

Environment Department - Fixed Penalty Enforcement Strategy

1 Enforcement Statement

In a developed society, laws are the rules by which we live. They help to better regulate conduct and enable 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 strategy has been produced having regard to Guidance from the Government Departments of the Environment, Food and Rural Affairs (DEFRA) and Communities and Local Government, LACORS and local policies on the use of fixed penalty notices. It sets out a framework for the use of Fixed Penalty Notices as a method of tackling environmental and other offences enforced by the Community Protection Service. It rests beneath the “Concordat on Good Enforcement”, the Code of Practice for Crown Prosecutors, and the current Community Protection Service Enforcement policy.

In line with this:

- We will publish clear standards, setting out our level of service, and will publish performance on how we are doing.
- We will provide information in plain English, or any other language, or format, upon request to those who are affected by our enforcement work.
- Complaints involving the process of issuing fixed penalty notices will be dealt with through the council’s Corporate Complaints procedure, or in the case of traffic offences the informal challenge procedure.
- Disputes over the commission of offences will be dealt with by the Courts, or Traffic Penalty Tribunal.
- We will be consistent in our approach at all times.

2 Consultation and Political Support

The following consultees have been given the opportunity to comment on this strategy:

- Middlesbrough Council Community Protection Service Enforcement Staff
- Middlesbrough Council Service Managers including Legal Services, Streetscene Services, Community Protection Service, Transport and Design Services, the Street Warden Service.

This strategy has been considered by the Council's Corporate Management Team and approved through the Executive process.

3 Objectives

This strategy covers the following offences that, at the time of publication of this policy, may be dealt with by way of fixed penalty notice. These are:

- Parking offences
- 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 documentation when required to do so
- Offences in relation to waste receptacles
- Failure to comply with a Dog Control Order
- To commit the night time noise offence from a dwelling
- To commit the night time noise offence from a licensed premises
- Dog fouling
- Failure to provide an Energy Performance Certificate
- Failure to display a conforming "no smoking" sign in smoke-free premises
- Smoking in a smoke-free place

Fixed penalty notices are one method of enforcement that we will use to achieve a cleaner and safer environment in Middlesbrough. They offer a simple and effective approach to dealing with unacceptable conduct, 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 Strategic Plan, Service delivery plans, and in meeting National Indicators. Our use of fixed penalty notices will make a contribution to achieving our goals. They are complementary to effective cleansing regimes, education, and the provision of public facilities that meet the needs of responsible citizens.

5 Joined up Working

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

6 Powers to be Used

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

7 Delegation Scheme

The Environmental Protection and Housing Group, Trading Standards and Environmental Health Team scheme of delegated powers contains a list of posts authorised to issue fixed penalty notices. These are all Public Protection staff. The Head of Community Protection has also authorised Street Wardens to issue fixed penalty notices for the four offences marked with a (W) in the table below. The Public Protection Manager, Environmental Protection Manager, Environmental Health Manager and Trading Standards Manager are authorised to institute legal proceedings. Any trained staff that are identified in the current Enforcement Policy, and not directly involved in the investigation, may act as disclosure officer.

8 Levels of Fixed Penalty Fine

The following levels of fixed penalty apply in Middlesbrough at the time of publication of this strategy.

Table 1. Offences and Levels of Fixed Penalties.

Section and Legislation	Description of Offence	Offending activity	Amount	Discounted rate and discount period
s.6(1) Clean Neighbourhoods and Environment Act 2005	Nuisance Parking	Advertising two or more cars in the street within 500m. Repairing cars in the street as part of a business.	£100	£60 10 days
s.2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a Vehicle	Abandoning a Vehicle in the open air.	£200	£120 10 days
s.88(1) Environmental Protection Act 1990	Littering	Dropping litter in the open air	£80	£50 10 days
s.94A(2) Environmental Protection Act 1990	Breach of a Street Litter Control Notice or Litter	Failing to clear litter when required by legal notice	£110	£60 10 days

