

APPENDIX 1



Operational Policy for Issuing Fixed Penalty Notices

1st June 2016 - Draft

1. Introduction

- 1.1. Enforcement activity through fixed penalty notices provides a means by which local authorities can visibly, proportionately and effectively respond to low level crime. The Government has, and continues to, encourage their use.
- 1.2. This policy is supplementary to the Council's Generic Enforcement Policy. The aim of this policy is to set out the principles that apply when authorised officers of the Council issue Fixed Penalty Notices (FPNs) for particular offences as contained under the following acts:
 - Anti-social Behaviour, Crime and Policing Act 2014 - Breach of a Public Spaces Protection Order
 - Health Act 2006 – Smoke-Free Premises, Places and Vehicles
 - Environmental Protection Act 1990 – Littering
 - Environmental Protection Act 1990 – Fly-tipping

For a breakdown of offences, fines and how monies raised are able to be re-invested in service improvements and efficiency see Appendix A.

- 1.3. The purpose of the guidance is to establish standard fixed penalty procedures to be adhered to when issuing fixed penalties for breaches of the above legislation, with appropriate guidance on the circumstances in which a fixed penalty notice may be issued.
- 1.4. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued.

2. Authorised Officers

- 2.1. This policy is to be implemented by appropriately trained officers who have decided that the issuing of a FPN is the most appropriate course of action to address anti-social activities under the above legislation.
- 2.2. All officers, who issue FPNs shall be appropriately authorised in accordance with the provisions of the Council's Constitution and under appropriately delegated authority.

3. How FPNs are issued

- 3.1. FPNs are designed to deal with low-level offending. When considering a case, officers should carefully evaluate the nature and severity of the breach.

3.2. A FPN may only be issued where an officer has reason to believe a person has breached legislation by committing a penalty offence and the officer considers there to be admissible evidence to support a successful prosecution. Admissible evidence shall include that witnessed by an authorised officer, as well as that provided by a reliable witness testimony.

Normally breaches of legislation resulting in a FPN will be witnessed directly by the officer and issued at the time of the incident and suspected offenders may be interviewed under caution on scene or invited to attend a subsequent interview.

Although an officer may consider it appropriate to issue a FPN to a suspect if they have not directly witnessed the breach, they may only do so if supported with reliable witness testimony.

3.3. There is no fixed time in which FPNs must be served, however, to avoid allegations of abuse of process; FPNs will normally be served within 14 days of the date of the breach. This may be particularly relevant for young people

3.4. Electoral register lists, DVLA checks and Police support may be used as a means of verifying names and addresses provided by people suspected has having breached the law. Those issued with a FPN will have a period of 14 days to pay. Unpaid FPNs, which have been served appropriately, are likely to be pursued through the courts.

3.5. An officer withholds the right to issue advice and guidance to the person suspected of breaching the law in place of issuing a FPN.

4. The Offender

4.1. A FPN should be issued only where;

- There is a clear breach of the above legislation. A FPN is a proportionate response.
- There is sufficient evidence as to his/her identity and place of residence. It is an offence for a transgressor to refuse or fail to give correct personal details when being reported.
- The person in breach of law understands why the FPN is being issued and is compliant. FPNs must be issued to and received by the person in breach of law.

4.2. A FPN will not be appropriate where:

- It is inappropriate or disproportionate for the breach of law.
- Prosecution is more suitable.

- No satisfactory address exists for enforcement purposes. This may be where the officer has reason to believe that the person in breach is homeless or sleeping rough.
- A penalty offence is known to have been committed in association with another non-fixed penalty offence that is enforceable under a different regime.
- The person in question is exempt, e.g. a registered assistance dog is taken into a dog exclusion area.
- A person in breach of law is threatening, abusive or violent to the officer. Where this occurs, the officer should ensure their own safety and seek help from the police. The offender may then be dealt with by way of prosecution, either by the police or the Authority.

4.3. Where the person in breach of law has a record of repeat offending, consideration should be given to an alternative disposal (e.g. prosecution and/or police involvement).

