

CABINET



Report subject	Pilot scheme for the use of fixed penalty notices for relevant environmental enforcement issues and associated policy
Meeting date	15 January 2020
Status	Public Report
Executive summary	<p>The purpose of the report is to seek approval for a pilot scheme to undertake environmental enforcement through the use of fixed penalty notices. The report also seeks approval of the required BCP wide enforcement policy to ensure legal compliance in serving fixed penalty notices in this context.</p> <p>Fixed penalty notices can be used for a number of environmental enforcement issues to include: littering, flytipping, flyposting and distribution of free material. BCP Council employ pro-active Community Safety Patrol Officers in designated areas who deter and address low-level crime and anti-social behaviour. These officers are accredited under the Community Safety Accreditation Scheme (CSAS). It is proposed that a pilot scheme conducted over six months enabling the Bournemouth Town Centre officers to undertake environmental enforcement through the use of fixed penalty notices, in addition to the key functions of their role. A further report at the end of the pilot period is proposed at which time a position for the whole of the BCP area will be recommended.</p>
Recommendations	<p>It is RECOMMENDED that:</p> <ul style="list-style-type: none"> (a) Cabinet approve a pilot Environmental Enforcement scheme in Bournemouth Town Centre for a period of six months. (b) Cabinet receive a further report on the outcome of the pilot, financial implications and future options appraisal for Environmental Enforcement across BCP, following completion of the pilot period. (c) Cabinet approve the Policy for Environmental Enforcement through Fixed Penalty Notices to ensure legal compliance.
Reason for recommendations	There is currently no pro-active patrol and enforcement of relevant environmental crimes, such as littering across BCP.

	<p>Evidence shows that Bournemouth Town Centre experiences a high proportion of littering offences.</p> <p>There are Community Safety Patrol Officers undertaking a patrolling and enforcement role who are able to undertake relevant environmental crime enforcement.</p> <p>The policy for environmental enforcement through fixed penalty notices allows for legal compliance and transparency in relation to the issue of fixed penalty notices for relevant offences.</p> <p>Following the expiration of the pilot scheme an options appraisal will be presented with consideration for wider enforcement across Bournemouth, Christchurch and Poole.</p>
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Corporate Director	Kate Ryan (Corporate Director for Environment and Communities)
Contributors	<p>Kelly Ansell (Director of Communities)</p> <p>Sophie Ricketts (Targeted Enforcement Manager)</p> <p>Sam Johnson (Policy and Performance Manager)</p> <p>Georgina Fry (Waste and Resource Projects Manager)</p> <p>Legal Services</p>
Wards	Central Bournemouth
Classification	For Decision

Background

1. A fixed penalty notice is a way in which the local authority can discharge a prosecution for a qualifying offence, instead of entering a case into court. Only certain offences can be managed in this way and the local authority have the option of issuing a fixed penalty notice or opting for a court prosecution. A fixed penalty notice is a fine, which is payable to the local authority following a relevant offence being committed, and a criminal burden of proof being established. Non-payment of this fine may lead to formal action in the form of further prosecution.
2. Fixed penalty notices can be used for a number of environmental crimes to include: littering, flytipping, flyposting and distribution of free material. The notice can be issued on receipt of sufficient evidence, at the time of the offence or as soon as reasonably practicable. There is statutory guidance on the value of fines issued; the income is retained by the local authority.
3. At present, environmental crimes such as those above are not pro-actively enforced across BCP, except on the seafronts by seafront services staff. This is

due to resourcing constraints and a lack of available pro-active staff to undertake this role.

4. Previously, legacy Councils have undertaken environmental crime enforcement in the following ways:

Bournemouth Borough Council: private company contracted via tender to undertake a pro-active patrol and enforcement function across the borough. The contract came to an end in January 2019 and following this, pro-active enforcement has not been undertaken.

Poole Borough Council: Primarily re-active work is undertaken around fly tipping by regulatory services officers. There is no pro-active patrol function.

Christchurch Borough Council: Civil Enforcement Officers (whose role includes parking enforcement) have the power to undertake enforcement, however, parking offences take service priority.

5. Bournemouth Town Centre has a significant footfall and issues such as littering have increased visibly. A lack of enforcement for these issues reduces the deterrent of behaviours. It is demonstrated through the fixed penalty notices issued by Bournemouth's previous external contractor as per section 12, that Bournemouth Town Centre is the key area of enforcement of litter offences. Furthermore, media coverage and the Bournemouth Opinion Survey show the increasing perception of the littering issue in this area.
6. BCP Council employ Community Safety Patrol Officers who are accredited under the Community Safety Accreditation Scheme (CSAS.) The officers undertake pro-active patrols of areas that are designated by the Chief Constable of Dorset Police, in order to deter and address low level crime and anti-social behaviour. Bournemouth Town Centre, is a specifically designated area where the officers patrol. The role of the officer includes service of formal warnings, undertaking evidence collation for anti-social behaviour action, confiscation of alcohol and requiring name and address for relevant offences. At present BCP Council employ two members of staff who work 40 hours per week each, over a 7-day period in this area.
7. The Community Safety Patrol Officers are accredited with the power to require name and address for an offence. This includes the offences listed within the legal framework below. It is a criminal offence to fail to comply with the request from a CSAS accredited officer. This approach and delegation of powers differs from previous litter enforcement and as such should gain greater compliance.
8. It is proposed that the current Community Safety Patrol Officers operating in Bournemouth Town Centre are delegated powers to issue fixed penalty notices as per the legal framework, on an initial pilot basis. The Council will employ an additional temporary Community Safety Patrol Officer and all three staff will then undertake both the environmental enforcement through the use of fixed penalty notices and the main role function of the Community Safety Patrol Officer within the Bournemouth Town Centre designated area. This ensures that there is no

impact on the current service provision, whilst affording wider coverage of the environmental enforcement role. There will still be a main focus on street related anti-social behaviour and appropriate enforcement and support to those engaged.

