

## **Mole Valley District Council**

### **Environmental Services**

#### **Clean Neighbourhoods and Environment Act 2005**

#### **Fixed Penalty Enforcement Statement**

### **1 Introduction**

In a developed society, laws are the rules by which we live. They help society to function. Environmental legislation facilitates living together in an increasingly crowded environment. Enforcement of these laws is an essential part of this process. This Enforcement Statement has been produced in line with guidance from DEFRA<sup>1</sup> on the use of fixed penalty notices. It sets out a framework for the use of Fixed Penalty Notices (FPNs) under the provisions of the Clean Neighbourhoods and Environment Act 2005. It takes into account the Code of Practice for Regulators, the Code of Practice for Crown Prosecutors, and the Council's Cleaner Neighbourhoods Strategy.

In line with the above advice and guidance:

- We will publish clear standards, setting out our level of service.
- We will provide information in plain English, or any other language that we deem appropriate, to those who are affected by our enforcement work.
- Complaints involving the process of issuing FPNs will be dealt with through the Council's Corporate Complaints procedure.
- Disputes over the commission of offences will usually be determined by the Magistrates' Court.
- We will be consistent in our approach at all times.

In addition to the above, we will have regard to the five principles of good regulation, namely that enforcement should be proportionate, consistent, transparent accountable and should be targeted at cases in which action is needed.

### **2 Consultation and Political Support**

The following consultees have been given the opportunity to comment on the Council's Cleaner Neighbourhoods Strategy (version 3) (covering the use of FPNs):

- Parish Councils
- Residents' Associations
- Town Centre forums
- Residents of Mole Valley
- Other stakeholders

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<sup>1</sup> DEFRA (2006) Fixed Penalty Notices

The Cleaner Neighbourhoods Strategy was adopted by the Council in January 2008 .

### **3 Objectives**

This Enforcement Statement relates to offences that are identified in the Clean Neighbourhoods and Environment Act 2005, particularly with regard to enforcement of littering offences that may be dealt with by way of FPN. A full list of offences includes:

- Nuisance Parking
- Abandoning a vehicle
- Littering
- Breach of a Street Litter Control Notice or a Litter Clearing Notice
- The Unauthorised Distribution of Free Printed Matter
- Graffiti and Fly-posting
- Failure to produce a Waste Carriers Licence when required to do so
- Failure to furnish Waste Transfer Notes when required to do so
- Offences in relation to waste receptacles

FPNs are one tool that we will use to achieve a cleaner and safer environment within the Mole Valley District. They offer a simple and effective way for the swift application of justice, without the need to involve the courts.

### **4 Strategic Fit**

We will take a holistic approach to achieving performance targets that are contained in our plans, including, but not limited to, the Environmental Services' Service Plan as published in the Council's Budget and Performance Plan. Our use of FPNs will make a contribution to achieving our goals. They are complementary to effective cleansing regimes and they assist in the education of members of the public and the provision of public facilities that meet the needs of responsible citizens.

### **5 Joined up Working**

In implementing this Statement we will work with our partners in other enforcement agencies, the voluntary sector, other Council services and local communities as appropriate.

### **6 Powers to be Used**

The offences that will be dealt with by way of FPNs are set out in section 3 above.

## 7 Delegation Scheme

The Corporate Head of Environment is the Council's Authorised Officer for all powers under the Clean Neighbourhoods and Environment Act 2005. The Authorised Officer will delegate powers of enforcement to those staff and others who are authorised to enforce the various provisions of the Clean Neighbourhoods and Environment Act 2005, being both Council employees and external personnel, e.g. the police.

## 8 Levels of Fixed Penalty Fine

Mole Valley District Council operates a local fixed penalty scheme. The levels of fixed penalties are currently set at the default amount as outlined in the relevant legislation and the Mole Valley Cleaner Neighbourhoods Strategy (Appendix 2). These levels will remain unless varied by the appropriate Committee or the Executive.

**Table 1 Agreed local levels of FPN**

<b>Offence</b>	<b>Amount</b>	<b>Discounted Early Payment (within 10 days)</b>
Nuisance Parking	£100 (fixed)	£60
Abandoning a vehicle	£200 (fixed)	£150
Littering	£75 (Between £50-£80)	£50
Breach of a Street Litter Control Notice or a Litter Clearing Notice	£100 (£75-110)	£60
Unauthorized distribution of Literature on designated land	£75 (£50-£100)	£50
Graffiti	£75 (£50-£80)	£50
Fly-posting	£75 (£50-£80)	£50
Failure to produce a Waste Carriers Licence	£300 (fixed)	£180
Failure to furnish Waste Transfer Notes	£300 (fixed)	£180
Offences in relation to waste receptacles	£100 (£75 to £110)	£60
Small Scale Flytipping*	Up to £300	N/A

\*For instances of flytipping we will look to recover our investigation and clear up costs from the offender.

Large fly tipping / repeat offences will not be dealt with through FPNs (in line with best practice from Defra) and instead we will seek prosecution.