A FPN may not be appropriate where it is known that the person in breach of law has a previous relevant conviction or caution, or has previously been issued with an FPN (for the offence), particularly if they have not paid. In these cases they should be informed that he/she will be reported with a view to prosecution.

5. Issuing the FPN

- 5.1. The officer will approach the person suspected of being in breach of law, identify him/herself and make the person aware that their actions have been seen, and constitute an offence in breach of the relevant legislation. The officer will then obtain the relevant personal information from the person. These details will be verified as far as practicable and the officer will make a decision whether to issue an FPN or provide the person with advice and guidance. These details are required for processing purposes. Documentary evidence of identity and place of residence will be requested, but not demanded, and will be preferable to non-physical checks such as the electoral register. Failure to identify a suspect could invalidate enforcement. Police assistance will be sought where necessary.
- 5.2. When the FPN is issued, the officer should explain that it provides an opportunity to avoid liability to prosecution, and will draw the person's attention to the relevant points about making payment and prosecution in the event of non-payment.

6. Appeals and withdrawals

6.1. There is no right of appeal against a FPN as this constitutes a summary offence which can only be defended via the Magistrate's court. Consideration for cancellation or withdrawal of a FPN will only be given on the following grounds:

6.2. Cancellation of an FPN:

- Where a person issued with a FPN falsely provides the identity details of another person, and that person successfully challenges the notice on that basis; and/or
- Where further information comes to light about the personal circumstances of the recipient of a fixed penalty notice, and which provides justification or mitigation for the breach of law.

6.3. Withdrawal of an FPN:

- Where the FPN has been served incorrectly; and/or
- Where it subsequently transpires that the evidence is insufficient to support a prosecution.

6.4. Full details of all decisions shall be recorded and appellants will be informed of the decision within 10 working days.

Where cancellation or withdrawal is refused the appellant shall be informed within 5 working days of the decision and the original payment terms, including the opportunity to pay the charge at the discounted rate, shall apply from the date of the letter notifying the person on whom it was served of the results of the decision.

7. Vulnerable Adults

7.1. If there is any doubt, or it is brought to the Authority's attention, that the person who has committed an offence is not capable of understanding that their actions constitute an offence; are mentally impaired in any way or are clearly unable to pay (e.g. homeless or rough sleeping), then a FPN will not be issued. An educative approach may be taken or the individual asked to rectify their actions under such circumstances.

8. Young People

8.1. FPNs will not be issued to children below the age of 10.

- 8.2. For young people between the ages of 10 and 17 a warning will be issued for a first breach and the matter reported to their parents or guardians. Only where an officer has evidence to confirm that the young person has been previously warned and the alleged offender has acknowledged wrong doing will consideration be given to the issuing of a FPN. In the event of any doubt, the officer will seek the advice of the Youth Offending Team
- 8.3. In situations where FPNs are issued to 15-17 year olds, the Youth Offending Team will be notified and the offender will be informed of this at the time of the incident.
- 8.4. In all cases, a FPN shall only be issued to young people in the presence of their parent or legal guardian.

9. Information sharing and storage

- 9.1. Information collected or recorded as part of the Council's enforcement activities which will also include decisions taken about the choice of enforcement options; and will be securely retained in a paper and/or electronic format; in line with the Councils Retention and Disposal Policy
- 9.2. The identity of a person providing the Council with information about other people committing crime will remain confidential unless prior agreement by the person is obtained. An exemption to this is where the Council work with other government organisations that have Regulatory or Enforcement functions and personal information may be shared with these organisations on a case-by-case basis.
- 9.3. Personal data held manually or as computer records will be handled in accordance with the Data Protection Act 1998 (DPA).

Appendix A

Description of Offence	Act and section	Fee	Reduced fee (paid in 10 days)
Depositing litter	Environmental Protection Act 1990, Section 77 and Section 78	£100	£75
Failure to comply with a Public Space Protection Order	Anti-social Behaviour, Crime and Policing Act 2014, Section 63 and Section 67.	£100	£75
Smoking in workplace	Health Act 2006 Section 7	£100	£75
Fly-tipping	Environmental Protection Act 1990, Section 77 and Section 78	Various £150 min. to £400 max.	Various