

Environmental Compliance Enforcement Policy

Date: January 2015
Version: 1.1

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Policy and Performance, Environment and Enterprise

Environmental Compliance Enforcement Policy v1.1

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1 Introduction

Harrow Council is committed to maintaining a clean and safe environment for the benefit of everyone in the borough. The commitment recognises the Council's responsibility to keep the streets and local environment clear of litter and obstructions and deal with other local environmental quality issues.

Along with all other local authorities in England, Harrow Council now has extended powers to enable enforcement of legislation intended to protect both the individual and community as a whole. This activity is set within the following legislation:

Environmental Protection Act 1990 (as amended)
Clean Neighbourhoods and Environment Act 2005
Highways Act 1980
Refuse Disposal (Amenity) Act 1978
London Local Authorities Act(s) 1995-2007
Town and Country Planning (Control of Advertisement) Regulations 1990 (as amended)
Greater London Council (General Powers) Act 1982
Criminal Justice and Public order Act 1994
Anti-Social Behaviour Act 2003 (as amended)
Anti-Social Behaviour, Crime and Policing Act 2014

This document sets out the enforcement policy of Harrow Council and how the Council uses this legislation and powers to ensure an effective, consistent and clear approach to street environment enforcement.

It covers offences including the following:

Littering
Waste
Noise nuisance
Distributing of free literature without consent
Failure to produce authority (certificate of registration) to transport controlled waste
Failure to produce transfer notices
Street litter notice
Abandoned vehicles
Graffiti and fly posting
Nuisance vehicles

These services enforce a wide range of legislation that aims to protect the interests and rights of people in relation to the environment that they use.

Within this legislative framework and to promote a clean environment, fixed penalty notices (FPN) can be used. An FPN is a financial penalty that officers can issue directly to offenders once their offence has been established. Payment of the FPN discharges the offender from any consequent legal action regarding the offence. However if the FPN isn't paid then the offender may face legal proceedings.

The implementation of FPNs delivers a firm commitment made in the Council's Corporate Plan to introduce on the spot fines for littering in our streets to help clean up Harrow. This will make Policy and Performance, Environment and Enterprise

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a difference for communities and local businesses by addressing environmental crime and improving Harrow for its residents and visitors and supporting a vibrant business environment.

The term “enforcement” is used in this policy to mean “actions taken by Council officers to prevent or rectify infringements of legislation”. These actions include: preventative work (including advice), informal warnings; and more formal actions such as the service of statutory notices, prosecutions and injunctions.

This Enforcement Policy sets out the general principles and approach, which Harrow Council will follow when enforcing environmental and highway legislation as the enforcing authority. Going forward, it will also take into account future guidance issued by Government, including the Department for Business Enterprise, Better Regulation Delivery Office (BRDO) and Regulatory Reform Statutory Code of Practice for Regulators. These principles cover all areas of enforcement within environmental and highways services.

Harrow Council regards the principal of prevention as a better means of dealing with compliance than enforcement and offers information and advice to those the Council regulates, and seeks to secure compliance avoiding bureaucracy or excessive cost. Individuals and businesses (‘Duty Holders’) are encouraged to act responsibly and to do so in all activities that could affect the highway and environment.

This policy is followed by the Council and any person(s) / company acting on its behalf in the capacities above. Harrow Council ensures that all appointed officers are competent and trained in the use of this policy.

2 Background

On 18 September 2014 a paper was presented to Harrow Cabinet seeking approval to use Fixed Penalty Notices (FPNs) as an enforcement tool for certain types of environmental crime and outlining its benefits. At this meeting, Cabinet approved the use of FPNs including delegation and authority levels. This policy supports the decisions made by Cabinet.

2.1 Previous enforcement

Issues such as litter, graffiti and abandoned cars are matters that are frequently raised by residents throughout the Borough and through Ward Councillors and MPs. These areas were previously enforced, but such enforcement was limited and time consuming. Enviro-crime enforcement was confined to taking informal action or prosecuting. As a result, issues such as littering did not get the effective enforcement needed due to time and resources, leading to increased environmental degradation.

2.2 Current enforcement

The Clean Neighbourhoods and Environment Act 2005 widened the types of offences for which FPNs can be used and the persons that can issue them. This was enhanced by the new ASB, Crime and Policing Act 2014.

The introduction of FPNs allows low level environmental crime in the Borough to be tackled, using a more cost effective and proportionate response to these offences. The FPN level is set to provide a deterrent aspect which goes towards the need to educate not just enforce.

