

Policy for environmental enforcement through fixed penalty notices

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Communities

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1. Purpose Statement

- 1.1 This policy is to ensure a consistent approach to the use and enforcement of fixed penalty notices issued for environmental crimes. The policy details transparency and the legal framework around the issuing of fixed penalty notices for qualifying offences.
- 1.2 It is important for local authorities to have an enforcement policy to ensure consistency of approach among Council Officers and for members of the public to know what to expect from the service. An enforcement policy also provides clarity if the Council takes legal proceedings or enforcement action is appealed against.
- 1.3 Our aim is to reduce environmental crime throughout Bournemouth, Christchurch and Poole, working with residents, visitors, businesses and stakeholders to achieve this. However, it is recognised that if the law is broken, then enforcement action may be necessary to protect the public and the environment.
- 1.4 This policy is based on the application of relevant statutory legislations and is also authorised by the Council's Cabinet. Relevant trained Council officers are authorised through the Council's Scheme of Delegation to apply the legislation as per the policy detail.

2. Who the policy applies to

- 2.1 This policy applies to all residents, visitors, businesses and stakeholders. The application and enforcement of legislation applies to all officers who are authorised through the Council's Scheme of Delegation.

3. This policy replaces

- 3.1 This policy does not replace any previous policy.

4. Approval process

- 4.1 The policy is approved by BCP Council's Cabinet. The lead cabinet member for this policy is the Cabinet Member for Communities.

5. Links to Council Strategies

- 5.1 During the preparation of this policy document due consideration has been given to the following Key Council Strategies:
 - Corporate Plan
 - Equality & Diversity Policy

6. Introduction

- 6.2 The Policy for the Use and Enforcement of Fixed Penalty Notices for Environmental Crimes outlines the Council's general approach to enforcement through fixed penalty notices across specific environmental crimes. This policy provides details of the Council's specific approach in Bournemouth, Christchurch and Poole.
- 6.3 The Policy confirms that:
 - The Council will communicate whenever possible to the public, businesses and organisations to help them meet their legal obligations in relation to the relevant legislation in conjunction with embarking on the enforcement process

- The Council is committed to carrying out its duties in a fair and consistent manner, ensuring that enforcement action is proportionate to the seriousness of failure to comply with statutory legislation.
- The decision to use enforcement action will depend on the severity of the non-compliance.

7. The Policy

7.1 What is a fixed penalty notice?

A fixed penalty notice is a way in which the local authority can discharge a prosecution for a qualifying offence, instead of entering a case into court. Only certain offences can be managed in this way and the local authority have the option of issuing a fixed penalty notice or opting for a court prosecution. A fixed penalty notice is a fine, which is payable to the local authority following a relevant offence being committed and a criminal burden of proof being established. Non-payment of this fine may lead to formal action in the form of further prosecution.

7.2 What can a fixed penalty notice be used for?

A fixed penalty notice can be used for a range of offences under various legislations. BCP Council's Community Safety Patrol Officers or other delegated officer will consider the usage of a fixed penalty notice for the following offences:

- Littering to include dog fouling- contrary to Sections 87 and 88 Environmental Protection Act 1990 <http://www.legislation.gov.uk/ukpga/1990/43/section/87>
- Flyposting- contrary to Section 43 Anti-Social Behaviour Act 2003 and Section 224 Town and Country Planning Act 1990
<http://www.legislation.gov.uk/ukpga/2003/38/part/6/crossheading/penalty-notices-for-graffiti-and-flyposting>
<http://www.legislation.gov.uk/ukpga/1990/8/section/224>
<http://www.legislation.gov.uk/ukpga/2003/38/section/43>
- Flytipping- contrary to Section 33 Environmental Protection Act 1990
<http://www.legislation.gov.uk/ukpga/1990/43/section/33>
- Unauthorised distribution of free literature – contrary to Section 94B and Paragraph 1 to Schedule 3A of the Environmental Protection Act 1990. [Section 94B and Paragraph 3 to Schedule 3A of the Environmental Protection Act 1990].
<http://www.legislation.gov.uk/ukpga/1990/43/section/94>

The monetary penalty associated with a fixed penalty notice is specified within the legislation and the guidance¹ however, the decision on scale lies with the local authority. Further information on the value of a financial penalty and early payment discounts is found in Section 7.7.

7.3 Who can issue a fixed penalty notice?

BCP Council delegates its statutory powers to trained, relevant officers. Any delegated officer for the investigation and enforcement of each statute can serve a fixed penalty notice. In relation to the above offences, the Community Safety Patrol Officers who are Community Safety Accredited by the Chief Constable of Dorset Police, will issue fixed penalty notices within their area of patrol.

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834449/part1a-enforcement-guidance1.pdf

7.4 Why do we issue a fixed penalty notice?

The offences which officers may consider issuing a fixed penalty notice for, are criminal offences, therefore successful prosecution would lead to a criminal record. BCP Council considers the proportionality of this to the offence committed when deciding whether to discharge the offence by way of financial penalty. The fixed penalty notice process is an efficient and less intrusive option when considering relevant breaches of legislation. Prosecution will still be considered for a range of factors to include unacceptable behaviour towards authorised officers, repeat offenders and non-payment of fixed penalty notice. A fixed penalty notice will be considered where a relevant offence has been witnessed by an authorised officer or there is sufficient evidence to establish an offence has been committed and that the person to be issued the fine is responsible for the commissioning of that offence.

