

**WANDSWORTH COUNCIL  
WASTE MANAGEMENT  
OPERATIONAL ENFORCEMENT PROCEDURES  
POLICY**

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## Operational Enforcement Procedures Policy

### **1. OVERVIEW**

1.1 Wandsworth Council's five strategic objectives include 'improving the local environment' and the enforcement of the legislation contributes to the achievement of this corporate objective. This operational enforcement procedures policy contributes to a number of the key actions in the subjective improve the local environment and enhance the street scene by providing an efficient and effective Street scene enforcement including:-

- a) Using seizure warrants against fly-tippers' vehicles and undertaking covert operations to enable prosecutions.
- b) Issuing Fixed Penalty Notices (FPNs), Penalty Charge Notices (PCN's) and/or prosecuting those who fail to comply with the relevant legislation outlined in the Council's Enforcement Policy for Street Scene activities
- c) To reduce the quantity of domestic refuse and recycling sacks being fly tipped on the pavement at the wrong time by households with no garden or area for off street waste storage.
- d) Issuing FPNs for waste-related and street trading offences and increasing the proportion paid or successfully prosecuted.
- e) Issuing of PCN's in town centres where "Time Bands" have been implemented to reduce the number of commercial waste sacks left out for an unacceptable time.
- f) Working with different agencies to reduce the number of illegal waste carriers that operate in the borough.
- g) Installing CCTV monitoring equipment, subject to the Regulation of Investigatory Powers Act 2000 (RIPA) authorisation to identify fly-tippers and monitor contractor performance.

1.2 This policy covers FPN's and PCN's issued for environmental and street trading offences under the Environmental Protection Act 1990, Control of Pollution Act 1989, London Local Authorities Acts 1990, 1994, 2004 and 2007, Controlled Waste Regulations 1992 and the Clean Neighbourhoods and Environment Act 2005. This policy will guide officers in their use of FPN's and PCN's as part of a wider enforcement strategy and achieving the Council's stated objectives. Guidance on all other relevant aspects of carrying out enforcement duties are included as well as information on the use of FPN's and PCN's:-

- a) Working practices

- b) Use of Surveillance and Acquisition of Subscriber Details.
- c) Description of the offences, fines and relevant legislation
- d) Police and Criminal Evidence Act 1984 (PACE)
- e) Issuing FPN's and PCN's
- f) Right of appeal
- g) Non Payment
- h) Publication

## **2. WORKING PRACTICES**

- 2.1 **Authorisation.** Wandsworth Borough Council employs a team of authorised Waste Enforcement Officers, with powers to issue FPN's and PCN's for environmental and street trading offences. These employees are all individually authorised in writing to issue FPN's and PCN's on behalf of the local authority. All authorised officers are required to carry with them, at all times, their 'Authorisation'. This document is signed by the Director of Environment and Community Services Department of Wandsworth Council and details the Acts and Sections under which the individual officer is entitled to carry out enforcement. Officers are also required to wear, so that clearly visible at all times, their photographic Council identification card which lists the officer's name and job title as well as an expiry date.
- 2.2 All officers will be trained in the requirements of the Police and Criminal Evidence Act 1984 and the relevant statutory instruments, the Regulation of Investigatory Powers Act 2000 and other key statutory requirement in relation to gathering evidence, investigative interviewing, continuity of evidence, cautioning and all other relevant skills to ensure that enforcement is maximised and lawful.
- 2.3 **Professional Approach.** Waste Enforcement Officers are the face of the local authority, undertaking what can often be a challenging role. Officers therefore, are expected to maintain high standards and be well presented. Officers must also ensure that they are knowledgeable in the legislation and practises in relation to the duties, which they perform. Officers will provide information and advice in plain language on the rules that the Council applies and will confirm in writing, on request. Any remedial work necessary will be explained and a time scale given. Officers will provide a courteous and efficient service and always identify themselves by name. Officers will carry out their duties in a fair, equitable and consistent manner. While officers are expected to exercise judgement in individual cases the provisions of the Enforcement Concordat and Regulators' Compliance Code promote consistency.

## 2.4 The “*Enforcement Concordat*”

- (a) The “*Enforcement Concordat*” sets out what business and others being regulated can expect from enforcement officers. It is supplemented by “*Enforcement Concordat: A Good Practice Guide for England and Wales*”.
- (b) Waste Management staff aim to conform to the principles outlined in the Concordat and apply them in the following ways:
- (c) **Openness and helpfulness:** The Council will publicise this enforcement policy so people know what standards are expected. Waste Management staff will help people to comply with the law and will explain what they are doing and why. They will inform people about their rights of appeal. They will make sure people know how to make a complaint. They will try to help people who cannot read or speak English by using the services of an interpreter.
- (d) **Proportionality, consistency and priorities:** Enforcement staff will carry out their duties in a fair, reasonable and consistent manner. They will take appropriate enforcement action when required to do so. Any action taken will fit the seriousness and prevalence of the crime.
- (e) It should be noted that each case is unique; certain offences are worse than others, and as such the enforcement action taken will potentially differ. Notwithstanding staff will be trained to apply the law and this policy in a fair and consistent way. To ensure consistency Senior Management will regularly carry out random to checks for accuracy and consistency.

## 2.5 The Regulators' Compliance Code.

- (a) Whilst the Regulators' Compliance Code (the Code) only applies to certain designated legislation, most of the regulatory functions of the Waste Management Service are included within the designation. The main purpose of the Code is to ‘embed a risk-based, proportionate and targeted approach to regulatory inspection and enforcement’. The Government expects that the Code will lead to better value from the regulatory efforts made and benefits to low risk and compliant businesses through better focused inspection activity. The Code stresses the need for a positive and proactive approach by helping businesses to understand and meet regulatory requirements as well as responding proportionately to breaches.
- (b) The Code establishes specific obligations, which flow from the Hampton Review (a previous Government investigation into regulatory burdens). These are as follows:
  - (i) **Economic progress:** Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear *case for* protection.

- (ii) Risk Assessment: Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources in the areas that need them most.
- (iii) Advice and guidance: Regulators should provide authoritative, accessible advice easily and cheaply.
- (iv) Inspections and other visits: No inspection should take place without a reason.
- (v) Information requirements: Businesses should not have to give unnecessary information or give the same piece of information twice.
- (vi) Compliance and enforcement actions: The few businesses that persistently break regulations should be identified quickly and face proportionate and meaningful sanctions.
- (vii) Accountability: Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.

2.6 **How Enforcement is undertaken.** Our Waste Enforcement Officers each have responsibility for one of the five refuse collection areas in the borough. These officers are supervised by the Waste Enforcement Manager. The team works on a shift pattern covering the hours from 7am until 12pm Monday to Friday and also provide daytime cover each weekend. Due to operational demands it is not always possible for the officers to work in pairs, however in certain circumstances such as Target Area Operations and Trade Waste Enquiries officers may work in larger groups.

2.7 **Uniform.** Permanently employed Waste Enforcement Officers are all provided with uniforms, which they are required to wear at all times while carrying out their duties on behalf of Wandsworth Borough Council. All officers are provided with the full range of Personal Protective Equipment (PPE) to carry out the duties for which they are employed. These ensure their safety when employed on the street as well as legitimising their presence and making the public aware that the problems are being tackled.

### **3. USE OF SURVEILLANCE AND ACQUISITION OF SUBSCRIBERS DETAILS**

3.1 You will need to determine when you can use this, how to comply with the Council's procedural rules and what information can be obtained. Internal Audit can advise. You indicate covert surveillance in the Corporate Business Plan and this means RIPA.

3.2 The use of surveillance will be undertaken within the Council's guidance on compliance with the law as issued under the Council's approved Anti-Fraud and Anti-corruption Strategy (Paper No 05/620) in full compliance with all the relevant legislation.