The implementation of FPNs delivers a firm commitment made in the Corporate Plan to introduce on the spot fines for littering in our streets to help clean up Harrow. It also links directly to two of the Council's priorities. These are:

1. Making a difference for communities: by addressing environmental crime and improving an area for its residents, visitors and businesses.
2. Making a difference for local businesses: the tackling of environmental crime supports a vibrant business environment.

The ultimate aim is to ensure that residents and others increasingly take control of their own behaviour to the benefit of the wider community.

2.3 Consultation and Engagement

Consultation took place on the use of Fixed Penalty Notices between 15th August and 5th September 2014. This was by an on-line survey supported by self-completion questionnaires. A total of 327 surveys were completed.

The majority of respondents said there was a problem with the environmental issues raised. This ranged from 94% for litter to 59% for abandoned cars. Around 9 out of 10 respondents agreed that these matters should be dealt with by way of fixed penalty notice enforcement. The figures range from 94% for litter to 85% for leaflets.

3 The Principles of Enforcement

Harrow Council believes in firm but fair enforcement of environmental and highway law. This is informed by the principles of proportionality in applying the law and securing compliance; consistency of approach; targeting of enforcement action; transparency about how the Council operates and what those regulated may expect; and accountability for the Council's actions. These principles apply both to enforcement in particular cases and to the management of enforcement activities as a whole.

3.1 Proportionality

Proportionality here means relating enforcement action taken to the risk¹ to health and the environment. Those whom the law protects and those on whom it places duties expect that action taken by Harrow Council to achieve compliance or bring businesses or individuals to account for non-compliance should be proportionate to any risks to health and the environment, or to the seriousness of any breach, which includes any actual or potential harm arising from the breach of the law.

¹ In this policy, 'risk' (where the term is used alone) is defined broadly to include a source of possible harm, the likelihood of the harm occurring, and the severity of any harm to health and the environment.

In practice, applying the principle of proportionality means that Harrow Council will take particular account of how far the individual / business has fallen short of what the law requires and the extent of the risks to people arising from the breach.

Some duties may be specific and absolute. Others require action as far as is reasonably practicable. Harrow Council will apply the principle of proportionality in relation to both kinds of duty.

3.2 Targeting

Targeting means making sure that regulatory effort is directed primarily towards those whose activities give rise to serious and / or persistent non compliance. Action will be primarily focused on breaches of the law or those directly responsible for the risk and who are best placed to control it.

Any enforcement action will be directed against those responsible for a breach. This may be businesses, residents or visitors to the Borough. Where several people / businesses have been identified in the act(s) of non-compliance, Harrow Council may take action against more than one when it is appropriate to do so in accordance with this policy.

Harrow Council will ensure that an appropriate senior officer is informed through daily reporting when officers issue warnings, fixed penalty notices, issue formal cautions or prosecute.

3.3 Consistency

Consistency of approach does not mean uniformity. It means taking a similar approach in similar circumstances to achieve similar ends.

Individuals and / or businesses found to be carrying out similar activities can expect a consistent approach from Harrow Council in the advice tendered; the use of enforcement notices; decisions on whether to prosecute; and in the response to incidents and complaints.

Harrow Council recognises that in practice consistency is not a simple matter. Officers are faced with many variables including the degree of risk, the attitude of individuals, any history of incidents or breaches involving the individual / business, previous enforcement action and the seriousness of any breach, which includes the persistence of the offence and any cumulative impact aspect.

3.4 Transparency

Transparency means helping people understand what is expected of them and what they should expect from Harrow Council. It also means making clear to businesses and individuals, not only what they have to do, but where relevant, what they should not. That means distinguishing between statutory requirements and advice or guidance about what is desirable but not compulsory.

Businesses and individuals also need to know what to expect from an Officer and what rights of complaint are open to them. This is linked directly to the policies and procedures of the Council, including the expectations placed upon Officers in the conduct of their duties.

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The following can be expected when an officer visits a business:

When officers offer businesses and individual's information or advice, face to face or in writing, including any warnings, officers will tell them what to do to comply with the law, and explain why. Officers will, if asked, write to confirm any advice, and to distinguish legal requirements from best practice advice.

In the case of fixed penalty notices the officer will discuss the notice and explain the payment method. The notice will state the offence, date and time of offence, reason for issue of FPN, and in the Officers opinion what legislation has been breached.

