



Fixed Penalty Notice Enforcement Strategy

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1 Introduction and Enforcement Statement

- 1.1 This document is the Fixed Penalty Notice (FPN) Enforcement Strategy for Amber Valley Borough Council. It sets out the key principles under which officers will use FPN's to achieve compliance with legislation enforced by the Council. In carrying out their duties officers will have regard to the Council's Corporate Enforcement Policy and adhere to the principles of good enforcement as set out in the Regulators Code and all other relevant codes including those concerned with the investigation of offences or the prosecution of offenders.
- 1.2 The primary function of the Council's enforcement work in relation to environmental crime, anti-social activities and private housing is to protect the public and the environment from activities that may have a detrimental effect on the community or individuals.
- 1.3 Amber Valley has adopted a graduated approach to enforcement that is proportionate and appropriate to the offence. The vast majority of FPN's are issued for environmental offences such as fly-posting, littering and dog-fouling. However, the Council has powers to serve FPN's for other offences such as smoke-free legislation and legislation relating to private housing and landlords.

Principles of Good Regulation

- 1.4 This strategy is designed to give clear guidance to those who are affected by the enforcement policy including businesses, organisations and individuals. It also provides guidance to enforcement officers who are responsible for ensuring compliance with legislation through dealing with non-compliance in a consistent manner.

Human Rights Act 1998

- 1.5 All enforcement activities will have regard to the Human Rights Act 1998 and the European Convention for the Protection of Human Rights and Fundamental Freedoms

General Data Protection Regulations 2018

- 1.6 Where there is a need for the Council to share enforcement information with other agencies, we will follow the provisions of the General Data Protection Regulations 2018.

Supporting Local Economic Growth

- 1.7 The Council also strives to support local businesses and provide a framework that supports local economic growth and fair-trading conditions.

2 Aims and Objectives

- 2.1 The use of FPN's is a method of dealing with the perpetrators of relatively minor offences and allowing them to discharge their liability to prosecution for the offence. If the penalty is not paid, then the Council can generally prosecute the offenders for the original offence. FPN's offer one solution to the Council in making Amber Valley a cleaner and safer place to live and work. They can also help to incentivise people to change their behaviour and support the Council's objective of helping communities to achieve a good quality local environment.
- 2.2 FPN's will only be served where there is enough evidence, to a criminal standard of proof, to enable a prosecution to be brought for the original offence, should the FPN not be paid.
- 2.3 The aim of the strategy is to apply the general principles of enforcement in respect of FPN's to ensure that any enforcement action is transparent, accountable, proportionate, consistent and targeted.
- 2.4 The strategy seeks to provide a cost-effective and timely enforcement option that reduces the burden on the Courts and reduces the time between the offence and the penalty.
- 2.5 As part of the FPN enforcement regime, the strategy seeks to increase public awareness of environmental offences such as dog-fouling, littering and the illegal deposit of waste. It is also a mechanism for dealing effectively with some fly-tipping and noise offences.

3 Scope

- 3.1 Local authorities are permitted to set their own level of penalty for specified environmental offences e.g. fly tipping, within a range that's prescribed in the Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2007 and within the Unauthorised Deposit of Waste (Fixed Penalties) Regulations 2016.
- 3.2 Also, under the above legislation local authorities are permitted to set their own level of penalty discount for early payment, the minimum value of which is prescribed in the regulations.
- 3.3 The offences that will be dealt with using FPNs, along with the associated penalty for that offence, are set out in **Annex 1** to this strategy.
- 3.4 All officers who issue FPN's shall be appropriately authorised in accordance with the provisions of the Council's Constitution and Delegated Authority and will be required to undergo appropriate training prior to issuing FPN's.
- 3.5 The Council may implement awareness campaigns and publicity about environmental offences and the use of FPN's, to promote awareness of the subject within affected communities.
- 3.6 The FPN process will be managed using back office IT systems, which will record full and accurate details of each fixed penalty notice from issue to closure. The systems enable the completion of statutory returns required by the Secretary of State and enable the reporting of the number of FPN's issued, the number paid, and the number of non-payments progressed to prosecution.
- 3.7 The Council will use receipts from FPN's in accordance with the Code of Practice for Litter and Refuse issued by the Department for Environment, Food and Rural Affairs (DEFRA). A full system of cost accounting shall be maintained to demonstrate compliance with the guidance.

Civil Penalties

- 3.8 Legislation has been introduced to tackle landlords that provide a poor standard of accommodation in which the imposition of a civil penalty is an alternative to prosecution. A civil penalty differs from an FPN in that it is a fine which if not paid would be recovered as a debt, whereas choosing not to pay an FPN would result in the matter being put forward for a criminal prosecution and potentially higher fine or other penalty being imposed by the court. The Council has developed a range of schemes that transparently show how the civil penalties are applied.
- 3.9 Also, under the Housing Act 2004 and the Mobile Homes Act 2013, the Council applies a charge when enforcement notices are served. This charge is reviewed annually and reflects the costs of drafting and serving an enforcement notice.