## **PRACTICE NOTE ON DIRECTED SURVEILLANCE**

**[Issued under the Council's approved Anti-Fraud and Anti-Corruption Strategy (Paper No 05/620)]**

### **INTRODUCTION**

There are detailed rules to be observed in order to ensure that covert surveillance undertaken by Council staff, or by others on behalf of the Council, is lawful and this Practice Note provides guidance on compliance with the law. All officers involved in undertaking, applying for, and authorising surveillance must understand the legal requirements set out in the Regulation of Investigatory Powers Act 2000 (RIPA), the Home Office Code of Practice on Covert Surveillance and this Practice Note. Officers will personally take responsibility for their decisions and their actions but if in any doubt they must seek advice from the Head of Audit and the Borough Solicitor.

### **DEFINITIONS**

The following definitions are important in deciding whether or not surveillance can be carried out and the procedures that are required to be followed:

#### **Surveillance**

- a) Monitoring, observing or listening to persons, their movements, their conversations or their other activities or communications, or
- b) Recording anything monitored, observed or listened to in the course of the surveillance; or Surveillance by or with the assistance of a surveillance device.

#### **Covert Surveillance**

- a) Surveillance which is carried out in a manner calculated to ensure that the persons subject to the surveillance are unaware that it is or may be taking place.

#### **Private Information**

- a) Information about a person relating to his/her private or family life.

#### **Directed Surveillance**

Surveillance is a directed surveillance:

- a) If covert but not intrusive; and
- b) For a specific investigation or operation; and
- c) In a manner likely to obtain private information for the investigation or not; but not

- d) In immediate response to an event such that it is not reasonably practicable for an authorisation to be sought.

The only qualifying ground for Local Authority Directed Surveillance is:

- a) to prevent or detect crime or prevent disorder

**Surveillance cannot be carried out by a local authority for any other purpose than for preventing or detecting crime or preventing disorder.**

Other requirements for a Directed Surveillance:

- a) it is necessary; proportionate to what it seeks to achieve; and properly authorised, reviewed, renewed if appropriate and cancelled

### **Other Permitted Surveillance**

There are a small number of other surveillance operations that the Council may undertake because they are deemed not to infringe human rights. These include the following, but see Additional Notes on Surveillance, the Office of Surveillance Commissioners web site and also OSC Guidance which provide helpful and practical advice:

- a) General use of CCTV in Public Areas
- b) Checking and recording the milometer reading of a motor vehicle
- c) Overt vehicle tracking
- d) In immediate response to an event such that it is not reasonably practicable for a Directed Surveillance authorisation to be sought.
- e) Pre-Surveillance Checks

### **Intrusive Surveillance**

Intrusive surveillance is defined (in section 26(3) of RIPA) as covert surveillance that is carried out in relation to anything taking place on any residential premises or in any private vehicle and involves the presence of an individual on the premises or in the vehicle or is carried out by means of a surveillance device. Council staff or the Council's agents are not empowered to engage in Intrusive Surveillance on behalf of the Council.

**Local authorities are NOT designated public authorities for the purposes of authorising and carrying out intrusive surveillance.**

## **4. ALL OTHER SURVEILLANCE**

The Council (and its agents on its behalf) cannot undertake surveillance other than as permitted above.

## 5. **LEGISLATIVE FRAMEWORK FOR DIRECTED SURVEILLANCE**

Local Authorities are authorised to lawfully perform directed surveillance under RIPA. The legislative framework is summarised below:

- a) Individuals have the lawful right to respect for private life under the European Convention on Human Rights (Article 8) and this is enacted in UK national law by the Human Rights Act 1998 (see Section 6 re public authorities).
- b) The right to respect for private life is however a qualified right and a public authority may interfere with this right provided it does so in accordance with the law, and it is necessary and it is for an allowable purpose.
- c) The Regulation of Investigatory Powers Act 2000 permits local authorities to carry out directed surveillance where properly authorised and together with relevant Regulations sets out the requirements relating thereto.

## 6. **AUTHORISATION PROCESS**

Obtaining authorisation under RIPA will only ensure that there is a justifiable interference with an individual's Article 8 rights if it is for a qualifying reason, and it is necessary and it is proportionate to the likely outcome. The Council considers the use of surveillance to be a "power of last resort" and other avenues must be explored first.

The Authorising Officer in each particular case must satisfy him/herself that the use of directed surveillance is for the qualifying reason, that it is necessary and it is proportionate to the likely outcome. Authorising Officers must balance the intrusiveness of surveillance (on the individual(s) and others that might be affected by it) against the operational need for the surveillance.

### **All surveillance will be subject to written authorisation.**

Surveillance will be conducted within the constraints of each individual authorisation and the officer(s) who conducts the surveillance will consider and make plans to reduce the level of collateral intrusion into the privacy of third parties. Authorising Officers must review each live authorisation on a monthly basis to ensure continuing compliance.

Written authorisations for directed surveillance are valid for 3 months but there is provision for renewal (see below, Authorisation process – Checklist for completing an application for renewal). The surveillance will cease when the evidence sought has been obtained or when it becomes clear that the evidence is not going to be obtained by further surveillance. The Authorising Officer must cancel the authorisation as soon as the directed surveillance no longer meets the criteria for authorisation.

Any failure of any part of the process must be brought to the attention of the Authorising Officer who will consult the Council's Legal section over what action should be taken.

Directed surveillance must be recorded and authorised using the Home Office RIPA Part II Standard Forms. There are four actions requiring separate authorisation and there are specific Home Office RIPA Part II Standard Forms for each:

- a) Application for authority for directed surveillance
- b) Review of directed surveillance authorisation
- c) Application for renewal of directed surveillance authority
- d) Cancellation of directed surveillance

Print the relevant Standard Form (for manual completion) or copy to a document on your pc. Always produce your blank copy form from this master set of documents for each separate surveillance authorisation request. Do not reuse that copy for a subsequent surveillance as the forms may have subsequently changed. Complete the Standard Form in accordance with the following instructions:

- a) Checklist for completing an application for authority for directed surveillance
- b) Checklist for reviewing an application for authority for directed surveillance (*watch this space for further advice*)
- c) Checklist for completing an application for renewal of directed surveillance authority
- d) checklist for completing a cancellation of directed surveillance

**Central Record of Authorisations.** The Head of Audit maintains the Council's central record of authorisations. Each Authorising Officer must immediately supply the Head of Audit with a copy of all the statutory forms (authorisation, renewal and cancellation) as soon as they have been approved.

**Retention of Documentation.** The Home Office Code of Practice also sets out the rules for retention of documentation and the use of material obtained as evidence in criminal proceedings. The Authorising Officer must keep each authorisation form (authority, review, renewal and cancellation) in safe custody for a period of 3 years from the date recorded in box 5 of the "Cancellation of a Directed Surveillance Authorisation" form.

All notebooks, surveillance logs and other ancillary documentation that relate to surveillance must be maintained to the required standards and retained for three years. Authorising Officers must provide documents to Internal Audit or to the Commissioner for Surveillance (or nominee) when requested.

**Admissible Evidence:** Information obtained through surveillance may be used in evidence in criminal proceedings. The proper authorisation of surveillance should ensure the admissibility of such evidence under common law, section 78 of the Police and Criminal Evidence Act 1984 and the Human Rights Act 1998.

The evidence/information obtained as a result of surveillance is also subject to the ordinary rules for retention and disclosure of material under the Criminal Procedure and Investigations Act 1996. If the forms contain information that might undermine the prosecution case, or assist the defence, it would have to be disclosed unless it was considered to include sensitive information. If so, advice should be sought on whether to seek a Court Order to prevent disclosure.

## 7. **WARNING**

The Office for Surveillance Commissioners oversees the implementation of RIPA in respect of surveillance and Covert Human Intelligence Sources (CHIS). The records relating to directed surveillance may therefore be inspected by the Chief Surveillance Commissioner, Assistant Surveillance Commissioner or Surveillance Inspector and must therefore be maintained accordingly.

If the statutory requirements are not met it is likely that it will be impossible to rely in subsequent legal proceedings on any evidence obtained in the course of an investigation.

**For more information on RIPA go to the Home Office page.**

Wilful disregard of any part of the RIPA Code of Practice or of internal procedures shall be a breach of the Council's Disciplinary Code and dealt with accordingly.

