

## Open and Coastal Spaces Public Spaces Protection Order Enforcement Protocol

### Enforcement

1. This Enforcement Protocol relates to the Coastal and Open Spaces PSPO's which can be viewed on the Council's website [here](#).
2. In carrying out any enforcement activity BCP Council will abide by and be informed by the principles of;
  - **Enforcement** - based around firm and fair regulation
  - **Proportionality** - degree of the risk of harm caused (precautionary principal)
  - **Consistency** - a similar approach in similar cases to achieve similar outcomes within which a degree of discretion is available
  - **Transparency** - helping people to comprehend what is required of them to include details of any rights of appeal
  - **Targeting** - directing regulatory effort effectively using a risk based approach
3. The Council will not operate a zero tolerance to PSPO infringement, all breaches will be considered on their individual merits. Communications will be key to informing residents and visitors of the PSPO and conditions attached, and signage will be prevalent in the areas of coverage.

### Partnership Working

4. Dorset Police will have delegated authority to enforce the PSPOs within Bournemouth, Christchurch and Poole. However, the Council will be the primary enforcers.
5. Enforcing Officers will follow guidance issued, record details of the offender and maintain supporting evidence of the breach. Officers will issue warning letters or FPNs if appropriate. Relevant agencies may be made aware of the breaches.
6. Officers will consider any safeguarding or vulnerability issues when considering the application of FPN's including referrals to relevant support and outreach services.
7. Where a person has been dealt with for more than two breaches resulting in FPNs being issued, consideration will be given to a Multi-Agency Risk Management Meeting (MARMM) referral so that options can be discussed to tackle the issues linked to the person continuing to offend. This could include support/intervention or enforcement options such as an ASB Injunction or Criminal Behaviour Order.

### Issuing Fixed Penalty Notices

8. An authorised officer of the Council may issue a FPN to anyone they have reason to believe has committed an offence under section 67 of the Anti-social Behaviour, Crime and Policing Act 2014.
9. A FPN is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for an offence by payment to the Council the amount specified in the notice.
10. No proceedings can be taken before the end of 14 days following the date of issue for the notice. A conviction may not be sought if the recipient pays the FPN before the end of that period. BCP Council will issue a FPN of £100 to be paid within 14 days with a reduced amount of £80 if paid within 10 days of the date of issue.
11. If the amount is unpaid a final reminder letter will be issued giving a further seven days' notice. If the penalty remains unpaid, the matter will result in prosecution.
12. Payments of a FPN by instalments will not be accepted.

13. An FPN must contain prescribed information:

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- (b) state the period during which proceedings will not be taken for the offence;
- (c) specify the amount of the fixed penalty;
- (d) state the name and address of the person to whom the fixed penalty may be paid;
- (e) specify permissible methods of payment

14. The Council will issue FPNs to individuals identified as breaching the prohibitions or requirements of the PSPO. Full and accurate details of each FPN shall be recorded and monitored at all stages from issue to closure.

15. Failure to pay the FPN within 14 days from the date of issue may result in prosecution. To ensure the creditability of an FPN scheme, all cases involving non-payment will be referred to the Council's legal services with a view to prosecution. If convicted, a defendant is likely to receive a fine, be ordered to pay prosecution costs and will incur a criminal record.

16. There is no fixed time in which the FPN must be served. However, to avoid any allegation of abuse of process, FPNs will normally be served within 15 working days of the date of the offence.

17. Any income received from the FPNs must be ring-fenced and spent on Council functions relating to community safety matters.

18. Costs awarded against defendants following successful prosecution will be received by the Council once recovered by the court service.

### **Young People**

19. If the Enforcing Officer has reason to believe that the offender is less than 18 years old, they should obtain the person's name and address and explain that they will be issued a formal warning letter and that their parents or guardians will be notified.

20. The details shall then be passed to the ASB team via email to [asbteam@bcpcouncil.gov.uk](mailto:asbteam@bcpcouncil.gov.uk) who will then follow their established community consequences scheme protocols.

21. If following further checks, the person is found to be over 18, the FPN process will apply.

### **Mitigating Circumstances**

22. A FPN shall only be issued where there is sufficient admissible evidence to support a prosecution, including offences directly witnessed by an authorised officer, or where there is reliable witness testimony.

23. A FPN shall only be issued where the local authority is confident that the correct identity details have been provided. Failure to supply a name and address, or to supply false details to an authorised officer is an offence.

24. FPN should not be issued where a suspect appears to be unable to understand what is being offered to them, for example there is a doubt about their ability to understand English. Where such circumstances arise every effort should be made to illicit / impart the required information.

