

Appendix 1

Code of Practice

Control of the Display of Goods and Advertising Boards on the Adopted Footway

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1. Introduction

This Code of Practice for the Display of Goods and Advertising Boards on the Adopted Footway aims to deal with items placed on the adopted footway. It does not apply to boards or display of goods on private property, including privately owned shopping centre areas. By adopting this approach, the Council endeavours to ensure the free passage for Sandwell pedestrians along footpaths and the highway and to seek an improvement in the visual street environment. The Code will enable officers to use the powers to obstructions fairly and consistently.

2. Display of goods Guidelines

The following conditions apply specifically to the display of goods on the adopted footway as detailed in the Highways Act 1980 and adopted sections of the Local Govt (Misc Provisions) Act 1982 and enforced under the Anti-Social Behaviour & Crime and Policing Act 2014

- (a) Shop displays must not cause a visual distraction or obstruct sight lines of vehicle drivers, nor block visibility for pedestrians.
- (b) No unauthorised encroachment by shops or selling or trading will be permitted upon public highway. All transactions must take place within the trading establishment. Unauthorised encroachment will be dealt with in line with penalties detailed in the Anti-Social Behaviour & Crime and Policing Act 2014.
- (c) This procedure does not relate to goods displayed at market, street fetes, Street Trading which are regulated by local byelaws or other legally adopted regimes.
- (d) Any approved, goods, wares, displays or removable sales aids in situ and may need to be removed during events, to permit maintenance of street works or for other reasonable cause. Any additional requirement by the Council, the Police or Emergency Services, including removal of any items, must also be complied with.
- (e) These general conditions may not be appropriate in every circumstance.

3. Advertising Boards Guidelines

Powers are granted to deal with obstruction of the Highway under Section 137 of the Highways Act 1980 and the Anti-Social Behaviour & Crime and Policing Act 2014 provides powers to address behaviour that has a detrimental effect on the quality of life of those in the locality and deemed as unreasonable. With regard to Advertising Boards etc ('A' Boards / For Sale or To Let board, banners etc on or over the highway), the following guidelines have been adopted by Sandwell.

- (a) No 'A' Board/For sale/To Let Board, advertising banners etc shall be fixed permanently onto the highway. 'A' Boards must be temporary in nature so they can be easily removed in their entirety at the end of each trading day.
- (b) For Sale / To Let Boards / Banners placed on the highway will not be permitted.
- (c) The owner and/or person benefitting from the advertising on the 'A' board must obtain public liability insurance for its display and for the period of its display. They must produce said insurance to any Council officer requesting it.
- (d) 'A' Boards should not be any bigger than 0.6m wide and 1.1m high. They should have a solid base so that they can be tapped by a visually impaired person using a long cane.

- (e) 'A' Boards should be positioned so that an absolute minimum pavement width of 1.8m is kept clear for pedestrians and in some locations where there is a high pedestrian flow the Council may require a greater width. This is to ensure that there is no obstruction or danger to any highway users, particularly visually impaired, and disabled, or those with pushchairs etc. 'A' boards should not be located in the middle of pavements.
- (f) The 'A' Board is the responsibility of its owner and Sandwell MBC will not be liable for any injury or damage caused. If any injury or damage is caused or a "near miss" happens, the owner of the 'A' board must tell the Council, and immediately remove the obstruction. The owner of the 'A' board or the premises advertised by it shall indemnify the Council fully against any claim made in respect of injury or damage.
- (g) The design of the 'A' Boards should not be distracting or visually confusing to motorists.
- (h) 'A' Boards must not obstruct sightlines or visibility splays of vehicle drivers, nor block visibility for pedestrians.
- (i) 'A' Boards will not be allowed on or within 25 metres of central reservations, roundabouts and the centre line of busy traffic junctions.
- (j) In pedestrian areas these principles will generally apply although the special nature of these areas means that each case will be considered on an individual basis. A route for emergency vehicles (minimum 3.5m) is normally required in pedestrian areas.

4. Enforcement Process

4.1 Display of Goods and Advertising Boards Obstructions

When an officer receives a complaint, they will firstly assess whether the obstruction is contravening the stipulations of the Highways Act 1980.