## 8. **ACQUISITION AND DISCLOSURE OF COMMUNICATIONS DATA**

Acquisition of subscriber details will be undertaken within the Council's guidance on Acquisition and Disclosure of Communications Data, in full compliance with all relevant legislation.

### 8.1 **Introduction.**

As a public authority specified in the Regulation of Investigatory Powers Act 2000 (RIPA) and subsequent statutory instruments, certain nominated officers of the Council can authorise the acquisition and disclosure of telecommunications data under Part 1 Chapter 2 of RIPA 2000.

There is an Acquisition and Disclosure of Communications Data Code of Practice that is issued pursuant to Section 71 of the RIPA. **You must familiarise yourself with it before applying for or authorising any type of request.** All that follows in this guidance is a brief overview and is no substitute for familiarisation with the Code of Practice that can be accessed via this link.

## 8.2 Communications Data.

Communications data is generated, held or obtained in the provision, delivery and maintenance of communication services, those being postal services or telecommunication services. The data is provided by Communication Service Providers (CSPs). The term communications data embraces the ‘who’, ‘when’ and where of a communication **but not the content, not what was said or written. Local Authorities do not have authority to intercept the contents of communications.**

Communications data is defined in Section 21(4) of RIPA as:-

- a) any **traffic data** comprised in or attached to a communication (whether by the sender or otherwise) for the purposes of any postal service or telecommunication system by means of which it is being or may be transmitted;
- b) any **service use information**, which includes none of the contents of a communication (apart from any information falling within paragraph (a)) and is about the use made by any person
  - (i) of any postal service or telecommunications service; or
  - (ii) in connection with the provision to or use by any person of any telecommunications service, of any part of a telecommunication system;
- c) any **subscriber information** not falling within paragraph (a) or (b) that is held or obtained, in relation to persons to whom he provides the service, by a person providing a postal service or telecommunications service.

## 8.3 Traffic Data.

Traffic data is described in section 21(6) of RIPA as:-

- a) any data identifying, or purporting to identify, any person, apparatus or location to or from which the communication is or may be transmitted,
- b) any data identifying or selecting, or purporting to identify or select, apparatus through which, or by means of which, the communication is or may be transmitted,
- c) any data comprising signals for the actuation of apparatus used for the purposes of a telecommunication system for effecting (in whole or in part) the transmission of any communication, and
- d) any data identifying the data or other data as data comprised in or attached to a particular communication, but that expression includes data identifying a computer file or computer program access to which is obtained, or which is

run, by means of the communication to the extent only that the file or program is identified by reference to the apparatus in which it is stored.

#### **8.4 Examples of Traffic Data Include:**

- a) information tracing the origin or destination of a communication that is in transmission;
- b) information identifying the location of equipment when a communication is or has been made or received (such as the location of a mobile phone);
- c) information identifying the sender and recipient (including copy recipients) of a communication from data comprised in or attached to the communication;
- d) routing information identifying equipment through which a communication is or has been transmitted (for example, dynamic IP address allocation, web postings and e-mail headers – to the extent that content of a communication, such as the subject line of an e-mail, is not disclosed);
- e) web browsing information to the extent that only the host machine, server or domain is disclosed;
- f) anything, such as addresses or markings, written on the outside of a postal item (such as a letter, packet or parcel) that is in transmission;
- g) online tracking of communications (including postal items and parcels).

Note that post cards are an exception. Any message written on a post card, which is in transmission, is content and falls within the scope of the provisions for interception of communications. All other information contained on the post card, for example the address of the recipient and the post-mark, is communications data within section 21(4) of the Act.

#### **8.5 Service Use Information.**

Examples include:-

- a) itemised telephone call records (numbers called);
- b) itemised records of connections to internet services;
- c) itemised timing and duration of service usage (calls and/or connections);
- d) information about amounts of data downloaded and/or uploaded;
- e) information about the connection, disconnection and reconnection of services;
- f) information about the provision and use of forwarding/redirection services (by postal and telecommunications service providers);

- g) information about the provision of conference calling, call messaging, call waiting and call barring telecommunications services;
- h) information about selection of preferential numbers or discount calls;
- i) records of postal items, such as records of registered, recorded or special delivery postal items, records of parcel consignment, delivery and collection.

## **8.6 Subscriber Information.**

This is information held or obtained by a CSP about persons to whom the CSP provides or has provided a communications service. Those persons will include people who are subscribers to a communications service without necessarily using that service and persons who use a communications service without necessarily subscribing to it.

Examples include:-

- a) ‘subscriber checks’ (also known as ‘reverse look ups’) such as “who is the subscriber of phone number 012 345 6789?”, “who is the account holder of e-mail account xyz@xyz.anyisp.co.uk?” or “who is entitled to post to web space [www.xyz.anyisp.co.uk](http://www.xyz.anyisp.co.uk) ?”;
- b) subscribers or account holders’ account information, including payment method(s) and any services to which the subscriber or account holder is allocated or has subscribed;
- c) addresses for installation and billing;
- d) information provided by a subscriber or account holder to a CSP, such as demographic information or sign-up data (to the extent that information, such as a password, giving access to the content of any stored communications is not disclosed).

## **8.7 Statutory Purpose for Acquisition of Communications Data.**

Local Authorities are only allowed to seek disclosure of such data for **The prevention and detection of crime and the prevention of disorder.**

## **8.8 Roles of Officers.**

There are a number of officers who play a key statutory role in deciding to apply for and seek to acquire Communications Data. They are the Applicant, the Single Point of Contact (the SPOC), the Designated Officer and the Senior Responsible Officer.

## **8.9 Applicant.**

The applicant is a person involved in conducting an investigation or operation who makes an application in writing or electronically for the acquisition of

communications data. The applicant completes an application form, setting out for consideration by the designated person, the necessity and proportionality of a specific requirement for acquiring communications data. The application forms are available via this link. The key facets to be addressed are set out in the next paragraph.

Applications, which must be retained by the public authority, must:

- a) include the name (or designation) and the office, rank or position held by the person making the application;
- b) include a unique reference number;
- c) include the operation name (if applicable) to which the application relates;
- d) specify the purpose for which the data is required, and this only for the prevention and detection of crime or the prevention of disorder;
- e) describe the communications data required, specifying, where relevant, any historic or future date(s) and, where appropriate, time period(s);
- f) explain why the acquisition of that data is considered necessary and proportionate to what is sought to be achieved by acquiring it;
- g) consider and, where appropriate, describe any meaningful collateral intrusion – the extent to which the privacy of any individual not under investigation may be infringed and why that intrusion is justified in the circumstances, and
- h) identify and explain the time scale within which the data is required.

#### **8.10 Designated Person.**

The Designated person at Wandsworth is the Head of Environmental Services or in her absence the Director of Environment and Community Services.

The designated person is a person holding a prescribed office in the same public authority as the applicant, who considers the application and records his considerations at the time (or as soon as is reasonably practicable) in writing or electronically. If the designated person believes it appropriate, both necessary and proportionate in the specific circumstances, an authorisation is granted or a notice is given.

The Designated person must ensure that they grant authorisations or give notices only for the purpose of the prevention or detection of crime, or the prevention of disorder.

The designated person shall assess the necessity for any conduct to acquire or obtain communications data taking account of any advice provided by the single point of contact (SPoC).

Designated persons should not be responsible for granting authorisations or giving notices in relation to investigations or operations in which they are directly involved, although it is recognised that this may sometimes be unavoidable.

Individuals who undertake the role of a designated person must have current working knowledge of human rights principles, specifically those of necessity and

proportionality, and how they apply to the acquisition of communications data under Chapter II of Part I of RIPA and the Code of Practice.

### **8.11 Single Point of Contact**

The SPoCs at Wandsworth are the Head of Environmental Services and the Chief Trading Standards Officer.

The single point of contact (SPoC) has been trained to facilitate lawful acquisition of communications data and effective co-operation between the Council and CSPs.

A SPoC promotes efficiency and good practice in ensuring only practical and lawful requirements for communications data are undertaken. This encourages the public authority to regulate itself. A SPoC provides objective judgement and advice to both the applicant and the designated person. In this way a SPoC provides a "guardian and gatekeeper" function ensuring we act in an informed and lawful manner.

