

## **Cabinet report**

### **Corporate enforcement policy**

#### **Annexe A**

##### **Background information on naming and shaming and similar activities**

The naming and shaming of recipients of fixed penalty notices was investigated during the development of the corporate enforcement policy.

It is an issue which falls under both the Data Protection Act and the Human Rights Act.

The cabinet report recommends the policy to only publicise personal details where criminal convictions have been gained, and not merely where Fixed Penalty Notices have been served.

Advice was sought from the Information Commissioner's Office (ICO). The ICO is an independent public body set up to promote access to official information and to protect personal information by promoting good practice, ruling on eligible complaints and taking appropriate action where the law is broken. A Fixed Penalty Notice (FPN) is not a criminal conviction. Any personal data relating to it will be sensitive personal data under the Data Protection Act.

The advice was that to publish details of, for example, a littering offence after the service of a FPN would not be proportionate in regard to the offence and the potential effect on the individual. It would also be a breach of the Data Protection Act. However if an individual was given repeated FPNs for similar offences, then it may be proportionate. However the individual would need to be informed that their details may be disclosed to the public and the reason why at the time the FPN was served. Also the fact that the Council would name and shame would need to be publicised widely on our website and other publications.

The following scenarios may help to illustrate how the proposed stance on naming and shaming would operate in practice.

1. An individual is served a FPN for littering and pays the charge on time. In this case it would not be proportionate to name and shame.
2. A FPN is served for littering and the recipient does not pay. The case would then go forward for prosecution, and if convicted the individual's details could be published.
3. If a persistent offender is found, who has been served with multiple FPNs, a decision would be taken to prosecute them, rather than to serve a further FPN. This is a more effective deterrent. If the prosecution were successful it would allow the publication of their details.
4. Where a major offence has been committed it would be more appropriate to take a prosecution as this would be more proportionate action against such an offence. Here again, if the conviction were successful, the offenders' details could be published under the proposed enforcement policy.

## Use of Closed Circuit Television (CCTV)

Some councils use CCTV systems to identify antisocial behaviour and other offences. The use of loudspeakers to warn offenders to pick up the litter they have just dropped (if compliant with surveillance legislation), is lawful as no personal data is involved.

Other councils use CCTV images on their websites to help identify offenders. This use of data is lawful where it is published as part of an investigation into the offence, and the authority has tried other methods to identify the offenders. However it is a breach of data protection law if the reason for publication of the images is solely for shaming the culprit and is not done as part of an investigation in to the offence.

It is important to note that West Wiltshire District Council does not own the town centre CCTV surveillance systems and as such has no access to the images captured by the existing systems.

## Options

There are a number of options which members can consider on this issue. They are listed below with the associated risks of legal challenge.

Number	Option	Risks
1	No publicity	Zero risk approach, but does use the potential benefits to the authority to improve the local environment
2	Publicise repeat offenders or serious breaches	Some risks which could be mitigated by warning offenders (on FPN tickets and on the council's website and other publications)
3	Publicise convictions only	Low risk approach which complies with ICO advice
4	Publicise all FPNs	High risk of challenge or complaint to ICO as unlawful use of personal data under the Data Protection Act
5	Publication of CCTV images	High risk as the council has no legal power to access or use existing town centre CCTV data

## Recommendations

It is recommended that members agree that an approach to the use of data for naming and shaming as described in options two and three above.