

# Fixed Penalty Notice Policy

March 2025

## Policy Statement

The purpose of this Policy is to set out how the Council will enforce the use of Fixed Penalty Notices for environmental offences, and should be read in conjunction with the Council's [Enforcement Policy](#).

In this Policy, the term Fixed Penalty Notice (FPN) shall include:

- Fixed Penalty Notices,
- Penalty Charge Notices,
- Penalty Notices, and
- Civil Penalties.

FPNs can be issued by local authority officers 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 low-level straightforward environmental crimes; and are an alternative to prosecution.

The Council will use FPNs as part of an overall approach to the maintenance and improvement of public health, safety, quality of life and wellbeing. The Council's vision is *"putting our communities first"* and we aim to achieve this by our corporate priorities which are:

- ✓ To make Chesterfield a thriving borough.
- ✓ To improve the quality of life for local people.
- ✓ To provide value for money services.

This Policy has been prepared in accordance with the published guidance for [Section 88B of the Environmental Protection Act 1990](#) and the [Guidance for Local Authorities on Household Waste Duty of Care Fixed Penalty Notices](#).

## 1. OVERVIEW

A FPN is a way of giving a person who has committed a relevant offence the opportunity to pay a fixed amount as a direct alternative to prosecution and in doing so discharge their liability to conviction. This Policy covers enforcement action for those offences that could be broadly described as *environmental* or related to *cleaner or safer neighbourhoods*; and covers:

- Dog control (dog fouling and breaches of the Public Spaces Protection Order).
- Littering.
- Fly tipping.
- Failing to comply with a duty of care with regard to household waste.
- Failure to produce a waste carriers' licence when required to do so.
- Failure to provide waste duty of care documentation when required to do so.
- Breach of a Community Protection Notice.
- Smoke Free (i.e. smoking in a fleet vehicle or taxi).

A fixed penalty is not a fine. Payment of the penalty by the recipient discharges their liability to conviction for the offence for which the FPN was issued. It does not constitute an admission of guilt, but removes the possibility of the creation of a record of criminal conviction.

Where legislation permits the use of FPNs, the Council will consider the use of them as a direct alternative to prosecution. Examples of where they may be appropriate are:

- To deal quickly and simply with less serious offences.
- To divert less serious cases away from the court process.
- To deter repeat offences.

Government guidance states that local authorities must have a Policy that details:

- ✓ Offences included in the local authority FPN scheme.
- ✓ How much fine is issued for each offence.
- ✓ Details of any early repayment discounts.
- ✓ How fixed penalty notices are issued.
- ✓ How we will deal with juvenile offenders.
- ✓ What we will do if the offenders don't pay.
- ✓ How to appeal (if that option is offered).
- ✓ How the money received from FPNs will be spent.
- ✓ What records we will keep.

A FPN may only be issued where an Authorised Officer has reason to believe a person has committed a penalty offence and there is sufficient evidence to support a successful prosecution.

An Authorised Officer may issue a FPN where the offence is of a nature suitable to be dealt with by means of a FPN. When considering a case, officers should consider the nature and seriousness of the offence. For example, the use of a FPN is appropriate for most types of littering offences, but in the case of flytipping, a FPN is only going to be appropriate for offences at the minor end of the scale.

Normally offences resulting in a FPN will be witnessed directly by the officer. However, an officer may consider it appropriate to issue a FPN to an offender if they have not directly witnessed the offence, but have a reliable witness testimony.

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

**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 (e.g. offender is deaf, or unable to understand English).
- The offender is a non-resident foreign national, as the penalty will not be enforceable.
- No satisfactory address exists for enforcement purposes (e.g. where the Authorised Officer has reason to believe that the offender 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 FPN, pursuing through the courts will be the appropriate action.
- The offender is a juvenile under the age of 10 years, or between the ages of 10 – 15 (with the exception of littering offences).

**A FPN *may not* be appropriate:**

- Where the suspect's behaviour suggests they have learning difficulties or mental disorder, or where the suspect is under the influence of intoxicating substances. The officer should question whether issuing a FPN is in the public interest.
- Where the penalty offence is known to have been committed in association with another non-fixed penalty offence.
- Where an offender is threatening, abusive or violent to the officer. Where an offender becomes aggressive or violent, the officer should ensure their own safety and seek

help from the police. The offender would be dealt with by way of prosecution, either by the police or the local authority.

A FPN will not be appropriate where it is known that the offender has a previous relevant conviction or caution, or has previously been issued with an FPN (for the offence), particularly if they have not paid. The officer should inform the offender that (s)he will be reported with a view to prosecution.

