

Medway Council Streetscene Enforcement Strategy

1. Introduction

This policy covers activities relating to enforcement of legislation that impacts on Medway's street scene.

Protecting and maintaining the local environment is one of Medway Council's key priorities. This aim links with a number of the Council's other priorities such as reducing crime and anti-social behaviour and promoting pride in Medway.

The quality of the street scene in Medway directly affects the quality of life of people living, working, visiting or studying in Medway. It also has a direct link to fear of crime and the ability of the public to use public open spaces and streets in a confident way. The Council has always recognised the importance of maintaining the environment as a part of achieving its priorities. In order to ensure that this happens the Council has a thorough and comprehensive cleansing service that maintains our streets and ensures that our parks and open spaces are clean and well presented.

Alongside the work of our cleansing contractor, we place a great emphasis on educating and informing the public and businesses about their rights and their responsibilities regarding litter and waste storage and disposal. This helps the Council, in partnership, to maintain a quality street scene environment for Medway.

Unfortunately there are a minority who do not take their responsibilities seriously and litter, fly tip, graffiti, allow their dogs to foul and cause other types of distress for many residents. When we come across these types of individuals we have no other choice but to use our range of enforcement powers.

Where education and persuasion fail we will not hesitate to take formal action including prosecuting cases through the criminal courts.

This policy recognises the role of the Community Safety Partnership in working together with partner agencies to maximise the effect of this work.

2. Our Role

Our role is to protect, promote and improve the health and environment of Medway and all its people through education, guidance and enforcement and by supporting the Corporate Objectives to ensure the continued success of Medway to grow and thrive.

We believe that carrying out these functions in a fair, consistent, independent and practical manner will help to promote a buoyant local and national economy.

We are committed to these objectives in our approach to enforcement action, which is intended to:

- ensure that we enforce the law in a fair, equitable and consistent manner;
- assist businesses and others in meeting their legal obligations without unnecessary expense; bureaucracy or burdens
- focus on prevention rather than cure;
- take firm action against those who flout the law or act irresponsibly.

3. Principles of Enforcement

Medway Council has an overarching Enforcement Policy and has formally adopted the Enforcement Concordat. The Enforcement Concordat is a national protocol that establishes practices that deliver fair, transparent, consistent and proportionate enforcement actions. This means that we will be open, helpful and fair to ensure that any enforcement action is proportionate to the risks.

3.1 A Consistent Approach

All our staff will:-

- be trained in taking enforcement action
- be courteous in their dealing with you;
- be open, fair and consistent in enforcing the law;
- show their official identification or give you a business card when they visit; (this may not be the case with regard to covert operations.
- give their name when speaking on the telephone;
- answer enquiries within specified Corporate standards;
- tell you if they are going to write following a visit. Sometimes our staff need to consult colleagues or others, seek further advice, or conduct further investigations.
- provide advice to business (if requested) in writing making clear what is best practice and what is a legal obligation.

We will be consistent in our approach by following the criteria and guidance set down in relevant legislation, codes of practice and official guidance.

We will take into account national advice on the application of laws.

We will ensure that before considering prosecution, the case will be subject to review by a Senior Manager.

We will always be objective to ensure our decisions are based on facts and evidence.

In some instances the Service may have shared responsibilities with another enforcement agency. In these circumstances we will liaise with that other agency to ensure effective co-ordination, to avoid inconsistencies and to ensure that any proceedings, which are instituted, are for the most appropriate offences.

To ensure that fair and consistent decisions are made regarding prosecutions any decision to prosecute takes account of the Code for Crown Prosecutors. In making this judgement, the Council will consider both the weight of evidence and if it is in the public interest to proceed.

We will, where possible, during the investigation, give the offender the opportunity to be interviewed, with legal representation if they so wish, and give due regard to any statutory defences, explanations or mitigation.

The Council will follow nationally recognised legal frameworks to ensure that individuals Human Rights are protected whilst carrying out the necessary steps for an investigation to be carried out.

Where evidence of offences has been gathered using the Councils CCTV systems this will be done in compliance with the Code of Practice for the operation of Closed Circuit Television.

4. Offences and Legislation

Below is a list of offences to which this strategy relates and a list of the legislation that the Council will use to enforce against these offences. Due to the nature of ever changing legislation the list of offences and legislation is not exhaustive.

4.1 Offences

- **Fly Tipping**
Prohibition of unauthorised or harmful deposit, treatment or disposal of waste. This relates to trade waste or domestic waste.
- **Transport of waste**
Anyone transporting waste, domestic or commercial, must be registered with the Environment Agency and carry waste transfer documents. It is an offence not to be registered or have such documents. Householders are under a duty to ensure that anyone they use to remove waste on their behalf is also registered and carries the correct documentation. A householder who is taking their own waste to the civic amenity site is exempt from the need for waste transfer documents.
- **Depositing Litter**
Individual items of litter thrown into the street or small deliberate deposits of refuse on the Streets. This includes litter thrown from vehicles and also includes cigarette butts and chewing gum.
- **Leaving refuse out early.**
Unless exceptional arrangements are made, residents should put rubbish sacks on the boundary of their properties by 7am on the day of collection, and no earlier than the night before. For domestic properties, this will follow national protocols that indicate a fixed penalty notice will not be issued unless a notice has been served on the premises indicating how refuse should be presented in the future.
- **Dog Fouling**
Allowing your dog to foul on any land in the open air
- **Graffiti**
Unauthorised writing or drawing on a surface in a public place
- **Fly-Posting**
Illegal erection of materials such as posters or signs
- **Abandoned Vehicles**

The council is responsible for identifying and removing abandoned vehicles on any land in the open air, including private property, or any other land forming part of a highway.

