

Civic Centre, Castle Street,
Merthyr Tydfil CF47 8AN

Main Tel: 01685 725000

www.merthyr.gov.uk



Cyngor Bwrdeistref Sirol
MERTHYR TUDFUL
MERTHYR TYDFIL
County Borough Council

FULL COUNCIL REPORT

Date Written	6 th March 2017
Report Author	Paul Jones, Jemma Rough
Service Area	Neighbourhood Services
Exempt/Non Exempt	Non Exempt
Committee Date	22 nd March 2017

To: Mayor, Ladies and Gentlemen

Environmental Cleansing and Enforcement Littering and Dog Fouling Policy

1.0 SUMMARY OF THE REPORT

- 1.1 The Council agreed to Pilot a one year in-house Enforcement Team to enforce littering and dog fouling offences.
- 1.2 This report outlines the procedures that will be adopted by the officers and the approach the Council intends to take in regards to appeals, part-payments and private land etc.

2.0 RECOMMENDATIONS that

- 2.1 The Policy relating to littering and dog fouling offences is approved.
- 2.2 Delegated authority is given to the Chief Officer of Neighbourhood Services to make updates or amendments to this Policy in conjunction with the Portfolio Member of Neighbourhood Services.
- 2.3 To delegate the Council's Environmental Cleansing and Enforcement Officer/s as the Council's appropriate officer/s to carry out the Council's enforcement of littering and dog fouling offences.

3.0 INTRODUCTION AND BACKGROUND

- 3.1 Litter and dog fouling are unsightly and detract from the general appearance of an area; it can also affect people's health by attracting animals and insects that carry diseases. Research also shows that heavily littered areas and poor local environmental quality deter economic activity and investment and can also lead to an increased fear of crime. Litter and dog fouling can therefore blight an area and need to be dealt with.
- 3.2 Offences relating to litter and dog fouling will be enforced by Environmental Enforcement Officers employed by Merthyr Tydfil County Borough Council. This Policy aims to lay out the approach and conduct carried out by officers for such offences.

4.0 AIM OF THE ENFORCEMENT POLICY

- 4.1 The aim of the Policy is to set out the councils approach to enforcement action throughout the service areas covered, without placing an unnecessary burden on local businesses, organisations, consumers and the public. We intend to apply our enforcement powers legally, consistently and fairly. This Policy sets out our approach for those affected by our enforcement activities as well as for Officers of the Council.

5.0 OBJECTIVES

- a. To ensure we enforce the law in a fair and consistent manner
 - b. To assist and advise businesses and others in meeting their legal obligations
 - c. To take firm action against those who flout the law, act irresponsibly, or where there is an immediate risk to health and safety
 - d. To support economic progress by having a cleaner and more attractive Borough.
- 5.1 We will also make sure all enforcement activities are:-
- i. Taken in accordance with the principles of good enforcement (best practice guides and / or statutory provisions)
 - ii. Compatible with the European Convention on Human Rights and the Human Rights Act 1998, to protect the rights of the individual. In particular, due regard is had to the right to a fair trial and the right to respect for private and family life, home and correspondence
 - iii. Managed efficiently
 - iv. Taken promptly and without unnecessary delay
 - v. Undertaken in a fair and transparent manner

6.0 EQUALITY AND DIVERSITY

- 6.1 The authority and its officers in Environmental Cleansing and Enforcement will take all reasonable and practical steps to prevent and eliminate discrimination and encourage good relations between all parties, treating all those involved with equal respect, both when corresponding with those individuals and organisations and during the enforcement proceedings.
- 6.2 This will be done irrespective of the individual's ethnic origin, sex, age, marital status, sexual orientation, disability, gender reassignment, religious beliefs or non-belief, use of Welsh, British Sign Language or other languages, nationality, responsibility for any dependants or any other reason which cannot be shown to be justified.
- 6.3 During the monitoring and review process the Council will also ensure that the enforcement reflects these requirements, all of which are in line with the Council's Strategic Equality Plan.
- 6.4 When dealing with juveniles or persons who are vulnerable, whether due to learning difficulties, mental illness or in some other way, due regard will be taken of their vulnerability and of any current Codes of Practice whether statutory or not, to ensure these persons are treated fairly.

7.0 CONSULTATIONS AND REVIEWS

- 7.1 This Policy will be reviewed regularly by senior officers and any required amendments made in light of best practice and changes to legislation will be approved by the Chief Officer in consultation with the relevant Cabinet Member. Any major changes that would impact on those that we regulate will be subject to consultation and approval by Council. We will monitor continually the content and adherence of our officers to this Policy.

