

Advice, Support and Enforcement Policy Update

Lead Officer: Mickey Green, Managing Director, Somerset Waste Partnership

Author: Julie Searle, Strategy Officer, Somerset Waste Partnership

Contact Details: mickey.green@somersetwaste.gov.uk

Forward Plan Reference:	<i>26.01.2021</i>
Summary:	This report updates members on the refresh of the Advice, Support and Enforcement Policy and sets out the proposed steps to approve and implement it.
Recommendations:	That the Somerset Waste Board notes the progress made and agrees the proposed approach for sign off.
Reasons for recommendations:	The District Councils are in the process of delegating the appropriate powers to SWP via SCC and require a final sign off stage after the SWB approve the policy. To hasten this final sign off, we would like to ensure the policy papers are agreed by each partner before bringing them back to the SWB for approval in June.
Links to Priorities and Impact on Annual Business Plan:	Action 8.8 in the Business Plan 2021-26.
Financial, Legal and HR Implications:	In order for the Advice, Support and Enforcement Policy to be successful it is important that the legal delegations are robust, and technical issues regarding the delegations are the reason that the Enforcement Policy as agreed by SWP in 2015 has not been able to be used. SWP have taken legal advice throughout the process and the process proposed ensures that individual partners legal teams are fully involved.
Equalities Implications:	An impact assessment on the Advice, Support and Enforcement Policy was undertaken in 2015 and has been updated with the

	refresh of the policy.
Risk Assessment:	The biggest risk to the project is not having the correct legal delegations to ensure that any Enforcement can be carried out. It is important that these are robust and will stand up in court.

1. Background

1.1. History

SWP has historically taken a light-touch approach to enforcement as we do not have robustly delegated powers to effectively enforce. We have relied on education and information to ensure compliance with service rules. This works for the majority of residents and businesses, but there is a small minority who refuse to comply, and this can result in negative financial, social and environmental impacts on the local amenity and community well-being, as well as increasing costs.

'Enforcement' includes any formal or informal action taken by officers aimed at ensuring that businesses or individuals comply with the law. These actions will range from offering information, advice, issuing written warnings, fixed penalty notices (FPN's), simple cautions and instituting legal proceedings and prosecutions. SWP will be using powers under sections 34, 46 and 47 of the Environmental Protection Act 1990.

SWP developed an Enforcement Policy which was approved by SMG and SWB in 2015, but a technical issue regarding the legal authorisations have prevented its full adoption and implementation.

1.2. Using in-cab technology

With the start of the new collection contract we have more options to identify issues and provide advice and support to residents, helping to resolve problems before they become serious issues:

- Crews identify, photograph and record all resident non-conformances with the service rules, such as contaminated recycling, excess waste and additional unauthorised bins.
- Where appropriate the containers are tagged setting out what action the customer needs to take (e.g. not put a material out that we don't recycle, not to excessively contaminate recycling). Information stored on crew devices indicate a total of 0.07% of recycling boxes are sufficiently contaminated to be tagged.
- This information is stored electronically and links with District customer service systems giving staff real time information to feed back to the very small minority of customers that then get in touch.
- These systems also prevent invalid missed collection reports (i.e. by enabling the crew to highlight if a bin wasn't out or if side waste was left). Analysis showed prior to the implementation of that less than 1% of missed collection

reports would be invalidated by the behaviour in the system.

- Once a customer has been tagged, in over 80% of cases this changes the behaviour of the customer and no further interventions are noted.
- Our systems record how many times a customer has been tagged and if the customer is tagged multiple times for the same issue within a period of time then a letter can be sent and an officer visit arranged to help the customer overcome their difficulties. SWP officers review which letters are sent out to ensure that we are targeting scarce resources at the highest priority issues and not taking actions which may lead to excess contact. Over the previous two months we sent out nearly six hundred letters surrounding additional unauthorised bins.
- This process of tagging, electronic storage of information, letters and officer visits forms the basis of identifying a tiny fraction of residents that do not comply with service rules and where enforcement action may be warranted.

1.3. Project Approach

It is important to note that SWP's approach to enforcement will not change, and we will continue to work with residents and businesses to support, advise and problem solve. The proposed project is to give SWP the ability to take enforcement action such as issuing fixed penalty notices (FPNs) for the very small minority who persistently refuse to engage or cooperate.