Community Protection Service

	Clearing Notice			
Schedule 3A para. 7(2) Environmental Protection Act 1990	Unauthorised distribution of literature (W)	Handing out flyers or other free printed matter without a consent in the town centre area	£80	£50 10 days
s. 43 Anti-social Behaviour Act 2003	Graffiti and Fly posting (W)	Spraying graffiti or putting up illegal advertisements	£80	£50 10 days
s. 5B(2) Control of Pollution (Amendment) Act 1989	Failure to produce waste carriers license	Transporting waste without a licence	£300	£180 10 days
s. 34A(2) Environmental Protection Act 1990	Failure to furnish waste transfer documentation	Businesses not providing proof of waste disposal when required by legal notice	£300	£180 10 days
s. 46, 47, 47ZA, 47ZB Environmental Protection Act 1990	Offences in relation to waste receptacles	Failing to comply with a legal notice to follow Council's domestic waste collection system, or requirements placed on businesses	£110	£60 10 days
s.59(2) Clean Neighbourhoods and Environment Act 2005	Failure to comply with a Dog Control Order (W)	In a Dog Control Area, allowing a dog to foul, or into an area where dogs are excluded, or off a lead in an on-lead area.	£80	£50 10 days
s. 8 Noise Act 1996	Noise from dwellings	To exceed a prescribed noise limit after 11pm	£110	£60 10 days
s. 8 Noise Act 1996	Noise from licensed premises	To exceed a prescribed noise limit after 11pm in a licensed premises	£500	NIL
S. 3 Dogs (Fouling of Land) Act 1996	Failure to remove faeces from designated land forthwith (W)	Allowing a dog to foul (outside a Dog Control Area)	£50	NIL

S. 40 Energy Performance of Buildings (Certificates and Inspections) (England and Wales) Regulations 2007	Failure to produce a valid energy performance and recommendation report	Not carrying out an energy rating assessment for a domestic or business premises you sell or rent to somebody	£200	NIL
S.6 Health Act 2006	Failing to display a conforming "no smoking" sign in smoke-free premises	Failing to display a conforming "no smoking" sign in smoke-free premises	£200	£150 15 days
S7.2 Health Act 2006	Smoking in a smoke free place	Smoking in a workplace	£50	£30 15 days
Traffic Management Act 2004	Higher Level Penalty Charge	e.g. parking in a place where it is always prohibited	£70	£35 14 days
Traffic Management Act 2004	Lower Level Penalty Charge	e.g. Parking outside a parking bay	£50	£25 14 days

9 Targeting of Offences

The Council has adopted a reactive and proactive approach to enforcement; reacting to complaints and service requests and being proactive in known hotspots and areas identified as a result of routine inspections.

10 Key Policies

First offences

For straight-forward offences, the normal course of action for a first offence will be to allow the offender the opportunity to redress the offence on-site as an alternative to a fixed penalty notice. In all cases excluding Traffic Management Act offences this will be followed up by a written warning. This option will only be offered at the end of the interview process in cases where there has been full cooperation with the investigation by the offender. Examples of "redress" in these cases includes:

- picking up the litter or dog fouling
- stopping the distribution of free printed matter until a distribution permit has been issued
- placing the dog back on a lead or removing it from a dog exclusion area
- putting out the cigarette that is being smoked illegally

- replacing a missing sign
- providing an energy performance certificate
- Moving the vehicle that is parked illegally (attended vehicles only)

Full details of the Council's Civil Parking Enforcement Strategy are contained in a separate document: 'Middlesbrough Parking Strategy'.

In cases where the offender fails to comply with the opportunity to redress the offence, or in cases where the offence cannot be remedied at the time e.g. graffiti, then a fixed penalty notice will be issued.

Where there are aggravating circumstances surrounding the offence, a fixed penalty notice will normally be issued without the opportunity to redress the offence. Examples of aggravated offences include, but are not limited to:

- causing demonstrable harm or hazard as a result of the offence e.g. smashing a glass bottle,
- where the offence is malicious,
- littering from a moving vehicle or adjacent to a litter bin,
- abusing the investigating officer,
- failure to cooperate with the investigation,
- where a dog is out of control,
- where an offence occurs in clear view of a warning sign,
- where a person continues to smoke or permit smoking in their premises after a warning has been issued,
- in all serious cases.

Where there have been previous warnings or advice of a general nature issued or if the problem is a particular priority in an area, a fixed penalty rather than rather than remediation will be the default position.

In cases where the law offers a defence such as "reasonable excuse" (e.g. dog fouling, breach of a dog control order) then officers will also need to consider any explanation offered by the defendant prior to reaching a decision on a course of action.