7.5 What is the burden of proof and how is it established?

The relevant offences hold a criminal burden of proof, therefore evidence must lead the issuing officer to believe beyond reasonable doubt that both an offence has been committed and that the person to be issued the fixed penalty notice was involved in the commissioning of said offence. Community Safety Patrol Officers are accredited with limited but targeted police powers to include requiring the name and address of a person for a relevant offence; it is an offence in itself to fail to comply with the request of an accredited officer. This allows correct identification of the person suspected of the offence. Further tools to establish the criminal burden of proof include, but are not limited to: video footage of the offence captured on accredited officers body cameras, witness statements, CCTV evidence and officer statements. Where an officer believes that an offence has been committed and it has met the criminal burden of proof, the officer will make the decision whether it is appropriate to discharge the offence by way of a fixed penalty notice or to collate evidence for formal prosecution.

7.6 How is a fixed penalty notice paid?

A fixed penalty notice will be issued by the officer on the spot at the time of the offence or as soon as reasonably practical if the officer is unable to establish the identity of the offender at the time of the offence, or further investigation is required. The fixed penalty notice can be paid by debit or credit card via the instructions on the notice, through the BCPCouncil.gov.uk website or through the bank. Discounts may be offered for qualifying offences if tickets are paid within 14 days, details of this discount and whether this applies to the offence can be found on the ticket. Tickets paid outside of the early discount period, where applicable, will be chargeable at the full amount. Payment plans can be considered where applicable.

7.7 Details of fixed penalty amounts, and discounted payment options are listed below:

Offence	Full payment amount	Discount amount
Littering to include dog fouling	£100	£75
Flyposting	£100	£75
Flytipping	£200	£150
Unauthorised distribution of free literature	£100	£75

7.8 Non-payment of a fixed penalty notice

Where an offender fails to make payment for the fixed penalty notice issued to them, further action may be taken. An initial payment reminder letter will be sent 28 days

after the offence and further action will be considered 14 days following this reminder. This can be in the form of formal prosecution via the court for the offence committed, where applicable. Prosecutions will be conducted by the BCP legal services team and notification will be sent via post to the registered address of the person subject to the penalty notice. Prosecutions will be entered to magistrates court within 6 months of the initial offence. Personal details will be taken and checked at the time issue of the fixed penalty notice issue.

The maximum penalties attached to each offence are as follows:

Offence	Maximum penalty
Littering to include dog fouling	£2500
Flyposting	£1000
Flytipping	Fine of up to £50,000 or 12 months imprisonment if convicted in a Magistrates' Court. The offence can attract an unlimited fine and up to 5 years imprisonment if convicted in a Crown Court
Unauthorised distribution of free literature	£2500

7.9 Appealing a fixed penalty notice

Where a person is issued a fixed penalty notice, a right of appeal will be offered on the rear of the notice. Appeals must be in writing, within 14 days of the issue of the ticket. Appeals must be addressed to the Head of Safer Communities, BCP Council, Town Hall, Bourne Avenue, Bournemouth, BH2 6DY. All appeals must detail the number of the fixed penalty notice, reason for appeal and any qualifying evidence.

7.10 Information sharing

Where an offence is committed, information may be shared with relevant statutory bodies such as the police under section 115 Crime and Disorder Act 1988. Further information on how personal information is held, retention period and information sharing can be found on the Communities Privacy Notice.²

8. Young people and fixed penalty notices

- 8.1 Authorised Officers will not issue a Fixed Penalty Notice on **young people** without discussion with the service manager. Enforcement will be considered in line with social services involvement and advice, if appropriate. A young person in this context is aged 16 to 19 years old.
- 8.2 Fixed Penalty Notices will not be issued to anyone under the age of 16 years old.
- 8.3 Non-payment of fixed penalty notices will not be pursued for those under 18 years old, however, other sanctions may be considered in line with relevant agencies in order to deter future breaches of legislation.

9. Repeat offenders, late payment and case escalation

- 9.1 FPNs are typically used for **minor infringements**, for more serious offences the delegated officer should consider moving straight to prosecution.

² <https://www.bournemouth.gov.uk/Privacy/community-enforcement.aspx>

- 9.2 Should a **late payment** of a FPN arrive after the 14 day expiry this should be accepted, as it is both legal and pragmatic to do so, subject to a court date and fee not being made at the time of receipt.
- 9.3 As per Section 7.6 payment plans can be considered on a case by case basis and the person in receipt of the fixed penalty notice should make contact as per the details on the rear of the notice to request this.
- 9.3 FPNs are not merely a fine but a tool to change behaviour. If someone commits further offences after having paid a FPN, this demonstrates a lack of change of their behaviour. In these cases, the delegated officer should consider prosecution for repeat offenders, and also consider what other legal measures are available.

10. How to use this policy

- 10.1 This policy will be used in line with the statutory guidance³ for enforcement through the use of fixed penalty notices.

11. Roles and responsibilities

- 11.1 Cabinet Member for Communities: lead elected member for the policy
- 11.2 Head of Safer Communities: policy lead
- 11.3 Community Safety Patrol Officers: policy enforcement

Appendix A – Equality Impact Assessment

³ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/834449/part1a-enforcement-guidance1.pdf