SWP will be supported by Somerset County Council's legal team (as the Administering Authority) to progress any court action that may be required in the event of non-payment of the FPN. In order for this to happen, each partner needs to delegate their powers under the appropriate legislation to enable SWP to issue FPNs. This is being done as part of the Business Planning process and will be revisited each year to ensure that the delegations are reviewed on an annual basis.

SWP has reviewed and updated the existing Enforcement Policy Statement and Operational procedures to ensure they are up to date. An Enforcement Strategy has also been drafted. These documents will be shared with the Partners for internal approval (for example to ensure that the process for approving any court action is fully compliant with individual authorities Constitution and Schemes of Delegation) and then brought to SWB for final sign off.

Once the Policies are approved by SWB, then the final sign off for the delegations can happen at the Districts and the Advice, Support and Enforcement policies will start being used. This does not mean that we will immediately start issuing fixed penalty notices, as before this can happen, there needs to be a strong, clear evidence trail of persistent problems, and efforts that have been made to resolve them. Evidence gathering must be carried out in a concise and consistent manner to ensure its admissibility in Court. There are several levels of engagement that need to be followed before we consider issuing an FPN. These include providing information and advice – both verbally and in writing, followed by written warnings.

2. Options Considered and reasons for rejecting them

- 2.1. The alternative option considered was to bring the papers to SWB at this February meeting, and then seek final review of the detailed delegations/authorisation process after that. However, SWP felt that undertaking that detailed review prior to bringing a final policy to SWB was more pragmatic. Like everything, the pressures of Covid-19 have also slowed down the process of consultation, but this has little impact on the project as the ongoing pressures will mean that implementation won't start immediately. Ensuring that the papers are approved by each of the partners before bringing them to SWB will ensure that any queries can be addressed in advance, and that the final sign off of the delegations can happen promptly after the SWB approve the policies.

3. Consultations undertaken

- 3.1. The Strategic Management Group (senior officers from each partner) have agreed the revised approach and are working with their legal teams to ensure each stage is signed off.

4. Implications

- 4.1. SWP's preferred approach is to engage with residents and businesses and provide advice and support as necessary. This will continue, and it is envisaged that enforcement action will be minimal and limited to situations where a resident or business persistently refuses to engage, and their actions are causing a nuisance to the local area.

4.2. Risks

The key risk to the project is not having the correct delegations which could mean that enforcement action may fail if tested in court.

Other risks include:

<i>Risk</i>	<i>Mitigation</i>
<ul style="list-style-type: none">• Differing appetites for this approach across the partnership	Ensure all partners have agreed and signed off the PID. Updated policy documents to be taken to SWB for approval.
<ul style="list-style-type: none">• Risk that enforcement activity is carried out disproportionately, or that vulnerable people are targeted.	Develop clear enforcement strategy and guidelines as to when enforcement is appropriate or not. SWP will continue to prioritise support, advice and problem solving.

<ul style="list-style-type: none"> • Risk of accusation of 'personal vendettas' 	<p>Enforcement activity will only take place if there is clear evidence, and Senior Officer sign-off will be required before enforcement can progress</p>
<ul style="list-style-type: none"> • Risk that offenders provide false details 	<p>Officers will seek to verify the identity of the offender. Enforcement activity will not take place without clear evidence.</p>
<ul style="list-style-type: none"> • Legal action may fail due to lack of due diligence or poor evidence gathering 	<p>Officers have carried out Enforcement training, and this will be updated as required.</p>
<ul style="list-style-type: none"> • Costs of enforcement may outweigh income from penalties 	<p>SWP will continue to provide advice and support ahead of any enforcement action. Enforcement will continue to be a last resort.</p>
<ul style="list-style-type: none"> • Refusal to pay FPNs results in increased time and costs from court action. 	<p>SWP will only issue FPNs where there is a clear evidence trail that will support prosecution in the courts. We anticipate that most will pay the FPN to discharge their liability for the offence.</p>
<ul style="list-style-type: none"> • Reputational risk or negative press 	<p>Clear policy to be published on the website. SWP will continue to provide advice and support ahead of any enforcement action. Enforcement will always be a last resort.</p>

5. Background papers

- 5.1.
- Draft Business Plan paper December 2020
 - Enforcement policy 2015