

I. Introduction

The Public Protection Service is part of the Office of the Director of Public Health and exists to protect and improve the health, safety, environmental, economic and social well-being of those who live in, work in and visit Plymouth by taking action to maximise compliance with a wide range of legislation.

It carries out its duties in various ways including: inspection, sampling, test purchasing, testing, investigation and prosecution, but also by informing, advising and educating businesses and the public.

The Service encompasses key services to both public and commercial customers and is made up of four Units: Environmental Health (Environmental Protection), Environmental Health (Food Safety), Licensing and Trading Standards.

We are committed to the principles of good enforcement, as set out in the Legislative and Regulatory Reform Act 2006, and the [Regulators Code](#)

Our aim is to make enforcement decisions that are fair, impartial, independent and objective. We are not influenced by issues such as ethnicity or national origin, gender, religious beliefs, political views or the sexual orientation of the suspect, victim, witness or offender. Decisions are not influenced by improper or undue pressure from any source.

The purpose of our enforcement policy is to provide a framework to make sure that we work in an equitable, practical and consistent manner. Although we have a duty to enforce legislation this does not automatically mean that formal (civil or criminal) enforcement action will be taken in respect of each and every infringement. Instead, we take steps to promote compliance by the most appropriate means, in line with enforcement priorities and consistent with available resources.

We recognise that most people want to comply with the law and we will endeavour to help businesses and the public meet their legal obligations without unnecessary expense. When a business or individual does break the law, we will consider all the surrounding circumstances before deciding whether formal action is appropriate. A prosecution will only be brought if it is in the public interest to do so.

This is our enforcement policy, it provides information on:

- our principles of inspection and enforcement
- our compliance with the 'home authority/primary authority' principle
- our enforcement options
- our accessibility and advice details
- our commitment to you
- Appeals
- Complaints

As we are continually seeking to improve our standards, this policy is subject to regular review.

2. Our principles of inspection and enforcement

Targeting

We aim to prioritise and direct our regulatory effort effectively, using intelligence and relevant risk assessment schemes. We will give due consideration to the combined effect of the potential impact and likelihood of non-compliance – this approach will enable us to focus our resources on the areas that need them most and to ensure that persistent offenders are identified quickly.

Proportionality

We will ensure that enforcement action is proportionate to the risks involved, and that the sanctions applied are meaningful.

Accountability

We will be accountable for the efficiency and effectiveness of our activities.

Fairness and Consistency

We will act fairly and apply our policies and procedures to achieve consistent outcomes. This does not mean we will always take the same steps to enforce the law in the same way on apparently comparable cases or use the same legislative option - we will aim to tailor the action to the individual circumstances.

Openness and Transparency

We are committed to the open provision of information and advice in a format that is accessible and easily understood. We will wherever possible and where appropriate, publicise all outcomes of court proceedings, undertakings and orders.

Supporting the local economy

We have a part to play in driving prosperity and reducing costs. Wherever possible, we will work in partnership with businesses, particularly small traders, to assist them with meeting their legal obligations without unnecessary expense.

Reducing enforcement burdens

If there is a shared enforcement role with other agencies, e.g. the Police, Food Standards Agency, HSE, HMRC or Environment Agency, we will consider co-ordinating with these agencies to minimise unnecessary overlaps or time delays and to maximise our overall effectiveness.

3. Compliance with the Home Authority and Primary Authority Principle

We support the Home Authority and Primary Authority Principles or similar schemes, which mean each local authority takes a lead in advising businesses with a Head Office in their area, to promote good enforcement practice. This reduces the burden on business from receiving multiple approaches on similar or linked issues.

We will therefore:

- provide businesses for whom we are the 'home authority' or 'primary authority' with appropriate guidance and advice. This may involve charging on a cost-recovery basis
- undertake and support efficient liaison between local authorities
- participate in and provide a system for the resolution of problems and disputes

4. Our enforcement options

In deciding what enforcement action to take against an offender we will have regard to the following aims:

- to change the behaviour of the offender
- to eliminate any financial gain or benefit from non-compliance
- to be responsive and consider what is the most appropriate sanction for the particular offender and the regulatory issue concerned
- for the action to be proportionate to the nature of the offence and the harm/potential harm caused
- to restore the harm caused by regulatory non compliance, where appropriate
- to deter future non-compliance

We will monitor the effect of our enforcement actions to ensure businesses and individuals are complying and to measure the impact of such interventions. This may take several forms, such as analysing complaints, monitoring the behaviour of individuals or traders or sector-wide proactive exercises.

