



**BRIDGEND COUNTY BOROUGH COUNCIL**

**COMMUNITIES DIRECTORATE**

**ENFORCEMENT POLICY FOR THE ISSUING OF  
FIXED PENALTY NOTICES FOR ENVIRONMENTAL  
OFFENCES**

March 2019

## **Introduction**

The purpose of this policy is to establish standardised fixed penalty procedures and enforcement procedures to be followed by all those with powers to issue fixed penalty notices for penalty offences on behalf of the Authority.

The purpose of this Policy is to ensure efficient compliance with legislation. It intends to explain the approach adopted by the Authority whilst carrying out its enforcement duties. All officers will consider and follow the Code for Crown Prosecutors issued by the Crown Prosecution Service when taking decisions on whether to prosecute.

In adopting this policy, officers will apply legal powers consistently and fairly, whatever the circumstances. Decisions will not be influenced by the gender, disability, language, ethnicity, religion, political beliefs or sexual preference of the subject, victims or witnesses.

### **1. Offences included in the Fixed Penalty Notice scheme**

It is not the intention of this Policy to deal formally with each and every situation where an offence has been witnessed. Neither is it the intention of the Policy to be prescriptive as to when a Fixed Penalty Notice (FPN) should be issued. Enforcement officers quite properly have discretion and must consider each set of circumstances when reaching a decision as to whether the issue of a FPN is appropriate.

A FPN may only be issued where an officer has reason to believe a person has committed a penalty offence and there is sufficient and appropriate evidence to a criminal standard of proof to support a prosecution in court, should the penalty notice go unpaid

FPNs are designed to deal with low-level offending only. When the nature or extent of the offence is so serious that the issue of a FPN would bring the system into disrepute, then prosecution should be considered instead.

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

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

## 2. Penalty Offences

As a local authority Bridgend County Borough Council can issue FPNs for the following offences:

Offence	Relevant Legislation
<b><i>Litter</i></b>	S87 & S88 Environmental Protection Act 1990
<b><i>Unauthorised distribution of literature on designated land</i></b>	Schedule 3a, Para 7(2) Environmental Protection Act 1990
<b><i>Failure to produce a Waste Carriers Licence</i></b>	S5 and 5B Control of Pollution (Amendment) Act 1989
<b><i>Failure to produce a Waste Transfer Note</i></b>	S34A Environmental Protection Act 1990
<b><i>Graffiti &amp; Fly-Posting</i></b>	S43 Anti-Social Behaviour Act 2003
<b><i>Failure to comply with a Public Space Protection Order</i></b>	S67 & S68 Anti-social Behaviour, Crime and Policing Act 2014
<b><i>Fly-tipping</i></b>	S33 and S33ZB Environmental Protection Act 1990
<b><i>Waste Receptacle Offences</i></b>	S46 and S47ZA Environmental Protection Act 1990
<b><i>Failure to comply with the duty of care in respect of household waste</i></b>	S 34(2A) and S34ZB Environmental Protection Act 1990

## 3. Who can issue Fixed Penalty Notices?

Local Authority Employees can issue FPNs on behalf of the Authority as long as they have been authorised to do so. They must also be familiar with the Authority's powers, penalty levels, this Policy and the areas where the FPNs can be issued.

If it is believed that an issue of a FPN is inappropriate or unjustified then this Policy allows for the decision to be reviewed by a senior officer.

### ***Third Party Enforcement Services***

The Authority reserves the right to enter into arrangements with Contractors/Third Parties who are not directly employed by the Authority to issue FPNs on its behalf where it has the statutory power to do so. Each employee of the Contractor/Third Party must be individually authorised in writing by the Authority to issue FPNs on its behalf.

Any such arrangements must be subject to appropriate due diligence checks and regard should be had to any guidance issued in respect of the use of third party enforcement services.

#### 4. Table of Fines

The level for fixed penalties is set by the Authority and is set out in the table below:

<b>Offence</b>	<b>Penalty</b>	<b>Early Payment Penalty</b>
Littering	<b>£100.00</b>	<b>£75.00</b>
Waste Receptacles	<b>£100,00</b>	<b>£75.00</b>
Graffiti and Fly-posting	<b>£100.00</b>	<b>£75.00</b>
Fly -Tipping	<b>£200.00</b>	<b>£120.00</b>
Failure to comply with a Public Space Protection Order	<b>To be confirmed</b>	<b>To be confirmed</b>
Failure to produce a Waste Carriers Licence	<b>£300.00</b>	<b>£180.00</b>
Failure to produce a Waste Transfer Note	<b>£300.00</b>	<b>£180.00</b>
Unauthorised distribution of literature on designated land	<b>£100.00</b>	<b>£75.00</b>
Failure to comply with the duty of care in respect of household waste	<b>£300.00</b>	<b>£150.00</b>

#### 5. Early payment discount

Early payment is encouraged by the Authority. Early payments should be paid no later than 14 days from the date of the notice in respect of all penalty offences. In the case of fly-tipping, where a lesser amount is specified, this must be paid within 10 days from the date of the notice.