A SPoC should be in a position to:

- a) assess whether the acquisition of specific communications data from a CSP is reasonably practical or whether the specific data required is inextricably linked to other data;
- b) advise applicants and designated persons on the interpretation of RIPA, particularly whether an authorisation or notice is appropriate;
- c) provide assurance to designated persons that authorisations and notices are lawful under RIPA and free from errors;
- d) provide assurance to CSPs that authorisations and notices are authentic and lawful;
- e) assess any cost and resource implications to both the public authority and the CSP of data requirements.

**The SPoC may be an individual who is also a designated person.**

### **8.12 Senior Responsible Officer**

The Council's Senior Responsible Officer is the Head of Audit who is also the Corporate advisor on Directed Surveillance and the deployment of Covert Human Intelligence Sources

He is responsible for reviewing:-

- a) the integrity of the process in place within the public authority to acquire
- b) communications data;
- c) compliance with Chapter II of Part I of RIPA and the Code of Practice, and

- d) oversight of the reporting of errors to the Commissioner and the identification of both the cause(s) of errors and the implementation of processes to minimise repetition of reported errors.

**As very little use is currently made of this power, the risk is considered to be low.**

### **8.13 The Statutory Guiding Principles.**

Each of these roles needs to satisfy themselves and ensure that any requests comply with the guiding principles of necessity, proportionality and minimisation of collateral intrusion.

**Necessity.** The application should clearly state why it is necessary to acquire the communications data. In particular it should state that it is for the only statutory purpose available to the Council and the statute that makes it so for instance the specific criminal act.

**Proportionality.** The application needs to detail the nature of the investigation, what the information is required for and the outcomes, namely what specific benefit does the acquisition of the data bring to the investigation. It should seek to argue the case that the acquisition of the data is justified in comparison to the interference with an individual's right of respect for their private life.

**Minimising Collateral Intrusion.** The application should also seek to identify any circumstances that could give rise to a meaningful degree of collateral intrusion.

## **9. APPLICATION PROCEDURES**

**Please use the following guidance in conjunction with the necessary forms, which may be downloaded, by using the following links:**

**Application for Communications data**

**Notice – section 22(4) of Regulation of Investigatory Powers Act 2000**

**Reporting of an Error by Accredited SPoC**

### **9.1 Authorisations**

The designated person may grant an authorisation for persons holding offices, ranks or positions with the same relevant public authority as the designated person to engage in any prescribed conduct provided that he believes that obtaining the data in question by the conduct authorised or required by the authorisation is proportionate to what is sought to be achieved by so obtaining the data.

An authorisation will only be granted where it is believed that :-

- a) if a notice is given, then the CSP will be incapable of complying with it and an authorization will be granted allowing an officer of the Council to retrieve the data.
- b) if a notice is given then the enquiry is likely to be prejudiced and an authorization will be granted allowing another Council officer to retrieve the data
- c) there is an existing agreement in place between the Council and the CSP for the exchange of data and the SpoC will retrieve the data using an automated system within the Council.

**An authorisation under section 22(3)**

- a) must be granted in writing or (if not in writing) in a manner that;
- b) produces a record of its having been granted;
- c) must describe the conduct that is authorised and the communications data in relation to which it is authorised;
- d) must specify the matters falling within section 22(2) by reference;
- e) to which it is granted; and
- f) must specify the office, rank or position held by the person
- g) granting the authorisation.

**A copy must be provided to the Head of Audit.**

**9.2 Notices**

Where it appears to the designated person that a postal or telecommunications operator is or may be in possession of, or be capable of obtaining, any communications data, the designated person may, provided he believes that obtaining the data in question by the conduct required by the notice is proportionate to what is sought to be achieved by so obtaining the data, by notice to the postal or telecommunications operator, require the operator:-

- a) if the operator is not already in possession of the data, to obtain the data; and
- b) in any case, to disclose all of the data in his possession or subsequently obtained by him.

**A notice under section 22(4) requiring communications data to be:-**

- a) disclosed or to be obtained and disclosed:

- b) must be given in writing or (if not in writing) must be given in
- c) manner that produces a record of its having been given;
- d) must describe the communications data to be obtained or
- e) disclosed under the notice;
- f) must specify the matters falling within section 22(2) by reference
- g) to which the notice is given;
- h) must specify the office, rank or position held by the person giving it; and
- i) must specify the manner in which any disclosure required by the notice is to be made.

**A notice under section 22(4) shall not require the disclosure of data**

To any person other than:

- (a) the person giving the notice; or
- (b) such other person as may be specified in or otherwise identified by, or in accordance with, the provisions of the notice. But the provisions of the notice shall not specify or otherwise identify a person unless he holds an office, rank or position with the same relevant public authority as the person giving the notice.

**A copy must be provided to the Head of Audit.**

**9.3 Duration of Authorisations and Notices**

Relevant to all authorisations and notices is the date upon which authorisation is granted or notice given. From that date, when the authorisation or notice becomes valid, it has a validity of a maximum of one month. This means the conduct authorised should have been commenced or the notice served within that month.

All authorisations and notices must relate to the acquisition or disclosure of data for a specific date or period. Any period should be clearly indicated in the authorisation or notice. The start date and end date should be given, and where a precise start and end time are relevant these must be specified. Where no date is specified it should be taken to be the date on which the authorisation was granted or the notice given.

Where an authorisation or a notice relates to the acquisition or obtaining of specific data that will or may be generated in the future, the future period is restricted to no more than one month by section 23(4) of the Act.

#### **9.4 Renewal of Authorisations and Notices.**

Any valid authorisation or a notice may be renewed for a period of up to one month by the grant of a further authorisation or the giving of a further notice. A renewed authorisation or notice takes effect upon the expiry of the authorisation or notice it is renewing.

Renewal may be appropriate where there is a continuing requirement to acquire or obtain data that will or may be generated in the future. The reasoning for seeking renewal should be set out by an applicant in an addendum to the application upon which the authorisation or notice being renewed was granted or given.

Where a designated person is granting a further authorisation or giving a further notice to renew an earlier authorisation or notice, the designated person should:

- a) consider the reasons why it is necessary and proportionate to continue with the acquisition of the data being generated;
- b) record the date and, when appropriate to do so, the time when the authorisation or notice is renewed.

Designated persons should give particular consideration to any periods of days or shorter periods of time for which they may approve for the acquisition or disclosure of historic or future data. They should specify the shortest period in which the objective for which the data is sought can be achieved. To do otherwise will impact on the proportionality of the authorisation or notice and impose unnecessary burden upon a CSP.

**A copy must be provided to the Head of Audit.**

#### **9.5 Cancellation of Notices and Withdrawal of Authorisations**

A designated person who has given notice to a CSP under section 22(4) of the Act shall cancel the notice if, at any time after giving the notice, it is no longer necessary for the CSP to comply with the notice or the conduct required by the notice is no longer proportionate to what was sought to be achieved. Equally where a designated person considers an authorisation should cease to have effect, because the conduct authorised becomes unnecessary or no longer proportionate to what was sought to be achieved, the authorisation shall be withdrawn.

Notification to a CSP of the cancellation of a notice can be undertaken by the designated person directly or, on that person's behalf, by the public authority's SPoC. Where human rights considerations are such that a notice should be cancelled with immediate effect a SPoC may notify the CSP to suspend compliance with the notice pending notification that the designated person has cancelled the notice.

When it is appropriate to do so a CSP should be advised of the withdrawal of an authorisation.

Where the designated person who gave the notice is no longer available, this duty should fall on a person who has temporarily or permanently taken over the role of the designated person.

**Cancellation of a notice must:**

- a) be undertaken in writing or, if not, in a manner that produces a record of it having been cancelled;
- b) identify, by reference to its unique reference number, the notice being cancelled;
- c) record the date and, when appropriate to do so, the time when the notice was cancelled, and
- d) specify the office, rank or position held by the designated person cancelling the notice. The designated person should also record their name (or designation) on any cancellation they make.