## 2. ISSUING THE FPN

A FPN is a means of changing offending behaviour and should be issued where

- ✓ the alleged offender is compliant and able to understand what is going on and,
- ✓ there is sufficient evidence as to his/her identity and place of residence.

The Authorised Officer will approach the offender, identify him/herself and tell the person, in simple terms that they have been seen committing an offence. The person will then be spoken with to obtain their name, address and date of birth. These details will be verified as far as is reasonably practicable. Documentary evidence of identity and place of residence will be requested but not demanded, and will be preferable to non-physical checks such as the electoral register. Failure to identify an offender prior to issue could invalidate enforcement. Police assistance will be sought where necessary. The officer must record the offender's forename, surname, address, postcode and date of birth. These are required for processing purposes.

Instead of issuing the FPN 'in person', the FPN can be completed in an office space and 'issued by post'. When the FPN is issued, it must be accompanied with a letter explaining that payment offers an opportunity to avoid liability to prosecution, and will draw the person's attention to the relevant points about making payment. The letter must advise that in the event of non-payment, they will be prosecuted for the offence.

Officers will not accept payment of a FPN anywhere other than in a Chesterfield Borough Council building or where a payment is made over the phone.

Payments can be made

**By phone:** 01246 345345

**In person:** Chesterfield Borough Council, Town Hall, Rose Hill, Chesterfield, Derbyshire, S40 1LP

It may not be possible to speak with an offender at the time of the incident, for example when litter is thrown/deposited from a vehicle (i.e. because the vehicle is moving). In this circumstance, the identity of the registered keeper will be obtained from the DVLA (or similar), and a letter will be sent to the registered keeper requesting that they confirm who was driving the vehicle at the time the offence took place. A FPN will then be issued by post.

## **2.1 Dealing with obstructing offenders**

Offences involving obstruction of officers are normally dealt with by way of prosecution. In terms of fixed penalty offences, officers should note the following guidance:

1. Offender refuses to give details or gives false details, but provides correct details after being warned, or before police arrive – it is considered appropriate to offer and issue an FPN.
2. Offender gives correct details only after being required to do so by a police officer – report for summons for original offence and offence of failing to give/giving false details.
3. Offender gives false/inaccurate details, FPN is issued at time, and is subsequently paid – no further action should be taken in respect of giving false details.
4. Offender gives false/inaccurate details, FPN issued at time and not paid, and enquiries identify offender – report for summons for original offence and the offence of giving false details.

## **2.2 Summary of rules for issuing FPNs**

In summary, when issuing fixed penalties, Authorised Officers should ensure that they:

- ✓ have all the proof necessary for the offence;
- ✓ are presentable and carry identification and authorisation;
- ✓ are alert, active and prepared;
- ✓ are fair, equitable, courteous and cooperative;
- ✓ are firm and self-confident but not over-officious;
- ✓ are consistent;
- ✓ are accurate, ensure writing is legible and that the notice is complete; and
- ✓ are tactful whilst maintaining a respectful and pleasant attitude.

## **3.0 VULNERABLE ADULTS & JUVENILES**

### **3.1 Vulnerable Adults**

If an Authorised Officer is of the professional opinion that the offender is vulnerable and/or issuing the FPN is not in the public interest, then on-the-spot education may be considered. This may include asking the person to rectify their actions or explaining the consequences of any offence. Should an Authorised Officer have any concerns regarding vulnerability and or public interest, then this should be raised with their line manager before taking any further action.

### **3.2 Juveniles under the age of 10 years**

A FPN cannot and will not be issued to a juvenile under the age of 10 years. Where an offence has been committed, the young offenders name, address and age shall be ascertained, together with that of their parents or legal guardian. As there is an obligation placed on the Council to discharge their duties for safeguarding and child welfare, the young offender will be referred to Children's Services.

### **3.3 Juveniles aged between 10 and 15 years**

Other than in the circumstances of litter, a young offender will not be issued with a FPN. The young offenders name, address and age shall be ascertained, together with that of their parents or legal 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.

Before issuing a FPN the following factors shall be considered:

- Has a FPN been issued previously?
- Is a reprimand, warning or other sanction more appropriate? And
- Are there any family circumstances or other vulnerabilities?

In all cases, the Children's Services (such as the Youth Offending Team) should be informed.

With specific regard to littering, 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. This is not a requirement if the child is truant at the time of the offence. In all such cases, the parents, legal guardian or school must be notified of the FPN issue as soon as possible.

### 3.4 Juveniles aged between 15 and 17 years

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

- Learning difficulties; and
- Any signs of substance abuse.

