



Enforcement Policy – Environmental Offences

**Civil Parking & Environmental Enforcement
Team**

1.0 Introduction

1.1 **Environmental Enforcement** is a “Clean & Green” corporate priority and, in particular, Torfaen takes a “zero tolerance” approach to dealing with offences relating to:

- i. Littering
- ii. Dog Fouling
- iii. Dog Exclusion Zones
- iv. Dogs on Leads Areas

1.2 Where the above offences are witnessed, Torfaen Enforcement Officers will, as a first resort, issue fixed penalty notices (FPNs) for the above offences in accordance with relevant legislation. These notices provide a quick, visible and effective way of dealing with low-level straightforward environmental crimes, and an alternative to prosecution.

1.2 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.

1.2. This policy document outlines the Authority’s approach to issuing fixed penalty notices in relation to the above Environmental Offences that are enforced by the Joint Civil Parking and Environmental Enforcement Team. It also outlines the Authority’s appeals and prosecution policies in relation to the above offences and how cases of obstruction will be dealt with.

1.3. Civil Parking Enforcement is not dealt with in this document. A Civil Parking Enforcement – Parking Enforcement Policy document is available separately.

2.0 Grounds For Issuing A FPN

2.1. A FPN may only be issued where an officer has reason to believe a person has committed an offence.

2.2. 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 direct evidence of an offence or reliable witness testimony.

2.3. 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

3.2. A FPN should be issued only where there is sufficient evidence as to his/her identity and place of residence.

3.3. **Where a suspect is not cooperative, consideration may be given to an alternative disposal** (e.g. prosecution and/or police involvement). **FPNs must be issued to and received by the suspect.** If an alleged offender refuses to give a correct name and address, and identity can be established through other means, i.e. by the police, the offence should normally be pursued by prosecution, rather than the FPN procedure. From April 2006 it has been a specific offence for a person to whom an officer proposes to issue a litter FPN, to fail to provide the officer with their name and address, or to give false details (see Section 9).

3.4. A FPN will not be appropriate:

1. Where a suspect appears to be unable to understand what is being offered to them (for example, where the suspect is deaf). Where such circumstances arise every effort should be made to solicit/impart the required information.

2. Where the suspect's behaviour suggest they have learning disabilities or mental disorder. Under such circumstances the officer should question whether issuing a FPN and prosecution is in the public interest.

3. Where the suspect is a non-resident foreign national (i.e. not British or Northern Irish), as the FPN will not be enforceable.

4. 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.

5. Where an offender is **threatening, abusive or violent** to the officer. Where an alleged 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 authority. (The officer should refer to the guidance on dealing with violent and aggressive people).

3.5. A FPN *may* not be appropriate where it is known that the suspect has a previous conviction or a caution for the offence, or has been issued with a number of FPNs, particularly if they have not paid. The officer should inform the offender that he will be reported with a view to prosecution.

4.0. Issuing The FPN

4.1. The Enforcement Officer will approach the alleged offender, identify him/herself and tell the person, in simple terms that they have been seen committing an offence. The Enforcement Officer will ensure that he/she carries identification and proof of authorisation, The Officer will be smartly dressed and in a uniform provided by, and identifiable to, the Authority. He or she will communicate in a respectful, even-handed manner.

4.2. The Offender will be spoken with to obtain their name, address and date of birth. These details will be verified as far as practicable, and the FPN will then be issued. 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 a suspect prior to issue could invalidate enforcement. Police assistance will be sought where necessary. The officer must record the suspect's forename, surname, address, post-code and date of birth on the FPN. These are required for processing purposes.

4.3. When the FPN is issued, the officer should explain that it provides an opportunity to avoid liability to prosecution, and will draw the person's attention to the relevant points about making payment and prosecution in the event of non-payment.

4.4. If the person either refuses to accept the FPN or, having accepted such a notice, does not pay before the end of suspended enforcement period (14 days), a further final reminder letter is issued giving a further seven days notice. In the event that payment has not been received within seven days, the matter may result in prosecution. To ensure the credibility of a FPN scheme, all cases involving non-payment will be referred to the Legal Section with a view to prosecution.

5. Appeals

5.1 Once a FPN has been issued the recipient can decide to phone or write in pleading mitigation or contesting the fact that a FPN was

issued. All appeals will be dealt with in a professional, even-handed manner. The adjudicator will be the Civil Parking and Environmental Enforcement Manager.

5.2 To preserve the integrity of the process, no undue external pressure shall be brought, by either members of the Council or other senior officers, designed to unduly influence the decisions by virtue of their position alone. Assembly Members and Members of Parliament are similarly expected not to seek to influence decisions.