**Withdrawal of an authorisation should:**

- a) be undertaken in writing or, if not, in a manner that produces a record of it having been withdrawn;
- b) identify, by reference to its unique reference number, the authorisation being withdrawn;
- c) record the date and, when appropriate to do so, the time when the authorisation was cancelled;
- d) record the name and the office, rank or position held by the designated person withdrawing the authorisation.

**A copy must be provided to the Head of Audit.**

## **9.6 Errors**

Proper application of the Act and thorough procedures for operating its provisions, including the careful preparation and checking of applications, notices and authorisations, should reduce the scope for making errors whether by public authorities or by CSPs.

Where any error occurs, in the grant of an authorisation, the giving of a notice or as a consequence of any authorised conduct or any conduct undertaken to comply with a notice, a record should be kept and a report made to the Commissioner. Recording and reporting of errors will draw attention to those aspects of the process of acquisition and disclosure of communications data that require further improvement to eliminate errors and the risk of undue interference with any individual's rights. The Head of Audit should be informed of any such instances.

An error can only occur after a designated person has granted an authorisation or given a notice that has been served on a CSP in writing or orally and the acquisition or disclosure of data has been initiated.

Any failure to correctly apply the process of acquiring or obtaining communications data set out in this code will increase the likelihood of an error occurring. An exhaustive list of possible causes of errors cannot be provided but they could, for example, fall into one of the following categories:

- a) an authorisation or notice made for a purpose, or for a type of data, which the relevant public authority cannot call upon, or seek, under the Act;
- b) human error, such as incorrect transposition of information from an application to an authorisation or notice or the acquisition or disclosure of communications data other than that specified on an authorisation or notice;
- c) an authorisation granted requiring a public authority to engage in impractical conduct or a notice given which is impractical for a CSP to comply with;
- d) disclosure or acquisition of data in excess of that required, where a SPoC may have failed to identify that the required data is inextricably linked to or inseparable from other data and/or the CSP failed to identify that compliance with the notice entailed the disclosure of data outside of the scope of the notice;
- e) failure to review information already held, for example seeking the acquisition or disclosure of data already acquired or obtained for the same investigation or operation, or data for which the requirement to acquire or obtain it is known to be no longer valid.

Communications identifiers can be readily transferred, or ‘ported’, between CSPs. When a correctly completed authorisation or notice results in a CSP indicating to that, for example, a telephone number has been ‘ported’ to another CSP does not constitute an error – unless the fact of the porting was already known.

When an error has been made, a report must be made to the Commissioner in written or electronic form as soon as is practical. All errors should be reported individually. The report sent to the Commissioner must include details of the error, explain how the error occurred, indicate whether any unintended collateral intrusion has taken place and provide an indication of what steps have been, or will be, taken to ensure that a similar error does not reoccur.

Where authorised conduct by a public authority results in the acquisition of excess data, or a CSP discloses data in excess of that required by a notice, all the data acquired or disclosed should be retained by the public authority and the error reported.

After the error has been reported the designated person must review all the data and consider whether it is necessary and proportionate to make use of that material in the course of the investigation or operation.

## **9.7 Records to be maintained by the Council.**

The following records will be maintained by the Head of Audit and consequently copies of all the relevant documentation must be forwarded to him so that he can maintain the records up to date.

- a) Number of applications submitted to a designated person for a decision to (i) give a notice or (ii) grant an authorisation.
- b) Number of notices requiring disclosure of communications data within the meaning of each subsection of section 21(4) of RIPA or any combinations of data.
- c) Number of authorisations for conduct to acquire communications data within the meaning of each subsection of section 21(4) of RIPA or any combinations of data.
- d) Number of times an urgent notice is given orally, or an urgent authorisation granted orally requiring disclosure of communications data within the meaning of each subsection of section 21(4) of RIPA or any combinations of data.
- e) Any errors in the grant of an authorisation, the giving of a notice or as a consequence of any authorised conduct or any conduct undertaken to comply with a notice.

Returns are required by the Interception of Communications Commissioner and the records can be inspected by his office.

**No covert surveillance will be undertaken without first receiving authorisation from a designated Council Officer and clearance from the Head of the Audit.**

## **10. DESCRIPTION OF THE OFFENCES, FINES & RELEVANT LEGISLATION**

### **10.1 Fixed Penalty Notice (FPN) Forms**

It is a legal requirement that any FPN:

- a) Gives reasonable details about the circumstances of the alleged offence;
- b) States that no proceeding for the offence will be instituted if the FPN is paid within 14 days;
- c) States the amount of the FPN and
- d) Gives details of how the FPN can be paid.

## **10.2 Discounts**

Wandsworth Borough Council provides for discounts for early payment of FPN's. These discounts apply if payment is received within a specified number of days after issue. Details of the reduced rates appear on the individual fixed penalty notices.

Notices also state prominently that non-payment is likely to result in prosecution for the alleged offence, and the maximum fine payable on conviction. Obviously the potential fines in court are a great deal higher, littering for example could be as much as £2500.

In the Magistrates' Courts offences that attract fines are subject to maximums from level 1 to level 5.

- a) Level 1: £200
- b) Level 2: £500
- c) Level 3: £1,000
- d) Level 4: £2,500
- e) Level 5: £5,000

## **10.3 Offences for which Waste Enforcement Officers are authorised to issue FPN's:**

- a) Offence of Littering - Environmental Protection Act 1990, Section 88(1) – Amount set locally of £80 reduced to £55 if paid within 10 days
- b) Street Litter Control and Litter Clearing Notices - Environmental Protection Act 1990, Section 94A(2) – Amount set locally of £100
- c) Failure to Produce Waste Carrier Registration Documents – Control of Pollution (Amendment) Act 1989, Section 5B(2) – Amount of £300 reduced to £210 if paid within 10 days.
- d) Failure to Produce Waste Transfer Notes - Environmental Protection Act 1990, Section 34A(2) – Amount of £300 reduced to £210 if paid within 10 days.
- e) Waste Receptacles - Environmental Protection Act 1990, Section 47ZA(2) – Amount set locally of £100
- f) Contravention of condition of street trading licence or temporary licence – London Local Authorities Act 1990 (c.vii) 34(1) - Amount of £100 reduced to £60 if paid within 10 days
- g) Making false statement in connection with application for street trading licence or temporary licence – London Local Authorities Act 1990 (c.vii) 34(2) - Amount of £125 reduced to £75 if paid within 10 days
- h) Resisting or obstructing an authorised officer – London Local Authorities Act 1990 (c.vii) 34(3) - Amount of £250 reduced to £150 if paid within 10 days

- i) Failure to produce street trading licence on demand – London Local Authorities Act 1990 (c.vii) 34(4) - Amount of £100 reduced to £60 if paid within 10 days
- j) Unlicensed street trading– London Local Authorities Act 1990 (c.vii) 38(1) - Amount of £150 reduced to £90 if paid within 10 days Street Trading Offences – Sections 34 and 38 of The London Local Authorities Act 1990 (amended 1994 and 2007).

#### **10.4 Offences for which Waste Enforcement Officers are authorised to issue PCN's**

- a) Street Trading Offences/Illegal Street Trading - where a street trader is known to have committed a street trading offence or is known to be illegally street trading and penalty charge notice can be issued under section 42 of the London Local Authorities Act 1990 (amended 1994, 2004 and 2007) .
- b) Commercial Waste Collection – The **London Local Authorities Act 1990** (amended 1994, 2004 and 2007) section 22 has since April 2009 when the Council adopted the waste regulations of the Act allows the Council to introduce ‘Time Bands’ and receptacle identification These measures restrict the periods of the day during which commercial waste can be placed and dictate the storage of the waste on the highway for collection. Contravention of these regulations will lead to the issuance of a Penalty Charge Notice (PCN).