If the Authorised Officer is in any doubt regarding the age of a young offender, then the procedures set out for young persons between ages of 10 to 15 years shall be applied.

In all circumstances, an educational letter can be issued to the parents informing them of the incident.

### 5.0 DISPUTES ABOUT ENFORCEMENT

Once a FPN has been issued the recipient may decide to phone or write to the Council pleading mitigation or contesting the fact that the FPN was issued. An offender contesting a FPN should be advised that there is no obligation to pay a fixed penalty and there is no formal appeal procedure.

Whilst the Council 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 receipt of the FPN. This will be by way of prosecution, on summons, and trial in a Magistrates Court, or a Tribunal Hearing.

Any person wishing to make a formal complaint about the FPN must do so in writing. 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 occasional circumstances will it be appropriate to withdraw a FPN or not proceed to summons on non-payment.

For example, a FPN may be withdrawn if information becomes available after a FPN has been served that an offence has not been committed or that it is not in the public interest to prosecute.

With specific regard to FPNs relating to 'smoke free' offences issued under the Health Act 2006, the offender has a choice to either pay the penalty or request a court hearing. To request a court hearing, the offender is required to complete the application box on the FPN paperwork.

Payment of a fixed penalty by instalments will not be accepted. In cases of demonstrable hardship, consideration may be given by a senior officer to extending the suspended



enforcement period and delaying the issue of summons, although there is no legal basis for this.

## **6.0 UNPAID OR CHALLENGED FPNs**

When a FPN is not paid in full within the required time period specified on the Notice (in most circumstances 14 days), then a prosecution for the non-payment will normally proceed.

Where early repayment discount is available, this will be specified on the FPN together with a shorter payment period. The discounted amount will not be accepted for any payments made after the early repayment period.

Where the offence carries a civil penalty, then the appropriate legislative procedure will be followed in the event of non-payment.

It is the responsibility of the officer who issued the FPN to ensure that all witness statements and exhibits, including any record of interview, are sent to the relevant administration officer (e.g. Lead Enforcement Officer or Senior Officer). Copies of documentation must also be made available to the Legal Services via [regulatory.law@chesterfield.gov.uk](mailto:regulatory.law@chesterfield.gov.uk).

Each case will be reviewed by Senior Officers and solicitors, applying the evidential and public interest tests before a prosecution is commenced.

## **7.0 AMOUNT OF FIXED PENALTY**

Chesterfield Borough Council has discretion to vary the amount of the FPN from the national default sum. This is supplemented by specific Regulations such as the [Fixed Penalty Notice \(Amendment\) Regulations 2023](#) which enable a local authority to specify the amount of fixed penalties for litter and waste offences.

Paid fixed penalties fund the functions to which the fixed penalty notice relates, so a paid litter penalty pays for litter enforcement.

Fines (set out from Magistrates Courts or Tribunal Hearings) are paid to the HM Courts & Tribunals Service and not to the Council.

## 8.0 FIXED PENALTY OFFENCES AND SPECIFIC LEGISLATIVE GUIDANCE

Reference should be made to the offence-creating statutes as well as to this document. As with any area of enforcement, it is essential that officers are aware of their powers under the relevant statutes.

### 8.1 Environmental Protection Act 1990: littering

In cases of littering, the normal course of action will be to offer a FPN, providing the person is cooperative and is not a habitual litter offender.

The offence under section 87 of the Environmental Protection Act 1990 applies to **all** places that are open to the air, including private open land, and land covered by water. It also applies to any covered place with a significant permanent opening on at least one side (such as a bus shelter, railway station or garage forecourt that remains open to the air at all times) providing the public has access to it, with or without payment.

A person does not commit a littering offence if they leave litter on their own land or they have the permission of the landowner to leave litter.

Litter is not defined, but includes cans, bottles, confectionary wrappers, food and drink containers, chewing gum, plastic bags, left over food, cigarette and cigar ends and flyers.

Issuing FPNs for food litter can be contentious and the following examples should assist officers:

- excessively feeding birds, warn in first instance;
- fruit peelings or apple core dropped on pavement. This requires cleaning, may lead to staining and is a slipping hazard, so issue FPN; and
- crumbs accidentally dropped, no action.

The authorised officer must be satisfied that the two elements of the offence have been committed, namely that a person has been witnessed '*throwing down, dropping or otherwise depositing*' any litter **and** leaving it. The offence is made out when a person intentionally discards something and walks away.

The officer should note how long someone has left something before approaching or how far they walked before being stopped.

