

CITY SERVICES - ENFORCEMENT DIVISION

Operational Policy Subject: **Litter arising from flyers**

Approved By: Director of City Services

Date: March 2005

Version number: 1

Scope

To tackle litter that has been generated through marketing activities (flyering) in the open air. This will include paper flyers but can also include other promotional materials.

This policy will also apply to flyers left on vehicle windscreens etc.

The term “flyers”, when used throughout this policy, should be read to include printed materials, advertising goods and other materials either issued hand to hand on the street or left on street furniture, vehicles and other highways structures.

Objective

To seek an improvement in the visual street environment by reducing the amount of litter found on the street.

This policy supports the general litter policy agreed in 2004. It recognises that most people who are given leaflets etc, or who find leaflets attached to their car windscreen, have received unwanted materials. Whilst individuals are still committing an offence if they drop litter, the source of the litter needs to be addressed. The policy does not prevent the Council taking enforcement action against individuals who are seen dropping litter.

The policy does not preclude the use of the ‘touting’ byelaw for the good rule and government of the City of Leeds and for the prevention of nuisances made by the City Council under Section 235 of the Local Government Act 1972.

Link to Council Plan

Looking after the environment is one of the five key aims in the plan. Improving the physical appearance and condition of the streets and immediate surroundings to improve quality of life helps support this aim.

Street cleanliness is measured against a cleanliness index. We aim to reach Grade A of the cleanliness index. Materials from flyering can seriously detract from reaching this standard, therefore the index itself will be used as the measure.

Application of the enforcement policy

“Paragraph 5.3 - Prosecution” and “par 5.3.1 - community benefit” apply to the problem of litter. Legal action will therefore be taken on each occasion an offence is committed due to the dramatic effects that flyering can have on litter in an area.

“Paragraph 5.2 - Fixed penalty notices” allows for the use of fixed penalty notices where the legislation allows. This will be used in respect of litter.

Paragraph 5.1 “Statutory Notices” - Notices shall be served to require offenders to cease contravening activities.

Legislation -

See appendix 1 for details

Policy

Leeds takes a zero tolerance approach to tackling litter.

Items left on street furniture etc will be classed as litter and will be included when carrying out the cleanliness assessment.

This policy applies to littering in any place in the City of Leeds; in the open air; in a covered thoroughfare or in a council owned or run shopping/leisure area, to which the public have right of access. It will not be applicable inside singular private buildings.

Assessment:

If staff see flyering activities in an area they will assess whether the flyers are contributing to the litter in the area.

If so, they will assess the standard of street cleanliness.

The assessment will be made against the Governments recognised measure of street cleanliness, arising from the Code of Practice for litter and refuse.

Appendix 2 provides information on the grades.

If an area is found to be grade A, the area is acceptable.

If an area is found to be grade B, the area is acceptable but will need monitoring. The flyerer will be verbally advised that the litter on the street should not get worse.

If an area is found to be grade B/C or C, the area is not acceptable.

If an area is found to be grade D or worse, the area is grossly unacceptable.

Enforcement action to be taken:

Grade B/C or C.

Photographic evidence of the flyerer and the litter will be obtained. The flyerer will then be approached. Enforcement staff will formally identify themselves and advise why they are there. Written and/or photographic evidence will be recorded of the extent of littering and the event/product being advertised.

The following information will be obtained from the flyerer:

- Name, address, and date of birth.
- Name, address & tel. number of their employer.

The flyerer will personally be issued with an Environmental Protection Act 1990 abatement notice at the time. This notice will require the prevention of nuisance from litter and prevent a recurrence. It will be enforceable immediately and will expect the removal of the litter.

The Notice to the individual will be deemed complied with and removed from the records if there is no recurrence of litter within 3 months of service.

The employing promoter/promotion company will be contacted and also be served with an abatement notice by e mail/fax/post (whichever means is available and is the quickest) as soon as practical to confirm details. This notice will require the immediate prevention of nuisance from litter and prevent a recurrence of litter arising from flyering organised by the promoter/promotion company.

If the flyerer does not know of the promoters arrangements, the venue/business advertised will be contacted. It is important to prevent further littering to act upon information quickly. The venue/business will be expected to co-operate and provide evidence of any third party responsibility being relied upon to avoid an offence. Initially this evidence can be verbal, but if found to be inaccurate, documentary evidence will be sought and if not available or inaccurate, the venue/business will be pursued. If immediate and full co-operation is not evident, the venue/business will be served a further abatement notice.

The Notice to the company (or employees or people operating on behalf of the company) will be deemed complied with and removed from the records if there is no recurrence of litter within 6 months of service.

Breach of the Abatement Notice could lead to prosecution for breach of that notice. The maximum fine is £5000. However, if there is a breach, an anti-social behaviour order may be a preferred option to be taken against the promoter/licensee or other person being pursued for the offences.