All the legislation mentioned can be accessed by following this link:-

[http://www.opsi.gov.uk/legislation/about\\_legislation.htm](http://www.opsi.gov.uk/legislation/about_legislation.htm)

#### **10.5 Issuing FPN's and PCN's**

Where available the issue of FPN's or PCN's may be considered as an alternative to any other form of enforcement action. Examples of where they may be appropriate are:-

- a) To deal quickly and simply with less serious offences
- b) To divert less serious cases away from the court process
- c) To deter repeat offences

#### **10.6 Before a FPN or PCN is administered the authorised officer will ensure:**

- a) That an offence has clearly been committed and there is, as may be appropriate, evidence of the offender's guilt sufficient to sustain a prosecution;
- b) The alleged offender is compliant and understands why they have been challenged;

- c) The issuing Enforcement Officer believes that the alleged offender has offered their correct name and address; and
- d) There are no aggravating circumstances.

**10.7 Circumstances when it is not appropriate to issue a FPN or PCN:**

- a) When the person alleged to have committed an offence is aged under ten;
- b) If the alleged offender, when approached, is obstructive and non-cooperative; [In these instances the Enforcement Officer will return to serve the notice with an Enforcement Officer colleague or the Police].
- c) When it is suspected that an alleged offender has failed to offer their correct name and address in relation to a minor offence such as littering; [In instances where assistance with identification is not available a verbal warning will be given with details of the offender being kept on file]. *These circumstances often arise in pre-planned operations on the street, for this reason a police presence is provided to assist. When dealing with offenders who are residents, businesses or vehicle users other methods of identification can be relied upon.*
- d) When the offence is committed by someone that has previously received a FPN for the same offence they will be prosecuted; When the offence committed is so small or trivial in its effect that action might not be in the public interest; the Enforcement Officer will be required to use his discretion in these instances, however if he/she should have any doubt the matter will be referred to the Waste Enforcement Manager for determination.
- e) When the offence that has been committed is considered to be too 'serious' in scale or effect to merit a FPN; In these instances prosecution proceedings will be initiated.
- f) When an alleged offender is in some way vulnerable, seems confused, either through some form of impairment or through drugs or alcohol. In this instance all Enforcement Officers are advised to seek support from the relevant agency and the issuing of a fixed penalty notice should be seen very much as a secondary issue.

**When issuing FPN's Wandsworth Waste Enforcement Officers follow the guidance laid down by Defra (Department for Rural Affairs). This guidance can be accessed through the following links:-**

<http://www.defra.gov.uk/environment/localenv/legislation/cnea/juveniles.pdf>

<http://www.defra.gov.uk/environment/localenv/legislation/cnea/fixed-penalty-guidance.pdf>

<http://www.defra.gov.uk/environment/localenv/legislation/cnea/fixedenaltnotices.pdf>

## **11. POLICE AND CRIMINAL EVIDENCE ACT 1984 (PACE)**

- 11.1 The following summary is an overview of the main features of the codes of practice under PACE codes C and E for the treatment and questioning of suspects who are not under arrest, but who are interviewed for offences under caution. [The information has been referenced from PHF Training Ltd].

For the avoidance of doubt Enforcement Officers are recommended to review the main elements of codes C and E before undertaking an interview under caution.

The codes are currently split into seven sections listed below:

- A Police Powers to Stop and Search
- B Search of Premises by Police Officers and Seizure of Property
- C Detention, Treatment and Questioning of Persons
- D Identification Procedures
- E Tape Recording of Interviews with Suspects
- F Visual Recording of Interviews
- G Power to Arrest
- H Detention etc re Terrorism Act 2000

Understanding the spirit of “Fair Play” with regard to the rights of the suspect as contained in the codes, will not only enhance the performance of the investigators, it will also avoid weakening any potential prosecution. It will also reduce any potential challenge under the Human Rights Act.

### **11.2 Availability of the Codes of Practice**

Codes C 1.2 & 1.3

The Code of Practice including the annexes must be readily available for consultation by investigators, suspects and members of the public.

When interviewing a suspect, the Codes of Practice are referred to and brought to the attention of the suspect during the formal introductions. However, although they are there to be consulted it does say in Code C Note 3D: *“that the right to consult the Codes of Practice does not entitle the person concerned to delay unreasonably any necessary investigative or administrative action whilst they do so”*

Despite the fact that a person attending is doing so voluntarily, the suspect wishing to consult the codes should not put off the investigator.

### **11.3 Voluntary Attendance Interviews**

The vast majority of interviews conducted by Enforcement Officers at the Council offices will be with suspects attending the interview voluntarily in response to having received a letter for the Council.

The Codes specifically state that:

- a) Persons there voluntarily should be treated with consideration
- b) They are free to leave at any time
- c) Can enjoy an absolute right to obtain legal advice
- d) The legal advice is only free if the person is interviewed at the Police Station

### **11.4 Vulnerable People**

Although vulnerable people may be capable of providing reliable evidence, they may, without knowing or wishing to do so, be particularly prone in certain circumstances to provide information that may be unreliable, misleading or self-incriminating. Special care should be involved if there is any doubt about a person's age, mental state or capacity. Because of the risk of unreliable evidence it is also important to obtain corroboration of any facts admitted whenever possible.

Vulnerable people include:

- a) Juveniles (a person who is or appears to be under the age of 17 years)
- b) Mentally handicapped
- c) Deaf persons
- d) People who because of their mental state or capacity may not understand the significance of any questions and their answers.

In essence, the suspect has to be capable of understanding what is being said to them and be capable of responding should they wish to do so.

Should an Officer wish to interview a suspect who is to be regarded as vulnerable the interview must take place in the presence of an appropriate adult. The same should be said for the interviewing of a witness.

It should be noted that vulnerable people are afforded exactly the same rights as any other person attending a voluntary interview. If their rights are explained to them in the absence of the appropriate adult they should be explained again in full in the presence of an appropriate adult.

## **11.5 Role of the Appropriate Adult**

In the interests of fairness the codes stipulate that an appropriate adult has a definite role if they are present at interview they must be informed of their role.

They should be told:

- a) They are not expected to act simply as an observer and the purpose of their presence is to advise the person being interviewed
- b) Observe whether the interview is being conducted properly and fairly
- c) Facilitate communication with the person being interviewed

If the interview is to be conducted on tape, their role would be explained on the tape machine when it is recording. In the case of a contemporaneous notes interview best practice would be to write it on the form and ask them to sign that relevant entry.

Since the Council does not have power of arrest, 'Fair Play' should dictate that the interviewee have someone present at the interview in the role of a friend. Caution should be taken to ensure that the role of the friend does not undermine the integrity of the interview.

## **11.6 Interpreters**

The Enforcement Manager is responsible for ensuring appropriate arrangements are in place for the provision of suitably qualified interpreters for people who:

- a) Are deaf
- b) Do not understand English.

Whenever possible, interpreters should be drawn from the National Register of Public Service Interpreters (NRPSI) or the Council for the Advancement of Communication with Deaf People (CADCP) Directory of British Sign Language/English Interpreters.

## **11.7 Foreign Language**

A person (not under arrest) must not be interviewed in the absence of a person capable of interpreting if:

- a) They have difficulty understanding English
- b) The interviewer cannot speak the person's own language
- c) The person wants an interpreter present.

The interviewer shall make sure the interpreter makes notes of the interview at the time in the person's language for use in the event of the interpreter being called to give evidence, and certifies its accuracy. The interviewer should allow sufficient time

for the interpreter to not each question and answer after each is put, given and interpreted. The person should be allowed to read the record or have it read to them and sign it as correct or indicate the respects in which they consider it inaccurate. If the interview is tape-recorded or visually recorded, the arrangements of Code E apply, which state:

*“the provisions of Code C, section 13 on interpreters for deaf persons or for interviews with suspects who have difficulty understanding English continue to apply. However, in an audibly recorded interview the requirement on the interviewer to make sure the interpreter makes a separate note of the interview applies only to paragraph 4.7 (interview with a deaf person).*

### **11.8 In the Case of a Person Making a Statement Other than in English:**

- a) The interpreter shall record the statement in the language it is made
- b) The person shall be invited to sign it
- c) An official English translation shall be made in due course.