The offence does not rely on any requirement to ask the person who has deposited litter, to pick it up. If a person chooses to return to the litter and pick it up following the

intervention from an officer, it will not be sufficient for an FPN not to be issued. Such action would be recorded by the officer and noted in the event of a subsequent prosecution.

## **8.2 Anti-Social Behaviour Crime & Policing Act 2014:**

### **Community Protection Notices**

The Anti-Social Behaviour Crime & Policing Act 2014 came into force on 20<sup>th</sup> October 2014 replaces a number of existing legislative functions. The ASB legislation introduces Community Protection Warning Notices (CPNs) to make a person or business stop or start an activity, or take a specific action. Failure to comply with a CPN can lead to a fixed penalty being issued or prosecution taking place.

The legislation requires a warning notice to be issued prior to the Community Protection Notice to present reasonable opportunity to comply.

## **8.3 Anti-Social Behaviour Crime & Policing Act 2014:**

### **Public Spaces Protection Order (PSPO) for dog control – fouling**

For persons who fail to clear up after a dog in their charge has fouled designated land, the normal course of action will be to offer a FPN, providing the person is cooperative and is not someone who has failed to be deterred by previous FPNs.

The requirement to clean up after a dog has fouled applies to any land which is open to the air and to which the public are entitled or permitted to have access (with or without payment). The whole of Chesterfield has been designated for the purposes of this Order.

If a person decides to clear up the dog faeces after the intervention of an authorised officer, it will not be sufficient for the FPN to not be issued. Such action would be recorded and noted in the event of a subsequent prosecution. The requirement is to remove faeces forthwith, i.e. immediately.

The offence does not apply to persons who are registered blind or to a person who has a disability which affects his/her mobility, manual dexterity, physical co-ordination or ability to lift, carry, or otherwise move everyday objects, in respect of a dog trained by a prescribed charity and upon which he/she relies for assistance.

Guidance states that not being aware of a dog's defecation, or not having a device or other suitable means of removing the faeces is not a reasonable excuse for failing to comply with the Order.

## 8.4 Anti-Social Behaviour Crime & Policing Act 2014:

### Public Spaces Protection Order (PSPO) for dog control – failing to put and keep dog on lead when directed to do so

An offence is committed when a person in charge of a dog, on land to which the Order applies, does not put the dog on a lead (and keep on a lead) when directed to do so by an authorised officer. For persons who fail to comply with such a direction, the normal course of action will be to offer a FPN, providing the person is cooperative and is not someone who is a repeat offender.

Authorised officers will only exercise the power to direct someone to put a dog on a lead where the dog is, in the opinion of the authorised officer, causing nuisance or alarm. This may include harassment of children or other dog walkers,

or where the dog is running into a road and may be a hazard to traffic. Officers will record why they made such a direction.

Offences which would be better dealt with under the Dangerous Dogs Act 1991 and Dogs (Protection of Livestock) Act 1953 will be referred to the Police.

## 9.0 CAUTIONS

### 9.1 When to issue

Under the Police and Criminal Evidence Act 1984 ([Code C – questioning](#)), a **caution must be given when:**

*A person whom there are grounds to suspect of an offence must be cautioned before any questions about an offence*, or further questions if the answers provide the grounds for suspicion, are put to them if either suspect's answers or silence (i.e. failure or refusal to answer or answer satisfactorily) may be given in evidence to a court in a prosecution.

A **person need not be cautioned** if questions are for other necessary purposes, e.g.

- solely to establish their identity or ownership of any vehicle;
- to obtain information in accordance with any relevant statutory requirement.

A caution needs to be given when informing a person not under arrest that they may be prosecuted for an offence.

## 9.2 Interviews

An **accurate record must be made of each interview**; which must state the place of interview, the time it begins and ends, any interview breaks and the names of all those present. The interview must be recorded in the Authorised Officers pocket notebook or on an interview record form.

## 10. AMENDMENTS TO THIS DOCUMENT

It may be necessary, for instance with the issuing of new guidance by Government, for amendments to be made to this document. If there are no statutory reasons to amend this document, it shall be reviewed every 2 years.

Any matters of legal doubt will be assessed by the Council's Regulatory Law team.

## 11. COMMENTS AND COMPLAINTS

### Complaints and appeals

All appeals in relation to enforcement action taken should be via the statutory appeals process outlined in the relevant legislation.

We value input from you to help us ensure our service is meeting your needs. We would like to hear from you whether your experience of us has been good or in need of improvement. This helps us to ensure we keep doing the right things and make changes where we need to. We are constantly looking for feedback on our services. We welcome any feedback that that will assist us in improving our services.