Where Plymouth City Council is the owner or operator of a business we will ensure legal compliance by including the business in all relevant risk and intelligence assessment processes and inspection/sampling plans. We will deal with any non-compliance in accordance with the hierarchical approach of this Enforcement Policy. Any enforcement decision relating to such a business will be subject to approval by the Director of Public Health who will ensure that it is appropriate, consistent and not affected by any conflict of interest.

Where the law has been contravened, the following range of enforcement actions is available to seek compliance with the law.

Table of Enforcement Actions

Action or Sanction	Nature of action
20 Proceeds of Crime	Confiscation of assets
19 Criminal Behaviour Order	Criminal Sanction
18 Prosecution	Criminal sanction
17 Simple caution	Criminal sanction
16 Formal Enforcement Order	Civil sanction
15 ASB Injunction / Closure Order	Civil sanction
14 Informal Undertaking	Civil sanction
13 FPN for disorder/PSPO	Civil Sanction
12 Fixed penalty notice/Penalty Charge Notice	Enforcement Action
11 Refusal/ review of licence or permit	Administrative sanction
10 Forfeiture of equipment or articles	Enforcement action
9 Statutory notice served	Administrative sanction
8 Warning letter or Home/Primary Authority referral	Enforcement action
7 Detention/seizure of equipment or articles	Enforcement action
6 Testing / Sampling of alleged non-compliant article or test purchase	Testing
5 Inspection of premises / investigation of non-compliance	Visit
4 Trader or individual advised how to correct alleged non-compliance	Educational intervention
3 Trader or individual advised of an alleged non-compliance	Advisory intervention
2 Information is recorded and shared with another agency	No enforcement action by us
1 Information is recorded	No enforcement action

Descriptions of Enforcement Actions

N°	Action	
Information		
1	Information is recorded	In certain circumstances, contraventions of the law may not warrant any action other than the details being recorded. This can be where the cost of the required enforcement action to the City Council outweighs the detrimental impact of the contravention on the community.
2	Information is recorded and shared with another agency.	Where another agency is best placed to have the information we will share it, having regard to security, Data Protection and GDPR guidance.
Intervention in writing		
3	Trader or individual advised of an alleged non-compliance	We start from the position of wanting to give a business or individual an opportunity to put the situation right. For some minor technical infringements the trader or individual will be advised, usually in writing, of the alleged or actual problem.
4	Trader or individual advised how to correct alleged non-compliance	Where a relatively minor offence has been committed but is not thought appropriate to take any further action, the suggested corrective action and a timescale will be communicated in writing to the alleged offender.
Visits, investigations and testing		
5	Inspection of premises / investigation of non-compliance	For more serious or repeated issues traders and/or consumers/individuals will be visited to enable us to investigate whether and how an infringement has arisen.
6	Testing / Sampling of alleged non-compliant article or test purchase	Articles will be formally tested to confirm whether they conform to relevant standards or descriptions, after consultation with relevant home authorities, in appropriate cases. Sometimes acting as a consumer, officers will purchase goods or services to see how they are sold and what is supplied.
Enforcement actions, Administrative sanctions		
7	Detention/Seizure of articles	Certain legislation enables authorised Officers to seize goods, for example unsafe products, equipment or documents that may be required as evidence for possible future court proceedings. When we seize goods we will give the person from whom the goods are taken an appropriate receipt.
8	Warning letter or Home/Primary Authority referral	After an investigation a formal letter to a trader (and/or home authority) will be used where no further sanction is thought necessary in this instance but the business needs to be put on warning in relation to future conduct. We may consider applying for these warnings to be admitted as “bad character” evidence in any future criminal action.

