

Policy on the issuing of Fixed Penalty Notices

General

G1. This policy shall be read in conjunction with the Environment & Street Scene Directorate Enforcement Policy.

G2. The use of FPNs will be in accordance with the guidance issued by Defra:

“Guidance on the Fixed Penalty Notice Provisions of the Environmental Protection Act 1990, the Clean Neighbourhoods and Environment Act 2005 and other legislation”

G3. A FPN will only be issued where an Authorised Officer has reason to believe a person has committed a relevant offence and that sufficient evidence exists to warrant and support a successful prosecution such that if a fixed penalty was not available the matter would be proceeded with in the Courts.

G4 A FPN will not be issued where the alleged offender appears unable to understand the process. Senior officers will then consider whether it is appropriate to proceed with the matter in the Courts.

G5. A FPN must be issued to and received by the offender. If an offender refuses to give their name and address, and their identity can be established through other means, i.e. by the police, the offender may still be provided with the opportunity to avoid prosecution by payment of the fixed penalty through the issuing of a FPN.

G6. A FPN will not be appropriate where:

- despite the best efforts of the Authorised Officer to inform the offender, the offender appears unable to understand the action being proposed.
- the suspect is a non resident foreign national, as the penalty will not be enforceable
- no satisfactory address exists for enforcement purposes, for example where the officer has reason to believe that the suspect is homeless or sleeping rough.
- where it is known that the offender has previous convictions or a caution for the offence, or has been previously issued with a number of FPNs , particularly if they have not been paid, where taking action through the Courts will be the appropriate action.

FPN issue process

FP1. The Authorised Officer will approach the offender and identify him/herself. The offender will be informed of the offence committed and the intention of the Council to pursue formal action to prosecute the offender for the offence. The offender will then be requested to provide their name, address and date of birth. The offender will be notified that they may be issued with a FPN for that offence with the opportunity for the offender to avoid prosecution by payment of a fixed penalty. A notice of intention to prosecute will be completed and issued to the offender (if possible). On return to the office the offender's details will be verified as far as practicable. A FPN will then be issued if the

FPN criteria are fulfilled and there is sufficient evidence to pursue prosecution proceedings.

FP2. Failure to identify a suspect prior to issue could invalidate enforcement. Police assistance will be requested where necessary since failure by a person to provide an officer proposing to issue a FPN with their name and address, or the giving of false details is a specific offence.

FP3. Any interview and questioning must be consistent with the practice and procedures established by the Police and Criminal Evidence Act 1984, Code C.

FP4. Where there is reliable witness testimony and an Authorised Officer has not directly witnessed the offence, an Authorised Officer may still issue a notice of intention to prosecute and consideration given to issuing a FPN for the offence committed.

FP5. If the offender either refuses to accept a FPN for the offence committed, or, having accepted such a notice, does not pay before the end of suspended enforcement period, the offence will in all cases be dealt with through the Courts. If payment of a FPN notice is received after prosecution proceedings have been implemented, in the interim period before the case is due to be heard, a senior officer will consider the merits of accepting the full FPN payment or continuing with proceedings in the Court.

FP6. The above process shall also apply to offences committed from moving vehicles (e.g. littering) provided that it can be evidenced who in the vehicle committed the offence and vehicle registration details can be established

FP7. Payment of a fixed penalty by instalments will not be accepted. In cases of exceptional and demonstrable hardship, and although there being no legal basis for this consideration, a senior officer may extend the suspended enforcement period and delay the issue of summons.

FP8. The fixed penalties and discounts for early payment shall be as set out in the table below:

FPN offence	Statutory default penalty	Minimum statutory discounted penalty	Suggested local penalty	Suggested local discounted penalty
Abandoned vehicle	£200	£120	N/A	£120
Nuisance parking	£100	£60	N/A	£60
Litter	£75	£50	£75	£50
Street litter control	£100	£60	£100	£60
Unauthorised leaflet distribution	£75	£50	£75	£50
Graffiti & flyposting	£75	£50	£75	£50
Failure to produce waste transfer notice	£300	£180	N/A	£180
Failure to produce waste carriers papers	£300	None	N/A	N/A
Waste receptacles	£100	£60	£100	£60
Dog control	£75	£50	£75	£50
Noise	£100	£60	£100	£60
Failure to nominate keyholder (in designated alarm areas)	£75	£50	£75	£50

Noise (licensed premises)	£500	None	N/A	N/A
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Disputes/appeals

DA1. Subject to policy DA2 below, an offender contesting a FPN will be advised that there is no obligation to pay a fixed penalty issued by the local authority but if they fail to pay the penalty, the matter will be pursued through the Courts, where they will be able to argue their case against the action of the Authorised Officer.

DA2. In exceptional cases it will be appropriate to withdraw a FPN or not proceed to summons on non payment. Such circumstances may arise where:

(a) information that was not available at the time the FPN was issued becomes available and it is determined that the offence to which the notice relates was not committed; or

(b) where evidence is provided to demonstrate that the notice ought not to have been issued to the person named

The issue of FPNs to Juveniles

J1. The issue of FPNs to Juveniles will take into account Defra guidance:

“Issuing Fixed Penalty Notices To Juveniles - Guidance on issuing fixed penalty notices contained within the Clean Neighbourhoods and Environment Act 2005”

J2. The issue of FPNs for differing age groups will be as set out below:

Juveniles under the age of 10 years

J2.1 A FPN cannot and will not be issued to a juvenile under the age of 10 years

J2.2 Where an offence has been committed, the young offender’s name, address and age shall be ascertained, together with that of their parents or legal guardian. The young offender will be informed that the offence will be shared with the local Youth Offending Team in accordance with the Data Protection Act 1998

(b) Juveniles aged between 10 and 15 years

J2.3 Other than in the circumstances set out below in J2.6, a young offender will not be issued with a FPN. The young offender’s name, address and age shall be ascertained, together with that of their parents or guardian. If an Authorised Officer’s view is that a FPN is appropriate for the offence committed, then a FPN shall only be issued in the presence of a parent or legal guardian.

J2.4 Before the issue of a FPN the following factors shall be considered:

- (i) has a FPN been issued previously;
- (ii) is a reprimand, warning or other sanction more appropriate; and
- (iii) are there family circumstances or other vulnerabilities

J2.5 In all cases, the Youth Offending Team and children's services should be consulted/informed

J2.6 A FPN can be issued for the offence of littering by school pupils where it has been agreed with the school to issue them for littering during the lunch period. In all such cases the parents, legal guardian or school must be notified of the FPN issue as soon as possible.

(c) Juveniles aged between 15 and 17 years

J2.7 A FPN can be issued to a young offender in accordance with the procedures for adults, subject to the same considerations plus:

- (i) mental handicap; and
- (ii) any signs of substance abuse

J2.8 If the Authorised Officer is in any doubt regarding the age of a young offender, then the procedures set out for young persons between the ages of 10 and 15 ((J2.3 to J2.6) shall be applied.