

STRONG AND SUPPORTIVE COMMUNITIES SCRUTINY COMMITTEE	Agenda Item No. 6
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Report of the Strategic Manager: Safer and Stronger Peterborough

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FLY-TIPPING PROSECUTIONS

1. PURPOSE

- 1.1 This report is to update the Strong and Supportive Communities Scrutiny Committee on ‘Fly-tipping’ prosecutions undertaken by the authority.

2. RECOMMENDATIONS

- 2.1 Members are asked to note the level of activity in relation to fly-tipping and associated offences and the approach taken by the council to ensure the City maintains a clean environment.

3. LINKS TO THE SUSTAINABLE COMMUNITY STRATEGY

- 3.1 The Sustainable Community Strategy aims to deliver a bigger and better Peterborough, through improving the quality of life for all. Tackling all forms of environmental crime helps to establish a clean and safe city, thereby helping to improve quality of life within our communities.

4. BACKGROUND

- 4.1 Fly tipping is the term to describe the act of the illegal dumping of rubbish (household, commercial or industrial). The most common fly-tipped waste is household waste. The type of waste has in the past included a single plastic bag, larger items such as furniture, white goods such as fridges and freezers, tyres, a bathroom suite and hazardous waste such as oil drums. Hazardous or not, the dumping of waste is illegal and comes with a serious cost to the offender. Fly tippers if found guilty can be fined up to £50,000 in a Magistrates’ Court, face unlimited fines in the Crown Court, as well as Community Punishment Orders or prison sentences of up to 5 years. The relevant legislation is Section 33 of the Environmental Protection Act 1990.

5. KEY ISSUES

5.1 Evidence required to undertake a prosecution

- 5.1.1 As a prosecuting authority the Council rely on the Criminal Justice System to deal with fly-tipping which imposes a much higher burden of proof, than being “beyond all reasonable doubt”.
- 5.1.2 Fly tipping can be problematic to prosecute given the need to prove who actually fly-tipped the waste. To establish an offence and to consider a prosecution it is important that the investigating officer has obtained good quality evidence of the alleged offender. It does not necessarily follow that the details found within the waste are of the person who physically dumped the waste. Contemporaneous notes about the fly-tipping incident, timed and dated photographs, CCTV footage, if available, witnesses able to explain clearly what they have seen, and lawfully conducted and recorded interviews are all of critical importance.

5.2 The current process for initiating prosecution of fly-tippers

5.2.1 The process for prosecuting fly-tippers complies with the Code for Crown Prosecutors issued by the Crown Prosecution Service who are the principle public prosecution service for England and Wales. Officers gather evidence and where possible seek to rectify evidential weaknesses. Statutory defences will also be taken into consideration. For clarity the term 'statutory defence' in this case constitutes the following:

- That the person took all reasonable precautions and exercised all due diligence to avoid the commission of an offence OR
- The acts alleged to constitute the contravention were done in an emergency in order to avoid danger to the public and that, as soon as reasonably practicable after they were done, particulars of them were furnished to the waste regulation authority in whose area the treatment or disposal of the waste took place.

5.2.2 The Solicitor to the Council and through delegated powers to appointed Lawyers of the Authority will objectively assess the evidence, taking a view as to whether it can be used and whether it can be relied upon and also any information put forward by the alleged offender before deciding to proceed with a prosecution file.

5.2.3 Accordingly, where there is sufficient evidence to justify a prosecution or to offer an out of Court sanction, the Council must go on to consider whether it is in the public interest to launch a prosecution. The "considerations" are those relating to the prescriptive Public Interest Test and Threshold Test contained within the Code for Crown Prosecutors. In every case where there is sufficient evidence to justify a prosecution, prosecutors must go on to consider whether a prosecution is required in the public interest. Considerations include, seriousness, level of culpability, mental and/or ill health, harm to the victim (although we do not act for the victim but overall for the good of the public), age of defendant (under 18), impact on the community, protection of a source.

5.2.4 Only when all the aforementioned issues have been considered can a move to prosecution by way of summons at the Magistrates Court commence.

5.3 Prosecution v caution v warning letter

5.3.1 The City Council operates an Enforcement Policy approved by the Legal Team, which complies with the Regulatory Compliance Code, and encompasses provisions within the Code for Crown Prosecutions. The Policy ensures that the appropriate sanction is applied and consequently a proportionate approach is taken.

5.3.2 As a public prosecutor the Council will only commence a prosecution when it is satisfied that there is a "realistic prospect of conviction" on the available evidence and the public interest test has been satisfied. If the case does not pass this evidential test it will not go ahead, no matter how important or serious the allegation may be.

5.3.3 In some circumstances it may be appropriate to review cases with a view to seeking alternative sanctions to prosecution including a written warning, clear up costs and offering a caution. The offer of a caution which is accepted and complied with takes the place of a prosecution. Where the opportunity to accept a caution is not accepted by the alleged offender the Council will seek to prosecute for the original offence. In general, the guidance from the Magistrates Association is that the courts view offences committed for commercial gain more seriously than those committed by individuals without any wider profit motive. There is a trend for the Court to hand down conditional and sometimes absolute discharges for first time fly-tipping offenders particularly where there are no aggravating features and guilt is admitted at interview. In these

circumstances it is appropriate for a prosecuting authority to offer a caution or a fixed penalty notice in the first instance.

6. CURRENT PERFORMANCE

6.1 Investigations into allegations of fly-tipping are undertaken by the council's neighbourhood environmental enforcement team (NEOs). This team comprises a total of five members of staff. At the beginning of December 2013 a change of internal structure has led to the team now reporting direct to the Safer Peterborough Strategy Manager.

6.2 The NEOs role combines both enforcement and problem solving elements. The information provided at 5) above outlines why statistics relating to solely categories entitled 'fly-tipping' should be read in the context of the wide interpretation that can be attributed to the term in much the same way as the term 'anti-social behaviour' means many things to many different people.

6.3 The Council are required to forward figures to Government in relation to allegations of fly-tipping. The most recent figures show the following for the first six months of this current financial year:

- 3806 registered issues of fly-tipping and associated offences
- 1097 investigations for fly-tipping and associated offences
- 1839 disposal by fixed penalty notice
- 76 warning letters were issues
- 7 cautions were issued
- 47 prosecutions were instigated.

6.4 These figures indicate an extremely high level of activity by the NEOs, a proportionate level of warnings and cautions where thought to be appropriate but also a resolve to prosecute those who fail to pay fixed penalty notices or where a fixed penalty notice is not thought to be an appropriate form of disposal.

6.5 The most up to date figures will be forwarded prior to the meeting.

7. NEXT STEPS

7.1 For the scrutiny committee to note the level of activity in relation to fly-tipping and associated offences and the proportionate levels of sanction imposed.

8. BACKGROUND DOCUMENTS

8.1 None

9. APPENDICES

9.1 None

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