3.5 Accountability

Regulators are accountable to the public for their actions. This means that Harrow Council has policies and standards (as set out in this document) against which it can be judged. The Council also has a mechanism for dealing with comments and handling complaints associated with enforcement.

The full procedures for this are available from Harrow Council.

4 The Purpose and Method of Enforcement

Harrow Council's Environmental Compliance Law Enforcement function is to ensure that the legislative requirements are met. This is achieved through a balance of proactive interventions and enforcement. This approach includes the proactive inspection of the highway including skip, crane and scaffolding usage. Additionally, the following up of complaints and service requests related to environmental or highway requirements, and the use of enforcement to seek compliance and remedy damage.

The purpose of enforcement is to:

- Ensure that individuals and businesses take action to deal immediately with failures of their duties,
- Promote and achieve sustained compliance with the law,
- Ensure that those that breach legal requirements are held to account, which may include bringing alleged offenders before the courts.

Harrow Council has a range of interventions at its disposal in seeking to secure compliance with the law and to ensure a proportionate response to criminal offences. Officers may offer information and advice, both face to face and in writing. This may include a warning that in the opinion of the officer, they are failing to comply with the law. Where appropriate, officers may also serve fixed penalty notices (where applicable), issue simple cautions, revoke licences and they may prosecute.

Investigating the circumstances encountered during interventions or following incidents or complaints is essential before taking any enforcement action. In deciding what resources to devote to these investigations, Harrow Council will have regard to the principles of Policy and Performance, Environment and Enterprise

enforcement set out in this statement and the objectives of the Council. Each case will ultimately be assessed on its specific merits.

Harrow Council will use discretion in deciding when to investigate or what enforcement action may be appropriate. Officers will refer to this policy, and associated guidance, when determining enforcement action. Such judgements will be made in accordance with the principles of the Enforcement Concordat, the Regulators Compliance Code and Regulatory Reform Act 2006.

Any proposed enforcement action relating to prosecution and simple cautions will result in completion of a Legal Review Form, and the proposed action signed off by the Service Manager.

All officers when making enforcement decisions shall abide by this policy and guidance issued in conjunction with it. While case law has shown that the enforcement policy such as this is “guidance”, it is accepted good practice that such policies are followed unless good cause is given why it was not. Ultimately, the spirit of the enforcement policy must be maintained, especially in terms of being consistent, transparent and proportional.

4.1 Investigation

Harrow Council uses discretion in deciding whether incidents, complaints, or cases should be investigated. This is based on risk, potential legislative breach and seriousness of the issue.

Investigations are undertaken in order to determine:

- Causes;
- Whether action has been taken or needs to be taken to prevent a recurrence and to secure compliance with the law;
- Lessons to be learnt and to influence the law and guidance;
- What response is appropriate to a breach of the law.

To maintain a proportionate response, most resources available for investigation of incidents will be devoted to the more serious circumstances. The Council recognises that it is neither possible nor necessary to investigate all issues of non-compliance with the law which are uncovered in the course of preventive intervention, or in the investigation of reported events.

Harrow Council will carry out a site investigation of a highway licence application; unless it is an instance where the Council is not responsible or there are other specific reasons for not doing so, in which case those reasons should be recorded.

In selecting which complaints or reports to investigate and in deciding the level of resources to be used, Harrow Council will take account of the following factors;

- The severity and scale of potential or actual harm to person or land;
- The seriousness of any potential breach of the law;
- Knowledge of the past relevant compliance issues;
- The enforcement priorities;

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- The practicality of achieving results;
- The wider relevance of the event, including serious public concern

4.2 Authorisation of Officers

Before an officer of the Council can carry out any enforcement duties, an officer will be authorised in accordance with the council's constitution and in accordance with legislation. Only competent officers who have appropriate qualifications or experience will be authorised to take enforcement action.

Inspector authorisations, or warrant cards, identify the Officer and provide evidence of the powers vested in the individual. The general authorisation to enter and inspect premises and do all such acts and things in accordance with Acts of Parliament and subordinate legislation applies to all officers. The Division when employing persons will look for qualifications and experience that are necessary for the post. Authorisation will be issued under delegated powers contained under the Council's Scheme of Delegation and will authorise suitably qualified / competent officers for the purposes of the Council's enforcement functions

4.3 Powers of Entry

Officers are authorised to hold the power of entry into commercial and residential premises in line with legislative requirements. Such powers are restricted in terms of environmental and highway legislation. Primarily such powers will be under the Environmental Protection Act 1990.

