



Fixed Penalty Enforcement Strategy

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CONTROL SHEET				
	Date	Author	Details of amendments/changes	Approved
Version 3	03/11/15	DD	Inclusion of paragraph regarding referral of offenders to the Calderdale Stop Smoking Service. Minor grammatical and administrative changes re terms "FPN" and telephone number update.	PB
Version 2	03/ 09/12	PB	Introduction of Dog Control (Calderdale) Orders 2012 & simplification of young people procedure.	MT
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1 Enforcement statement

- 1.1.1 The Council's ambition is to make Calderdale a place where we value everyone being different and through our actions we demonstrate that everyone matters. The environment plays a central role in achieving this goal and the Council wants to work with local people to help improve its quality and promote respect for Calderdale's heritage.
- 1.1.2 The Council uses an 'Educate, Engage, Enforce' approach to delivering its environmental objectives. In the first instance, the accent is on information, encouragement, and support but if the Council is to have a realistic chance of achieving its aims then it will, in some circumstances, have to use its enforcement powers to fulfil this ambition. Environmental legislation has been introduced, over the years, with the purpose of controlling activities that can potentially adversely affect people and the environment. Fair, proportionate and consistent enforcement of all legislation is essential and this document sets out the Council's framework in relation to Fixed Penalty Notices (FPNs).
- 1.1.3 FPNs are a means by which the perpetrator of relatively minor crime can discharge their liability to prosecution for the offence. If the penalty is not paid then the Council can generally prosecute the offender for the original offence. FPNs offer one solution to the Council in their attempt to make Calderdale a cleaner and safer place. FPNs will only be served where there is sufficient evidence, to a criminal standard of proof, to enable a prosecution to be brought for the original offence, should the fixed penalty not be paid.
- 1.1.4 This enforcement strategy has been produced having regard to DEFRA guidance on the use of FPNs under the provisions of the Clean Neighbourhoods and Environment Act 2005. This Fixed Penalty Strategy rests beneath the Enforcement Concordat, the Regulator's Compliance Code, the Code of Practice for Crown Prosecutors and the Housing, Environment and Renewal Service Enforcement Policy.
- 1.1.5 In relation to FPNs we will:
- Publish clear standards and guidance
 - Publish performance on how we are doing
 - Provide information in plain English, or any other language, or format, upon request to those who are affected by our enforcement work.
 - Investigate complaints only in relation to the process of issuing fixed penalty notices.
 - Disputes over the commission of offences will be dealt with by the Magistrates' Court.
 - We will aim to be consistent in our approach at all times.

2 Consultation and political support

2.1.1 The following consultees were given the opportunity to comment on this Strategy:

- Calderdale Youth Offending Team
- West Yorkshire Police
- Head of Democratic and Partnership Services
- Community Engagement Team in the Safer and Stronger Communities Directorate
- Environmental Health Section in the Directorate of Economy and Environment

2.1.2 In June 2010 the Council's "Talkback" panel reviewed environmental quality issues and results have been considered in formulating this Strategy.

2.1.3 This Strategy was considered by the Cabinet and approved on 25th October 2010.

3 Objectives

3.1.1 The Council may deal with all the following matters, as identified in the Clean Neighbourhoods and Environment Act 2005, by way of FPN. These are:

- Nuisance parking
- Abandoning a vehicle
- Dropping litter
- 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 provide 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

4 Strategic fit

4.1.1 This Fixed Penalty Strategy fits into the overall planning process for the area. The Sustainable Community Strategy sets out the vision, aims, and outcomes that the Council and its partners wish to achieve for those who live, work, and visit or access services in Calderdale. One of the priorities is to improve the quality of our environment and promote respect for Calderdale's heritage by providing cleaner, greener and safer public spaces.

4.1.2 This Strategy plays a vital role in contributing to this priority along with other activities undertaken by the Council in the different Service areas; including effective street cleansing regimes, effective waste and recycling collection, education, and the provision of household waste and recycling sites. The

performance of the Strategy will be assessed against service plan indicators which are based on the now discontinued NI195 indicator which was designed to measure local environmental quality, and covered litter, detritus, graffiti and fly-posting.