9	Statutory notice served	Where there is a need to secure compliance but no immediate other sanction is required, certain legislation allows notices to be served requiring offenders to take specific actions or cease certain activities. In other circumstances, the time allowed will be reasonable, and take into account the seriousness of the contravention and the implications of the non-compliance.
10	Forfeiture of equipment or articles	This procedure may be used in conjunction with seizure and/or prosecution where there is a need to dispose of goods in order to prevent them re-entering the market place or being used to cause a further problem or danger. In appropriate circumstances, we will make an application to the Magistrate's Court.
11	Refusal / review of licence	Where there is a requirement for a business to be licensed by the local authority or other body then a review of the licence will be sought where the actions of the trader question their fitness and are incompatible with the expected level of professional diligence.
12	Fixed penalty notices, Penalty charge notices	Certain offences are subject to Fixed Penalty Notices (FPN) - they are recognised as a low-level enforcement tool. See Appendix I – FPN Enforcement Strategy Penalty Charge Notices (PCN) are prescribed by certain legislation as a method of enforcement by which the offender pays an amount of money to the enforcer in recognition of the breach. Failure to pay the PCN will result in the offender being pursued in the County Court for non-payment of the debt. A PCN does not create a criminal record and we may choose to issue a PCN without first issuing a warning.
Civil Sanctions		
13	Penalty notice for disorder (PND). Public Spaces Protection Order (PSPO)	A penalty notice for disorder is the fixed penalty option for anti-social behaviour such as the sale of alcohol to a minor by shop staff. We may choose to issue a PND without first issuing a warning. A PSPO can be applied for where conduct is having a detrimental effect on the quality of life of those in the area.
14	Informal Undertaking	A voluntary undertaking to change their behaviour is appropriate from traders who have started to persistently breach the law in less serious matters

15	Anti Social Behaviour Injunctions	Where the non-compliance under investigation amounts to anti-social behaviour such as persistent targeting of an individual or a group of individuals in a particular area then, following liaison with the Council's Anti-Social Behaviour Unit where appropriate, a restraining order or other injunctive measure may be sought to stop the activity. In extremely serious cases an injunction from the High Court can be sought.
16	Formal Enforcement Order	<p>For serious continuing breaches where other sanctions are not a deterrent.</p> <p>In certain circumstances, for example, where offenders are repeatedly found guilty of similar offences or where it is considered that injunctive action is the most appropriate course of enforcement, then Enterprise Act Enforcement Orders may be used to deal with repeat offenders, dangerous circumstances or significant consumer detriment. The range of actions under this legislation include the following:</p> <ul style="list-style-type: none"> • formal undertakings • interim orders • court orders • contempt proceedings
Criminal sanctions		
17	Simple caution	A caution is an admission of guilt but it is not a form of sentence, nor is it a criminal conviction - it may be cited in court in certain circumstances. A record of the caution will be recorded and sent to other bodies that are required to be notified. It allows us to seek to deal quickly and simply with less serious offences and to avoid unnecessary appearances in criminal courts.
18	Prosecution	<p>Before a decision to prosecute is taken, the alleged offence(s) will be fully investigated, a Report compiled by the Investigating Officer and the file reviewed by a Senior Manager.</p> <p>A prosecution will only be undertaken when the evidence passes the 'Evidential Test' and, when it is in the public interest to do so. See the Code for Crown Prosecutors</p> <p>In cases of sufficient seriousness, and when given the opportunity, we will consider indicating to the magistrates that the offence is so serious that they may send it to be heard or sentenced in the higher court where higher penalties can be imposed.</p> <p>Where appropriate we will draw the court's attention to all the factors that are relevant to the court's decision as to what sentence is appropriate on conviction. This will include the application to admit 'Bad character' evidence where appropriate.</p>