### **11.9 Interviewing Persons Who are Deaf**

If a person appears to be deaf or there is doubt about their speaking ability, they must not be interviewed in the absence of an interpreter unless they agree in writing to be interviewed without one.

#### **11.1.0 Legal Advice**

Every person to be interviewed has the right to legal advice prior or during the interview and they must not be interviewed or continue to be interviewed if they want legal advice until they have received such advice. All requests for legal advice have to be recorded together with the action taken. If they require legal advice during the interview the interview would have to be suspended.

Code C 6.4 states, *no investigator should, at any time, do or say anything with the intention of dissuading the detainee from obtaining legal advice.*

Should an interviewee who has requested legal advice change their mind, then the interview may commence or re-commence if:

- a) The person agrees in writing or on the tape
- b) The Enforcement Manager has enquired about the reasons for their change of mind and gives authority for the interview to proceed.

**All consultations between a solicitor and his client regarding legal advice are private and should this be breached it would be regarded as a very serious breach of Human Rights.**

### **11.1.1 Role of the Solicitor**

The solicitor's role is to protect and advance the legal rights of their client. On occasions this may require the solicitor to give advice, which has the effect of the client avoiding giving evidence, which strengthens a prosecution case. The solicitor may intervene in order to seek clarification, challenge an improper question to their client or the manner in which they are put, advise their client not to reply to particular questions, or if they wish give their client further legal advice.

It is possible to require a solicitor to leave the interview if their conduct is such that the interviewer is unable to properly put questions to the suspect. The procedure is detailed in Code C 6.10 and 6.11. Any Officer who takes the decision to exclude a solicitor must be in a position to satisfy the court that the decision was properly made.

### **11.1.2 Interviewing**

Understanding the definition of an interview is important. If the interview does not fall within the definition then the codes do not apply.

### **11.1.3 Definition**

An interview is the questioning of a person regarding their involvement or suspected involvement in a criminal offence or offences, which, must be carried out under caution.

Whenever a person is interviewed they must be informed of the nature of the offence or further offences.

### **11.1.4 The Caution and When it Must be Given**

A person whom there are grounds to suspect of an offence must be cautioned before any questions about an offence, or further questions if the answers provide the grounds for suspicion, are put to them, if either the suspect's answers or silence may be given in evidence to a court in a prosecution.

A person need not be cautioned if questions are for other necessary purposes for example:

- a) To establish identity
- b) To obtain information in accordance with any statutory requirements
- c) To seek verification of a written record or comments made by a suspect outside the context of an interview, which may be relevant to the offence.

### **11.1.5 Caution Wording**

*“You do not have to say anything. But it may harm your defence if you do not mention when questioning something, which you later rely on in Court. Anything that you do say may be given in evidence”.*

The fact that a caution has been given must be recorded either in a pocket notebook or in the written interview record. If the interview is taped the caution will have been recorded.

If it appears the person does not understand the caution, the person giving it should explain it in his or her own words.

Although the code does not require it, good practice dictates that the investigator enquire whether the suspect has understood the caution.

There is no definition of what constitutes grounds to suspect, however note C 10A, states: “there must be some reasonable grounds, objective grounds for the suspicion, based on known facts or information which are relevant to the likelihood the offence has been committed and the person to be questioned committed it”.

#### **11.1.6 Unsolicited Comments**

There will be times when suspects outside the safeguard of the interview. The codes deal with these under the headings of significant statements Code C 11.4 and comments outside of an interview Code 11.13. The action to be taken is to make an accurate record of what is said at the time or as soon as practicable. It should be timed and dated and signed by the maker and any other witness hearing the comment. The suspect should be asked at the beginning of the interview after they have been cautioned and advised of their rights whether they confirm or deny what was said and if they want to add anything. The suspect should endorse it with the words “I agree that this is a correct record of what I said” and sign it.

If the suspect does not agree with the contents of the interviewer should record the disagreement and then ask them to again read the details and sign to show it reflects the disagreement.

#### **11.1.7 Oppression**

Code C 11.5 states that no interviewer may try to obtain answers or elicit a statement by the use of oppression. Section 78 of PACE allows the court to exclude evidence which has been obtained unfairly. If a confession is obtained by oppression Sec 76 (a), or in circumstances likely to render it unreliable Sec 76 (b), it must be excluded from evidence.

#### **11.1.8 Complaints Against the Interviewer**

If during the interview a complaint is made by or on behalf of the interviewee concerning their treatment having regard to the code of practice, the interviewer should record the details in the interview record.

### **11.2.0 Recording Interviews**

An accurate record must be made of each interview. The record must state the place of interview, the time it begins and ends, any breaks in the interview and the names of those present.

Any written records must be made and completed during the interview, unless it would not be practicable or would interfere with the conduct of the interview, and must either constitute a verbatim record of what has been said or, failing this, an account of the interview which adequately and accurately summarises it. The record must be timed and signed by the maker.

Unless it is impracticable, the interviewee should be given the opportunity to read the interview record and to sign it as correct or to indicate how they consider it to be inaccurate.

If a written record is not made during the interview it must be made as soon as practicable after completion and the reason for it not being completed during the interview must be recorded in the interview record.

The best method of recording an interview is by the use of tape recording equipment. It ensures that what is said during the interview is recorded accurately. Therefore the tape recording of interviews should be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

### **11.2.1 Breaks in the Interview**

Breaks in an interview should be taken at recognised meal times. A time limit of two hours is suggested for interviewing without a break and breaks should be for fifteen minutes.

If the interview is being taped recorded the fact that a break is to be taken and the reason for it and the time shall be recorded on the tape.

If the suspect leaves the room for a break from a tape-recorded interview the tapes must be removed from the machine and the procedures for the conclusion of the interview followed.

### **11.2.2 Cease Questioning**

The interview or further interview of a person about an offence with which that person has not been charged or for which they have not been informed they may be prosecuted, must cease when:

- a) The officer in charge of the investigation is satisfied all the questions they consider relevant to obtaining accurate and reliable information about the offence have been put to the suspect, this includes allowing the suspect an opportunity to give an innocent explanation and asking questions to test if the explanation is accurate and reliable.
- b) The officer in charge of the investigation has taken account of any other reliable evidence, and
- c) The officer in charge of the investigation believes there is sufficient evidence to provide a realistic prospect of conviction for that offence.

### 11.2.3 Charging or Putting an Allegation

If the investigator has made the decision that a suspect is to be charged, have an allegation put to them or informed that they may be prosecuted for an offence they shall be cautioned as follows:

*“You do not have to say anything. But it may harm your defence if you do not mention now something, which you later rely on in court. Anything you do say may be given in evidence”.*

The allegation notice should commence with *“You are being informed that you may be prosecuted for the offences shown below”*. It should then have the caution above on it followed by the details of the precise offence written in simple terms. It should also show the investigators details. Any comments made by the suspect should be noted on the form and best practice would be for the suspect to sign the form or any comments made if it was not handed to them during a tape recorded interview.

### 11.2.4 Statement Under Caution

There are two ways to obtaining a written statement. One is where the suspect would write the statement himself or herself and the other is where the investigator would write down what the suspect says on their behalf; although the codes state that a person shall always be invited to write down what they want to say.

A statement can be taken down in writing either during the interview, at the time of charging or putting an allegation, or some time after the person has already been charged or been provided with an allegation notice etc. In each of these instances no matter who writes the statement the procedure is that at the beginning of and before the body of the statement is recorded, a caption will be recorded and needs to be signed by the suspect.

Caption prior to charge or upon charging:

*“I make this statement of my own free will or [I .....wish to make a statement. I want someone to write down what I say]. I understand that I do not have to say*

*anything that may harm my defence if I do not mention when questioned something which I later rely on in court. This statement may be given in evidence” (Signature)*

**Caption after charge:**

*I make this statement of my own free will or [ I.....wish to make a statement. I want someone to write down what I say]. I understand that I do not have to say anything. This statement may be given in evidence. (Signature)*

When the writing of the statement is finished the person making it shall be asked to read it and to make any corrections, alteration or additions they want. When they have finished reading it they shall be asked to write and sign the following certificate at the end of the statement.