5 Joined up working

- 5.1.1 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

- 6.1.1 The offences that can be dealt with by way of an FPN are outlined in Table 1 below. Whilst fixed penalty powers are available for a large variety of offences, Calderdale Council will only use the powers where there is a local need or there is a problem which warrants their use.
- 6.1.2 The Council has recognised the changes introduced in the Clean Neighbourhoods and Environment Act 2005 in relation to fixed penalty amounts and the opportunity for local authorities to offer discounts for early payment. The Council will implement these powers in relation to some FPNs. The details of the level of fines and the discounts are shown in Table 1.

7 Delegation scheme

- 7.1.1 The Officer Delegation Scheme contained in Part 3, section 5 of the Council's Constitution confers on Chief Officers various powers to carry out the Authority's executive functions. Chief Officers have the power to authorise suitably experienced officers in relation to the functions in their respective areas (set out in article 12).
- 7.1.2 The Head of Democratic and Partnership Services is empowered to authorise suitably trained staff within the Council to serve FPNs, where there is a legal power to do so, on recommendation from the Head of Housing, Environment and Renewal. In making such a recommendation to authorise an officer, the Head of Housing, Environment and Renewal will give consideration to the training and experience of staff in relation to FPNs.
- 7.1.3 Staff who work in the areas where the offences are likely to be committed will be authorised to serve FPNs, subject to the above criteria. The administration of the scheme, including all queries with regard to FPNs will be undertaken and dealt with by the Environmental Health Section of the Housing, Environment and Renewal Service of the Economy and Environment Directorate.
- 7.1.4 The Head of Housing, Environment and Renewal will also be responsible for making the decision to instruct the Head of Democratic and Partnership Services to instituting legal proceedings in relation to prosecutions arising from failure to pay an FPN.

8 Levels of fixed penalty fine

- 8.1.1 Table 1 contains a list of all the various FPNs available for use by the Council in relation to environmental crime. It includes details of the particular FPN, present levels of fine, and any discounts that the Council will offer for early payment.
- 8.1.2 One of the provisions of the Clean Neighbourhoods and Environment Act 2005 introduced powers for local authorities to offer discounts for early payment of some fixed penalty. The standard payment period set in legislation is 14 days. Once an FPN has been issued and paid within this period then the authority cannot prosecute for the original offence. For this reason the period for which a discount can be offered should be less than 14 days and guidance recommends that it should be not more than 10 days. The Council will offer discounts for early payments if paid within 10 days for certain offences as outlined in Table 1. Discounts have been identified for higher volume offences principally involving individuals rather than businesses. Lower volume, more serious offences involving businesses are not considered appropriate for discounted payments.

8.1.2 Table 1 List of offences and levels of fine:

Offence	Legislation	What is the Council is trying to achieve by using fixed penalty powers?	Level of fine
Nuisance parking	S 6(1) Clean Neighbourhoods and Environment Act 2005	Deal with nuisance associated with vehicle repairs & the sale of vehicles on a highway.	Amount fixed at £100.
Abandoning a vehicle	S 2A(1) Refuse Disposal (Amenity) Act 1978	Removing the dangers and hazards associated with abandoned vehicles. This provides an effective alternative to prosecution for people who abandoned vehicles.	Amount fixed at £200.
Dropping litter	S 88(1) Environmental Protection Act 1990	Cleaner streets and public places demonstrated in part by an improved National Indicator, NI195 score. Also increasing public awareness by publicity associated with fixed penalty.	£80 reduced to £50 if paid within 10 days.
Breach of a Street Litter Control Notice or Litter Clearing Notice	S 94A(2) Environmental Protection Act 1990	Cleaner streets and public places by strengthening existing powers to require business to help clear litter they generate (street litter control notices). Also gives LA new powers to require businesses and individuals to clear their land (litter clearing notices).	Amount fixed at £110.
Unauthorised distribution of literature	Schedule 3A paragraph 7(2) Environmental Protection Act 1990	Cleaner streets and public places by restricting the distribution of flyers, hand - outs and pamphlets which often end up as litter on the streets.	Amount fixed at £80.
Graffiti and Fly-posting	S 43 Anti-social Behaviour Act 2003	Cleaner buildings and structures by strengthen the powers to deal with graffiti removal and fly-posting	Amount fixed at £80.
Failure to produce waste carriers licence	S 5B(2) Control of Pollution (Amendment) Act 1989	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.	Amount fixed at £300.
Failure to provide waste documents	S 34A(2) Environmental Protection Act 1990	Identifying business operators and the public who transfer their waste irresponsibility which may lead to unlawful disposal or fly-tipping.	Amount fixed at £300.

