



# Northumberland County Council

## Environmental Enforcement Fixed Penalty Notice Policy 2023

### 1 Introduction

1.1 The purpose of this policy is to set out how the Council will enforce the use of Fixed Penalty Notices for environmental offences. It sets out the Council's levels for the payment of such Notices issued by duly authorised officers of the Council. In this Policy, the term "Fixed Penalty Notice – ("FPN")" shall include:

- Fixed Penalty Notices,
- Penalty Charge Notices,
- Penalty Notices,
- Civil Penalty
- Final Notices of decisions to impose a Financial Penalty, or any other Notice (howsoever it may be described under the relevant legislation for the time being in force or that may come into force in the future), for the purposes of allowing the Council to impose financial penalties.

1.2 The Council will use FPNs as part of an overall approach to protecting and improving the environment, safety & well-being of our communities. This policy is strongly linked to the following vision and values of the Council:

#### ***Our Vision:***

- One Council that works for everyone

#### ***Our Values:***

- Residents first
- Excellence and Quality
- Keeping our communities safe and well

1.3 In the use of FPNs the Council will always seek to follow the enforcement principles described in its Corporate Enforcement Policy. There is no obligation on the Council to offer someone the option of a paying an FPN.

This policy has also been prepared in accordance with published guidance issued in accordance with s88B Environmental Protection Act 1990 and the Regulators Code:

[Regulators' Code \(publishing.service.gov.uk\)](https://publishing.service.gov.uk)

1.4 A FPN is a means to give a person who has committed a relevant offence the opportunity to pay a fixed amount as a direct alternative to prosecution and in so doing discharge their liability to conviction. Should an alleged offender receive a FPN they may choose not to accept or pay it, but they may then face prosecution for the original offence. This means that they would have to defend the case in court where there is a risk of being liable for potentially higher financial penalty, plus costs if applicable on conviction.

1.5 This policy covers enforcement action for those offences that could be broadly described as environmental or related to cleaner or safer neighbourhoods. As such it covers:

- Dog control including dog fouling in breach of a 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 furnish waste duty of care documentation when required to do so
- Nuisance parking
- Abandoning a vehicle
- Graffiti and Flyposting
- Breach of a Community Protection Notice

## 2. General Principles

- 2.1 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
- 2.2 Before a FPN is administered the authorised officer will ensure:
- there is sufficient evidence of the offender's guilt to provide a realistic prospect of conviction (any subsequent decision to prosecute will be in accordance with the current published Code for Crown Prosecutors)
- 2.3 Where legislation gives the local authority the ability to set the level of a FPN charge, the level of the charge shall be set by the Council. The current charges are as set out in the schedule to this policy.
- If there is not a charge level set within the schedule to this policy then an Officer to whom the power is delegated in consultation with the appropriate Portfolio Holder for that service area shall set the charge level.
- The schedule may be substituted from time to time to reflect amended and updated relevant legislation particularly in relation to the charge levels. Should there be a need to include new offences, then the default levels as set by relevant legislation will apply until the charges are considered as above and amendments made to the schedule.
- The level of the FPN charge shall be set with regard to:
- any published Government guidance on the level at which the FPN charge should be set,
  - the need to deter offenders from opting for prosecution because they believe that the court would impose a lower level of penalty,
  - the cost of bringing a prosecution where fixed penalties were not paid.
- 2.4 The schedule to this policy specifies the offences to which this policy relates, and also sets out the charges and any early payment discounts available.
- 2.5 Where a FPN is not paid within the specified time limit (usually 14 days) then the case will be considered for prosecution.
- 2.6 There is no appeal procedure for a person in receipt of an FPN, where the service of a FPN is a classed as a direct alternative to prosecution, should the FPN remain unpaid then in accordance with section 2.5 above then the case will be considered for prosecution and proceedings may be issued in the

Magistrates' court. The Council considers it appropriate that the magistrates court should determine such matters.