The officer will engage with the owner and request the goods are removed/repositioned in accordance with SMBC's guidance/legal requirements. The officer will check to see if a previous warning has been issued to the owner and if there has been previous non-compliance. The officer will record the discussion with the owner and take photographic evidence. The owner will be given 7 days to remove/reposition the goods, after which time a revisit will be carried out.

If the owner is still non-compliant, using the Anti-Social Behaviour & Crime and Policing Act 2014 consideration will be given to the issuing of a Community Protection Warning (**Appendix 1**).

The purpose of the Community Protection Warning will be:

- To outline how their unreasonable behaviour is affecting local environmental quality.
- To explain what behaviour, we expect and an appropriate timescale to comply.
- To highlight the consequences if their unreasonable behaviour continues (they will be issued with a CPN).
- The owner will also be issued with the A Boards and Goods on Highway guidelines.

The Community Protection Warning once issued can remain in place for 12 months to ensure continued compliance.

If the owner remains non-compliant, using the Anti-Social Behaviour & Crime and Policing Act 2014, consideration will be given to the issuing of a Community Protection Notice (**Appendix 2**).

The purpose of the Community Protection Notice will be:

- To outline how their unreasonable behaviour is affecting local environmental quality.
- To explain what behaviour we expect and an appropriate timescale to comply.
- To remove the items within an appropriate timescale.
- To highlight the consequences if their unreasonable behaviour continues (they will be issued with a FPN of £100 or could face prosecution).
- The owner will also be issued with the Display of Goods and Advertising Boardsguidelines.

If the goods are not removed/repositioned within the timescales detailed in the Community Protection Notice, then evidence will be taken for breaching the notice.

The owner of the goods will be informed of the breach and a Fixed Penalty Notice will be issued. Once the timeframe to pay the Fixed Penally Notice has elapsed the file will be prepared for Legal with a view to issuing proceedings.

If the item is not removed, then the officer may apply to the Justice of the Peace for a seizure order under section 51 of the Anti-Social Behaviour and Crime and Policing Act 2014. This must be following up with prosecution action within 28 days. Failing this then the goods would have to be returned to the owner.

5. Legislation

5.1 Highways Act 1980

- S132 (2) – The highway authority may... remove any picture, letter, sign or other mark which has, without consent... been painted... or affixed upon the surface of the highway or upon any tree, structure... on the Highway.
- Section 137(1) - If a person... in any way wilfully obstructs the free passage along a highway he is guilty of an offence....

5.2 Anti-Social Behaviour & Crime and Policing Act 2014

- S48 Offence of failing to comply with a notice
 - S51 Seizure of an item used in commission of an offence
- Extracts from this act are provided in Appendix 3.

5.3 Local Government (Misc Provision) Action 1982

- S4 Street Trading

5.4 Town and Country Planning Act 1990 & the Town and Country Planning (Control of Advertisements) Regulations 1992

- S224 (3) ... if any person displays an advertisement... he shall be guilty of an offence and liable... to a fine... not exceeding (£1000), and in the case of a continuing offence, £100 (1/10th) for each day during which the offence continues after conviction.
- (4) ... a person shall be deemed to display an advertisement for the purposes of that subsection if— (a) he is the owner or occupier of the land on which the advertisement is displayed; or (b) the advertisement gives publicity to his goods, trade, business or other concerns. N.B. (5) A person shall not be guilty of an offence... if he proves that it was displayed without his knowledge or consent.
- S 225 (1) ... the local planning authority may remove or obliterate any placard or poster—(a) which is displayed in their area; and (b)... is so displayed in contravention of regulations made under section 220. *But not...* within a building to which there is no public right of access.
- (3) ... where a placard or poster identifies the person who displayed it or caused it to be displayed, the local planning authority shall not exercise any power conferred by subsection (1) unless they have first given him notice in writing [that] (a)... it is displayed in contravention of regulations ... (b)... they intend to remove or obliterate it... (5)(not less than two days from the date of service of the notice).
- *N.B. (4) Subsection (3) does not apply if—(a) the placard or poster does not give his address, and (b) the authority... are unable to ascertain it after reasonable inquiry.*

5.5 Town Police Clauses Act 1847

- S28 states that it is an offence to place goods for sale on a footway.

