <p>Regular training is offered to SBC staff and we engage with contractors to ensure their training is relevant, staff are supervised and errors are managed.</p> <p>Statistics are monitored to see if there are any patterns of enforcement that may impact the protected characteristic groups.</p> <p>All of the above mitigates the ratings that are shown below in the impact against the protected characteristics.</p>
<p>Information and research:</p> <ul style="list-style-type: none"> • Outline the information and research that has informed the decision. • Include sources and key findings. • Include information on how the decision will affect people with different protected characteristics. 	<p>The overarching corporate policy also sets out the principles of good regulation (consistent, targeted, transparent, accountable, proportionate and helpful) which should be applied to all of the Council's enforcement activity.</p> <p>We have included the appropriate updated legislation which governs the way in which we take appropriate enforcement action.</p> <p>We will provide easy, clear and convenient access to our services. We will achieve this by –</p> <ol style="list-style-type: none"> 1. Providing Council documents in alternatives formats, i.e. large print, audio, different language; 2. Providing a choice of access to our services through a balance of cost-effective and convenient options, and pursue initiatives to improve customer service at reduced cost (eg. face-to-face, electronic, phone or written letter depending on customer need) 3. Treating all of our customers with respect by being polite, welcoming and courteous;

	<p>Supporting our vulnerable residents – we will achieve this by;</p> <ol style="list-style-type: none"> 1. Through the work of the Community Safety Partnership seek to identify and support vulnerable victims of crime and anti-social behaviour, focusing on those issues and vulnerable groups as identified in the annual Community Safety Strategic Assessment. 2. Ensure that any necessary referrals are completed i.e. safeguarding <p>We will have respect and understanding of those residents with protected characteristics that we interact with, and these will be taken into account alongside any enforcement action taken.</p>
<p>Consultation:</p> <ul style="list-style-type: none"> • Has there been specific consultation on this decision? • What were the results of the consultation? • Did the consultation analysis reveal any difference in views across the protected characteristics? • Can any conclusions be drawn from the analysis on how the decision will affect people with different protected characteristics? 	<p>Over 1500 residents of Swale completed a ‘waste survey’ and a large number of responses advised that they were in favour of enforcement for waste/litter offences and would like to see more enforcement taken and promoted.</p> <p>This is a refresh of a policy that has been in place for many years. It also follows the corporate enforcement policy https://services.swale.gov.uk/assets/Strategies-plans-and-policies/Enforcement%20Policy/Enforcement%20Policy.pdf</p> <p>This document cites; Enforcement decisions and actions will also be made with due regard to:</p> <ul style="list-style-type: none"> • Human Rights legislation; • Crime and Disorder legislation; • Equal rights and anti-discrimination legislation; • All other relevant, applicable legislation.

<p>Is the decision relevant to the aims of the equality duty? Guidance on the aims can be found in the EHRC’s PSED Technical Guidance - https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance</p>	
Aim	Yes/No
1) Eliminate discrimination, harassment and victimisation	Yes
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	Yes
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	Yes

Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

Characteristic	Relevance to decision High/Medium/Low/None	Impact of decision Positive/Negative/Neutral
Age	High for under 18's and those over 60 years	Neutral *Only after we have mitigated but has the chance of being negative for certain age groups
Disability	Medium – lack of understanding of the process	Neutral
Gender reassignment	None	Neutral
Marriage and civil partnership	None	Neutral
Pregnancy and maternity	Low	Neutral
Ethnicity	Medium – through lack of understanding of process	Neutral
Religion or belief	Medium	Neutral
Gender	Low	Neutral
Sexual orientation	None	Neutral
Other socially excluded groups ¹	Low *although we ask for a representation in writing this can come via any form i.e., CSC, front desk and they can do it for them.	Neutral

<p>Conclusion:</p> <ul style="list-style-type: none"> • Consider how due regard has been had to the equality duty, from start to finish. • There should be no unlawful discrimination arising from the decision (see PSED Technical Guidance). 	<p>Summarise this conclusion in the body of your report</p> <p>Swale Borough council has removed or minimised disadvantages suffered by people due to their characteristics by ensuring that we are consistent and transparent with our approach to enforcement. There are regular checks and reviews of enforcement action, by multiple officers. We engage regularly with contractors working on our behalf to ensure training is up to date and errors are shared.</p>
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¹ Other socially excluded groups could include those with literacy issues, people living in poverty or on low incomes or people who are geographically isolated from services

Advise on the overall equality implications that should be taken into account in the final decision, considering relevance and impact.	We will take steps to meet the needs of people from protected groups where these are different from the needs of other people.
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Timing

- Having ‘due regard’ is a state of mind. It should be considered at the inception of any decision.
- Due regard should be considered throughout the development of the decision. Notes should be taken on how due regard to the equality duty has been considered through research, meetings, project teams, committees and consultations.
- The completion of the EIA is a way of effectively summarising the due regard shown to the equality duty throughout the development of the decision. The completed EIA must inform the final decision-making process. The decision-maker must be aware of the duty and the completed EIA.

Full technical guidance on the public sector equality duty can be found at:
<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

Please send the EIA in draft to Bob Pullen in the Policy and Performance Team (bobpullen@swale.gov.uk – 01795 417187) who will refer it on to the EIA Group who will peer review it and let you have any comments or suggested changes. This Equality Impact Assessment should form an appendix to any SMT or committee (e.g. Cabinet or Council) report relating to the decision and a summary should be included in the ‘Equality and Diversity’ section of the standard committee report template under ‘Section 6 – Implications’.