- **Vehicles for sale or being repaired on the highway**
Both of these are offences in the Medway area and vehicles can be removed and owners prosecuted.
- **Areas of land that are detrimental to the amenities of the neighbourhood**
Areas of land or gardens, which are untidy, unsightly, full of litter, rubbish or overgrown to the extent that neighbours or the general area are affected.
- **Illegal Street Trading**
Street trading or peddling is an offence within Medway without consent from the council and the offenders goods can be seized.
- **Unauthorised distribution of free printed matter**
It is an offence within the Medway area to distribute free printed material either by offering by hand or by placing on vehicles.

4.2 Legislation

- Environmental Protection Act 1990
- Clean Neighborhood & Environment Act 2005
- Refuse (Disposal) Amenity Act 1978
- Medway Council Act 2004
- Dog Fouling of Land Act 1995
- Anti-social Behavior act 2003
- Control of Pollution (Amendment) Act 1989
- Local Government Act 1972
- Town & Country Planning Act 1990

5. Education & Awareness

The Council will raise the profile of all of these offences with the community. This will include campaigns, leaflets, school visits etc. in order for the public and business sector to understand how they may comply with the legislation and the penalties for not doing so.

Successful prosecutions will be publicised via local/national press to act as a deterrent and reinforce the Council's message.

Delivering effective education and publicity will help the Council negate claims of ignorance and help focus the minds of individuals on the problem and impact of environmental crime.

6. When Enforcement is necessary.

Where education and awareness has failed it is sometimes necessary to take enforcement action. This can be in a number of forms.

6.1 Fixed Penalty Notices (FPN's)

Certain legislation allows for offences to be dealt with by way of the issuing of a FPN. The issuing of a FPN allows the offender to discharge any liability to prosecution for the offence.

This will generally be done for first time offenders where the offence is not of a serious nature and a record of offenders will be kept. For further offences enforcement action will generally be initiated in line with the Corporate Enforcement Policy.

Fixed Penalty Notices will be issued when:

- The case warrants prosecution
- There is enough evidence to prosecute for the offence
- It will act as a sufficient deterrent against re-offending.

If the FPN remains unpaid after the specified period a prosecution file will be prepared and passed to legal services to initiate a prosecution for the offence.

FPNs issued to young people will be issued with due regard to the Children Act 2004 and the DEFRA guidance on issuing fixed penalties notices to juveniles 2006.

Notices may be issued to 16 and 17 year olds using the same procedures as for adults. However, authorised officers will consider whether a written warning is appropriate for a first offence, depending upon the nature and seriousness of the offence.

In most circumstances a written warning will be issued to the parents of a child under the age of 16 in the first instance. If the offence occurs in school hours or in school uniform an advisory letter will be sent to the Head Teacher.

If the child continues to offend despite this intervention, enforcement action (including a Fixed Penalty Notice) may be taken following discussions with relevant local agencies responsible for law enforcement and children' services. (e.g. Police, Youth Service, Youth Offending Team). The Council will consult with partners to determine whether a FPN is the most appropriate measure for a person under 16 or if other measures (e.g. warnings; Acceptable Behaviour Contract) are more appropriate

In all circumstances the parent or legal guardian will be advised as soon as possible.

6.2 Other Enforcement Notices

Various legislation allows Officers to serve notices requiring works to be carried out to comply with the law, much enforcement work is carried out in this way. These notices are often served following an inspection as part of an inspection regime or more often than not as a result of an investigation resulting from a complaint from a member of the public.

If Enforcement Notices are not complied with there are a variety of actions that can be taken depending on the specific legislation. These actions can include carrying out the required works and recharging the landowner or offender or prosecuting for non-compliance with the Notice. Officers make these decisions in order to reach the best resolution to the problem for both customers and the Council.

6.3 Prosecution

The Council recognises that most people wish to comply with the law and prosecution will generally be restricted to those who flout the law or carry out offences of such a magnitude that no other option would be appropriate.

Any decision to prosecute will be made by a Head of Service and will be recorded in writing. The written record will show the offence and that due consideration of the Council's Corporate Enforcement Policy has been given.

7. Diversity

The Council is committed to equality of access to its services and has adopted an equality Policy. This policy will be followed by officers when carrying out their duties. The Policy states:

'No service user, employee or job applicant will be discriminated against, harassed or receive less favourable treatment on the grounds of gender, race, colour, ethnic or national origin, disability, marital status, family commitments, sexual orientation, age, HIV status, religious or political beliefs, social class or trade union activity or irrelevant spent conviction'

8. Review

This strategy will be reviewed on an annual basis and amended in light of any changes in legislation, Codes of Practice or Official Guidance.