Due to the nature of the role, and the requirements of the legislation, visits to premises will be carried out without giving prior notice in terms of pro-active interventions where feasible. The exception is residential premises where 24 hour written notice shall be given.

In appropriate circumstances, an application will be made to the Magistrates Court for a warrant to enter (e.g. if access is refused, or the premises are vacant, or giving prior notice would be counterproductive. A warrant shall also be obtained where a visit to a residential address is needed due to a serious public health risk, and notice of the visit would defeat the object of the visit.

During all visits to premises, regardless of nature, Officers will show their authorisation to demonstrate authority to enter.

4.4 Obstruction of Officers

Areas of legislation enforced make it a clear offence to obstruct authorised officers in carrying out their roles. This includes offering the officer reasonable assistance in the conduct of their duties and investigations / inspections.

The Cleaner Neighbourhood and Environment Act 2005 sets out clear offences regarding the failure of people to furnish names and addresses to authorised officers who seek to serve an

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FPN. These will be enforced, with Police assistance as required, to ensure that offences are dealt with at the lowest level possible.

The Council regards the obstruction of, or assaults (physical and/or verbal) on staff whilst lawfully carrying out their duties as a serious matter. Instances of such will be referred to senior managers with a view to instigating legal proceedings against the perpetrator. Any threat or assault will not be tolerated.

5 Enforcement Options

The main options for action are:-

- a) Prosecution
- b) Simple Cautions
- c) Fixed Penalty Notice
- d) Written Warning and Advice
- e) No Action

The Council works to ensure that enforcement decisions are consistent, balanced and fair and relate to common standards both locally and nationally. Internal guidance is issued relating to these matters with the purpose of encouraging consistency.

Where enforcement action is being contemplated which is inconsistent with local and national documented advice or guidance then the matter is referred to the relevant statutory / Government body.

Where enforcement action impacts upon aspects of a business' policy that has been agreed centrally by the decision making base of the business, then the matter is referred to the Primary / Home / Lead Authority for consideration. These are envisaged to be limited in terms of environmental and highway aspects.

5.1 Prosecution

Harrow Council uses discretion in deciding whether to bring a criminal prosecution. The decision whether to prosecute will take account of the evidential test and the relevant public interest factors set down by the Director of Public Prosecutions in the Code for Crown Prosecutors. No prosecution may go ahead unless the Council finds there is sufficient evidence to provide a realistic prospect of conviction and decides that prosecution would be in the public interest.

While the primary purpose of the Environmental Compliance Service is to ensure that businesses and individuals meet their statutory duties, prosecution is an essential part of enforcement. Where in the course of an investigation Harrow Council has collected sufficient evidence to provide a realistic prospect of conviction and has decided, in accordance with this policy and taking account the Code for Crown Prosecutors, that it is in the public interest to

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prosecute, then that prosecution will go ahead. Where the circumstances warrant it and the evidence to support a case is available, Harrow Council will prosecute without warning or recourse to alternative sanctions.

Criminal proceedings are taken against those persons responsible for the offence. Where a company is involved, it will be usual practice to prosecute the company where the offence resulted from the company's activities. However, the Council will also consider any part played in the offence by the employees of the company, including Directors, Managers and the Company Secretary. Action may also be taken against such employees (as well as the company) where it can be shown that the offence was committed with their consent or connivance or is attributable to neglect on their part and where it would be appropriate to do so in accordance with this policy.

Prosecution will generally be restricted to persons who blatantly disregard the law, refuse to achieve even the basic minimum legal requirements, often following previous contact with the Council and who put the public at serious risk. Regard should be had to the Crown Prosecution Service's Code for Crown Prosecutors which gives guidance on the decision making process for prosecutions.

<http://www.cps.gov.uk/publications/docs/codeeng.pdf>

Circumstances which are likely to warrant prosecution are:-

- a) Where the alleged offence involves a flagrant breach of the law such that public health, safety or well-being is or has been put at risk.
- b) Where the alleged offence involves a failure by the suspected offender to correct an identified serious potential risk having been given a reasonable opportunity to comply with the lawful requirements of an authorised officer.
- c) Where the offence involves a failure to comply in full or in part with the requirements of a statutory notice.
- d) Where there is a history of related similar offences.
- e) Where the offence is likely to lead to a cumulative impact on the Borough if left (e.g. cases of fly tipping that are likely to encourage others to duplicate this action)

The above is not an exhaustive list.