Where the offence carries a civil penalty, then the appropriate legislative procedure will be followed.

- 2.7 Normally the Council will only issue a FPN to first time offenders for those offences as set out in the schedule. In cases where the offender has a history of committing the same or a similar offence, and the payment of a previous FPN or the imposition of a financial penalty by a Court has not deterred them from re-offending, then a prosecution will be considered.
- 2.8 In cases where the offence is deemed to be so serious that the issue of a FPN would not be considered proportionate then a prosecution will be considered for a first-time offence. Issues that will be considered relevant when making this decision include but are not limited to:
- where there is evidence of widespread and systemic offending,
  - non-co-operation or obstruction of an investigation (any such allegation may also lead to an additional offence of obstruction where the legislation allows)
  - intimidation of witnesses.
- 2.9 Any penalty receipts collected through the FPN procedure will only be spent on related functions of the Council and in accordance with the relevant legislation.
- 2.10 FPNs can be issued in person and by post. The FPN should also include the following:
- The type of offence and details of the offence.
  - When and where the offence took place
  - The amount of the FPN and details of any early payment discount
  - How and where the FPN can be paid
  - When the FPN can be paid in order to discharge any liability for prosecution.
- 2.11 Records will be kept (in accordance with the General Data Protection Regulations – GDPR with regard to the retention, storage, sharing or disclosure of any personal data) in relation to any FPNs issued. This will include:
- Decisions taken at each stage from the issue of a FPN to payment and or prosecution.
  - The evidence on which the FPN is based, should the Council decide to prosecute

### **3. Vulnerable Adults**

- 3.1 If a duly authorised officer is of the view that an alleged offender is vulnerable and or the issue of a FPN is not in the public interest to proceed 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 a duly 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.

#### **4. Children and young people**

##### **4.1 Under 10-year-olds**

- In the case of children below the age of criminal responsibility - 10, the Council will not take any formal enforcement action. A duly authorised officer may, where it is considered appropriate, contact the child's parents or guardians, either directly, or through any supporting service the family may have.

##### **4.2 Between 10 and 15 years old**

- An informal verbal warning would normally be issued for a first offence, this may also include on the spot education including an explanation that what they have done is wrong and that it should not be repeated.
- Where it is considered appropriate the duly authorised officer should also report the event to the child's parents or legal guardian, having obtained their details either directly or through any supporting service the family may have.
- In most such cases an FPN will not be issued but the record of the incident should be brought to a line manager for discussion. If it is subsequently decided that a FPN is suitable, it should be issued to the alleged offender in person with a parent or legal guardian present. If the FPN must be issued by post, the alleged offender's parent or legal guardian should be notified at the same time

##### **4.3 Between 16 and 17 years old**

- Where it is identified that the offender is 16 or 17 years old, if it is appropriate immediate on the spot education should be carried out to explain that what they have done is wrong and that it should not be repeated.
- An FPN may be issued on the spot if the name, address, and date of birth of the offender have been obtained together with the name and address of a parent or legal guardian. The offender should also be advised that details of the offence will be shared with the local Youth Offending Team.
- If an FPN is not issued on the spot, a record of the incident should be brought to a line manager for discussion, again if the name, address, and date of birth of the offender have been obtained together with the name and address of a parent or legal guardian and the offender has been advised that details of the offence may be shared with the local Youth Offending Team. If it is deemed appropriate and proportionate by the line manager following consideration of the facts an FPN may be issued by first class post to the

offender together with a covering letter addressed to the offender and copied to the parent/guardian.

- No offender between 16 and 17 years old should the need arise will be interviewed under caution without an appropriate adult being present.
- If there is any doubt as to the offender's age, in other words there is a belief that they may be under 16, then the procedure for those aged between 10 and 15 years old should be followed.