Each Notice served will apply to whole of the Leeds City Council area.

Grade D or worse.

The policy as above will apply. However, in addition, the street cleaning team will be brought in to sweep the street immediately. The costs of this additional clean

up will be calculated and an invoice will be sent to the business which owns or occupies the premises in which the advertised promotion is taking place.

The business will be invoiced as non-payment can be held against the property asset or business asset if not paid. It will be for the business to seek recompense from any promoter or other third party if they have further legal agreements.

All council street staff will be able to inform enforcement staff where littering is thought to be arising from flyering activities. All council street staff can directly advise flyerers if they believe that litter is being created and request the flyerer to pick up any litter generated. If they do not receive co-operation, they will inform enforcement staff who will record this for evidential purposes in related cases.

Offences observed on CCTV will be pursued where identity can be reasonably obtained. In particular, where gross littering occurs from flyers associated with a particular premise, and is recorded on CCTV, the CCTV team may call in street cleaning teams. The council will seek to recover the cleaning costs.

Appendix 1

Environmental Protection Act 1990

Abatement Notice

79.—(1) Subject to(*Not applicable*).... the following matters constitute "statutory nuisances" for the purposes of this Part, ...

(e) any accumulation or deposit which is prejudicial to health or a nuisance;

(7) In this Part—

"industrial, trade or business premises" means premises used for any industrial, trade or business purposes or ... for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;

"person responsible", in relation to a statutory nuisance, means the person to whose act, default or sufferance the nuisance is attributable;

80.—(1) Where a local authority is satisfied that a statutory nuisance exists, or is likely to occur or recur... the local authority shall serve ..."an abatement notice" ...

(a) requiring the abatement of the nuisance or prohibiting or restricting its occurrence or recurrence;...

and the notice shall specify the time or times within which the requirements of the notice are to be complied with.

(2) The abatement notice shall be served—

(a) ... on the person responsible for the nuisance;...

(3) The person ... may appeal against the notice to a magistrates' court within ... twenty-one days (of service). ...

(4) If a person on whom an abatement notice is served, without reasonable excuse, contravenes or fails to comply with any requirement or prohibition imposed by the notice, he shall be guilty of an offence.

(5) ... a person who commits an offence ... shall be liable on summary conviction to a fine not exceeding level 5 (£5000) ... together with a further fine of an amount equal to one-tenth of that level for each day on which the offence continues after the conviction....

(7) Subject to subsection (8) below, in any proceedings for an offence under subsection (4) above in respect of a statutory nuisance it shall be a defence to prove that the best practicable means (*sec 79 (9)*) were used to prevent, or to counteract the effects of the nuisance.

(8) The defence under subsection (7) above **is not available**—

(a) in the case of **a nuisance** falling within paragraph (a), (d), **(e)**, (f) or (g) of section **79(1)** above **except** where the nuisance arises on industrial, trade or business premises;...

Sec 87 / 88 - Describes the offence of leaving litter and offers the offender the opportunity of paying a fixed penalty (£50) to avoid prosecution, if they admit to the offence.

Sec 87 (1) - If any person throws down, drops or otherwise deposits in, into or from any place...and leaves, anything whatsoever in such circumstances as to cause, or contribute to, or tend to lead to, the defacement by litter of any place...shall be guilty of an offence.

88.—(1) Where on any occasion an authorised officer of a litter authority finds a person who he has reason to believe has on that occasion committed an offence under section 87 above in the area of that authority, he may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty.

Anti Social Behaviour Act 2003

Pt 9 - (The Crime and Disorder Act 1998) Use of ASBOs -

ASBOs are available where there is behaviour which causes or is likely to cause harassment, alarm and distress to others and it can be shown that an order is necessary to prevent further anti social acts. Beneficiaries, organisers and people flyering that creates litter can all have ASBOs made against them. Evidence can be persistent flyering that creates litter despite warnings to stop creating litter.

Local Government Act 1972

Section 222 - The Council can use the authority of s. 222 LGA 1972 to bring proceedings in the County Court for an injunction to prohibit a person from continuing to cause a public nuisance if it can be shown that it is expedient for the promotion or protection of the interests of the inhabitants of the area. These injunctions can be used to deal with flyering that creates litter by prohibiting a person from flyering that creates litter and can include a claim for compensation. The penalty for breach of an injunction is imprisonment for contempt of Court.

Appendix 2 - Cleanliness standards

Grade A



Grade A: No litter or refuse

Grade B



Grade B: Predominantly free of litter and refuse apart from some small items

Grade C



Grade C: Widespread distribution of litter and refuse with minor accumulations

Grade D



Grade D: Heavily littered with significant accumulations