The decision to prosecute will normally be taken at the earliest opportunity. When circumstances have been identified which may warrant a prosecution all relevant evidence and information will be considered to ensure a consistent, fair and objective decision is made. Suspected offenders will be invited to offer an explanation before proceedings are commenced, unless circumstances dictate otherwise.

Before a prosecution proceeds, the officer will ensure that there is relevant, substantial and reliable evidence and that an identifiable person or company has committed an offence. There must also be a realistic prospect of conviction; a bare prima facie case is insufficient. A

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Legal Review Form will be completed and signed off by a Service Manager prior to being approved.

Once the decision to prosecute has been made the matter will be referred to Legal Services without undue delay. The referral must include a legal review form stating the reasons for bringing the prosecution.

5.2 Simple Cautions

Formal (Simple) Caution will be considered by Harrow Council in the following circumstances where:

- There is sufficient evidence to prove the case;
- The offender has admitted the offence;
- The offender has agreed to be cautioned;
- The offence has not been committed by the offender before.

Reference should be made to Home Office Circular 016/2008 and officers will consider the use of simple cautions as an alternative to prosecutions.

<http://www.knowledgenetwork.gov.uk/HO/circular.nsf/79755433dd36a66980256d4f004d1514/d820bbad9e5edd8680257013004d1ccf?OpenDocument>

The purpose of the Formal (Simple) Caution is:-

- To deal quickly and simply with less serious offences;
- To divert offenders where appropriate from appearing in the criminal courts;
- To reduce the likelihood of re-offending.

In considering whether a Formal (Simple) Caution is appropriate, the investigating officer must consider the following facts:

- a) Is there sufficient evidence of the suspect's guilt to meet the Threshold Test (as outlined in the CPS Guidance)
- b) Is the offence indictable only (and the available evidence meets the Threshold Test)? If the answer is 'yes', this disposal option must be referred to a Crown Prosecutor.
- c) Has the suspect made a clear and reliable admission of the offence (either verbally or in writing)? An admission of the offence, corroborated by some other material and significant evidential fact will be sufficient evidence to provide a realistic prospect of conviction. This corroboration could be obtained from information in the crime report or obtained during the course of the investigation. A Formal (Simple) Caution will not be appropriate where a person has not made a clear and reliable admission of the offence (for example if intent is denied or there are doubts about their mental health or intellectual capacity, or where a statutory defence is offered).
- d) Is it in the public interest to use a Formal (Simple) Caution as the appropriate means of disposal? Officers should take into account the public interest principles set out in the Code for Crown Prosecutors.

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- e) Is the suspect 18 years or over? Where a suspect is under 18, a reprimand or final warning would be the equivalent disposal.

If all the above requirements are met, the officer must consider whether the seriousness of the offence makes it appropriate for disposal by a Formal (Simple) Caution.

5.3 Fixed Penalty Notice (FPN)

This option can only be used for certain offences, e.g. littering and graffiti. This option gives the offender the opportunity to discharge liability for the offence by payment of a specified amount. FPNs must only be issued where there is sufficient evidence to prosecute. If the FPN is not paid within a specified time the case should proceed to prosecution.

Further information is provided in the Councils Environmental Compliance “Fixed Penalty Operational Guidance” document.

5.4 Written Warning and Advice

For some contraventions the offender will be sent a firm but polite letter clearly identifying the contraventions, giving advice on how to put them right and include a deadline by which this must be done. Failure to comply could result in a notice being served.

Informal action should be considered when:-

- a) Past history is good;
- b) The contravention is insufficiently serious to warrant formal action;
- c) Confidence in the individual/management;
- d) Non-compliance will not pose a significant risk to health or the environment

5.5 No Action

In exceptional circumstances, contraventions may not warrant any action. This is likely to be when the cost of compliance to the offender outweighs the impact of the offence. A decision of no action may also be taken when a trader has ceased to trade. The decision to take no action will be recorded detailing the decision making process.

It is expected even in cases where the duty holder has remedied the breach informally, that this is followed up in writing as part of the “education” process to prevent recurrence of the issue.

6 Action by the Courts

Where the matter is taken to court, the Council will seek to draw to the court’s attention to all the factors which are relevant to the court’s decision as to what sentence is appropriate on conviction

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In cases of sufficient seriousness, and when given the opportunity, the Council shall consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed.