8.0 COMPLAINTS

- 8.1 Any complaints about the application of this Policy should be addressed to the Chief Officer of Neighbourhood Services at the address below. If the matter is not satisfactorily concluded it will be dealt with in accordance with the Merthyr Tydfil County Borough Council Corporate Complaint Policy
- 8.2 This Policy is published on the Merthyr Tydfil County Borough Council webpage and in hard copy. Requests for copies in other formats or languages or comments on this policy should be sent to the following:-

Chief Officer
Neighbourhood Services
Civic Centre
Castle Street
Merthyr Tydfil
CF47 8AN

9.0 THE PRINCIPLE OF GOOD ENFORCEMENT – LOCAL GOVERNMENT CONCORDAT ON GOOD ENFORCEMENT

9.1 The Authority has formally adopted the central and local government Concordat on 'Good Enforcement' and will abide by its principles. Consideration will also be given to any additional guidance or codes of practice on enforcement that are relevant to the services. The following principles will also be adhered to:

Openness

9.2 The Environmental Cleansing and Enforcement Team will provide information in plain language and in other languages and formats on request, on the rules that apply, and will distribute this as widely as possible. We will be open about how we set about our work including charges we set. We will discuss general issues, specific compliance failures or difficulties in complying with the law, we will respond to enquiries and visit individuals when requested. In certain circumstances we will take steps to raise awareness and increase compliance levels by publicising unlawful business practices or criminal activity and, where appropriate, we will publicise the results of specific court cases.

Helpfulness

9.3 We believe that prevention is better than cure and that our role involves actively working with businesses and individuals to advise compliance. We will provide a courteous and efficient service and our staff will identify themselves by name. We will provide a contact point and telephone number and will encourage businesses and individuals to seek advice and information from us.

Proportionality

9.4 We will minimise the costs of compliance for businesses by ensuring that any action we require or take is proportionate to risk.

9.5 When dealing with individual members of the public, the concept of proportionality will also apply, in so far as the legislation permits.

Consistency

9.6 We will carry out our duties in a fair, equitable and consistent manner. Where Officers are expected to exercise judgement in individuals cases, we will have arrangements in place to ensure consistency, including effective arrangements for liaison with other authorities and enforcement bodies. This will be achieved through staff development training and where appropriate the use of written procedures and protocols.

10.0 THE PRINCIPLES OF GOOD REGULATION – REGULATORS CODE

10.1 Part 2 of the Legislative and Regulatory Reform Act 2006 requires Merthyr Tydfil County Borough Council to have regard to the Principles of Good Regulation when

exercising a specified regulatory function. For local authorities, the specified functions include those carried out by Environmental Cleansing and Enforcement.

10.2 Officers will exercise our regulatory activities in a way which is:

- i. Proportionate
- ii. Accountable
- iii. Consistent
- iv. Transparent
- v. Targeted

11.0 DATA PROTECTION ACT 1998

11.1 Where there is a need for Merthyr Tydfil County Borough Council to share enforcement information with other agencies, the Environmental Cleansing and Enforcement Team will follow the provisions of the Data Protection Act 1998.

12.0 SHARED ENFORCEMENT ROLE

12.1 There are situations where the Local Authority shares or has a complimentary enforcement role with other agencies, e.g. Police. In such situations officers shall have due regard to the Data Protection Act 1998 any Information Sharing Protocols, Codes of Practice or Memoranda of Understanding that exist in seeking to co-operate with those agencies.

12.2 On occasion, it will be more appropriate for other agencies or other Local Authorities to deal with particular breaches of legislation. In carrying out shared duties, the Environmental Cleansing and Enforcement Team will still comply with the Enforcement Policy, but the other agencies will maintain the right to take any action they consider to be necessary.

13.0 ENFORCEMENT OPTIONS

13.1 A number of enforcement options are available and Officers are authorised to enforce legislation in accordance with the Council's **Scheme of Delegation**. The appropriate option will be determined following careful consideration of the circumstances of each individual case. Our enforcement officers will interpret and apply legal requirements and enforcement policies consistently and fairly.

Our Enforcement Actions Will:

- Aim to change the behaviour of the offender and deter future non-compliance;
- Aim to eliminate any financial gain or benefit from non-compliance;
- Consider what is appropriate to the nature of the offence and the regulatory issue;
- Be proportionate to the nature of the offence and the harm caused, with consideration of the size of the business entity where relevant;

Environmental Enforcement Officers

- 13.2 The County Borough will be patrolled by MTCBC employed Environmental Enforcement Officers. These officers will have the powers to issue Fixed Penalty FPNs (FPNs) for offences relating to dog fouling and littering.