- 3.10 Within the scope for imposing charges for contraventions of the Housing Act and associated legislation the following can be subject to imposition of charges:
- a. Failure to provide an energy performance certificate
 - b. Letting out a property that does not have a minimum level of energy performance
 - c. Failure to comply with a Housing Act 2004 enforcement notice (civil penalty)
 - d. Failure to provide a smoke alarm or carbon monoxide alarm
 - e. Failure for a lettings agency to be part of redress scheme
 - f. Failures relating to the licensing of houses in multiple occupation
 - g. Non-compliance with the provisions of the Tenancy Fees Act 2019
- 3.11 The Council also issues civil penalties known as Penalty Charge Notices (PCN's) for parking offences via the Derbyshire Parking Partnership Agreement. Park Smarter is the civil parking enforcement partnership that enforces off-street and on-street parking in Amber Valley and more widely across Derbyshire. More details can be obtained online at www.parksmarter.org.uk or by [clicking here](#).

4 Dealing with Non-Compliance

- 4.1 An FPN shall only be issued for the offences listed in Annex 1 and where there is enough evidence to support a prosecution. Admissible evidence shall include that witnessed by an authorised officer, as well as that provided by a reliable witness testimony.
- 4.2 Where an authorised officer directly witnesses an offence and is able to interview the suspect under caution at the scene, the officer may issue an FPN at the time of the incident. However, the more usual course of action will be the issue of an FPN at the conclusion of the investigation, based on the evidence available.
- 4.3 Generally, we will aim to serve an FPN within fourteen days of the date of the offence. FPN's may be served up to a maximum of six months after the offence, where there is a justifiable reason for the delay, such as a lengthy investigation.
- 4.4 The Council will utilise its normal sources of intelligence and information, such as the electoral register list, DVLA and Police support as a means of verifying the names and addresses provided by people suspected of committing offences. Where it is established that offenders have provided false details when requested by an authorised officer or obstructed the officer, then additional offences will be considered, and the matter may be taken before a Magistrates Court.
- 4.5 Offenders will have the appropriate period, as identified in Annex 1, to pay the FPN. All unpaid FPN's, that have been served appropriately, will be pursued through the courts.
- 4.6 Generally, an FPN will not be offered where it is identified that the offence has been committed by someone who has previously received an FPN for a similar offence. In such circumstance's prosecution proceedings shall generally be instigated in respect of repeat offenders.
- 4.7 For the purposes of this strategy the term litter is defined as; *anything that is dropped, thrown, left or deposited that causes defacement in a public place*. This includes cigarettes, cigars, and other products such as chewing gum. It also includes biodegradable matter such as fruit peelings.
- 4.8 Littering FPN's may be issued for fly-tipping offences in respect of small unauthorised deposits of controlled waste, equating to one standard size refuse sack of waste at the discretion of the Senior Investigating Officer.
- 4.9 Medium size fly-tipping offences will be dealt with by way of a specific FPN, which attracts a much larger penalty, consistent with the nature of the offence.

