



Woking Borough Council Public Space Protection Order: Enforcement Strategy

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Introduction

Introduced by the Anti-social Behaviour Crime and Policing Act 2014, Public Spaces Protection Orders (PSPO) are intended to tackle identified problem behaviour in a specific location rather than individuals or properties. Local authorities can implement PSPOs to prohibit specified activities, and/or require certain things to be done by people engaged in particular activities, within a defined public area.

The threshold for making a PSPO is set out in Section 59 Anti-social Behaviour Crime and Policing Act 2014 which permits local authorities to make a PSPO if satisfied, on reasonable grounds, that the following conditions are met as defined by the Act:

- (a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or
- (b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect
- (c) the activities is, or is likely to be, of a persistent or continuing nature,
- (d) is, or is likely to be, such as to make the activities unreasonable, and
- (e) justifies the restrictions imposed by the Order

A breach of the PSPO is a criminal offence, which can be dealt with, either by way of a fixed penalty notice (FPN) of up to £100 or prosecution. If prosecuted, an individual could be liable to a fine no higher than £1,000.

Any PSPO introduced can only be valid for a maximum of three years or shorter and must thereafter be extended if still required. Such extension is subject to Woking Borough Council being satisfied that it is reasonable and necessary to do so and is subject to the same publication requirements as the introduction of a PSPO. The extension period is also restricted to a maximum of three years.

Procedure for making a Public Spaces Protection Order

The Council can make a PSPO on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre.

The Council must formally consult with the Police through the Chief Officer of Police and the Police and Crime Commissioner, but details could be agreed by working level leads. In addition, all owners or occupiers of the land within the area to be restricted by the PSPO must be consulted. Woking Borough Council must also consult relevant community representatives along with the wider general public to give the users of the public space the opportunity to comment on whether the proposed restriction or restrictions are appropriate, proportionate or needed at all.

Before the PSPO is made, the council must publish the draft order in accordance with regulations published by the Secretary of State and ensure that the draft order is available on its website.

When the final set of measures is agreed the Order should be published in accordance with regulations made by the Secretary of State and must:

- identify the activities having the detrimental effect;
- explain the potential sanctions available on breach; and
- specify the period for which the Order has effect.

Challenges

Any challenge to the PSPO must be made by judicial review proceedings in the High Court by an interested person within six weeks of the PSPO being made by the Council. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council. Interested persons could challenge the validity of a PSPO on two grounds. They could argue that the Council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance statutory consultation) had not been complied with.

Where a judicial review application is made, the High Court can decide to suspend the operation of the PSPO pending the final outcome of the judicial challenge. The High Court has the ability to uphold the PSPO, quash it, or to vary it.

Enforcement

Partnership working

Surrey Police will have delegated authority to enforce the PSPO within Woking. Surrey Police will be the primary enforcers of the PSPO. Enforcing officers will follow guidance issued by Surrey Police (appendix a) and supply personal details of the offender and supporting evidence of the breach to the local authority, to issue warning letters or FPNs if appropriate (appendix b).

Relevant agencies such as social services or the youth offending team will also be made aware of the breaches.

Where a person has been dealt with for more than two breaches resulting in FPNs being issued, consideration should be given to a Community Harm and Risk Management Meeting (CHaRMM) referral so that options can be discussed to tackle the issues linked to the person continuing to offend. This could include support/intervention or enforcement options such as an ASB Injunction or Criminal Behaviour Order.

Issuing Fixed Penalty Notices

An authorised officer of the Council may issue a FPN to anyone they have reason to believe has committed an offence under section 67 of the Anti-social Behaviour, Crime and Policing Act 2014. A FPN can be issued to anyone from the age of 10 years old.

A FPN is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for an offence by payment to the Council the amount specified in the notice.

No proceedings can be taken before the end of 29 days following the date of issue for the notice. A conviction may not be sought if the recipient pays the FPN before the end of that period.

Woking Borough Council will issue a FPN of £100 to be paid within 14 days with a reduced amount of £75 if paid within 10 days of the date of issue. If the amount is unpaid a final reminder letter will be issued giving a further seven days' notice. If the penalty remains unpaid, the matter could result in prosecution. Payments of a FPN by instalments will not be accepted.

An FPN must contain prescribed information:

- (a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- (b) state the period during which proceedings will not be taken for the offence;
- (c) specify the amount of the fixed penalty;
- (d) state the name and address of the person to whom the fixed penalty may be paid;
- (e) specify permissible methods of payment

The Council will issue FPNs to individuals identified as breaching the prohibitions or requirements of the PSPO. Full and accurate details of each FPN shall be recorded and monitored at all stages from issue to closure on E-CINS.

Failure to pay the FPN within 14 days from the date of issue may result in prosecution. To ensure the creditability of an FPN scheme, all cases involving non-payment will be referred to the Council's legal services with a view to prosecution. If convicted, a defendant is likely to receive a fine, be ordered to pay prosecution costs and will incur a criminal record.

There is no fixed time in which the FPN must be served. However, to avoid any allegation of abuse of process, FPNs will normally be served within 15 working days of the date of the offence.

Any income received from the FPNs must be ring-fenced and spent on Council functions relating to community safety matters.

Costs awarded against defendants following successful prosecution will be received by the Council once recovered by the court service.