Formal Action

Fixed Penalty FPNs

- 13.3 For dog fouling and litter offences, officers will exercise powers to issue FPNs which gives the offender an opportunity to avoid prosecution by payment of an £85 penalty. These are recognised as a low-level enforcement tool, whereby they do not create a criminal record for the offender, although we will keep a record of any previous FPNs issued and they will be taken into account for any future offences. Accepting an FPN gives the offender the opportunity to discharge liability. Where the FPN is unpaid, a prosecution may be appropriate; however such action will only occur where there is adequate evidence to support a prosecution. Failure to pay the amount imposed by the FPN, within 14 days may result in the offender being pursued through the courts.

Juveniles

- 13.4 The service areas will follow relevant guidance on issuing such FPNs to juveniles, with actions taken being influenced by the offender's age and circumstances of the offence. The minimum age for the service of a FPN is 10 years old, however FPNs shall not be issued to offenders under the age of 18, a warning will be issued and their parents will be informed of the juvenile's actions. Repeat offenders will be referred to the Youth Offending Service intervention programme.

Appeals

- 13.5 If you are served a Fixed Penalty Notice by Merthyr Tydfil County Borough Council, but you disagree that you have committed an offence or feel that it was unreasonable for us to serve the FPN, you can appeal, in writing to The Head of Neighbourhood Services, Civic Centre, Castle Street, Merthyr Tydfil, CF47 8AN

Every appeal will:

- a) Be considered on its merits, on the basis of the information and evidence provided by the appellant and by the person who issued the FPN.
- b) Receive a full written response, normally within 10 working days. Where a more detailed investigation is required, appeals will be acknowledged within 5 working days.
- c) Where appeals are not upheld, the reasons for this will be explained, a further 14 day period given for payment will be given and details of the Councils Complaint procedure will be provided.

Part-Payment

- 13.6 There will be no opportunity to pay a FPN in part; therefore full payment will need to be made to the Local Authority within 14 days to prevent the case proceeding to court.

Private Land

- 13.7 The Local Authority's main priority will be to patrol Council owned land, however private land may be patrolled with the consent of the land owner.

Prosecution

- 13.8 Failure to pay a FPN within 14 days will result in prosecution. When deciding to prosecute, a number of factors will be taken into consideration including:

- Any statutory defence available
- Any explanation offered, and if the law allows, the circumstances and the attitude of the offender
- Realistic prospect of conviction

- 13.9 The decision to prosecute is taken by an appropriate authorised officer and takes into account:

- This Policy
- The evidence
- The current Crown Prosecution Service, 'Code for Crown Prosecutors'
- Any statutory requirements
- Consideration of all other relevant codes of practice

- 13.10 The Code for Crown Prosecutors has two main tests that must be satisfied:-

- Evidential Test – Is there sufficient evidence to provide a realistic prospect of conviction?
- Public Interest Test – Is it in the public interest to take action?

- 13.11 If a decision is made to prosecute, where the law allows we will always seek to recover the costs of the investigation and the legal proceedings.