Due regard will be given to Court of Appeal guidance in considering what representation to make.

A list of the sanctions presently available to the Court is included in the policy. Higher Courts may impose unlimited fines and the option of imprisonment for some offences.

6.1 Penalties

The existing law gives the courts considerable scope to punish offenders and to deter others. Unlimited fines and, in some cases, imprisonment may be imposed by the higher courts. The Council will continue to raise the awareness of the courts to the gravity of offences and will encourage them to make full use of their powers. Examples of penalties presently available to the courts for certain offences are: -

- Magistrates' Courts; up to 6 / 12 months imprisonment and/or £20,000 fine;
- Crown Court: up to 2 years imprisonment and/or an unlimited fine.

The Council will always seek to recover the costs of investigation and legal proceedings.

7 Enforcement Notices

Notices may be issued to individuals or organisations as appropriate. Notices include those under the Highways Act 1980 (for instance Section 143, Power to Remove Structures). These are different to Notices requiring the furnishing of information (e.g. Section 16 Notices under the Local Government Miscellaneous Provisions) which have a legal remedy if not complied with.

Failure to comply with statutory notices will lead to legal proceedings and/or carrying out the works specified in the notice in the recipients default where applicable.

8 Seizure

Where a person is convicted of fly-tipping under Section 33 of the Environmental Protection Act 1990 the court can order the seizure of any vehicles involved in the offence. The court can also make an order depriving the owner of rights to any vehicle used in the commission of the offence and vesting these rights in the Environment Agency or a waste collection authority.

The Control of Pollution (Amendment) Act 1989 makes it a criminal offence for a person who is not a registered carrier to transport controlled waste to or from any place in Great Britain. It also provides under The Controlled Waste (Registration of Carriers and Seizure of Vehicles) Regulations 1991 for the seizure and disposal of vehicles used for illegal waste disposal.

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Neither option shall be taken without a prosecution taking place. If the Officer considers that these are viable for the case, the matter shall be discussed and taken forward by the Council's Legal Department.

9 Public Interest Factors

Harrow Council will consider the following factors in deciding whether or not to prosecute:

- The seriousness of the offence;
- The foreseeability of the offence or the circumstances leading to it;
- The intent of the offender, individually and/or corporately;
- The history of offending;
- The attitude of the offender;
- The deterrent effect of a prosecution, on the offender and others;
- The personal circumstances of the offender;
- The likelihood of the offender being able to establish a legal defence.

These factors are not exhaustive and those, which apply, will depend on the particular circumstances of each case. Deciding on the public interest is not simply a matter of adding up the number of factors on each side. The Council decides how important each factor is in the circumstances of each case and goes on to make an overall assessment.

10 Conflict of Interest

There may be occasions where the Council operates the business and issues of non-compliance are identified (e.g. some schools).

Visit reports and follow up letters are issued in accordance with this policy to the Head of Service directly responsible for the Council business. Serious breaches of environmental and highways law are brought to the attention of the Chief Executive / Senior Corporate Officer without delay.

All correspondence will clearly state the level of enforcement action that would be taken and the reason for that action in the same way as if the premises were outside of local authority control. Contracted services are dealt with in accordance with this policy, Codes of Practice and other relevant guidance. The relevant Council officer responsible for the contract is kept advised of any action.

Authorised officers must ensure that at all times a conflict of interest does not arise as a result of their actions and activities.

11 Publicity

Harrow Council will consider making publicly available:

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- Information on revocation of licences and number of fixed penalty notices served.
- Companies and individuals who have been convicted in the previous 12 months of breaking the law.

Harrow Council will also consider publicising any conviction, which could serve to draw attention to the need to comply with environmental and highway requirements, or deter anyone tempted to disregard their duties under such legislation.

12 Partnership working

This policy relies on strong partnership working. We aim to work with the following partners in delivering the policy:

- Police Community Support Officers (PCSOs)
- The Police
- Harrow Town Centre Business Improvement District (BID)

It is likely we will look towards a 3rd party company to be authorised to serve notices for littering on behalf of the Council.

13 The Storing and Disclosure of Information

Information collected or recorded as part of the Council's enforcement activities will be securely retained in a paper and/or electronic format for a period defined by legislation or required for future reference by the service. This information will include decisions taken about the choice of enforcement options.

The identity of a person providing the Council with information about other people committing crime, will remain confidential unless prior agreement by the person is obtained, or its disclosure is authorised by law or by a court of law.