Payment of a fixed penalty by instalments will not be accepted

#### 6. How Fixed Penalty Notices are issued

FPNs must be issued in accordance with Legislation and any statutory and/or best practice guidance published by or on behalf of the UK Government and the Welsh Government.

## Gathering evidence

Enforcement Officers are required to record all evidence in their PACE notebook. Information to be recorded in the notebook shall include:

- The nature of the penalty offence
- Date and Time of penalty offence
- Location
- Name and Address of the Offender
- Date of birth (if applicable)
- Gender of the Offender
- Offender's Appearance
- Weather Conditions at time of penalty offence
- Identification number of the Enforcement Officer
- The FPN number

The Enforcement Officer should ensure that all evidence including photographs, video footage and notes are kept as evidence and to help resolve any disputes are kept for the time periods set out in the table below:

<b>Offence</b>	<b>Time period to keep evidence</b>
Littering	<b>6 months</b>
<b>Waste Receptacles</b>	<b>6 months</b>
Graffiti and Fly-posting	<b>6 months</b>
Fly -Tipping	<b>Indefinitely</b>
Failure to comply with a Public Space Protection Order	<b>6 months</b>
Failure to produce a Waste Carriers Licence	<b>6 months</b>
Failure to produce a Waste Transfer Note	<b>Indefinitely</b>
Unauthorised distribution of literature on designated land	<b>6 months</b>
Failure to comply with the duty of care in respect of household waste	<b>6 months</b>

A register of FPNs issued will be kept and updated each time a FPN is issued.

Enforcement Officers can use the DVLA vehicle keeper database to find the owners of vehicles used in connection with the offence of Littering, Fly-tipping, Dog Fouling and Fly-Posting. Third party enforcement services are excluded from using the DVLA vehicle keeper database.

## **7. Grounds for issuing a Fixed Penalty Notice**

A FPN may only be issued where an officer has reason to believe a person has committed a penalty offence and there is sufficient and appropriate evidence to a criminal standard of proof to support a prosecution in court, should the FPN go unpaid.

An officer may issue a FPN where the offence is of a nature suitable for being dealt with by a FPN. 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 a suspect if they have not directly witnessed the offence, but have direct evidence of an offence or reliable and direct witness testimony. The Witness must be prepared to give evidence in court under Oath.

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

FPNs should only be issued where it is appropriate to do so. In some circumstances, the issuing of a FPN will not be appropriate and, instead, either no further action should be taken or the matter should be considered for prosecution in the court.

In the following circumstances, it will not be appropriate to issue a FPN and no further action should be taken:

- where there is insufficient evidence to support prosecution for the original offence in the magistrates' court should the FPN go unpaid;
- where the offence that has been committed is so small or trivial in its effect that action might not be in the public interest.
- where the suspect appears to be unable to understand what is being offered to them or there is any doubt about their ability to understand English;
- where the suspect's behaviour suggests they have learning disabilities or a mental disorder;
- where the suspect is drunk or under the influence of drugs;
- where the suspect is a non-resident foreign national.

In the following circumstances, prosecution in the Court should be considered instead of issuing the FPN:

- Where the offence that has been committed is considered to be too 'serious' in scale or effect to merit a FPN.
- Where an alleged offender becomes aggressive or violent or is threatening or abusive towards an officer, 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 by the Authority

- A FPN may not be appropriate where it is known that the suspect has a previous conviction or a caution for the offence, or has been issued with a number of FPNs, particularly if they have not paid. The officer should inform the offender that he will be reported with a view to prosecution.
- Where there has been more than two FPNs served on the same individual within a twelve month period

Where there is no satisfactory address for enforcement purposes, for example where the suspect is homeless, further investigation will be required before the issuing of a FPN can be considered.

## **8. The Offender**

A FPN should be issued only where there is sufficient evidence as to his/her identity and place of residence.

Where a suspect is not cooperative, consideration may be given to an alternative disposal (e.g. prosecution and/or police involvement). FPNs must be issued to *and* received by the suspect. If an alleged offender refuses to give a correct name and address, and their identity can only be established through other means, i.e. by the police, the offence should normally be pursued by prosecution, rather than the FPN procedure.