25. Where the suspects' behaviour suggests they have learning difficulties or mental disorder, or where the suspect is under the influence of alcohol or drugs, the Enforcing Officer should question whether issuing a FPN is appropriate (as it may go

unpaid) and whether education is a better solution or if prosecution may be in the public interest.

26. Where no satisfactory address exists for enforcement purposes, this may be where the Officer has reason to believe that the suspect is homeless or where the suspect is a non-resident foreign national, further multi-agency work will be undertaken to educate and support.
27. When considering the issuing of a FPN, Officers will consider whether the offender has a reasonable excuse for the potential breach before taking this form of action.
28. PSPOs that require an offender to leave the restricted area for a specific amount of time, the Officer must allow the following mitigating criteria to apply which are used for Dispersal Orders in accordance to the Anti-Social behaviour, Crime and Policing Act 2014:
29. An Officer may not give a direction to leave the area and not return for a specific amount of time;
  - that prevents the person to whom it is given having access to a place where the person lives.
  - that prevents the person to whom it is given attending at a place which the person is—
    - (a) required to attend for the purposes of the person's employment, or a contract of services to which the person is a party,
    - (b) required to attend by an obligation imposed by or under an enactment or by the order of a court or tribunal, or
    - (c) expected to attend for the purposes of education or training or for the purposes of receiving medical treatment, at a time when the person is required or expected (as the case may be) to attend there.
30. An Officer may not give a direction to leave the restricted area and not return for a specific amount of time if the person is one of a group of persons who are—
  - (a) engaged in conduct that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (peaceful picketing), or
  - (b) taking part in a public procession of the kind mentioned in subsection (1) of section 11 of the Public Order Act 1986 in respect of which—
    - (i) written notice has been given in accordance with that section, or
    - (ii) written notice is not required to be given as provided by subsections (1) and (2) of that section.
31. In deciding whether to give a direction an Officer must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention. "Convention" has the meaning given by section 21(1) of the Human Rights Act 1998.

### **Disputes about enforcement**

32. Once a FPN has been issued, the recipient may decide to phone or write to the Council pleading mitigation or contesting the fact that a FPN was issued. An alleged offender contesting a FPN should be advised that there is no obligation to pay a fixed penalty and there is no formal appeal procedure.
33. Whilst the Council should review the facts of a particular case when invited, the opportunity to challenge the allegation and plead not guilty to the alleged offence at

an independent hearing is open to the recipient of the FPN. This will be by the way of prosecution, on summons, and trial in a Magistrates' Court.

34. Any person requesting a reconsideration of the decision to issue a FPN should do so in writing to the Head of Safer Communities, BCP Council, Civic Offices, Bourne Avenue, Bournemouth. Dorset. BH2 6DY.
35. Such letters may help identify any issues that need resolving or investigating before a case is prepared for court. Arguments over the law, the amount of the fixed penalty etc. will not be relevant, but claims that a defence applies will.
36. Only in exceptional circumstances will it be appropriate to withdraw a FPN or not proceed to summons on non-payment. Examples of this may be when information that was not available at the time the FPN was issued becomes available, that it would not be in the public interest to prosecute, or that the notice should not have been issued to the person named in the notice.
37. Where reconsideration has been requested, and the decision to issue the FPN upheld, the appellant shall be informed within five working days of the decision and the original payment terms, including the opportunity to pay the charge at the discounted rate, which will apply from the date of letter notifying the appellant of the results of the reconsideration.
38. Where a reconsideration has been requested which results in the withdrawal or cancellation of the FPN, the appellant shall be informed within five working days of the decision. Any complaint regarding the issue of a FPN to do with its appropriateness or proportionality in the circumstances shall be dealt with under the Council's complaint procedure, details of which are available on the Council's website. [Compliments and suggestions \(bcpcouncil.gov.uk\)](http://bcpcouncil.gov.uk)

### **Enforcing Officers**

39. Officers with delegated authority to issue a FPN under the Orders within the scope of this protocol are;
  - Community Safety Accredited Officers (CSAS)
  - Seafront Rangers
  - Senior Seafront Rangers
  - Grounds Maintenance Supervisors
  - Countryside Wardens and Rangers
  - Heathland Mitigation Officers

### **Training**

40. All Enforcement Officers will receive relevant training prior to issuing any FPN under this protocol. Training will be refreshed every three years.

### **Collection of Personal Data**

41. Name address and additional details will be requested by the Enforcing Officer when issuing an FPN. The enforcement of the PSPO's requires authorised officers to collect and process personal information about identified individuals found to be in breach of these orders.
42. In accordance with the principles of The General Data Protection Regulations, in particular their right to the protection of personal data, this information will only be retained as long as necessary in relation to the enforcement of Public Space Protection Orders.

**Active Review**

43. This document will be reviewed and updated every six months – to reflect as required any further site specific guidance required as enforcement action is carried out.