

Northumberland County Council
Environmental Enforcement Fixed Penalty Notice Policy
2017

1 Introduction

1.1. The purpose of this policy is to set out how the Council will enforce through the use of Fixed Penalty Notices (FPNs) for environmental offences. It sets out the Council's fine levels for the non-payment of fixed penalty notices issued by the Council.

1.2. The Council will use fixed penalty notices as part of an overall approach to protecting and improving the environment, safety & well-being of our communities. This policy is strongly linked to the following corporate priorities:

- Improve our places and our environment
- Enable communities and families to be strong
- Help people to be healthy and independent

1.3. In the use of FPNs the Council will always seek to follow the enforcement principles described in its Corporate Enforcement Policy.

1.4. A FPN is a means to give a person who has committed a relevant offence the opportunity to pay a fine and in so doing discharge their liability to conviction. As such it is intended as a means by which Courts are prevented from being overloaded with minor offences by first time offenders.

1.5. This policy covers such enforcement action for those offences that could be broadly described as environmental or related to cleaner or safer neighbourhoods. As such it covers:

- Dog control including dog fouling
- Littering
- Fly tipping
- Failure to produce a Waste Carriers Licence when required to do so
- Failure to furnish Waste duty of care documentation when required to do so
- Nuisance parking
- Abandoning a vehicle
- Graffiti and Fly-posting
- Offences in relation to waste receptacles
- Consuming alcohol in public spaces.

2. General Principles

2.1 Where legislation permits the use of fixed penalty notices, the Council will consider the use of them as an alternative to prosecution. Examples of where they may be appropriate are:

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

2.2 Before a fixed penalty fine is administered the authorised officer will ensure:

- there is evidence of the offender's guilt sufficient to sustain a prosecution (any subsequent decision to prosecute will be in accordance with the Code for Crown Prosecutors)

2.3 Where legislation gives the local authority flexibility to set the level of a fixed penalty charge the level of the charge shall be set by the Council. If there is not a fine level set in this policy then an Officer to whom the power is delegated in consultation with the appropriate Lead Member for that service area shall set the fine level. The level of the fixed penalty charge shall be set with regard to:

- any Government guidance on the level at which the fixed penalty charge should be set,
- the likely level of fine which a court would impose for a similar offence,
- the need to deter offenders from opting for prosecution because they believe that the court would impose a lower level of penalty,
- the cost of bringing a prosecution where fixed penalties were not paid.

2.4 The table in section 6 sets out the level of fines the Council has decided is appropriate for each particular offence listed.

2.5 Where a fixed penalty fine is not paid within the specified time limit (usually 14 days) then the case will be considered for prosecution.

2.6 There is no appeals procedure for a person in receipt of an FPN because a person served with an FPN who believes they did not commit the offence has the right for their case to be heard in court. The Council considers it appropriate that the magistrates court should determine such matters.

2.7 Normally the Council will only issue FPNs to first time offenders for those offences shown in section 6. In cases where the offender has a history of committing the same or similar offence, and the payment of earlier fixed penalties or court fines has not deterred them from re-offending, then prosecution will normally follow.

2.8 In cases where the nature or extent of the offence is so serious that the issue of a fixed penalty would not be considered proportionate then prosecution will be

considered for a first time offence. Issues that will be considered relevant when making this decision include:

- where there is evidence of widespread and systematic offending,
- non-co-operation or obstruction of an investigation (any such allegation may also lead to an additional offence of obstruction where the legislation allows)
- intimidation of witnesses.

2.9 Any fines collected through the FPN procedure will only be spent on related functions of the Council

3. Vulnerable Adults

3.1 If there is any doubt in the enforcement officer's mind that the person who has committed the offence is not capable of understanding what they have done, are mentally or physically impaired in any way, clearly unable to pay e.g. homeless, or otherwise the issue of a fixed penalty would not be in the public interest, then on-the-spot education will be considered. This could include asking the person to rectify their actions or explaining the consequences of such. In any event, the evidence should be brought to a line manager for discussion before a decision on issuing a fixed penalty is made.

4. Children and young persons

4.1 Under 10 year olds

- In the case of children below the age of criminal responsibility i.e. 10, we will not take any formal enforcement action. Where we consider it appropriate, we will report the event to the child's parents or guardians, either directly, or through any supporting service the family may have.