*“I have read the above statement, and I have been able to correct, alter or add anything I wish. This statement is true. I have made it of my own free will” (Signature)*

**11.2.5 Taped Interviews**

Tape recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview.

The Codes of Practice have to be readily available to be consulted.

In all tapped interviews one of the tapes has to be sealed in the suspect’s presence, as a master tape and a second tape will be used as a working copy. The purpose of sealing the master tape in the suspect’s presence is to show the tapes integrity is preserved.

The codes state the when a suspect enters the interview room, the interviewer shall without delay unwrap the tapes in the sight of the suspect and load them into the machine.

The following takes place on the tape once it has been set to record:

- a) The interviewer on tape will say the following: *“The interview is being taped recorded.”*
- b) The investigators for voice identification purposes then identify themselves on the tape with their name and position.
- c) The suspect is asked to identify themselves normally with their full name, date of birth and current address.
- d) If a solicitor is present they are also asked to identify themselves and their role has to be explained to them.

- e) If an appropriate adult or friend is present they also identify themselves and their role has to be explained to them.
- f) The time, date and place of interview are given.
- g) State that the suspect will be given a notice about what will happen to the tapes.
- h) The suspect is then cautioned.
- i) Explain that they are not being detained and that they are free to leave at any time.
- j) Explain to them their right to obtain legal advice and that they can do so at any time during the interview.
- k) Hand them a notice explaining their rights.
- l) Explain the Codes of Practice are there should they wish to consult them.
- m) The interviewer should put to the suspect any unsolicited comment of significant statement and verify its contents.
- n) The interview now commences through to closure.

If the interview is being tape-recorded the fact that a break is to be taken and the reason for it and the time shall be recorded on the tape.

When the recorder shows the tapes only have a short time left, the interviewer shall tell the suspect the tapes are coming to an end and round off that part of the interview.

Once new tapes have been unwrapped in the presence of the suspect they shall be inserted into the tape recorder and the recorder set to record, and then the interview re-commences.

To avoid confusion between tapes, the interviewer shall mark the tapes with an identification number immediately they are removed from the machine

### **11.2.6 Equipment Failure**

If the equipment fails and it can be rectified quickly by inserting new tapes, then the procedure is the same and changing tapes and once the interview recommences the interviewer shall state on tape what has occurred.

If it is not possible to rectify the problem and no other machine is available, the interview may be continued by conducting a written interview.

If the decision is to suspend the interview until a machine is available you will have to take account of all the circumstances including the wishes of the suspect.

If a tape breaks it shall be removed from the machine and sealed as a master in the suspects presence in the usual way and the interview resumed where it left off with a new set of tapes following the above procedure. The unbroken tape should be copied and the original unbroken tape should be sealed as a master in the suspect's presence.

### **11.2.7 Conclusion of Interview**

At the conclusion of the interview the suspect shall be offered the opportunity to add or clarify anything they wish. Once concluded, including the taking and reading back of any statement the time shall be recorded and the tape recorder switched off.

The tapes will be removed and the interviewer shall seal one tape with a master label and treat it as an exhibit. The interviewers, the suspect and any third person present should sign the label.

The suspect shall be handed a notice, which explains;

- a) How the tape recording will be used.
- b) The arrangements for access to it.
- c) That if the person is charged or informed they will be prosecuted, a copy of the tape will be supplied as soon as practicable.

### **11.2.8 After Interview Procedure**

The interviewer shall make a note in their pocket book or on the file notes that the interview has taken place, that it was recorded on tape, its time, date, duration and the master tapes identification number.

### **11.2.9 Tape Security**

The code stipulates that the officer in charge where the tape recordings are carried out has to make arrangements for the master tapes to be kept securely and their movements accounted for on the same basis as material, which may be used for evidence, purposed, in other words continuity of the exhibits.

Care must also be taken with the working copies of tapes because their loss or destruction may lead to the need to access the master tapes.

### **11.3.0 Tape Transcript and Tape Summaries**

The evidence for a taped interview can be presented at court by either the whole interview being transcribed in full or by summarising the content. Whichever method is used the transcript or summary is an exhibit in the case as well as the original tape. These will be referred to in the interviewer statement.

### **11.3.1 Right of Appeal**

There is no right of appeal against a fixed penalty notice covered by this policy as it only deals with criminal offences. A person served with a fixed penalty notice who believes they did not commit the offence has the right for their case to be heard in court.

However in cases where the alleged offender believes that a fixed penalty notice has been wrongly issued and that there are grounds similar to those listed below for contesting its issue, they may appeal in writing to the Waste Enforcement Officer Manager.

### **11.3.2 Possible grounds**

- a) When the person accused was not the person that committed the offence – false particulars.
- b) Where the person issued with the fixed penalty notice brings forward evidence that could undermine any later prosecution.
- c) Where a fixed penalty notice has been wrongly issued.
- d) Where the person issued the fixed penalty notice is a child under the age of ten.
- e) If further evidence is provided that shows the person is in some way vulnerable and the enforcement is not in the public interest.
- f) It is for some other reason not considered to be in the public interest.

Following consideration of an appeal of this nature a response will be given in writing.

### **11.3.4 Non-Payment**

The reduced fixed penalty rate as shown on individual notices will be accepted if paid within ten days. The full amount will then be payable up to fourteen days. After fourteen days a notice of intended prosecution will be sent to the alleged offender giving a final seven days in which to pay the full amount. At the end of this period if payment has not been received a prosecution file will be prepared, checked and passed to the legal department within seven days. The Council will look to recover all its costs.

### **11.3.5 Publication.**

**The details of all successful prosecutions including details of the offence, the name of the offenders and the level of the sanction including the amount of costs recovered is to be published regularly in Brightside and included in specific press releases.**

Appendix 1

**Police & Criminal Evidence Act 1984**

<b><u>SUBJECT</u></b>	<b><u>PAGE</u></b>	<b><u>SECTION</u></b>	<b><u>CODE</u></b>
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Suspect can not delay proceedings	5	3.D	C
<b><u>VOLUNTARY ATTENDANCE</u></b>			
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Voluntary duty to assist	7	1.K	C
Voluntary attendance legal advice	13	3.21	C
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<b><u>VULNERABLE</u></b>			
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Consultation with solicitor	13	3.19	C
	18	6.1	C
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Must not be interviewed without adult	38	11.15	C
Fitness to be interviewed	78	Annex G	C
<b><u>MENTALLY VULNERABLE</u></b>			
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Definition of mentally vulnerable	6	1.G	C
Cautioning	32	10.12	C
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### **JUVENILE**

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	22	6.17	C

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	13	3.22	C

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Can not interview if advice is requested	19	6.6	C
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Re interview after allegation or charge	52	16.5	C
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## **RECORDING OF NON-TAPED INTERVIEW**

Accurate record to be made	37	11.7	C
Record not made at time	37	11.8	C
	38	11.10	C
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	40	11.E	C
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Not normally necessary	43	12.A	C
Written by suspect	71	Annex D 1-5	C
Written by investigator	72-73	Annex D 6-12	C
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Code readily available	194	1.1	E
	206	1.1	F
Open, Ethical etc.	195	2.1	E
	206	2.1	F
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	206	1.3	F
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	207	2.4	F
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	208	3.3	F
	197	3.B	E
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	211	4.8	F
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<b><u>COMMENCEMENT</u></b>			
Without delay unwrap tapes	198	4.3	E
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Time, date, persons present etc.	198	4.4	E
	210	404	F
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	34	10.A	C
	35	10.G	C
Caution wording	32	10.5	C
	33	10.7	C
Legal advice	198	4.5	E
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Significant statement	198	4.6	E
	210	4.6	F
	36	11.4 & 4.A	C
	39	11.A & 11.E	C
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Comment outside of interview	38	11.13	C
	40	11.E	C

Complaints	199	4.9	E
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	42	12.9	C
	27	9.2	C
	201	4.E & 4.F	E
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**CONCLUSION OF TAPED INTERVIEW**

Add anything	200	4.17	E
	213	4.17	F
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	213	4.18	F
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	203	6.B & 6.C	E
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