

## Agenda Item 6

<b>Executive Member</b>	Cllr Dave Mir – Executive Member for Environment and Parking		
<b>Strategic Management Team Lead Officer</b>	Paul Anderson (Interim Corporate Head of Service)		
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<b>Date</b>	31 October 2017		
<b>Ward (s) affected</b>	All	<b>Key Decision</b>	Yes
<b>Subject</b>	Fixed Penalty Notice Enforcement Policy		
<b>Recommendations</b>			
To approve the Fixed Penalty Notice Enforcement Policy.			
<b>Environment</b>			
<b>A highly attractive area with housing that meets local need</b>			
<ul style="list-style-type: none"> <li>• Protect and enhance the natural and built environment and ensure our areas of natural beauty are well looked after.</li> <li>• Encourage our communities to take care of their environment, and support them by tackling fly-tipping, littering and dog fouling.</li> </ul>			
<b>The Executive has the authority to determine the Recommendations</b>			

### 1. Introduction

- 1.1. In April 2017, Executive approved the Environmental Anti-Social Behaviour Strategy. The Strategy sets out Mole Valley District Council's approach to tackling environmental anti-social behaviour (ASB). The Strategy is supported by an Action Plan which sets out improvements that will be delivered in the short to medium term, and aspirations and principles for the longer term.
- 1.2. A key element of the Strategy was about improving the approach to issuing Fixed Penalty Notices (FPNs), for environmental offences. The Environmental Services and Fraud and Investigation Teams have developed new working methods to specifically target fly-tips. This ensures that every fly-tip is searched for evidence which would then be securely recorded, collected and stored, and investigations undertaken to establish whether sanctions can be made. Since March 2017, eight FPNs have been issued for fly-tipping, and a further two for littering.
- 1.3. The FPNs that have been issued to date have been in line with existing Mole Valley District Council policy which has been in place for a number of years. This report presents a new policy which reflects legislative changes, would allow FPNs to be issued for a broader range of offences and for the FPN charges to be set at the highest levels.
- 1.4. The Policy has been developed to reflect best practice and is in line with new policies being developed by other Surrey Districts and Boroughs. Officers continue to work in partnership with colleagues at Surrey County Council and the other Districts and Boroughs through an enforcement officer network, to share intelligence, best practice

and effective approaches to enforcement, in terms of larger and smaller scale environmental crimes. This has had benefits in terms of the implementation of the Mole Valley Environmental ASB strategy and the Surrey wide Fly-Tipping Strategy.

- 1.5. The table below summarises, for ease of reference, the current offences for which FPNs can be issued and the additional offences which would be possible under this policy.

Current Offences	Additional Offences
Abandoning a vehicle	No smoke free signage
Littering	Smoking in a smoke free place
Unauthorised distribution of free printed material	Failing to remove dog faeces from Designated Land
Criminal Damage (graffiti and fly posting)	Failure to comply with a S47 waste receptacles notice
Illegal dumping of waste (fly tipping)	Parking of vehicles exposed for sale on a road
Failure to produce a waste carriers licence	Repairing vehicles in a road by a business
Failure to produce waste transfer notes	Emitting excessive noise (domestic property)
	Emitting excessive noise (Licensed premises)
	Failure to comply with a Community Protection Notice
	Failure to notify nominated key-holder

## 2. Options

**Option 1:** Approve the Fixed Penalty Notice Policy – Recommended

**Option 2:** Approve the Fixed Penalty Notice Policy, subject to specific changes being made.

**Option 3:** Not approve the policy and continue in line with the current framework.

## 3. Corporate Implications

### Property implications

- 3.1. There are no specific implications for the authority's premises or assets as a result of adopting the Fixed Penalty Notice Policy.

### Finance Implications

- 3.2. Income from FPNs will increase slightly. Income from FPNs will be used to support the delivery of activities in line with the Environmental ASB Strategy.

### **Legal Implications**

- 3.3. The offences for which a fixed penalty notice can be issued are set out in the Appendix to the Policy and the enforcement procedures and processes will need to comply with the relevant legislation. In addition to the legislation relating to the offences, there are other areas of legislation that will also need to be considered and complied with, such as the Human Rights Act 1998, the Police and Criminal Evidence Act 1984 in connection with the investigation and prosecution of criminal offences and, where the use of covert directed surveillance is deemed appropriate, for example, by using hidden CCTV cameras, the appropriate authorisations under the Regulation of Investigatory Powers Act 2000, as amended, will be required.

### **Monitoring Officer Commentary**

- 3.4. The Monitoring Officer is satisfied that the relevant legislation has been taken into account in this report

### **S151 Officer Commentary**

- 3.5. The S151 is satisfied with the financial implications of this report.

### **Risk Implications**

- 3.6. MVDC can continue to issue FPNs in line with the current Policy. Therefore if the Executive decides to not approve the Policy there will be no negative risks in the sense that Mole Valley District Council can continue the approach to issuing FPNs that it has operated over the last 12 months. The risk in not adopting policy applies to the opportunity lost to broaden the scope of options available to Mole Valley.

### **Equalities Implications**

- 3.7. An Equality Impact Assessment has been undertaken on this Policy. The Assessment has not identified any specific equality issues. Section 10 of the Policy sets out how children will be addressed should the commit any offences. The Policy also recognises challenges with issuing FPNs to people who do not speak English, or who have a learning disability and addresses the approach that should be taken in these circumstances.

### **Employment Issues**

- 3.8. There are no specific employment issues as a direct consequence of this report.