Young people

In law a local authority can issue an FPN to anyone over the age of 10 if it appears they have committed an offence. Parents and guardians are not responsible in law for paying fixed penalties issued to young offenders. However, a court before which a young person appears can order the parent / guardian to pay any fine it may impose.

Children's service authorities, including local authorities and Police, have duties under the Children Act 2004 to discharge their functions having regard to the need to safeguard and uphold the welfare of children.

If the enforcing officer has reason to believe that the offender is less than 18 years old they should obtain the person's name and address and explain that their details will be passed to Woking Borough Council who will issue a formal warning letter to them and notify their parents or guardians.

Under 18s offending for a second time will be visited by the relevant Police Neighbourhood Officer (PC or PCSO) or Police Youth Intervention Officer and an appointment with their parent or guardian will be made to discuss the offence. The Youth Offending Team will also be notified of the breaches and if appropriate alternative restorative measures or an anti-social behaviour agreement (ABA) will be pursued. Where required, relevant partner agencies such as, social services and housing associations will also be notified of the breaches.

Under 18s offending for a third time will be given consideration as to whether it is suitable for them to be issued with a FPN via post by Woking Borough Council along with parents or guardians being notified.

Only on non-payment of a FPN, or where the offender is identified as a persistent offender, would prosecution of a youth under 18 years of age be considered.

Mitigating circumstances

A FPN shall only be issued where there is sufficient admissible evidence to support a prosecution, including offences directly witnessed by an authorised officer, or where there is reliable witness testimony.

A FPN shall only be issued where the local authority is confident that the correct identity details have been provided. Failure to supply a name and address, or to supply false details to an authorised officer is an offence.

A FPN should not be issued where a suspect appears to be unable to understand what is being offered to them, for example there is a doubt about their ability to understand English. Where such circumstances arise every effort should be made to illicit / impart the required information.

Where the suspects' behaviour suggests they have learning difficulties or mental disorder, or where the suspect is under the influence of alcohol or drugs, the local authority should question whether issuing a FPN is appropriate (as it may go unpaid) and whether education is a better solution or if prosecution may be in the public interest.

Where no satisfactory address exists for enforcement purposes, this may be where the local authority has reason to believe that the suspect is homeless or where the suspect is a non-resident foreign national.

PSPOs that require an offender to leave the restricted area for a specific amount of time, the Police Officer must allow the following mitigating criteria to apply which are used for Dispersal Orders in accordance to the Anti-Social behaviour, Crime and Policing Act 2014:

A Constable may not give a direction to leave the area and not return for a specific amount of time;

- that prevents the person to whom it is given having access to a place where the person lives.
- that prevents the person to whom it is given attending at a place which the person is—

(a) required to attend for the purposes of the person's employment, or a contract of services to which the person is a party,

(b) required to attend by an obligation imposed by or under an enactment or by the order of a court or tribunal, or

(c) expected to attend for the purposes of education or training or for the purposes of receiving medical treatment, at a time when the person is required or expected (as the case may be) to attend there.

- A Constable may not give a direction to leave the restricted area and not return for a specific amount of time if the person is one of a group of persons who are—

(a) engaged in conduct that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 (peaceful picketing), or

(b) taking part in a public procession of the kind mentioned in subsection (1) of section 11 of the Public Order Act 1986 in respect of which—

(i) written notice has been given in accordance with that section, or

(ii) written notice is not required to be given as provided by subsections (1) and (2) of that section.

(d) In deciding whether to give a direction a constable must have particular regard to the rights of freedom of expression and freedom of assembly set out in articles 10 and 11 of the Convention.

"Convention" has the meaning given by section 21(1) of the Human Rights Act 1998.

Disputes about enforcement

Once a FPN has been issued, the recipient may decide to phone or write to the local authority pleading mitigation or contesting the fact that a FPN was issued. An alleged offender contesting a FPN should be advised that there is no obligation to pay a fixed penalty and there is no formal appeal procedure.

Whilst the Council should review the facts of a particular case when invited, the opportunity to challenge the allegation and plead not guilty to the alleged offence at an independent hearing is open to the recipient of the FPN. This will be by the way of prosecution, on summons, and trial in a Magistrates' Court.

Any person requesting a reconsideration of the decision to issue a FPN should do so in writing to the Community Safety Manager, Woking Borough Council, Civic Offices, Gloucester Square, Woking, GU21 6YL or by using the online form.

Such letters may help identify any issues that need resolving or investigating before a case is prepared for court. Arguments over the law, the amount of the fixed penalty etc. will not be relevant, but claims that a defence applies will. Only in exceptional circumstances will it be appropriate to withdraw a FPN or not proceed to summons on non-payment. Examples of this may be when information that was not available at the time the FPN was issued becomes available, that it would not be in the public interest to prosecute, or that the notice should not have been issued to the person named in the notice.

Where reconsideration has been requested, and the decision to issue the FPN upheld, the appellant shall be informed within five working days of the decision and the original payment terms, including the opportunity to pay the charge at the discounted rate, which will apply from the date of letter notifying the appellant of the results of the reconsideration.

Where a reconsideration has been requested which results in the withdrawal or cancellation of the FPN, the appellant shall be informed within five working days of the decision.

Any complaint regarding the issue of a FPN to do with its appropriateness or proportionality in the circumstances shall be dealt with under the Council's complaint procedure, details of which are available on the Council's website.

Any complaint regarding the conduct of a Police Officer must be made directly to [Surrey Police Professional Standards](#) or to the [Independent Office for Police Conduct](#).

