

SURREY HEATH BOROUGH COUNCIL

Corporate Enforcement - Environmental Protection

Fixed Penalty Notice Enforcement Policy

(Environmental Offences)



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DOCUMENT HISTORY

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1.0 INTRODUCTION

- 1.1 Notices of opportunity to pay a Fixed Penalty Notice (referred to as FPN's) can be issued by Local Authority officers for certain offences where the legislation permits and where the officer is authorised to do so. These notices provide a quick, visible and effective way of dealing with environmental crime that has a detrimental and costly impact on our Borough.
- 1.2 FPNs are one of a number of enforcement tools used to tackle environmental crime and as a means to change offending behaviour, and are used as an alternative to prosecution.
- 1.3 A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence

2.0 AIM OF POLICY

- 2.1 The aim of this policy is to apply the general principles of enforcement in respect of fixed penalty notices to ensure that any enforcement action is transparent, accountable, proportionate, consistent and targeted.

3.0 OBJECTIVES

- 3.1 To introduce an enforcement regime in previously unregulated areas to address low-level environmental crime.
- 3.2 To provide a cost-effective and timely enforcement service that reduces the burden on the Courts and reduces the time between the offence and the penalty.
- 3.3 To increase public awareness of environmental offences.

4.0 JOINED UP WORKING

- 4.1 The Counter Fraud and Corporate Enforcement Team shall work in close partnership with external bodies such as Surrey Police, Surrey County Council, Registered Social Landlords (RSL's) and Parish Councils to extend the enforcement service within the Borough.

5.0 TARGETING OF OFFENCES

- 5.1 To ensure best use of resources, the Counter Fraud and Corporate Enforcement officers shall liaise with relevant internal departments and external agencies to target problem areas.

6.0 DELEGATION

- 6.1 All Officers who issue FPNs shall be authorised by The Executive Head of Community under delegated authority.
- 6.2 The Executive Head of Community shall have the authority to withdraw the FPN in appropriate circumstances.

7.0 OFFENCES

- 7.1 The relevant environmental offences enforced by Surrey Heath Borough Council's Counter Fraud and Corporate Enforcement Officers are detailed in the table at Appendix 1.

8.0 APPROPRIATE USE OF FIXED PENALTIES

- 8.1 A FPN shall only be issued where there is sufficient admissible evidence to support a prosecution, including offences directly witnessed by an authorised officer, or where there is reliable witness testimony.
- 8.2 A FPN shall only be issued where the enforcement officer is confident that the correct identity details have been provided. Failure to supply a name and address, or to supply false details to an authorised officer is an offence.
- 8.3 A FPN will be appropriate for first time offenders and one-off incidents as it is a low level disposal and the recipient can avoid obtaining a criminal conviction. A FPN is a means to changing offending behaviour.
- 8.4 A FPN should not be issued in the following circumstances:
- 8.4.1 *Where the offence committed is so small or trivial in its effect that the action may not be in the public interest, in accordance with published government guidance.*
- 8.4.2 *Where a suspect appears to be unable to understand what is being offered to them, for example where the suspect is deaf or there is a doubt about their ability to understand English. Where such circumstances arise every effort should be made to illicit / impart the required information.*
- 8.4.3 *Where the suspects' behaviour suggests they have learning difficulties or mental disorder, or where the suspect is under the influence of alcohol or drugs. The officer should question whether issuing a FPN is appropriate (as it may go unpaid) and whether on the spot education is a better solution or if prosecution may be in the public interest*
- 8.4.4 *A FPN shall not be issued where the offence has been committed by someone that has previously received a fixed penalty for the same offence in the last three years. Prosecution proceedings shall be instigated directly in respect of repeat offenders.*
- 8.4.5 *Where no satisfactory address exists for enforcement purposes. This may be where the officer has reason to believe that the suspect is homeless or where the suspect is a non-resident foreign national.*
- 8.4.6 *Where false identity details have been provided by the offender, and where the enforcement officer later determines the correct details. In this event, the use of a FPN is inappropriate and as such prosecution proceedings should be instigated directly.*
- 8.4.7 *Where the offender is threatening, abusive or violent to the officer. In this instance, the officer should ensure their own safety and seek help from the Police. The offender would be dealt with by way of prosecution*

9.0 ISSUING FIXED PENALTY NOTICES

- 9.1 In order to achieve good quality control (i.e. verification of name and address, repeat offender check etc.) and to minimise the risk of a confrontational situation

and the associated hazards, the majority of FPNs shall generally be served by post.