5 Dealing with Vulnerable and Young People

Vulnerable Persons*

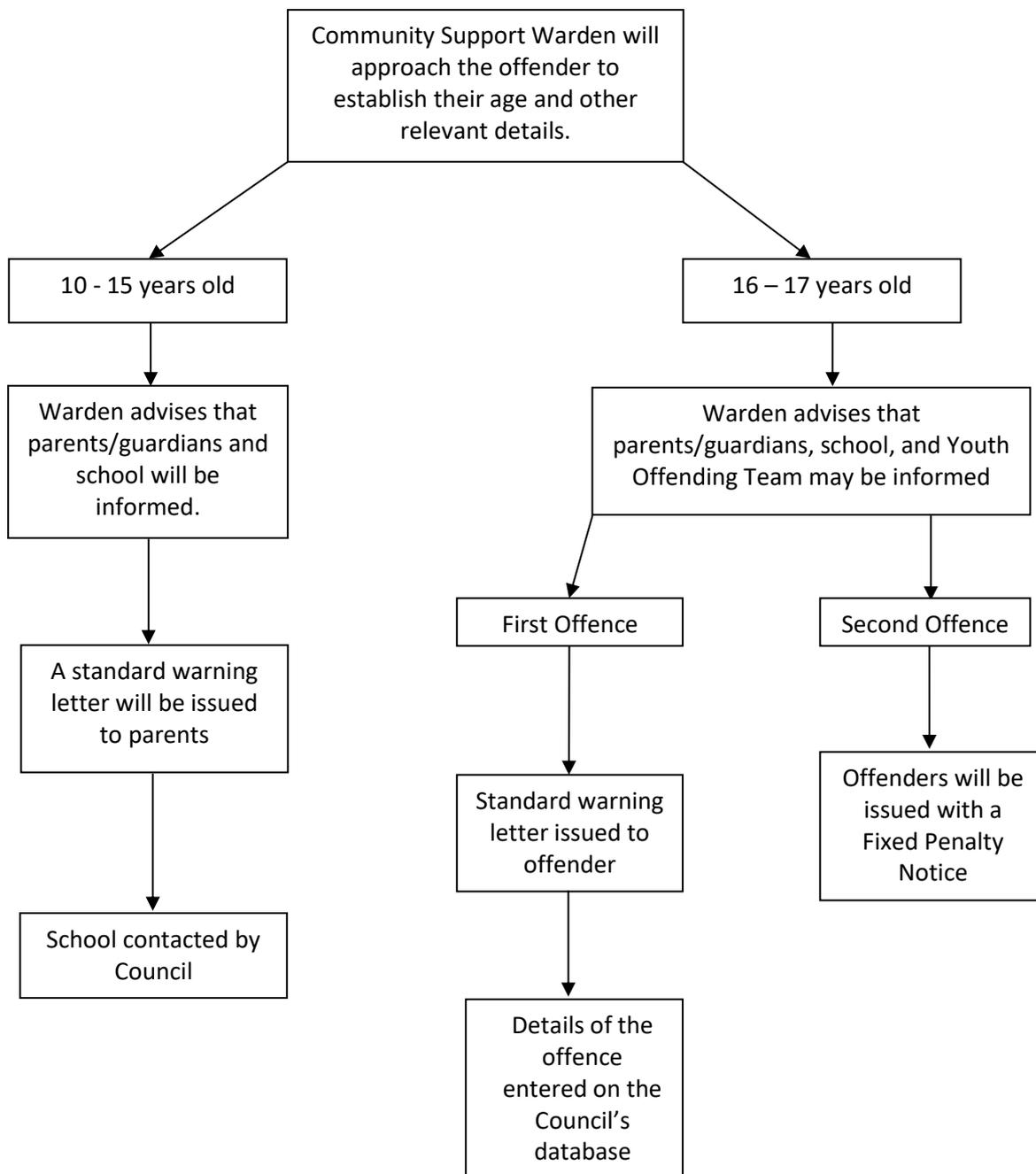
- 5.1 Where the investigating officer has concerns that the person suspected of committing the offence is not capable of understanding that their actions constitute an offence e.g. a recognised learning disability, or they are clearly unable to pay, then an FPN should not be issued and a more appropriate course of action considered, such as an educative approach or suitable remedial actions.

Young People*

- 5.2 Any action should have due regard to DEFRA guidance on issuing FPN's to young persons and juveniles.
- 5.3 FPN's will not be issued to any person under the age of 10 years. For young people between 10 and 15 years a warning letter may be issued to their parents or guardians. Where a young person has previously been warned then the officer should consider the issuing an FPN. In the event of any doubt, the officer will seek the advice of the Derbyshire Youth Offending Service.
- 5.4 Young people aged 16 to 17 years will generally be treated in the same manner as 10 to 15-year olds. In all cases where an FPN is issued to a juvenile then it shall be issued in the presence of a parent or guardian.
- 5.5 In situations where FPN's are issued, the Youth Offending Team will be notified, and the offender will be informed of this at the time of the incident.

**See the 'Dealing with Young People Decision Tree' on page 7*

FIXED PENALTY NOTICE PROCESS **Dealing with Young People***



6 Appeals and Customer Comments

Appeal Procedure

- 6.1 All recipients of an FPN can appeal the notice. This must be done within the specified period of 14 days and to ensure a fair, transparent and consistent appeals process, the appeal will be referred to a Senior Officer* who will review all the circumstances. Full details of all appeals and decisions shall be recorded and appellants will be informed of the decision within 10 working days.
- 6.2 The Senior Officer* shall have the authority to determine whether an appeal against an FPN is upheld.
- 6.3 Where an appeal is not upheld the appellant shall be informed within 10 working days of the decision. The original payment terms, including the opportunity to pay the charge at the discounted rate, shall apply from the date of the decision letter.
- 6.4 The Senior Officer *shall have the authority to cancel or withdraw an FPN.
- 6.5 FPN's may only be cancelled in the following circumstances:
 - a) Where a person issued with an FPN falsely provides the identity details of another person, and that person successfully challenges the notice on that basis; or
 - b) Where further information comes to light about the personal circumstances of the recipient of an FPN, who it later transpires, is 'vulnerable'; or
 - c) If the person issued with the FPN brings forward evidence, a statutory defence, or other reasonable excuse that could undermine any later prosecution.
- 6.6 The Council may withdraw an FPN in the following circumstances:
 - a) Where the FPN has been served incorrectly; or
 - b) Where it subsequently transpires that there is not enough evidence to support a prosecution.