Offence	Legislation	What is the Council is trying to achieve by using fixed penalty powers?	Level of fine
Offences related to waste receptacles	S 47ZA(2) Environmental Protection Act 1990	Attempting to resolve waste storage and collection issues on domestic and commercial premises which can give rise to odours and rats. In the domestic situation encourage participation in the Council's recycling service.	£110 reduced to £60 if paid within 10 days in domestic situations. Fixed amount at £110 for commercial situations
Breach of Dog Control Orders	The Fouling of Land by Dog (Calderdale) Order 2012 The Dogs on Leads (Calderdale) Order 2012 The Dogs on Leads by Direction (Calderdale) Order 2012 The Dogs Exclusion (Calderdale) Order 2012 The Dogs (Specified Maximum) (Calderdale) Order 2012	Increase awareness of the problems caused by dogs by the introduction of controls which provide a balance between the needs of dog owners to have adequate access to areas to exercise their dogs and the needs of others, particularly children, to have access to dog free areas or areas where dogs are kept under strict control. Also the need to reduce the number of incidents of dog fouling in the Borough which will result in cleaner streets and public places and a reduction in serious public health risk.	£80 reduced to £50 if paid within 10 days.
Noise from dwellings	S 8 Noise Act 1996	Reduce the problems of noise from domestic premises by increasing powers available to deal with burglar alarms and also greater flexibility when dealing with noise nuisance.	£110 reduced to £60 if paid within 10 days.
Noise from licensed premises	S 8 Noise Act 1996	Reduce the problems of noise from licensed premises by increasing powers available to the local authorities deal with night time noise.	Amount fixed at £500.

9 Targeting of offences

- 9.1.1 The Council adopts a responsive approach when dealing with the various offences which can be dealt with by the fixed penalty regime. This approach is influenced by service requests received, concerns expressed at the Council's ward forums, Partners and Communities Together (PACT) meetings and also by information gathered from inspections of the local environment.
- 9.1.2 Specific operational procedures are in place to ensure that targeted, proportional and intelligence-led enforcement takes place in relation to these offences. The development of a wider number of 'street patrol' type officers empowered to issue notices will enable the development of a more proactive publicised approach to addressing environmental crime, particularly dog fouling and litter which have featured highly in public consultation as issues to prioritise. This will support the strengthening of the Council's general approach to Safer, Cleaner, Greener activity.

10 Key policies

- 10.1 This section sets out the key policies in relation to FPNs. It is by no means exhaustive and additional policies can be found in operational procedures and guidance.
- 10.2 Second and subsequent offences
- 10.2.1 FPNs will normally be offered as an opportunity to discharge responsibility for offences that otherwise would be taken to court. They are normally a "one-time-only" offer. In cases where the offender has a history of committing the same or similar offence, and the payment of earlier fixed penalties or court fines has not deterred them from re-offending, then prosecution will normally follow.
- 10.3 The appropriate use of fixed penalties
- 10.3.1 Fixed penalties will be used for routine offences covered in Table 1 in this Strategy. In cases where the nature or extent of the offence is serious and that the issuing of an FPN would bring the system into disrepute, then prosecution will be considered. Examples could include cases where there is evidence of widespread and systematic offending, non-co-operation or obstruction with enquiries, intimidation of witnesses or aggressive or violent conduct. Some discretion may be used in the opposite case where, for example, an Officer feels the offence was accidental; then an opportunity for on-the-spot reparation may be given to the offender before a decision is made e.g. picking up the litter just dropped.
- 10.4 Vulnerable adults
- 10.4.1 If there is any doubt in the enforcement officer's mind that the person who has committed the offence is not capable of understanding what they have done, or are seriously mentally impaired, and the issuing of a fixed penalty would

not be in the public interest, then on-the-spot education will be considered. This could include asking the person to rectify their actions or explaining the consequences of their actions. In any event, the evidence should be brought to the Head of Housing, Environment and Renewal, or his representative, for discussion before a decision on issuing a fixed penalty is made.