		<p>Death at Work</p> <p>Where there has been a breach of the law leading to a work-related death, we will consider whether the circumstances of the case might justify a charge of manslaughter. We will liaise with the Police, Coroners and the Crown Prosecution Service and if they find evidence suggesting manslaughter, pass it on to the Police or where appropriate the CPS. If the Police or the CPS decide not to pursue a manslaughter case, we will bring a health and safety prosecution if that is appropriate. (To ensure decisions on investigation and prosecution are co-ordinated the HSE, the Association of Chief Police Officers and the CPS have jointly agreed and published "Work Related Deaths: A Protocol for Liaison". The Council has agreed that it should take account of the Protocol when responding to work-related deaths.)</p>
19	Criminal Behaviour Order	Where appropriate, we will apply for a CBO post-conviction. A CBO is an order designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court.
20	Proceeds of Crime	Applications may be made under the Proceeds of Crime Act for confiscation of assets in serious cases. Their purpose is to recover the financial benefit that the offender has obtained from his criminal conduct. Proceedings are conducted according to the civil standard of proof. Applications are made after a conviction has been secured.

5. Accessibility and Advice

We are committed to providing open, equal and timely access to our services.

The postal address of the service is:

Office of Director of Public Health

Windsor House

Tavistock Road

Plymouth

PL6 5UF

Tel: 01752 304141

Fax: 01752 226314

Email: public.protection@plymouth.gov.uk

Website: www.plymouth.gov.uk

The telephone number 03454 040506 is used for consumer contacts and businesses seeking advice in respect of a consumer contract; it is answered by our partner the Citizen's Advice Consumer Service which handles all Trading Standards consumer advice matters and is available 9.00am to 5.00pm Monday to Friday

Our staff are not fully office-based, but field workers, and therefore frequently out of the office. Consequently personal callers cannot be accommodated without an appointment.

We should respond to requests for business advice within 3 working days. For other enquiries we aim to respond within 5 working days to phone messages and e-mails, and 7 working days to letters.

This policy is available on our website. On request it will also be made available on tape, in Braille, large type, or in a language other than English.

6. Our commitment to you

Where it is necessary to carry out a full investigation, the case will be progressed without undue delay. All investigations into alleged breaches of legislation will be conducted in compliance with statutory powers and all other relevant legislation (and relevant Codes of Practice), including the requirements of:

- Police and Criminal Evidence Act (PACE)
- Criminal Procedure and Investigations Act
- Regulation of Investigatory Powers Act
- Human Rights Act
- Regulators Code
- Code for Crown Prosecutors

As part of the investigation process, persons suspected of breaching legal requirements will, wherever possible, have the opportunity to give an explanation or make any additional comments about the alleged breach. (This may be by means of a formal interview in accordance with PACE).

7. Appeals

Where we take enforcement action, there is often a statutory right to appeal. We will always tell you about this at the appropriate time.

We are always willing to discuss with you the reasons why we have acted in a particular way, or asked you to act in a particular way. You can contact the relevant Service Manager using the details listed above.

8. Complaints

If you are unhappy with the service you have received, or we have failed to live up to our promises, we want to know and will try to find a solution.

If you wish to make a complaint, in the first instance, please contact the relevant Service Manager or:

Director of Public Health

Windsor House

Tavistock Road

Plymouth

PL6 5UF

Telephone – 01752 668000

If you are still dissatisfied, and wish to make a more formal complaint, then you can follow the Council's complaints procedure. Details are available here:

<https://www.plymouth.gov.uk/feedbackandcomplaints>

or by telephoning the Contact Centre on 01752 668000.

Appendix I - Fixed Penalty Notice Enforcement Strategy

Where legislation permits an offence to be dealt with by way of a Fixed Penalty Notice (FPN) we may choose to administer one on a first occasion, without issuing a warning. This avoids a criminal record for the defendant. However failure to pay the FPN will result in the legal action being taken against the offender.

We do not offer early payment discounts.

Some legislation enables Local Authorities to set the amount of the FPN within a Range. Details of the FPNs, range stipulated by legislation and amount set are detailed below.