Littering Offences

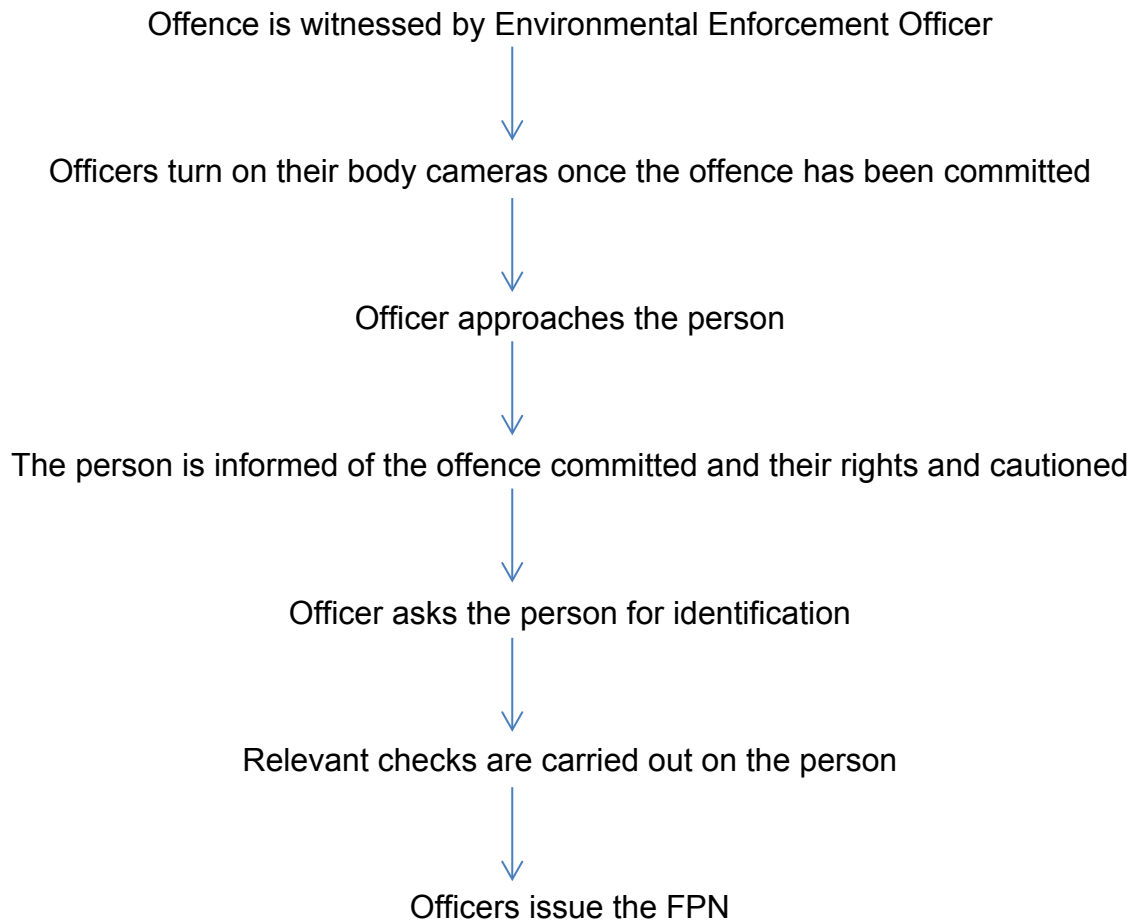
- 13.12 We apply this Policy in accordance with the Environmental Protection Act 1990 and the Clean Neighbourhoods and Environment Act 2005. Where a person has accidentally dropped litter, they will be given the opportunity to pick it up, however if the litter is not picked up a FPN will be issued. Where litter is intentionally or knowingly dropped and left, a FPN will be issued without the opportunity given to pick it up.

- 13.13 Where litter is thrown out of a vehicle, the registration number will be recorded along with the date, time and details of the offence. A search will then be carried out using the Driver and Vehicle Licencing Agency (DVLA) and a FPN will be served on the owner of the vehicle. The owner of the vehicle may not be the offender; however it is the responsibility of the owner to identify the offender. If the owner fails to identify the person responsible, the owner will be pursued for the offence.
- 13.14 Once the offender has been issued with the FPN, where possible, officers will pick the litter up and dispose of it in the nearest bin. Where this is not possible, a member of the Environmental Cleansing and Enforcement Team will be contacted to arrange cleansing of the area.

Dog Fouling Offences

- 13.15 A FPN will be issued to any persons responsible for a dog which fouls and no attempt is made to clean it up.