## **9. Issuing a Fixed Penalty Notice**

The officer will approach the alleged offender, identify him/herself, caution them in accordance with Police and Criminal Evidence Act 1984 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 practicable and the person must be given the opportunity to explain why they committed the offence and put forward any mitigating factors.

If evidence has been found without the presence of the alleged offender which leads the enforcement officer to suspect an offence has been made such as Fly-Tipping, a letter which complies with the provisions of Pace will be issued to the offender providing evidence of what has been found and providing the offender with an opportunity to answer questions in relation to the evidence. The Officer can then determine whether any further action should be taken.

If there is any doubt over someone's identity they should not be offered a FPN at the time. Rather, the enforcement officer should see if it is possible to verify the individual's identity. If, following further enquiries, it turns out that the alleged offender was providing the correct details then a FPN can be issued retrospectively. If it transpires that false details were provided and the enforcement officer is able to establish the correct identity then consideration will be given to prosecute the alleged offender for the original offence

Where the enforcement officer requires the alleged offender to provide their name and address and it transpires that false or inaccurate details were provided, the Authority will consider prosecuting that person for providing the false or inaccurate details where it has the power to do so.

Failure to identify a suspect prior to issue could invalidate enforcement. Police assistance will be sought where necessary. The officer must record the suspect's forename, surname, address, post-code and date of birth on the FPN. These are required for processing purposes.

When the FPN is issued, the officer should explain that it provides an opportunity to avoid prosecution, and will draw the person's attention to the relevant points about the level of fine, making payment and prosecution in the event of non-payment.

FPNs can be issued by person or by post and this should be clearly stated on the FPN. The FPN must also include details of the date by when the fine must be paid. This date must be at least 14 days following the date of the notice.

If the person either refuses to accept a FPN or, having accepted the FPN, does not pay before the end of the time period set out in the FPN, then the matter may result in prosecution.

#### **Issuing a Fixed Penalty Notice to Juvenile offenders**

The Council and its authorised Officers 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.

A person under 17 is to be treated as a juvenile for the purposes of the Police & Criminal Evidence Act 1984 together with the relevant Codes of Practice and should not be interviewed without the presence of an 'appropriate adult'. An appropriate adult is the young person's parent or legal guardian, or if the young person is in care, an adult from the care authority.

Officers are advised to consider the merits of issuing an FPN to a person aged below 16.

When an Officer approaches a young person they should only obtain their name and address and details of their parent or legal guardian.

Officer should then consider whether a Fixed Penalty Notice is appropriate, consider whether the offender has received a Fixed Penalty Notice previously (wherever possible no more than one Fixed Penalty Notice should be issued to anyone under 16, but a reprimand, warning or other sanction should be considered instead). Consideration should also be given to his or her family circumstances and whether he or she suffers from other vulnerabilities.

The Officer will also need to consult with the Youth Offending Team and the Young Person's school before a final decision is made to issue the FPN.

If on enquiry it is decided that a Fixed Penalty Notice is suitable, the Fixed Penalty Notice shall be issued to the young offender personally with a parent or legal guardian present. If for any reason the Fixed Penalty Notice is issued by post a responsible adult shall be notified at the same time.



An FPN will not be appropriate where a young person's behaviour suggests they have learning disabilities, or they suffer from a vulnerability that impairs his or her understanding of what goes on. In such cases the matter should be referred to the Youth Offending Team and Social Services. Any action in respect of the alleged offence can be decided on later.

### **Juveniles 16-17**

Once the age of the offender has been ascertained, FPNs can be issued to this age group using the same procedure as for adults.

## **10. Non payment**

If a FPN is not paid within the prescribed period, criminal proceedings will be considered.

It will be at the discretion of the Authority's Legal Services Department in deciding whether to initiate a prosecution.

## **11. Appeals process**

If the FPN is issued by a third party enforcement services: any appeal should be made to the third party enforcement service and their appeal process should be followed.

If the FPN is issued by the Authority: Written representation should be sent to the Cleaner Streets and Waste Contract Manager via Post or email within five working days of the date of the FPN

All relevant evidence and information will be considered before deciding upon a prosecution in order to enable a consistent, fair and objective decision to be made. The Council will have regard to the Attorney General's Code for Crown Prosecutors, which means that the following criteria will be considered:

- Whether the standard of evidence is sufficient for there to be a realistic prospect of conviction;
- Whether the prosecution is in the public interest;

The public interest test will be considered in each case where there is enough evidence to provide a realistic prospect of conviction. Consideration will also be given as to whether a caution would be appropriate.