Table I: FPN Details

Offence	Legislation	Range	Amount
Littering	Environmental Protection Act 1990	£50-£150	£80
Littering from vehicle	Litter from Vehicles Outside London (Keepers Civil Penalties) Regulations 2018	£50-£150	£80
Public Spaces Protection Order	Anti-Social Behaviour, Crime and Policing Act	Max £100	£100
Graffiti	Anti-Social Behaviour Act 2003	£50-£150	£80
Fly-posting	Anti-Social Behaviour Act 2003	£50-£150	£80
Fly-tipping	Unauthorised Deposit of Waste (Fixed Penalty) Regulations 2016 Environmental Protection Act 1990	£120-£400	£400
Household Duty of Care offences	Environmental Protection Act 1990 (new regulations)	£120-£400	£400 *
Domestic Waste Receptacle Offences	Environmental Protection Act 1990	£40 - £80	£80
Commercial waste receptacle offences	Environmental Protection Act 1990	£60- £110	£110
Failure to furnish document – waste carriers licence	Control of Pollution Act 1989	£120-£300	£300
Failure to produce authority – waste transfer notes	Environmental Protection Act 1990	£120-£300	£300

Breach of Public Space Protection Order (PSPO)	Anti Social Behaviour, Crime and Policing Act	Max £100	£100
Breach of Community Protection Notice (CPN)	Anti Social Behaviour, Crime and Policing Act	Max £100	£100
Unauthorised distribution of literature on designated land	Environmental Protection Act 1990	£50-£150	£150
Smoking in a smoke-free place	The Health Act 2006	N/A	£50 (reduced to £30 if paid in 15 days)
Failure to display at least one legible no smoking sign in a place or vehicle	The Health Act 2006	N/A	£200 (reduced to £150 if paid in 15 days)
Failure to prevent smoking in a smoke free place: private vehicle (b)	The Health Act 2006	N/A	£50 (reduced to £30 if paid in 15 days)
Nuisance Parking	Clean Neighbourhoods and Environment Act 2005	£60-£100	£100
Alarm Noise	Clean Neighbourhoods and Environment Act 2005	£50-£80	£80
Exceeding permitted noise levels- domestic premises	Noise Act 1996	£60-£110	£110
Exceeding permitted noise levels- licensed premises	Noise Act 1996	£500	£500

*Proposed fees

Issuing an FPN

They will be only be issued by an Officer authorised by the Council to do so and where the officer has reason to believe a person has committed a penalty offence and there is sufficient evidence to support a successful prosecution. They will be issued either immediately by the Officer or sent in the post.

Normally offences resulting in a FPN will be witnessed directly by the officer. However, an officer may consider it appropriate to issue a FPN to a suspect if they have not directly witnessed the offence, but have reliable witness testimony.

In law a local authority FPN can be issued to anyone over the age of 10. However, it is our policy not to issue an FPN to anyone under the age of 18.

Disputing an FPN

There is no formal appeal process for an FPN – if you disagree that you have committed an offence, you can decide not to pay the FPN and the matter will then be decided by a Court. This can be expensive and time-consuming for both parties.

However, in order to avoid this you can make a representation to the Council disputing an FPN. Representations must be made in writing and show the FPN was not issued correctly by law – for example, by proving it was issued to the wrong person.

Representations would not be considered on the basis that:

- you didn't know the law
- you didn't know the law was being enforced
- it was the first time you committed the offence
- you believe the officer issuing the FPN did not behave appropriately – we will consider this as a complaint but the FPN will stand if issued correctly by law

Spending the money received from FPNs

The Council will use the income from FPNs on the functions as set out below

FPN Type	Functions
Littering	Litter, dog control, graffiti and fly-posting
Graffiti	Litter, dog control, graffiti and fly-posting
Dog Control	Litter, dog control, graffiti and fly-posting
Fly-Posting	Litter, dog control, graffiti and fly-posting
Waste	Waste on land
Alarms, Permitted Noise levels	Statutory noise nuisance, noise at night and audible intruder alarms
Nuisance Parking	Road traffic, litter and refuse

Records we will keep

The Council will keep records of:-

- FPNs issued, from issue through to payment or prosecution and information will be held in line with the data retention policy
- any evidence in case the FPN goes to court
- For any FPN that is paid, any body worn video footage information will be held for a period of 30 days following receipt of payment.