4.2 Between 10 and 15 years old

- An informal verbal warning would normally be issued for a first offence, this should also include on the spot education including an explanation that what they have done is wrong and that it should not be repeated.
- Where it is considered appropriate the officer should also report the event to the child's parents or legal guardian, either directly or through any supporting service the family may have.
- In most such cases an FPN will not be issued but the record of the incident should be brought to a line manager for discussion. An FPN may be issued by first class post if a responsible person (parent or legal guardian) can be identified and it is deemed appropriate and proportionate by the line manager following consideration of the facts. Any FPN issued to an offender between 10 and 15 years old will be sent with a covering letter addressed to the offender and copied to the parent/guardian.
- It is not appropriate to issue an on the spot FPN

4.3 Between 16 and 17 years old

- Where it is identified that the offender is 16 or 17 years old, if it is appropriate immediate on the spot education should be carried out to explain that what they have done is wrong and that it should not be repeated.
- An FPN may be issued on the spot if the name, address and date of birth of the offender have been obtained together with the name and address of a parent or legal guardian. The offender should also be advised that details of the offence may be shared with the local Youth Offending Team.
- If an FPN is not issued on the spot, a record of the incident should be brought to a line manager for discussion, again if the name, address and date of birth of the offender have been obtained together with the name and address of a parent or legal guardian and the offender has been advised that details of the offence may be shared with the local Youth Offending Team. If it is deemed appropriate and proportionate by the line manager following consideration of the facts an FPN may be issued by first class post to the offender together with a covering letter addressed to the offender and copied to the parent/guardian.
- No offender between 16 and 17 years old should the need arise, be interviewed under caution without an appropriate adult being present.
- If there is any doubt as to the offender's age, in other words there is a belief that they may be under 16, then the procedure for those aged between 10 and 15 years old should be followed.

5. Non-Payment of Fixed Penalties

5.1 When a fixed penalty fine is not paid in full within the required time period specified on the notice (in most circumstances 14 days) then a prosecution for the offence will normally proceed.

5.2 A lower discounted fine (typically a reduction of 20%) will also be specified on the notice together with a shorter payment period. This amount only applies to those who make the discounted payment in full within the shorter time period specified in section 6 (normally 7 days). The lower amount will not be accepted for any payments not received within the shorter time period and in such cases the full fine amount will be expected to be paid within the 14 days from service of the notice.

6. Levels of Fixed Penalty Notices

Offence: Section and Legislation	Description of Offence	Legislative guidance		Adopted for Northumberland	Adopted for Northumberland
		Range of fixed penalty	Default level	Amount	Amount if early payment received
s.59(2) Clean Neighbourhoods and Environment Act 2005	Failure to comply with a dog control order	£50 - £80	£75	£75	£60 (if paid within 7 days)
S.67 (1) Anti-Social Behaviour, Crime & Policing Act 2014	Failure to comply with a public spaces protection order	Up to £100	Up to £100	£100	£80 (if paid within 7 days)
S.48 (1) Anti-Social Behaviour, Crime & Policing Act 2014	Failure to comply with a Community Protection Notice	Up to £100	Up to £100	£100	£80 (if paid within 7 days)
s.87(1) & 88(1) Environmental Protection Act 1990	Littering	£50 - £80	£75	£80	£65 (if paid within 7 days)
S33 Environmental Protection Act 1990	Fly tipping	£150 - £400	£200	£400	£300 (if paid within 10 days)
s. 3(1) Clean Neighbourhoods and Environment Act 2005	Nuisance Parking – exposing vehicle for sale on a road	£60 - £100	£100	£100	£80 (if paid within 7 days)
S 4(1) Clean Neighbourhoods and Environment Act 2005	Nuisance Parking – repairing vehicles on a road	£60 - £100	£100	£100	£80 (if paid within 7 days)
S71(2)(4) Clean Neighbourhoods and Environment Act 2005	Failure to nominate key holders in alarm notification areas	£50 - £80	£75	£75	£60 (if paid within 7 days)
s.2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a Vehicle	£120 - £200	£200	£200	£160 (if paid within 7 days)
s5(7)(a) Control of Pollution (Amendment) Act 1989	Failure to produce waste carriers license	£300	£300	£300	£240 (if paid within 7 days)

s.34(6) Environmental Protection Act 1990	Failure to furnish duty of care documentation (as respects waste). If a person, who is subject to a duty imposed by S34(1), (2E), (2F), (2I), (2K) or (2L), fails to comply with regulations in accordance with Section 34(5).	£300	£300	£300	£240 (if paid within 7 days)
s.44 Anti-social Behaviour Act 2003	Graffiti, fly posting and other relevant offence	£50 - £80	£75	£75	£60 (if paid within 7 days)
Schedule 3A paragraph 1(1) & (2) Environmental Protection Act 1990	Unauthorised distribution of literature	£50 - £80	£75	£75	£60 (if paid within 7 days)
S63(6) Anti-Social Behaviour, Crime & Policing Act 2014	Consumption of alcohol in breach of a prohibition in order	£100	£100	£100	£80 (if paid within 7 days)
s47(6) Environmental Protection Act 1990	Offences in relation to waste receptacles	£75-110	£100	£100	£80 (if paid within 7 days)