



**Fixed Penalty Notice
Enforcement Policy**

Anti-Social Behaviour Offences

2022

1.0 INTRODUCTION

- 1.1 A notice of opportunity to pay a Fixed Penalty Notice (referred to as FPNs) 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 anti-social behaviour and 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 anti-social behaviour and 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 anti-social behavior and 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 offences.

4.0 JOINED UP WORKING

- 4.1 The Community Safety & Enforcement and Fraud & 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 Executive Head of Service under delegated authority.
- 6.2 The appropriate Executive Head of Service shall have the authority to withdraw the FPN in appropriate circumstances.

7.0 OFFENCES

- 7.1 The relevant anti-social behaviour offences enforced by Mole Valley District Council's Community Safety & Enforcement and Fraud & 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 suspect's 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 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 that it provides an opportunity to avoid liability for prosecution and will draw the person's attention to the relevant points about making payment.
- 9.2 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.
- 9.3 Enforcement officers are not authorised to accept payment of a FPN.

- 9.4 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 a FPN should be issued.

10.0 YOUNG PEOPLE

- 10.1 In law a local authority can issue a 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 suggests 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 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.
- 10.6 FPNs for youths aged between 16 and 18 years will usually be issued by post. On the spot FPNs can be issued at the officer's discretion.
- 10.7 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'.
- 10.8 Only on non-payment of a FPN, or where the 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 formal appeal procedure, other than by way of prosecution of the offender, on summons, and trial in a Magistrates' Court. There is no obligation to pay a fixed penalty notice if the recipient does not wish to accept this alternative to prosecution.
- 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 wishing to plead mitigation or contest the basis on which the FPN was issued. should do so in writing to the relevant Executive 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 which suggests 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 will be honoured. This timescale will apply from the date of the 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.

12.0 LEVELS OF FIXED PENALTIES

- 12.1 Local authorities are permitted to set their own level of penalty for the specified offences within a range prescribed in the appropriate legislation.
- 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.
- 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. The discounted charge, if applicable shall be paid within 10 days 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 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 Executive 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 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 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 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.
- 16.2 Accurate details of all environmental FPNs 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	20 th October 2022
Responsible Officer	Stella Keen
Agreed by	Rachel O'Reilly
Next update due	1 st April 2024

FPN OFFENCES AND PENALTIES 1st April 2022 to 31st March 2024

Offence Number	Description of offence	Legislation	Amount of penalty if paid early	Full amount of penalty	Maximum penalty on conviction
1	Littering	Section 87/88 Environmental Protection Act 1990	£65	£100	£2,500
2	Littering from Vehicles	The Littering From Vehicles Outside London (Keepers: Civil Penalties) Regulations 2018 No. 171	£65	£100	£2,500
3	Fly Posting Graffiti	Section 43 and 43A – Anti –Social Behaviour Act 2003 Section 43 and 43A – Anti –Social Behaviour Act 2003	£65	£100	£500 - £2500 dependent on offence
4	Abandoning a Vehicle	S2 and 2A Refuse Disposal (Amenity) Act 1978	£120	£200	£2,500
5	Fly-Tipping	Unauthorised Deposit of Waste (fixed penalties) Regulations 2016 Section 33 & 33ZA Environmental Protection Act 1990	n/a	£400	£50,000
6	Failure to produce waste transfer notes	Section 34 and 34A - Environmental Protection Act 1990 and Regulations made under the Act	£180	£300	Unlimited
7	Failure to produce waste carriers licence	Section 5 & 5B Control of Pollution (Amendment) Act 1989	£180	£300	Unlimited
8	Failure to undertake a duty of care with household waste	Section 34 & 34A - Environmental Protection Act 1990 and Regulations made under the Act	£180	£300	£2,500
9	Failure to comply with a Community Protection Notice	Section 48 & 52, Anti-Social Behaviour, Crime and Policing Act 2014	£65	£100	£2,500 individuals Unlimited for a body
10	Breach of Public Spaces Protection Order	S68 Anti-Social Behaviour, Crime and Police Act 2014	£65	£100	£1,000
11	Parking of vehicles exposed for sale on a road	Section 3 & 6 Clean Neighbourhoods and Environment Act 2005	N/A	£100	£2,500
12	Repairing vehicles in a road by a business	Section 4 & 6 Clean Neighbourhoods and Environment Act 2005	N/A	£100	£2,500