Warnings will not be available for breach of a legal notice, as the service of a legal notice constitutes a prior warning (e.g. domestic and commercial waste offences). In the case of failure to comply with a requirement to provide a valid energy performance certificate, a reminder letter sent to the defendant constitutes a warning.

Investigating officers will therefore need to consider checking the person's history from office-based records prior to determining a course of action. Warnings and fixed penalty notices may therefore be issued at a later date.

The Energy Performance of Buildings (Certificates and Inspections)(England and Wales) Regulations 2007 set out a full procedure for dealing with a failure to provide an Energy Performance Certificate that includes time periods to allow the document to be supplied and appeals against a notice. Officers will

follow this procedure before issuing a fixed penalty notice and seek recovery of the debt in the civil courts

Second and Subsequent Offences

Fixed penalty notices will normally be offered as an opportunity to discharge responsibility for offences that otherwise would be taken to court. They are a 'one time' offer. In cases where the offender has a history of committing the same or similar offences, and the payment of earlier fixed penalties or court fines has not deterred them from re-offending, then a fixed penalty notice will be deemed inappropriate and prosecution will normally follow.

The appropriate Use of Fixed Penalties

Fixed penalties will be used for routine offences covered in table 1 in this strategy, subject to the above rules on first time offences. 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 prosecution will be considered. Examples could include cases where there is evidence of widespread and systematic offending, obstruction of enquiries, or intimidation of witnesses.

Vulnerable Adults

If there is any doubt, or it is brought to the investigating officers attention, that the person who has committed the offence is not capable of understanding that their actions constitute an offence, are mentally impaired in any way, clearly unable to pay e.g. homeless, or otherwise the issue of a warning or fixed penalty would not be in the public interest, then on-the-spot education is recommended. This could include asking the person to rectify their actions or the enforcement officer explaining to them the consequences of their actions. In any event, the evidence should be brought to a line manager for consideration before a decision on issuing a warning or fixed penalty is made.

Young People

We aim to use an holistic approach to the problem of young offenders, including education work through the schools and in the streets, use of young volunteers e.g. litter picking, and the use of civil remedies such as acceptable behaviour contracts and ASBO's.

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 a fixed penalty notice if we have evidence that they understand the offence and have first received a warning. In the event of any doubt, we will consult South Tees 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 ASBO's, and writing essays as an alternative punishment.

Sixteen and Seventeen Year Olds

The rules on ten to fifteen year will apply, however, if we issue fixed penalty notices to 16 and 17 year olds, we will notify the South Tees Youth Offending Service when we have done so, and tell the offender this will happen at the time of issue.

11 Delivery

Details of Middlesbrough Council staff that are authorised to issue fixed penalty notices are included in the Community Protection Service's Delegation Scheme. In addition Police Community Support Officers and Street Wardens have been trained and authorised to issue some types of fixed penalty notice. The fixed penalty notice process is tracked using the Civica APP software system (Flare). Incoming payments are tracked using the SAP finance system. The Community Protection Service has a Legal Case File Manager who is responsible for progressing non-payment, and preparing legal files as appropriate.

12 Training

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

13 Management Systems

Some types of fixed penalty are monitored in monthly reports, including the number of fixed penalties issued, the number paid, and the number of non-payers sent for prosecution or civil recovery. Annual returns are also completed for the Government with this type of information plus the number discontinued or withdrawn. Quarterly and annual budget and performance reports are produced for clinics.

14 Use of Receipts

Middlesbrough Council will use its fixed penalty receipts from offences created or amended by the Clean Neighbourhood and Environment Act in accord with the guidance issued by DEFRA in their Guidance "Fixed Penalty Notices" issued in 2006. As an "excellent" council Middlesbrough 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. Any receipts from smoke-free enforcement are spent on smoke-free enforcement work.

15 Targets

We will aim to receive all payments due, and progress where possible non-payment through the courts. DEFRA have set a target payment rate for offences created or amended by the Clean Neighbourhoods and Environment Act at 75%. We will track our performance against this target. There are no targets for other offences covered by the policy.

16 Reporting

Details are given under section 13 "Management Systems". In addition to the statistical information referred to in section 13, we will publicise selected enforcement work in the monthly Community Protection Service Newsletter, through the media, and through monthly reports.

17 The Review Process

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

Dated:

Signed:

Title: Executive Member for Community Protection