## **5. Non-Payment of Fixed Penalties**

- 5.1 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 offence will normally proceed.
- 5.2 Where an early payment 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 not received within the shorter payment period and in such cases the full amount will be expected to be paid within the 14 days from service of the notice.

## Schedule

This schedule may be substituted from time to time to reflect amended and updated relevant legislation, any amendments will be made in conjunction with paragraph 2.3

FPN Provision	Offence legislation	Range	Amount Payable	Early Payment Discount
s.52 Anti-social Behaviour, Crime and Policing Act 2014	Failure to comply with a Community Protection Notice  <b>s.48(1)</b> Anti-social Behaviour, Crime and Policing Act 2014	Up to £100	£100	£80 if paid within 7 days
s.68 Anti-social Behaviour, Crime and Policing Act 2014	Contravention of, or failure to comply with a requirement of, the Northumberland County Council (Dog Control) Public Spaces Order  <b>s.67(1)(a) or (b)</b> Anti-social Behaviour, Crime and Policing Act 2014	Up to £100	£100	£80 if paid within 7 days
s.5B Control of Pollution (Amendment) Act 1989	Failure to produce Waste Carriers Licence <b>s.5(7)(a)</b> Control of Pollution (Amendment) Act 1989	£180 - £300	£300	£240 if paid within 7 days
s.33ZA Environmental Protection Act 1990	Waste deposit offence (Fly Tipping) <b>s.33(1)(a)</b> Environmental Protection Act 1990	£150 - £400	£400	£300 if paid within 7 days
s.34ZA Environmental Protection Act 1990	Failure to comply with the duty relating to the transfer of household waste in section 34 (2A) Environmental Protection Act 1990  <b>S.34(6)</b> Environmental Protection Act 1990	£120 - £400  Default level £200	£400	£300 if paid within 7 days

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s.34A Environmental Protection Act 1990	Failure to make, retain or furnish Duty of Care documents re: waste <b>s.34(6)</b> Environmental Protection Act 1990	Up to £300	£300	£240 if paid within 7 days
s.88 Environmental Protection Act 1990	Littering <i>(Throwing down, dropping or otherwise depositing litter in any place which is open to the air and to which the public has access with or without payment)</i> <b>s.87(1)</b> Environmental Protection Act 1990	£65 - £150  Default level £100	£150	£100 if paid within 7 days
Schedule 3A paragraph 7 Environmental Protection Act 1990	Unauthorised distribution of printed matter on designated land  <b>Schedule 3A paragraph 1 (1) and (2)</b> Environmental Protection Act 1990	£50 - £100 (used to £50- £80  Default level £100	£100	£80 if paid within 7 days
s.6 Clean Neighbourhoods and Environment Act 2005	Nuisance parking – exposing a vehicle for sale on a road  <b>s.3 (1)</b> Clean Neighbourhoods and Environment Act 2005	Up to £100  Default level £100	£100	£80 if paid within 7 days
s.6 Clean Neighbourhoods and Environment Act 2005	Nuisance Parking – repairing vehicles on a road  <b>s.4 (1)</b> Clean Neighbourhoods and Environment Act 2005	Up to £100  Default level £100	£100	£80 if paid within 7 days
s.73 Clean Neighbourhoods and Environment Act 2005	Failure to nominate key holders in alarm notification areas  <b>s.71 (2) and (4)</b> Clean Neighbourhoods and Environment Act 2005	£50 - £80  Default level £75	£80	£60 if paid within 7 days
s. 43 Anti-Social Behaviour Act 2003	Graffiti and fly posting  <b>s.44</b> Anti-Social Behaviour Act 2003	£50 - £100  Default level £100	£100	£80 if paid within 7 days

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## Civil Penalty Notices

PN Provision	Legislation	Range of	Amount Payable	Early Payment Discount
s46A Environmental Protection Act 1990	Domestic waste receptacle offences <b>s46</b> Environmental Protection Act 1990	£60 - £80  Default level £60	£60	£40