5.6 The Equality Act 2010

- S20 (4) requires that where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

6. APPENDICES

6.1 Appendix 1 - Community Protection Warning

Name

Address Line 1

Address Line 2

Address Line 3

Postcode

Date:

Please ask for:

Telephone:

Reference:

Date

Name

Tel

Reference Number

Dear Name

**Sections 43 - 58 of the Anti-Social Behaviour Crime & Policing Act 2014
Formal Community Protection Warning**

Being satisfied that your conduct is having a detrimental effect on the quality of life of others in the locality of:

Describe Locality

I, Name of Authorised Officer, an authorised officer of Sandwell MBC hereby require you to:

- Detail specific prohibitions/requirements & timescales

This warning letter has been issued because:

- Describe behaviours

This is having a detrimental effect on the quality of those in the locality Describe the impacts

This letter offers you the opportunity to avoid the issue of a Community Protection Notice.

IMPORTANT

If you fail to comply with this warning letter a Community Protection Notice may be issued without further warning. Non-compliance with a Community Protection Notice carries criminal sanctions and can lead to a criminal record.

Failure without reasonable excuse to comply with a Community Protection Notice can lead to seizure and forfeiture of items, default works and recovery of costs and / or a fine of up to £2,500 in relation to an individual or up to £20,000 in the case of a body.

Non-compliance may also result in the issue of a Fixed Penalty Notice in the sum of £100:00.

Further behaviour could also result in the council applying for a Civil Injunction against you which would prohibit you from doing certain things. If you breach the terms of an Anti-Social Behaviour Injunction (ASBI), you could receive a prison sentence or a fine.

This Community Protection Warning will be effective for a period of **(Specify effective length of CPN - i.e. 6 Months)** from the date of issue.

Signed (authorised officer): _____

Date of Service: _____

Name: Name
Position: Role

Contact Details: Telephone
 Email
 Address Line 1
 Address Line 2
 Address Line 3
 Postcode

6.2 Appendix 2 - Community Protection Notice

To:

Name

Address Line 1

Address Line 2

Address Line 3

Postcode

Date:

Please ask for:

Telephone:

Reference:

Date

Name

Tel

Reference Number

Section 43 of the Anti-Social Behaviour Crime and Policing Act 2014 **Community Protection Notice**

Being satisfied that your conduct is having a detrimental effect on the quality of life of others in the locality of:

Describe Locality

I, Name of Authorised Officer, authorised officer of Sandwell Metropolitan Borough Council am satisfied on reasonable grounds that the conduct of **Name and address of offender** is having a detrimental effect on the quality of life of those in the locality, is persistent and/or continuing in nature and is unreasonable.

The nature of the conduct which is having a detrimental effect is as follows:

- Describe behaviours

This is having a detrimental effect on the quality of those in the locality Describe the impacts

You have previously been given a written warning on **Date CPW was served**, that a Community Protection Notice would be issued unless your unreasonable behaviour, detailed above, ceased. Despite having had enough time to deal with the matter, your unreasonable behaviour continues.

You are hereby required to comply with the following:

- Detail specific prohibitions

If you fail to comply with these requirements without reasonable excuse:

1. You may be issued with a fixed penalty notice.
2. You may be prosecuted. If you are prosecuted and convicted the maximum penalty for an individual is a fine of up to £2,500 or a fine of up to £20,000 for a business or organisation.
3. The court may make whatever order the court thinks appropriate to ensure that what the notice requires to be done is done.
4. A court order may require you to:
 - a) Carry out specified work, or

- b) Allow specified work to be carried out by or on behalf of (insert issuing agency name) who can then charge you for carrying out the work.
5. The court may require you to surrender possession of any item used in your failure to comply with the Notice, to a constable or to a person representing the local authority. The court may require this item to be destroyed or disposed of. A justice of the peace may issue a warrant, authorising a constable or authorised person to enter your premises to seize the item.

Sandwell Council will also consider what other action may be required to stop the problems, such as applying for an injunction, a Premises Closure Order or considering whether breaches of your tenancy agreement have occurred (Tenants only).