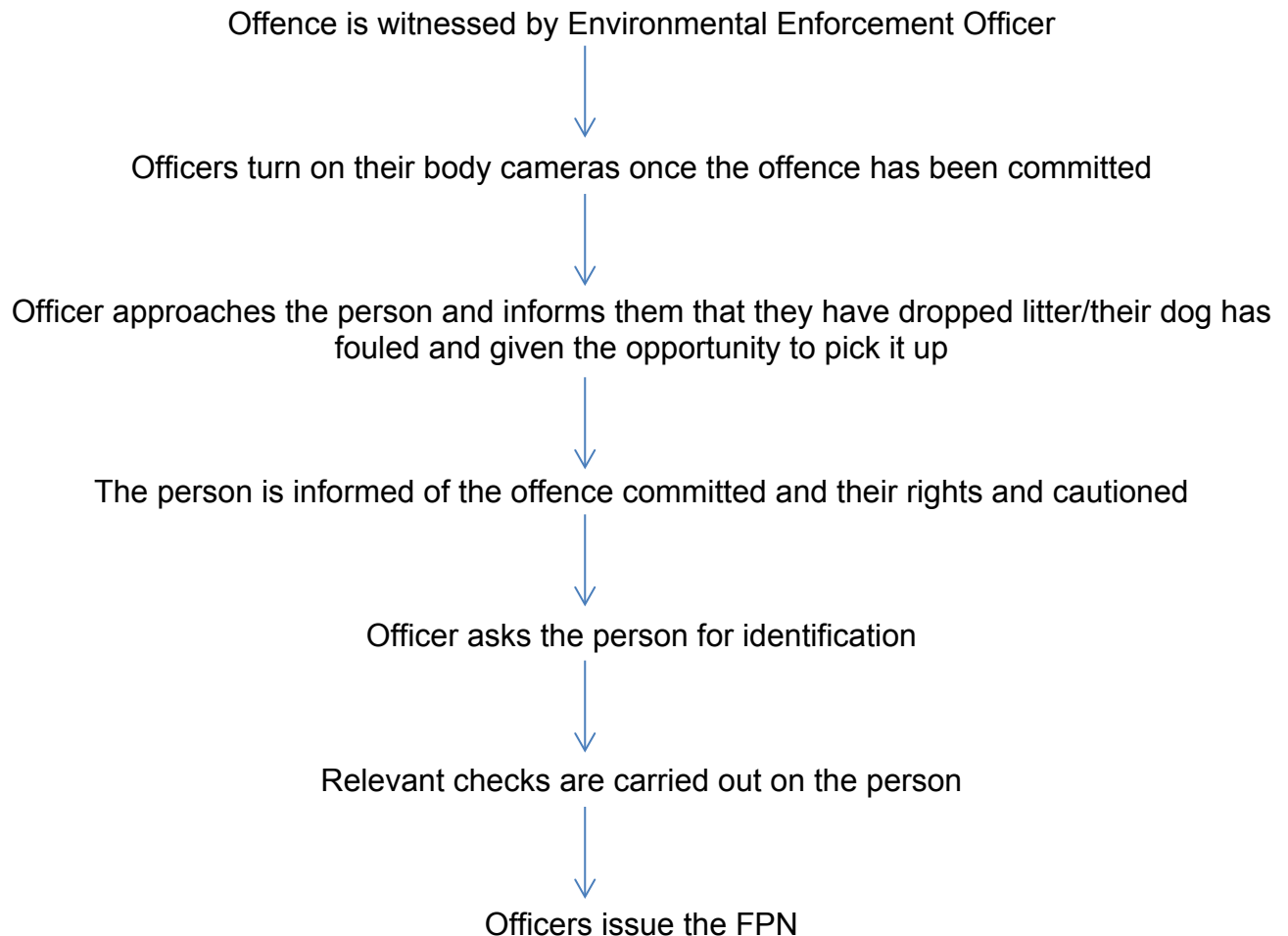
14.0 INTENTIONAL LITTERING/DOG FOULING OFFENCES



N.B. If the person fails to provide accurate information to an officer they will be made aware that a further offence has been committed and they will be given the opportunity to provide correct/accurate details. If the person continues to be uncooperative, police back up will be called.

If the person flees the area, a screenshot will be taken from the officers body camera and uploaded to the 'ID Parade' on MTCBCs webpage.

15.0 ACCIDENTAL LITTERING/DOG FOULING OFFENCES



N.B. If the litter/dog fouling is accidentally deposited and the person picks it up they will not be issued with a FPN and no further action will be taken.

If the person fails to provide accurate information to an officer they will be made aware that a further offence has been committed and they will be given the opportunity to provide correct/accurate details. If the person continues to be uncooperative, police back up will be called.

If the person flees the area, a screenshot will be taken from the officers body camera and uploaded to the 'ID Parade' on MTCBCs webpage.

16.0 FINANCIAL IMPLICATION(S)

16.1 Please refer to business submitted to Full Council on 25th January 2017.

17.0 SINGLE INTEGRATED PLAN AND SUSTAINABILITY IMPACT SUMMARY

17.1 The Single Integrated Plan & Sustainability Impact Assessment has been completed and the proposals positively impact on a number of aspects of the Corporate Plan and the Single Integrated Plan, including people, who live and work in Merthyr Tydfil are supported to enjoy a healthier and better quality of life; and people enjoy a vibrant, attractive, safe and sustainable place in which to live, work, play and visit. No negative impacts have been identified.

18.0 EQUALITY IMPACT ASSESSMENT

18.1 An Equality Impact Assessment (EqIA) form has been prepared for the purpose of this report. It has been found that a full assessment is not required at this time. The form can be accessed on the Council's website/intranet via the 'Equality Impact Assessment' link.

CHERYLLEE EVANS
CHIEF OFFICER NEIGHBOURHOOD
SERVICES

COUNCILLOR CHRIS BARRY
CABINET MEMBER NEIGHBOURHOOD
SERVICES AND PUBLIC PROTECTION

BACKGROUND PAPERS		
Title of Document(s)	Document(s) Date	Document Location
Does the report contain any issue that may impact the Council's Constitution?		

Consultation has been undertaken with the Corporate Management Team in respect of each proposal(s) and recommendation(s) set out in this report.