



Document:	Fixed Penalty Notices – supplementary guidance
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1.0 INTRODUCTION

This 'supplementary guidance' document supports Chesterfield Borough Council's Corporate Enforcement Policy. The purpose of this guidance document is to establish standardised procedures to be followed by all those authorised officers with powers to issue fixed penalties, including the circumstances in which a Fixed Penalty Notice (FPN) should be issued.

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.

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.

Current government guidance is that local authorities must have a fixed penalty notice document 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.

Further information about Fixed Penalty Notices can be found [online](#).

2.0 GROUNDS FOR ISSUING A FPN

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

An 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 a suspect 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.

3.0 THE OFFENDER

A FPN 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.

A FPN will be appropriate for first-time offenders and 'one-off' incidents as it is a low-level disposal and the recipient can avoid obtaining a conviction. Issuing a FPN will also be appropriate because it is not likely that there is a record of previous warnings being served by other agencies on the same individual.

A FPN is a means of changing offending behaviour and may be an appropriate response where a warning or a caution might have been considered.

Where the suspect is not cooperative, consideration should be given to an alternative disposal (e.g. prosecution and/or police involvement).

FPNs must be issued to and received by the offender.

If an intended recipient of a FPN refuses, after being warned, to give a correct name and address, and identity can be established through other means (i.e. by the police), (s)he should be reported for prosecution, rather than given an FPN. It is a specific offence for a person to fail to provide the officer with their name and address, or to give false details.

A FPN *may not* be appropriate:

- where a suspect appears to be unable to understand what is being offered to them (for example, the suspect is deaf), or there is doubt about



their ability to understand English. Where such circumstances arise every effort should be made to solicit/impart the required information.

- 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 and (as it will probably go unpaid) prosecution is in the public interest.
- where no satisfactory address exists for enforcement purposes. This may be where the officer has reason to believe that the suspect is homeless or sleeping rough, or where the suspect is a non-resident foreign national (i.e. not British or Northern Irish).
- 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.



4.0 ISSUING THE FPN

The 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 on the FPN. These are required for processing purposes.

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. 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 where the individual who left the litter can be identified, e.g. CCTV image, visual recognition or statement by the keeper of the vehicle.

For 'smoke-free' offences under the Health Act 2006, authorised officers are not permitted to seek the identity of the registered keeper via the DVLA. Authorised officers are required to record the company name (if visible on the vehicle) or for taxi's, the plate number.

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

In person: Customer Service Centre, 85 New Square, Chesterfield, Derbyshire, S40 1SN

By post: Chesterfield Borough Council, Town Hall, Rose Hill, Chesterfield, Derbyshire, S40 1LP (postal orders only not cheques)

By phone: 01246 345345

4.1 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.

4.2 Summary of rules for issuing FPNs

In summary, when issuing fixed penalties, 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.

5.0 ISSUING FPNs to JUVENILES

The issuing of FPNs to juveniles will take into account DEFRA (Department for Environment, Food and Rural Affairs) guidance:

“Issuing Fixed Penalty Notices to Juveniles – Guidance on issuing fixed penalty notices contained within the Clean Neighbourhoods and Environment Act 2005”.

The issuing of FPNs for differing age groups will be as set out below:

5.1 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. The young offender will be informed that children's service authorities will be informed (as there is an obligation under the Children's Act 2004 to discharge their functions having regard to the need to safeguard and uphold the welfare of children).

5.2 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 authorities (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. In all such cases, the parents, legal guardian or school must be notified of the FPN issue as soon as possible.

5.3 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, a letter can be issued to the parents informing them of the incident.

6.0 DISPUTES ABOUT ENFORCEMENT

Once a FPN has been issued the recipient may decide to phone or write in 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 Authority 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.

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 comes to 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 rear of the FPN.

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.

For offences under the Health Act 2006, the FPN amount is reduced if paid within 15 days of the date the FPN was issued.

7.0 UNPAID OR CHALLENGED FPNs

If the person either refuses to accept a FPN or, having accepted such a notice, does not pay before the end of the suspended enforcement period (14 days), a final reminder letter will be issued giving a further seven days' notice. If the FPN remains unpaid, the matter will result in prosecution (unless there is good reason to not to). To ensure the credibility of a FPN scheme, the assumption will be that all cases involving non-payment will be referred to court.

With the exception of 'smoke free' offences under the Health Act 2006, reminder letters are not sent. The FPN clearly states that 'no reminder letter will be issued' and that 'payments must be made within 29 days of the FPN being served'.

Where a FPN is refused, not paid, or challenged, the process defaults to a standard prosecution and the officer who issued the FPN will be notified.

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 . This must be done within two weeks of notification.

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

8.0 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 legislation such as the [Environmental Offences \(Fixed Penalties\) \(Miscellaneous Provisions\) Regulations 2006](#) which enable a local authority to specify the amount of fixed penalties for litter and waste offences.

Table 1 – list the offence and fixed penalty amount

Offence	Minimum full penalty	Maximum full penalty	CBC	Discount?
Littering	£50	£80	£60	None offered
Anti-social Behaviour Crime & Policing Act 2014 Community Protection Notices	-	£100	£70	None offered
Anti-social Behaviour Crime & Policing Act 2014 Public Spaces Protection order s.63 Order (alcohol)	-	£100	£100	None offered
Anti-social Behaviour Crime & Policing Act 2014 Public Spaces Protection Order s. 67 Order (asb)	-	£100	£100	None offered
Anti-social Behaviour Crime & Policing Act 2014 Public Spaces Protection Order s. 59 Order (dog control)	-	£100	£80	None offered
Flytipping	£200	£400	£300	None offered
Smoke free	-	£50	£50	Reduced to £30 if paid within 15 days

9.0 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.

9.1 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.

9.2 Anti-Social Behaviour Crime & Policing Act 2014: Community Protection Notices

The Anti-Social Behaviour Crime & Policing Act 2014 came into force on 20th 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.

9.3 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.

**9.4 Anti-Social Behaviour Crime & Policing Act 2014:
Public Spaces Protection Order (PSPO) for dog control – failing to put
and keep dog on lead with 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 be 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.

10 CAUTIONS

10.1 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.

10.2 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.



11 AMENDMENTS TO THIS SUPPLEMENTARY GUIDANCE 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.