Failing to comply with a Community Protection Notice is a Criminal Offence. You have the right to appeal against the issue of the Community Protection notice to a Magistrates Court within 21 days of the Notice being issued to you.

You are advised to refer to the following extract from the Anti-Social Behaviour Crime and Policing Act 2014 for further information and explaining your rights of appeal against the notice (Appendix A).

This Community Protection Notice will be effective for a period of **(Specify effective length of CPN - i.e. 6 Months)** from the date of issue.

Outside of the appeal process (outlined in **Appendix A**), there is a provision for the Notice to be varied or discharged after it has been served. The Notice may be varied or discharged by the issuing agency, or on receipt of a qualifying request by the recipient.

The power to vary the Notice includes extending the term of the Notice or including additional prohibitions or requirements in the Notice. Should you wish to apply for variation or discharge of the Notice, you should submit a written request to the issuing officer (who's contact details are below), outlining the reason for this request.

Signed (authorised officer): _____

Date of Service: _____

Name: _____
Position: _____

Name
Role

Contact Details: Telephone
Email
Address Line 1
Address Line 2
Address Line 3
Postcode

6.3 Appendix 3 - Extracts from the Anti-Social Behaviour Crime and Policing Act 2014

Section 46 – Appeals against Notices

(1) A person issued with a community protection notice (CPN) may appeal to a magistrates' court against the notice on any of the following grounds. 1 That the conduct specified in the CPN did not take place; has not had a detrimental effect on the quality of life of those in the locality; has not been of a persistent or continuing nature; is not unreasonable, or is conduct that the person cannot reasonably be expected to control or affect. 2 That any of the requirements in the notice, or any of the periods within which or times by which they are to be complied with, are unreasonable. 3 That there is a material defect or error in, or in connection with, the notice. 4 That the notice was issued to the wrong person. (2) An appeal must be made within the period of 21 days beginning with the day on which the person is issued with the notice. (3) While an appeal against a CPN is in progress (a) a requirement imposed by the notice to stop doing specified things remains in effect, unless the court orders otherwise, but (b) any other requirement imposed by the notice is of no effect. For this purpose an appeal is "in progress" until it is finally determined or is withdrawn. (4) A magistrates' court hearing an appeal against a CPN must (a) quash the notice, (b) modify the notice (for example by extending a period specified in it), or (c) dismiss the appeal.

Section 47. Remedial action by local authority

(1) Where a person issued with a CPN ("the defaulter") fails to comply with a requirement of the notice, the relevant local authority may take action under subsection (2) or subsection (3) (or both). (2) The relevant local authority may have work carried out to ensure that the failure is remedied, but only on land that is open to the air. (3) As regards premises other than land open to the air, if the relevant local authority issues the defaulter with a notice (a) specifying work it intends to have carried out to ensure that the failure is remedied, (b) specifying the estimated cost of the work, and (c) inviting the defaulter to consent to the work being carried out, the authority may have the work carried out if the necessary consent is given. (4) In subsection (3) "the necessary consent" means the consent of (a) the defaulter, and (b) the owner of the premises on which the work is to be carried out (if that is not the defaulter). Paragraph (b) does not apply where the relevant authority has made reasonable efforts to contact the owner of the premises but without success. (5) A person authorised by a local authority to carry out work under this section may enter any premises to the extent reasonably necessary for that purpose, except that a person who is only authorised to carry out work under subsection (2) may only enter land that is open to the air. (6) If work is carried out under subsection (2) or (3) and the relevant local authority issues a notice to the defaulter (a) giving details of the work that was carried out, and (b) specifying an amount that is no more than the cost to the authority of having the work carried out, the defaulter is liable to the authority for that amount (subject to the outcome of any appeal under subsection (7)). (7) A person issued with a notice under subsection (6) may appeal to a magistrates' court, within the period of 21 days beginning with the day on which the notice was issued, on the ground that the amount specified under subsection (6)(b) is excessive. (8) A magistrates' court hearing an appeal under subsection (7) must (a) confirm the amount, or (b) substitute a lower amount. (9) In this section "the relevant local authority" means (a) the local authority that issued the CPN; (b) if the CPN was not issued by a local authority, the local authority (or, as the case may be, one of the local authorities) that could have issued it.