### **Sustainability Issues**

- 3.9. Environmental ASB threatens the quality of soil, air and water for this generation and future generations thus undermining the concept of sustainable development. Sustainability also relies on creating inclusive and harmonious communities, which can be undermined by incidents of ASB. As a key element of delivering the Environmental ASB Strategy, this Policy helps address both issues and therefore is in the interest of achieving sustainable development.

### **Reputational Implications**

- 3.10. This Policy forms part of the framework of the implementation of the Environmental ASB Strategy which seeks to achieve a balance between effective enforcement and the prudent use of public resources. There are considerable risks to MVDC's

reputation if they are seen not to be using their available resources to tackle environmental and community ASB.

### **Consultation Issues**

3.11. No specific consultation has been undertaken on this Policy.

### **Communication Implications**

3.12. The delivery of the Environmental ASB Strategy has a number of the actions about raising awareness amongst Mole Valley communities regarding the authority's enforcement powers and the responsibilities of residents.

### **Appendices**

3.13. Fixed Penalty Notice Enforcement Policy

### **Background Document**

3.14. Environmental Anti-Social Behaviour Strategy.

# **Mole Valley District Council**

## **Fixed Penalty Notice Enforcement Policy – Environmental Offences**

### **1.0 INTRODUCTION**

- 1.1 A notice 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 District.
- 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 prosecution 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 Environmental Services and Fraud and Investigation Teams 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 District.

### **5.0 TARGETING OF OFFENCES**

- 5.1 To ensure best use of resources, 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 appropriate Corporate Head of Service under delegated authority.
- 6.2 The appropriate Corporate Head of Service shall have the authority to withdraw the FPN in appropriate circumstances.

## 7.0 OFFENCES

- 7.1 The relevant environmental offences enforced by Mole Valley District Council's Environmental Services and Fraud and Investigation 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, every effort should be made to elicit/impart the required information such as the nature of the offence and the detail of the FPN.*
- 8.4.3 *Where the suspects' behaviour suggests they have a learning disability, 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*
- 8.4.8 *In paragraphs 8.4.4, 8.4.6 and 8.4.7 a prosecution will be instigated against the offender provided that there is sufficient evidence and it is in the public interest to do so.*

## 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 officer 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, with the exception of fly-tips where further work may be required to identify if and to whom an FPN should be issued.

## **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' services 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.
- 10.6 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 telephone or write to the Council pleading mitigation or contesting the fact that a FPN was issued or the basis on which it 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 of the offender, 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 relevant Corporate Head of Service. Such letters may help identify any issues that need resolving or investigating before deciding whether the FPN should be withdrawn or 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 for non-payment. Examples of this may be when information that was not available at the time the FPN was issued becomes

available that the notice should not have been issued to the person named in the notice, or that it would not be in the public interest to prosecute..

- 11.4 Where a reconsideration has been requested, and the decision to issue the FPN upheld, the recipient 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 recipient of the decision on the reconsideration.
- 11.5 Where a reconsideration has been requested which results in the withdrawal or cancellation of the FPN, the recipient 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 prosecution for the offence.
- 12.4 The full charge shall be paid within 14 days following the date of the FPN (except smoking offences which is 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 the relevant Corporate Head of Service 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 or 29 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 the Legal Services Manager (or nominated deputy), 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.

Last updated	
Responsible Officer	
Agreed by	
Next update due	

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	£60	£80	£2,500
2	Abandonment of Vehicle	S2 and 2A Refuse Disposal (Amenity) Act 1978	£120	£200	£2,500
3	No smoke free signage	S6 and 9 Health Act 2006	£150	£200	£1,000
4	Smoking in a smoke free place	S7 and 9 Health Act 2006	£30	£50	£200
5	Failing to remove dog faeces from Designate Land	S3 Dogs (Fouling of Land) Act 1996	N/A	£50	£1,000
6	Criminal Damage (Graffiti and fly posting)	Section 43 and 43A- Anti-social Behaviour Act 2003	£60	£80	£2,500
7	Unauthorised distribution of free printed matter	Schedule 3A, paragraphs 1(1) and 7 - Environmental Protection Act 1990	£60	£80	£2,500
8	Failure to produce waste transfer notes	Section 34(5), - Environmental Protection Act 1990 and Regulations made under the Act	n/a	£320	Unlimited
9	Failure to produce waste carriers licence	Section 5 & 5B Control of Pollution (Amendment) Act 1989	n/a	£320	Unlimited
10	Failure to comply with a S47 waste receptacles notice	Section 46 & 47/47ZA/47ZB -Environmental Protection Act 1990	£60	£80	£1,000
11	Illegal dumping of waste (fly-tipping)	Section 33 & 33ZA Environmental Protection Act 1990	n/a	£400	£50,000
12	Parking of vehicles exposed for sale on a road	Section 3 & 6 Clean Neighbourhoods and Environment Act 2005	£60	£100	£2,500
13	Repairing vehicles in a road by a business	Section 4 & 6 Clean Neighbourhoods and Environment Act 2005	£60	£100	£2,500
14	Emitting excessive noise (domestic property)	Section 4/8 Noise Act 1996	£60	£80 - £120	£1,000
15	Emitting excessive noise (Licensed premises)	Section 4A/8 Noise Act 1996	N/A	£550	Unlimited
16	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
17	Failure to notify nominated key-holder	S71, 73 & 74 Clean Neighbourhoods and Environment Act 2005	n/a	£52.50 - £84	£1,000