Whether you wish to make a comment, complaint or a compliment you are encouraged to do so by either: -

<b>In person:</b>	Customer Services Centre, Chesterfield Borough Council, Town Hall, Rose Hill, Chesterfield. S40 1LP
<b>Telephone:</b>	01246 345345
<b>By post:</b>	Chesterfield Borough Council, Town Hall, Rose Hill, Chesterfield. S40 1LP
<b>Online:</b>	<a href="http://www.chesterfield.gov.uk">www.chesterfield.gov.uk</a>
<b>Social media:</b>	Facebook, Twitter

Complaints about the conduct of officers should be made via Chesterfield Borough Council's [complaints procedure](#).

We will seek to work with you in the most appropriate way to meet your individual needs. We can make information available in different formats and have access to translation and interpretation services.

## **12. SERVICE DELIVERY STANDARDS, QUALITY AND PERFORMANCE MONITORING**

### **Skills, competencies and experience of regulatory officers**

The Council will ensure that all Authorised Officers are equipped with the appropriate level of skills, competencies and experience commensurate with their role and responsibilities and the support necessary to undertake their job effectively and efficiently. Continuing Professional Development (CPD), qualifications, training and development to meet statutory codes of practice will always be offered.

Staff training and development will be maintained by using methods such as the Regulators Development Needs Analysis (RDNA) and Guide for Regulators Information Point (GRIP), CPD, development opportunities, appraisals, feedback, personal learning plan, mentoring/shadowing, secondment, peer review and challenge (both receiving and supporting).

### **Service and quality standards**

Chesterfield Borough Council will always strive to meet the highest standards in undertaking enforcement action. The following service standards will be applied:

- ✓ Officers will clearly identify themselves and carry the appropriate ID cards and any necessary authorisations.
- ✓ Officers will be professional, courteous and helpful in their conduct, during work on enforcement issues and will work with individuals, groups and businesses to promote compliance.
- ✓ Officers will provide assistance where appropriate and advice will be given to assist in compliance before formal action is instigated, except in those circumstances where the breach of legislation is sufficiently serious to warrant formal action or is punishable by the issuing of a fixed penalty notice.

- ✓ Fairness in appropriate cases – adequate opportunity will be given to rectify the non-compliance before formal proceedings are commenced.
- ✓ Matters relating to enforcement will be dealt with promptly.

### **Benchmarking**

The Council will work with organisations such as the Chartered Institute of Public Finance and Accountancy, the Food Standards Agency, the Health & Safety Executive, the Local Government Association and HouseMark to share data on our performance and facilitate benchmarking.

## **13. OTHER SUPPORTING DOCUMENTS**

This Policy should be read in conjunction with the [Council's Enforcement Policy](#) which is an overarching policy that applies to all the Environmental Health regulatory functions. Certain service areas may have additional service specific enforcement requirements (for example [Private Sector Housing Enforcement Policy](#), Tenancy Management Team and Community Safety Team) and [Chesterfield Borough Council – Corporate Surveillance Policy](#)

## **14. REVIEW OF THIS POLICY**

This Policy will be reviewed every two years or in line with changes in relevant legislation, or Regulators Code.

## 15. SCHEDULE

[Table 1 – list of offences and fixed penalty amount](#)

Offence	Minimum full penalty	Maximum full penalty	CBC	Discount?
<a href="#">Littering (in the street)</a>	£50	£500	£150	£100 when paid within 14 days
<a href="#">Littering (from a vehicle)</a>	£50	£500	£150	£100 when paid within 14 days
Penalty charge notice				
Anti-social Behaviour Crime & Policing Act 2014 <a href="#">Community Protection Notices</a>	-	£100	£100	None offered
Anti-social Behaviour Crime & Policing Act 2014 Public Spaces Protection order s.63 <a href="#">Order (alcohol)</a>	-	£100	£100	None offered
Anti-social Behaviour Crime & Policing Act 2014 Public Spaces Protection Order s. 67 <a href="#">Order (asb)</a>	-	£100	£100	None offered
Anti-social Behaviour Crime & Policing Act 2014 Public Spaces Protection Order s. 59 <a href="#">Order (dog control)</a>	-	£100	£100	None offered
<a href="#">Fly tipping (commercial)</a>	-	£1000	£700	£350 when paid within 14 days
<a href="#">Flytipping (householder duty of care)</a>	-	£1000	£350	None offered
<a href="#">Smoke free</a>	-	£50	£50	£30 when paid within 15 days



## 16. POLICY DETAILS

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