Section 48. Offence of failing to comply with notice

(1) A person issued with a CPN who fails to comply with it commits an offence. (2) A person guilty of an offence under this section is liable on summary conviction (a) to a fine not exceeding level 4 on the standard scale, in the case of an individual; (b) to a fine not exceeding £20,000, in the case of a body. (3) A person does not commit an offence under this section if (a) the person took all reasonable steps to comply with the notice, or (b) there is some other reasonable excuse for the failure to comply with it.

Section 49 Remedial orders

(1) A court before which a person is convicted of an offence under section 48 in respect of a CPN may make whatever order the court thinks appropriate for ensuring that what the notice requires to be done is done. (2) An order under this section may in particular require the defendant (a) to carry out specified work, or (b) to allow specified work to be carried out by or on behalf of a specified local authority. (3) To be specified under subsection (2)(b) a local authority must be (a) the local authority that issued the CPN ;(b) if the CPN was not issued by a local authority, the local authority (or, as the case may be, one of the local authorities) that could have issued it.(4) A requirement imposed under subsection (2)(b) does not authorise the person carrying out the work to enter the defendant's home without the defendant's consent. But this does not prevent a defendant who fails to give that consent from being in breach of the court's order. (5) In subsection (4) "the defendant's home" means the house, flat, vehicle or other accommodation where the defendant--(a) usually lives, or (b) is living at the time when the work is or would be carried out. (6)If work is carried out under subsection (2)(b) and the local authority specified under that subsection issues a notice to the defaulter (a) giving details of the work that was carried out, and (b) specifying an amount that is no more than the cost to the authority of having the work carried out, the defaulter is liable to the authority for that amount (subject to the outcome of any appeal under subsection (7)).(7) A person issued with a notice under subsection (6)may appeal to a magistrates' court, within the period of 21 days beginning with the day on which the notice was issued, on the ground that the amount specified under subsection (6)(b) is excessive. (8) A magistrates' court hearing an appeal under subsection (7) must (a) confirm the amount, or (b) substitute a lower amount

Section 50. Forfeiture of item used in commission of offence

(1) A court before which a person is convicted of an offence under section 48 may order the forfeiture of any item that was used in the commission of the offence. (2) An order under this section may require a person in possession of the item to hand it over as soon as reasonably practicable (a) to a constable, or (b) to a person employed by a local authority or designated by a local authority under section 53(1) (c). (3) An order under this section may require the item (a) to be destroyed, or (b) to be disposed of in whatever way the order specifies. (4) Where an item ordered to be forfeited under this section is kept by or handed over to a constable, the police force of which the constable is a member must ensure that arrangements are made for its destruction or disposal, either (a) in accordance with the order, or (b) if no arrangements are specified in the order, in Appendix B Item 7 / Page 43 whatever way seems appropriate to the police force. (5) Where an item ordered to be forfeited under this section is kept by or handed over to a person within subsection (2) (b), the local authority by whom the person is employed or was designated must ensure that arrangements are made for its destruction or disposal, either (a) in accordance with the order, or (b) if no arrangements are specified in the order, in whatever way seems appropriate to the local authority.

Section 51. Seizure of item used in commission of offence

If a justice of the peace is satisfied on information on oath that there are reasonable grounds for suspecting (a) that an offence under section 48 has been committed, and (b) that there is an item used in the commission of the offence on premises specified in the information, the justice may issue a warrant authorising any constable or designated person to enter the premises within 14 days from the date of issue of the warrant to seize the item. (2) In this section "designated person" means a person designated by a local authority under section 53(1) (c). (3) A constable or designated person may use reasonable force, if necessary, in executing a warrant under this section. (4) A constable or designated person who has seized an item under a warrant under this section (a) may retain the item until any relevant criminal proceedings have been finally determined, if such proceedings are started before the end of the period of 28 days following the day on which the item was seized; (b) otherwise, must before the end of that period return the item to the person from whom it was seized. (5) In subsection (4) "relevant criminal proceedings" means proceedings for an offence under section 48 in the commission of which the item is alleged to have been used.