- 9.2 The option to serve a fixed penalty notice on the spot will be at the officer's discretion. Should this be appropriate the officers will explain the it provides an opportunity to avoid liability for prosecution and will draw the person's attention to the relevant points about making payment.
- 9.3 A person who refuses to accept a FPN from the officer will be informed that he / she will be reported for the offence in question.
- 9.4 Enforcement officers are not authorised to accept payment of a FPN.
- 9.5 There is no fixed time in which the FPN must be served. However, to avoid any allegation of abuse of process, FPNs will normally be served within 15 working days of the date of the offence.

10.0 YOUNG PEOPLE

- 10.1 In law a local authority can issue an FPN to anyone over the age of 10 if it appears they have committed an offence. Parents and guardians are not responsible in law for paying fixed penalties issued to young offenders. However, a court before which a young person appears can order the parent / guardian to pay any fine it may impose
- 10.2 Childrens' service authorities, including Local Authorities and Police, have a duty under the Children Act 2004 to discharge their functions having regard to the need to safeguard and uphold the welfare of children.
- 10.3 A FPN will not be appropriate where a young person's behaviour suggest they have learning difficulties or they suffer from a vulnerability that impairs his or her understanding of what goes on. In such cases the matter will be referred to Youth Offending Team and Children's Services.
- 10.4 If the officer has reason to believe that the offender is less than 16 years old they should obtain the person's name and address and explain that an appointment with their parent or guardian will be arranged to discuss the offence. Two officers will attend and in consultation with the youth's parent/guardian decide whether a FPN should be served or a written warning given.
- 10.5 Under 16's offending for a second time will be issued with a FPN. However a meeting will still be arranged with the youth's parent/guardian.
- 10.6 If an under 16 year old is caught committing a similar offence more than once, contact shall be made with the Youth Offending Team, informing them of the circumstances.
- 10.7 FPNs for youths aged between 16 and 18 years will usually be issued by post. On the spot FPN's can be issued at the officers discretion.
- 10.8 A person under 17 years is to be treated as a juvenile for the purposes of PACE Act 1984 and should not be interviewed without the presence of an 'appropriate adult'.
- 10.9 Only on non-payment of a FPN, or where offender is identified as a persistent offender would prosecution of a youth under 18 be considered.

11.0 DISPUTES ABOUT ENFORCEMENT

- 11.1 Once a FPN has been issued, the recipient may decide to phone or write in pleading mitigation or contesting the fact that a FPN was issued. An alleged offender contesting a FPN should be advised that there is no obligation to pay a fixed penalty and there is no formal appeal procedure
- 11.2 Whilst the Authority should review the facts of a particular case when invited, the opportunity to challenge the allegation and plead not guilty to the alleged offence at an independent hearing is open to the recipient of the FPN. This will be by the way of prosecution, on summons, and trial in a Magistrates Court.
- 11.3 Any person requesting a reconsideration of the decision to issue a FPN should do so in writing to the Executive Head of Finance. Such letters may help identify any issues that need resolving or investigating before a case is prepared for court. Arguments over the law, the amount of the fixed penalty etc. will not be relevant, but claims that a defence applies will. Only in exceptional circumstances will it be appropriate to withdraw a FPN or not proceed to summons on non-payment. Examples of this may be when information that was not available at the time the FPN was issued becomes available, that it would not be in the public interest to prosecute, or that the notice should not have been issued to the person named in the notice.
- 11.4 Where a reconsideration has been requested, and the decision to issue the FPN upheld, 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, which will apply from the date of letter notifying the appellant of the results of the reconsideration.
- 11.5 Where a reconsideration has been requested which results in the withdrawal or cancellation of the FPN, the appellant shall be informed within 5 working days of the decision.
- 11.6 Any complaint regarding the issue of a FPN shall be dealt with under the Council's complaint procedure, details of which are available on the Council's website.

12.0 LEVELS OF FIXED PENALTIES

- 12.1 Local authorities are permitted to set their own level of penalty for the specified environmental offences within a range prescribed in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007.
- 12.2 Local authorities are also permitted to set their own level of penalty discount for early payment, the minimum value of which is prescribed in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007.
- 12.3 Payment of either the full or discounted fixed penalty charge within the specified time period will discharge the offender's liability to conviction for the offence.
- 12.4 The full charge shall be paid within 14 days following the date of the FPN (except smoking offences which 29 days). The discounted charge, if applicable shall be paid within 10 days (15 for smoking offences) following the date of the FPN.
- 12.5 The fixed penalty charges are detailed in the table at Appendix A
- 12.6 The level of fixed penalties for environmental offences may be subject to review within the prescribed limits at any time.

13.0 PAYMENT OPTIONS

- 13.1 Payments of a FPN by instalments will not be accepted. In cases of demonstrable hardship, consideration may be given by Executive Head of Finance to extending the suspended enforcement period and delaying the issue of summons, although there is no legal basis for this.