** For the purpose of this strategy a "Senior Officer" is defined as the Head of Regulatory Services or above.*

Customer Comments Procedure

- 6.7 The Council operates a Customer Comments Procedure for receiving, recording and responding to comments and complaints made by its customers which is available on the Council's website or by the hyperlink [here](#).

7 Review and Version Control

- 7.1 This strategy was approved at a meeting of the Full Council on the 24th June 2020 and is subject to a full review every three years. The minutes of Council meetings are available on the Council's website and by clicking [here](#).
- 7.2 The strategy will be subject to minor amendments to accommodate legislative changes and similar as and when required. All changes will be recorded in the version control table below.
- 7.3 A copy of this strategy is available on the Council's website and the contact details are provided below

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Version	Agreed	Date	Changes	Officer
1.0		15 March 2017	Original created.	Steve Haslam
2.0	Full Council minute 4544.	24 June 2020	Scheduled three-year review.	Ben Adams
3.0		June 2023	Next scheduled review.	

Annex 1 - Table of Offences, Legislation and Fines

Offence	Legislation	Aim of Enforcement	Penalty
Depositing and leaving litter	Environmental Protection Act 1990 s.87 and s.88(6A)(a)	Cleaner streets and public places. Increased public awareness by publicity associated with fixed penalties	£80 (£60 if paid within 10 days)
Graffiti	Anti-Social Behaviour Act 2003 s.43 and 43A	Strengthen powers to deal with graffiti removal and ensuring building and structures are free from unsightly and possibly offensive graffiti	£80 (£60 if paid within 10 days)
Failure to produce waste documents (Duty of Care)	Environmental Protection Act 1990 s.34 and s.34ZA	Identifying business operators and members of the public who transfer waste irresponsibly which may lead to unlawful disposal or fly-tipping	<u>Domestic</u> - £200 (£120 if paid within 10 days) <u>Commercial</u> - £300 (£180 if paid within 10 days)
Failure to produce waste carriers license	Control of Pollution (Amendment) Act 1989 s.5B(2)	Reduce illegal waste disposal by targeting illegal waste carriers who may fly-tip their load or dispose of it unlawfully, thereby preventing harm to the environment.	£300 (£180 if paid within 10 days)
Offences relating to waste receptacles	Environmental Protection Act 1990 s.46, 47, and 47ZB(2)(a)	Resolve waste storage and collection issues on domestic and commercial premises, which can give rise to offensive odours and infestations. Encourage the use of recycling services.	<u>Domestic</u> -£80 (£60 if paid within 10 days) <u>Commercial</u> - fixed £110

Fly-tipping	Environmental Protection Act 1990 s.33 and 33ZA(2)	Reduce illegal waste disposal by targeting those who fly-tip their load and or dispose of their waste unlawfully, thereby preventing harm to the environment.	£400 (£200 if paid within 10 days)
Fly-posting	Town and Country Planning Act 1990. s.224 Anti-social Behaviour Act 2003 s.43 and 43A	Strengthen powers to deal with fly-posting issues, by ensuring their removal from buildings, structures and open spaces such as grass verges.	£80 (£60 if paid within 10 days)
Nuisance Parking	Clean Neighbourhoods and Environment Act 2005 s.6(1)	Deal with nuisance associated with the sale and repairs of vehicles on a highway	£100 (£60 if paid within 10 days)
Abandoning a vehicle	Refuse Disposal (Amenity) Act 1978 s.2(1)(a) and s.2A(1)	Removing the dangers and hazards associated with abandoned vehicles	£200 (£150 if paid within 14 days)
Breach of a Community Protection Notice	Anti-social Behaviour, Crime and Policing Act 2014 s.52	To protect the local environment and prevent activities that have a detrimental effect on the local community	£100 (£60 if paid within 14 days)

<p>AVBC PSPO October 2019 - DOGS Dog Fouling, Dogs on Leads in Cemeteries, Dogs Excluded from Play Areas, No means to pick up Dog Waste.</p>	<p>Anti-Social Behaviour, Crime and Policing Act 2014 s.67 and s.68</p>	<p>To protect the local environment and prevent activities caused by irresponsible dog ownership from having a detrimental impact on the local community and open spaces.</p>	<p>£100 (£60 if paid within 14 days)</p>
<p>A range of private sector housing related offences.</p>	<p>Housing Act 2004 Housing and Planning Act 2016</p>	<p>To provide a safe and healthy private rented housing sector.</p>	<p>Variable and up to a maximum of £30,000</p>