Personal data held manually or as computer records will be handled in accordance with the Data Protection Act 1998 (DPA). This information will be used in accordance with the Council's DPA registration. Exemptions to this include where information is disclosed to other agencies or used for another reason for the purposes of detecting or preventing crime. This will include the sharing of information between Council services and with the police and other enforcement agencies. Sharing of information relating to the Crime and Disorder Act, will be undertaken in accordance with the appropriate information sharing protocol.

Right of access to information held by the Council will be given on request, in accordance with the Freedom of Information Act 2000 and Environmental Information regulations 2004 unless the information is already publicly available (as described in the Council's Publication

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Scheme). Some exemptions to the Council can be found in the Act, Regulations and the Council's publication scheme. (

14 Complaints and Appeals

Anyone who is dissatisfied with enforcement actions that an Officer has taken will have their concerns investigated by the Service Manager Public Protection. Fixed Penalty Notices do not have an appeal process in place, but should a person feel that they have not caused an offence or the FPN was incorrectly served, they can write to the Service Manager (Public Protection), Harrow Council, PO Box 18, Station Road, Harrow HA1 2UT stating the reasons. This will be taken into consideration but does not mean that further formal action won't be taken if the reasons are not justified and payment is not made. If the complaint relates to the conduct of the Officer, rather than the actual offence being reported, the enforcement services will then follow Harrow Council's complaints procedures to deal with complaints and send a full written reply within 10 working days.

In the case of Enforcement Notices, as described, the correct appeal notes are to be given at the time the Notice is served. These notes will clearly show the appeal process for the relevant notice, setting out:

- a) The time limit for appeals;
- b) The place to submit an appeal, including contact details

If the Notes are not given at this stage, a copy will be given immediately to the recipient of the Notice and this matter recorded by the Officer.

In the case of written and verbal warnings issued by an officer, there is no set appeal process as no formal legal action has been initiated. Contact details of the person to contact, should a decision of the officer not be accepted or a matter be in dispute, will be made available without delay on request.

Any complaint about the conduct of an officer will be immediately notified to the Line Manager of the officer concerned, who will make a judgement on what action will be taken. An officer will not automatically be withdrawn from any case by virtue of a customer complaint. The Line Manager will consider the complaint and assess if the officer has acted outside their remit and / or has acted unprofessionally towards the business concerned. All complainants will be advised of their recourse to the Council's Corporate Complaint system. Stage 1 will be investigated by the Line Manager in line with the above. Stage 2 will be carried out by the Service Manager.

Should further complaints be made by a business / individual against an individual officer and no corporate complaint submitted, a decision will be made by the Line Manager whether to send an additional officer on future visits to ensure:

- Verification of the officers' actions; and
- Protection for the officer should the complaints be made for reasons of intimidation

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This decision will be documented in the case file as well as on the database system.

The withdrawal of any legal action taken by an officer will not be entertained based solely on a complaint regarding the officer, as recourse is available through the appeal process, unless evidence is available to demonstrate the legal action does not meet the requirements set out in this Policy.

The Environmental Compliance Principal Officer / Team Leader shall have the authority to determine whether or not an appeal against a fixed penalty notice is successful.

The Public Protection Environmental Services Manager shall have the authority to cancel fixed penalty notices, but only should the notice be shown to be wrongly served.

There is no requirement for an appeal process for Fixed Penalty Notices. If there is refusal to pay, then the matter will be considered for prosecution.

A person can make a representation to the Public Protection Environmental Services Manager as to why a prosecution is not appropriate. Such representations are informal, and while consideration may be given to them, they do not necessarily prevent a prosecution taking place.

15 Definitions

Litter – The Environmental Protection Act 1990- Section 87 (as amended) states that an offence is committed if anything is dropped, thrown, left or deposited that causes defacement, in any place open to the air that the public have access to with or without payment.

Fly tipping – Waste dumping.

Graffiti – Any informal or illegal marks, drawings or paintings that have been deliberately made by anyone on any physical element in the outdoor environment.

Fly Posting – Any printed material and associated material, which is left illegally fixed to any structure.

Nuisance Vehicles – Selling two or more vehicles on a road or roads, within 500 metres of each other, is an offence. Repairing vehicles on a road is an offence.

Obstructions – Items left in the road, on pavements or overhanging pavements are a potential health and safety risk for road users and pedestrians.