9. The Bournemouth Community Safety Patrol Officers are fully trained on the legal processes of formal prosecutions as well as the criminal burden of proof and are therefore best placed to undertake this trial scheme through addition of relevant enforcement tools to their job role. Officers are also fully trained in support provision and multi-agency referrals where vulnerabilities are present.
10. The pilot is proposed for six months where further review will be given on outcomes and enforcement issued, and consideration by Cabinet on future proposals. If successful, the Council may wish to consider the extension of this operating model across the two other CSAS schemes in place across BCP, in Boscombe and Poole Town Centre. Further consideration can also be given to the implementation of the CSAS service in wider areas, funding dependant.
11. Although CSAS schemes are also designated in Boscombe and Poole, Bournemouth is deemed to be most suitable for the pilot scheme due to prevalence of the issue and the function of the service. The newly accredited Poole CSAS scheme is due for implementation in December 2019 and due to its infancy, the pilot for environmental enforcement is not suitable in this location. The Boscombe scheme covers a limited area, and therefore a pilot would not accurately represent the longer-term enforcement that could be required across the borough.
12. The policy for the enforcement of environmental issues through fixed penalty notices is detailed at Appendix 1. The adoption of this policy is required in order to achieve legal compliance.

Legal Framework

13. The local authority is enabled to issue fixed penalty notices for a range of offences as detailed below:

Littering to include dog fouling– Section 87 of the Environmental Protection Act 1990. [Section 88 of the Environmental Protection Act 1990]

Flyposting – Section 224 of the Town and Country Planning Act 1990. [Section 43 of the Anti-Social Behaviour Act 2003]

Flytipping – Section 33 of the Environmental Protection Act 1990. [Section 33ZA of the Environmental Protection Act 1990].

Unauthorised distribution of free literature – Section 94B and Paragraph 1 to Schedule 3A of the Environmental Protection Act 1990. [Section 94B and Paragraph 3 to Schedule 3A of the Environmental Protection Act 1990].

Summary of financial implications

14. Fixed penalty notices are financial penalties, with income retained by the local authority. There will be an option for a discounted early payment for the majority of offences. Details of the financial penalties are as follows:

Offence	Full payment amount	Discount amount
Littering to include dog fouling	£100	£75
Flyposting	£100	£75
Flytipping	£200	£150
Unauthorised distribution of free literature	£100	£75

15. BCP Council will undertake formal prosecution for failure to make payment for a fixed penalty notice, which can result in fines or prison sentences dependant on the offence and person/business committing it. There are implications on the resource of legal services and this has been considered within the proposals. Due to the expected limited requirement for the pilot period, the impact is expected to be minimal and within tolerance. The ongoing resource requirements and associated costs will be considered at the end of the pilot period when making further recommendations.
16. It is expected that income from the issue of fixed penalty notices will fund an additional full-time officer for the pilot period. A full report of the outcomes from the issue of fixed penalty notices and a long-term options appraisal will be presented to Cabinet following the expiry of the six-month pilot.

Summary of legal implications

17. The application of relevant legislation is prescribed by statute and supported by case law and relevant guidance. There has been legal consultation on the validity of this policy and pilot scheme and are satisfied that it is within the legal framework.
18. Failure to make payment following the issue of a fixed penalty notice may lead to formal prosecution through the Court with penalties ranging per offence, as detailed in the policy for environmental enforcement through fixed penalty notices.
19. Officers will receive full training to ensure fines are issued correctly and there is no negative equality and diversity impact.

Summary of human resources implications

20. An additional Community Safety Patrol Officer will be required to deliver the service. Recruitment for this post will be required for a 6-month fixed term contract.
21. Human resources have been consulted regarding the additional duties to be placed on the Community Safety Patrol Officers and it is deemed commensurate with their current role.

Summary of environmental impact

22. The proposal is expected to positively impact the environment through a reduction in relevant offences such as littering and an increase in enforcement. Visual improvement to the area is anticipated, through a reduction in litter and other environmental enforcement issues. The pilot will support recycling and correct disposal of waste and have a positive impact on environmental sustainability.

Summary of public health implications

23. There are no public health implications.

Summary of equality implications

24. There is no adverse effect on protected groups. A full equality impact assessment has been included within the body of the policy at Appendix 1.

Summary of risk assessment

25. Potential risks associated with the pilot scheme include:
 - Residents, businesses and visitors are unhappy about the enforcement activities or about receiving a fine.
 - Members of the public continue to commit environmental offences regardless of enforcement and associated fine.
 - There are not sufficient numbers of Fixed Penalty Notices to fund the additional Community Safety Patrol Officers.
26. The following mitigation has been implemented:
 - Officers will be fully trained in the correct issue of fixed penalty notices. Officers are BCP Council staff and are therefore accountable and subject to the Code of Conduct. The use of fully trained, CSAS accredited officers will promote a professional and consistent service.
 - There will be communications promoted through key stakeholders and through wider mediums such as local publications and social media to remind the public of the relevant offences and consequences.

- Consideration and assessment of the previous Bournemouth financial model has been undertaken. Payment rates will be monitored through the pilot and will form part of the final report to cabinet following the pilot.

Background papers

Policy for environmental enforcement through fixed penalty notices

Equality Impact Assessment

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834331/pb11577b-cop-litter1.pdf

Appendices

1. Policy for environmental enforcement through fixed penalty notices with included Equality Impact Assessment