14.0 PROSECUTION

- 14.1 If a person either refuses to accept a FPN or having accepted such a notice does not pay before the end of the suspended enforcement period (14 days), a final reminder letter will be issued giving a further seven days' notice. If the penalty remains unpaid, the matter will result in prosecution (unless there is good reason otherwise) To ensure the integrity of the FPN scheme is maintained, the assumption will be that all cases involving non-payment will be referred to court.
- 14.2 It is the responsibility of the officer who issued the FPN to ensure that all witness statements, exhibits and any other supporting documentation are sent to Legal Services.
- 14.3 Each case will be reviewed by a Senior Lawyer in conjunction with the Head of Legal Services, applying the evidential and public interest tests before a prosecution is commenced
- 14.2 Prosecution proceedings will be cancelled in the event that the penalty amount is paid prior to the court hearing.

15.0 USE OF RECEIPTS

- 15.1 Fixed penalty receipts for environmental offences may only be used to meet the cost of undertaking specific functions or enforcement action under the relevant legislation.
- 15.2 Fixed penalty receipts for environmental offences may not be spent on any other function.
- 15.3 Cost accounting shall be undertaken to demonstrate compliance with the legislation.

16.0 RECORDING AND REPORTING

- 16.1 Full and accurate details of each FPN shall be recorded and monitored at all stages from issue to closure on the Teams Fraud Detection Management system.
- 16.2 Accurate details of all environmental FPN issued shall be reported on the annual fixed penalty notice return form to DEFRA.

17.0 MONITORING AND REVIEW

- 17.1 This Policy shall be reviewed on an annual basis, or at such time as deemed appropriate.
- 17.2 This Policy shall be published on the website, allowing members of the public and businesses to have the opportunity to comment on the Policy and to provide feedback.
- 17.3 A record of amendments to the Policy shall be maintained within this document.

FPN DESCRIPTIONS

Appendix A

Offence Number	Description of offence	Legislation	Amount of penalty if paid early	Full amount of penalty	Maximum penalty on conviction
1	Depositing litter	Section 87/88 Environmental Protection Act 1990	£50	£75	£2,500
2	Failure to comply with a street litter control notice	Anti-Social Behaviour, Crime and Policing Act 2014	£60	£100	£2,500
3	Failure to comply with a litter clearing notice	Anti-Social Behaviour, Crime and Policing Act 2014	£60	£100	£2,500
4	Abandonment of Vehicle	S2 and 2A Refuse Disposal (Amenity) Act 1978	£120	£200	£2,500
5	No smoke free signage	S6 and 9 Health Act 2006	£150	£200	£1,000
6	Smoking in a smoke free place	S7 and 9 Health Act 2006	£30	£50	£200
7	Failing to remove dog faeces from Designate Land	S3 Dogs (Fouling of Land) Act 1996	N/A	£50	£1,000
8	Criminal Damage (Graffiti)	Section 43 - Anti-social Behaviour Act 2003	£50	£75	£2,500
9	Fly Posting	S43 and 44 Anti-Social Behaviour Act 2003, S224 TCPA	£50	£75	£2,500
10	Unauthorised distribution of free printed matter	Schedule 3A, paragraphs 1(1) and 7 - Environmental Protection Act 1990	£50	£75	£2,500
11	Failure to produce waste transfer notes	Section 34(5) and Regulations made under it/34(6)/34A - Environmental Protection Act 1990	n/a	£300	Unlimited
12	Failure to produce waste carriers licence	Section 5 & 5B Control of Pollution (Amendment) Act 1989	n/a	£300	Unlimited
13	Failure to comply with a S47 waste receptacles notice	Section 46 & 47/47ZA/47ZB -Environmental Protection Act 1990	£60	£100	£1,000
14	Illegal dumping of waste (fly-tipping)	Section 33ZA The Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016	n/a	£400	£50,000
15	Parking of vehicles exposed for sale on a road	Section 3 & 6 Clean Neighbourhoods and Environment Act 2005	£60`	£100	£2,500
16	Repairing vehicles in a road by a business	Section 4 & 6 Clean Neighbourhoods and Environment Act 2005	£60	£100	£2,500
17	Emitting excessive noise (domestic property)	Section 4/8 Noise Act 1996	£60	£100	£1,000

18	Emitting excessive noise (Licensed premises)	Section 4A/8 Noise Act 1996	N/A	£500	Unlimited
19	Failure to comply with a Community Protection Notice	Section 48 & 52, Anti-social Behaviour, Crime and Policing Act 2014	£60	£100	£2,500 individuals Unlimited for a body
20	Failure to notify nominated key-holder	S71 & 73(2) Clean Neighbourhoods and Environment Act 2005	£50	£75	£1,000