16 Monitoring and Review

This policy will be reviewed within two years of its implementation. The review will highlight successes as well as areas for improvement and how effective the policy has been in reducing the impact on local environmental policy. Reviews will also seek to introduce where necessary

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any new powers granted to local authorities in managing local environmental quality. The review will include measures such as:

- Reduction in the level of fly tipping
- Improvements in resident satisfaction relating to the cleanliness of the borough
- Reduction in levels of abandoned vehicles
- Review numbers of FPNs issued, cancelled and the subsequent payment rate
- Review of complaints statistics
- Evaluation of waste and recycling statistics

17 Amendments to this Policy

As may be necessary, for instance with the issuing of new guidance by Government, amendments will be made to this Enforcement Policy. Should such amendments not deviate away from the overall spirit, such amendments will be attached through an amendment document rather than the re-issuing of the Enforcement Policy as a whole.

Any matters of legal doubt will be assessed by the Councils Legal Section, prior to coming into place, where there is no clear-cut guidance, case law or precedent.

18 Appendix A – Local Level Settings

OFFENCES WITH LOCAL LEVEL SETTING AND DISCOUNTING ALLOWED:

Description of Offence	Act	Section of Act	Allowable Penalty	Fee (Paid within 14 days)	Fee (Paid within 10 days)
Depositing litter (includes spitting)	Environmental Protection Act 1990, as amended by section 19 of the CNEA 2005	87/88	Locally set between £50 and £80	£75	£50
Unauthorised distribution of free printed matter on designated land	Environmental Protection Act 1990, as amended by section 23 of the CNEA 2005	Schedule 3A, para 7(2)	Locally set between £50 and £80	£75	£50
Graffiti and Flyposting	Anti-Social Behaviour Act 2003, as amended by section 28 of the CNEA 2005	43	Locally set between £50 and £80	£75	£50
Failure to comply with a waste receptacle notice	Environmental Protection Act 1990, as amended by section 48 of the CNEA 2005	46/47/47ZA/47ZB	Locally set between £75 and £100	£100	£60
Failure to comply with a Community Protection Notice	Anti Social Behaviour, Crime and Policing Act 2014	48	£100	£100	£60
Failure to comply with a Public Space Protection Order	Anti Social Behaviour, Crime and Policing Act 2014	63 and 67	£100	£100	£60

OFFENCES WITH NO LOCAL LEVEL SETTING AND DISCOUNTING ALLOWED:

Description of Offence	Act	Section of Act	Allowable Penalty	Fee (Paid within 14 days)	Fee (Paid within 10 days)
Nuisance parking	CNEA 2005	s.6(1)	£100	£100	£60
Abandoning a vehicle	Refuse Disposal (Amenity) Act 1978, as amended by section 10 of the CNEA 2005	Schedule 2A (1)	£200	£200	£120
Failure to furnish documentation (waste carrier's licence)	Environmental Protection Act 1990, as amended by section 45 of the CNEA 2005	s.34A(2)	£300	£300	£180
Failure to produce authority (waste transfer notes)	Control of Pollution (Amendment) Act 1989, as amended by section 38 of the CNEA 2005	s.5B(2)	£300	£300	£180

19 Appendix B - ACTION PLAN

The Action Plan reflects actions recommended to date to meet identified issues. Budget implications will be confined within the Directorates finances.								
No.	Ref	Action	Dependency	Action by	Expected Outcome	Budget	Start Date	End Date
A1.1		Further FPNs to be introduced in line with legislation, including ASB, Crime and Policing Act 2014						
A1.2		Unauthorised distribution of litter will be further defined in terms of area (and also has to be advertised for 28 days in the local paper)						
A1.3		Training for internal and external officers to ensure consistency with agreed policy and procedures	Availability of all relevant officers, including Police	R Le-Brun	Officers competent in the practical issuing of FPNs in line with Council policy and procedure	£10,000	Dec 2014	March 2014
A1.4		Procurement of a 3rd party company to carry out the uniformed enforcement of littering in Harrow	Dependant on meeting procurement requirements and in line with Council requirements	R Le-Brun / Procurement	Self funding external company in place to issue on street FPNs for the purpose of littering	Self funding external company in place to issue on street FPNs for the purpose of littering	Dec 2014	April 2014
A1.5		Authorisation of External Bodies to issue FPNs, including Police	Dependant on external bodies processes for such	R Le-Brun	Partnership approach to issuing of FPNs to maximise educational	None	Jan 2014	April 2014

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			authorisation		impact			
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