10.5 Young people

- 10.5.1 The Council does not wish to subject young people to criminal proceedings unnecessarily. We aim to take a holistic approach to the problem of young offenders, including education work through the schools and on the streets, use of young volunteers e.g. litter picking. We will endeavour to adopt reparation and restorative justice approach in all appropriate circumstances.
- 10.5.2 In the case of children below the age of criminal responsibility i.e. children less than 10 years old, the Council will not take any formal enforcement action. Where it is considered appropriate, the incident will be reported to the child's parents, guardians or carers, either directly, or through any supporting service the family may have available to them.
- 10.5.3 In the case of young people between the age of ten and seventeen years old the Council will normally take enforcement action. Where it is considered appropriate, an FPN will be served with the offer to undertake some form of reparation as an alternative to payment of the fixed penalty. The Youth Offending Team will be notified of every young person served with a fixed penalty notice and they will make the necessary arrangements for the young person to undertake the reparation. In circumstances where the reparation is not undertaken or the fixed penalty is not paid then the Youth Offending Team will be contacted again to discuss what further action they feel should be taken.
- 10.5.4 The purpose of consulting the Youth Offending Team is for them to give advice on the appropriateness or otherwise of the action and also to ascertain whether the young person is already involved with the Team, and if so whether alternative action may be more appropriate.
- 10.5.5 In circumstances where young people in this age group are persistent offenders or commit more serious offences consideration will be given to other methods of control. This may comprise the service of an Acceptable Behaviour Contract or a Community Protection Notice, for example.

10.6 **Smoking related litter.**

- 10.6.1 If the offender (irrespective of whether they are a young person or not) commits a smoking-related litter offence, then the person will be offered to take up reparation via the Stop Smoking Service, such that if they stop smoking within a defined timescale, then payment of the Fixed Penalty will not be required, and the file will be closed.
- 10.6.2 The offender can choose to accept the offer of stop smoking reparation, pay the Fixed Penalty, or have the matter heard in court.

- 10.6.3 If the offender initially engages with the Stop Smoking Service but then disengages within the four weeks, or does not successfully stop smoking by the end of the four week period, then the offender will again be offered the opportunity to pay the Fixed Penalty at the higher rate of £80, in full within the following two weeks. If payment of the Fixed Penalty is not received, then the Housing Environment and Renewal Service will give consideration to a recommendation to commence prosecution proceedings.

11 Delivery

- 11.1.1 Details of Calderdale Council staff that are authorised to issue fixed penalty notices are included in the Housing, Environment and Renewal Service's Delegation Scheme. The progress of FPNs is tracked using the Civica APP software system (Flare). The Environmental Health Section of the Housing, Environment and Renewal Service are responsible for progressing non-payment and preparing legal files as appropriate.

12 Training

- 12.1.1 All front line staff who are responsible for issuing FPNs, all back office staff who are responsible for administration of the scheme, and all managers associated with the scheme will be fully trained in the appropriate procedures, and in any other areas that are deemed appropriate.

13 Management systems

- 13.1.1 The fixed penalty process is managed through the Civica APP software. Monthly reports are produced indicating the number of fixed penalties issued, the number paid, and the number of non-payers sent for prosecution. Web based systems such as Sharepoint will be used to publish this information internally and annual returns are produced from this data and completed for the Government

14 Use of receipts

- 14.1.1 Calderdale Council will use its fixed penalty receipts in accord with the guidance issued by DEFRA in their Guidance "Fixed Penalty Notices" issued in 2006. The money raised by the fixed penalty regime will normally be used to help meet the costs of providing the service in the service area relevant to the offence.

15 Targets

- 15.1.1 We will aim to receive all payments due, and progress where possible non-payment through the courts. We will track our performance against the DEFRA target of 75% of fixed penalties paid.

16 Reporting

- 16.1.1 Details are given under section 13 "Management Systems". In addition the press office is notified of successful prosecutions in relation to non-payment of FPNs.

17 The review process

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



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