## 9 Targeting of Offences

We will provide a responsive approach to target our enforcement effort and provide a front line service that meets the needs of the community i.e. enforcement will occur where there is a litter problem. Information to target our enforcement work will be derived from complaints, requests for service and from inspections.

## 10 Key Policies

Second and Subsequent Offences: FPNs will normally be offered initially as an opportunity to discharge responsibility for offences that otherwise would be taken to court. They are normally a “one time” offer. In cases where the offender has committed the same or a similar offence in the past, and the payment of earlier fixed penalties or court fines has not deterred them from re-offending, then prosecution will normally follow.

The appropriate Use of Fixed Penalties: Fixed penalties will normally be used for routine offences covered in Table 1 of section 8 in this Statement. In cases where the nature or extent of the offence is so serious that the issue of a fixed penalty would bring the system into disrepute, then a prosecution will be considered. Examples could include cases where there is evidence of widespread and systematic offending, or non-co-operation or obstruction with enquiries, or intimidation of witnesses or enforcement officers. Some discretion may be used in the opposite case where, for example, an officer believes the offence was accidental; then an opportunity for on-the-spot reparation may be given to the offender, e.g. requiring the offender to pick up the litter just dropped, instead of issuing a FPN.

Vulnerable Adults: 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, or they appear to be mentally or physically impaired in any way, or is clearly unable to pay, e.g. the person is homeless, or 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 to them the consequences of such actions. In any event, the evidence should be brought to a line manager for discussion before a decision on issuing a fixed penalty is made.

Juveniles: We will follow best practice<sup>2</sup> on issuing FPNs to juveniles. We aim to use a holistic approach to the problem of young offenders, including providing education programmes in schools and in the streets, together with the use of

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<sup>2</sup> DEFRA (2006) Issuing Fixed Penalty Notices to Juveniles

young volunteers, e.g. litter picking, as well as the use of civil remedies such as acceptable behaviour contracts and ASBOs.

Under Ten 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.

Between Ten and fifteen years old: For youths between the age of 10 and 15, we will normally issue a warning for a first offence. We will report the event to the child's parents or guardians, either directly, or through any supporting service the family may have. We will only issue FPNs if we have evidence that the youth understands the offence. In the event of any doubt, we will consult the Youth Offending Service, and other children's services that are appropriate before determining a course of action. We will consider other methods of control for persistent offenders, such as acceptable behaviour contracts, and ASBOs.

Sixteen and Seventeen year olds: Once the age of the offender has been ascertained, fixed penalty notices can be issued to this age group using the same procedure as for adults. If there are doubts as to whether the offender is 16 or 17, the procedures for 10 to 15 year olds should be followed.

The Environmental Services Department is committed to treating all its customers fairly, irrespective of race, ethnicity, nationality, religion, gender, marital status, disability or age.

## **11 Rights of Appeal**

There is no obligation for an authority to offer an appeals process to someone that may want to dispute a FPN (e.g. the FPN was served on the wrong person).

In Mole Valley a non-statutory appeals process has been established.

An individual can appeal against an FPN directly to the Council. The appeal should be made in writing to the Corporate Head of Environment and it must set out the grounds as to why they feel they should not have been issued with a FPN, quoting the FPN number (top left of the notice).

The appeal will be considered by the Corporate Head of Environment, or another person appointed by the Corporate Head of Environment. After consideration of the grounds, the authority will write to the appellant and explain the outcome.

Any appeal against an FPN will be responded to (in most cases) within 21 days of receiving the appeal in writing. In the event of an unsuccessful appeal, the Council's response should explain as fully as possible why this is the case. The

letter should state the action that will follow should the FPN remain unpaid. If a notice is withdrawn any monies paid will be repaid.

Anyone who wishes to lodge an appeal should not be disadvantaged and the Council will still offer a discount for early payment. If an appellant is unsuccessful, providing the appeal was lodged before the close of the early payment period, the person will be permitted to pay the discounted amount within 10 days of being served with an unsuccessful appeal decision letter.

Payment of the penalty is not an admission of guilt and does not result in conviction or a criminal record.

## **12 Delivery**

The duties and functions covered by this Statement will be delivered via authorised officers in accordance with the Council's Cleaner Neighbourhoods Strategy

## **13 Training**

All staff responsible for the issue, and progressing of FPNs will be fully trained in the appropriate procedures to follow, and in any other areas that are deemed appropriate.

## **14 Use of Receipts**

Mole Valley District Council will use its fixed penalty receipts in accordance with the advice issued by DEFRA in their Guidance "Fixed Penalty Notices" issued in 2006 and may spend the receipts on any of its functions. Normally we will spend the receipts on functions that are relevant to the offence committed, e.g. litter receipts will be spent on controlling litter.

## **15 Targets**

We will aim to enforce all payments due, and progress where possible non-payment through the courts. We will track our performance against the Defra's target of achieving 75% of fixed penalties being paid.

## **16 The Review Process**

This Statement will be reviewed every two years, or earlier in the event of a change in circumstances necessitating a review.