5.3 Grounds for Appeal

Cases where an appeal might be considered favourably include, but are not limited to, instances where the recipient of a fixed penalty notice can demonstrate that:

- i. No offence was committed, or the fixed penalty notice has been wrongly issued, for example where a public space (dog control) protection order did not apply or the person had exemption under the law
- ii. The offence was committed by someone else.
- iii. The offence was not the fault of the person against whom the Notice was served, and there was nothing they could do to prevent the offence
- iv. The offender is under 18, or has physical or mental health problems or has some other disability that prevents them from understanding that they committed an offence.
- v. Information that was not available at the time the FPN was issued becomes available and it is determined that the offence to which the notice relates was not committed, or that the notice should not have been issued to the person who is named in the notice.
- vi. There are significant extenuating circumstances that temporarily affected the ability of the person to comply with the law
- vii. Serving the Notice is not considered to be in the public interest

5.4 Circumstances where an appeal will not be considered

- i. Ignorance of the law – the test would be whether a reasonable person would be aware that an offence had been committed. There are some requirements to display notices warning people about the law, but these do not apply everywhere and to all legislation. Warning notices do not have to be present exactly where an offence was committed.
- ii. An individual did not know an offence had been committed – the test would be whether a reasonable person would have known what had happened.

- iii. An individual could not prevent the offence - the test would be whether a reasonable person could have taken steps to prevent the offence occurring.
 - iv. The offence was only minor – Fixed Penalty Notices are issued for less serious offences as this gives the opportunity to avoid going to Court.
 - v. The amount of the penalty – this is not relevant. The charge is set by the Authority in accordance with legislation (see Section 7, below)
 - vi. It's not in the public interest to pursue the offence – The Authority needs to respond to concerns about low level criminality by making sure the law is enforced. The use of fixed penalty notices ensures a proactive proportionate approach to dealing with offending behaviour.
- 5.5 Following an appeal decision by the Civil Parking and Environmental Enforcement Manager, an appellant can request one further review of the decision by the Chief Officer Neighbourhoods, Planning & Public Protection (or deputy) and/or Executive Member. This decision will be final.
- 5.6 The opportunity to further challenge the alleged offence and plead not guilty will remain open to the recipient of the FPN if he or she elects to do so, or if there is non-payment of the penalty. The matter will be dealt with at the Magistrates Court. Where offences are to be dealt with by way of prosecution, the Legal Services Section will assess each case on its merits and advise relevant service managers as to whether to instigate proceedings. As a general rule, simple cautions will not be offered in lieu of prosecution.
- 5.7 The annexe at the end of this document provides a summary of the enforcement process illustrated in a flowchart.
- 5.8 Payment of a fixed penalty by instalments will not be accepted.

6. Issuing Fixed Penalty Notices To Young Persons Aged under 18

Policy

- 6.1 Fixed penalty notices will not be issued to young persons for littering and dog control offences. However, young persons that offend will be verbally warned in an even-handed and educative manner. Where appropriate, enforcement officers will engage with local schools, colleges and other similar establishments, where offences are committed by young people associated with such establishments, in an attempt to further promote the Authority's Clean & Green priorities and relevant behaviour change.

7.0 Amount Of Fixed Penalty

- 7.1. [The Environmental Offences \(Fixed Penalties\) \(Miscellaneous Provisions\) \(Wales\) Regulations 2008](#) and the [Anti-Social Behaviour, Crime & Policing Act 2014 section 68](#) enables the Authority to specify the amount of some fixed penalties. The table below sets out the current fixed penalty amounts in Torfaen.

Offence	Current penalty	Discounted penalty
Littering	£100	Not allowed
Dog Fouling	£100	Not allowed
Dog Exclusion Zones	£100	Not allowed
Dogs On Leads Areas	£100	Not allowed

8. Fixed Penalty Offences and Specific Guidance

- 8.1 Reference should be made to the offence-creating statutes as well as to this guidance. As with any area of enforcement, it is essential that officers are aware of their powers under the relevant statutes.

8.2 Environmental Protection Act 1990, Section 87 – Littering

- i In cases of littering, the normal course of action will be offer a FPN, providing the person is cooperative. The offence under s.87 of the Environmental Protection Act 1990, as amended in 2005, applies to all places that are open to the air, including private open land, and land covered by water. A person does not commit a littering offence if they leave litter on their own land or if they have the permission of the landowner to leave litter.
- ii **Litter** is not defined, but **includes** cans, bottles, confectionary wrappers, food and drink containers, chewing gum, plastic bags, till receipts, left over food, cigarette and cigar ends and flyers.
- iii The authorised officer must be satisfied that the two elements of the offence have been committed, namely that a person has thrown down, dropped or otherwise deposited any litter, and left it. The offence is made out when a person intentionally discards something (e.g. puts an empty bottle on a wall, screws up a bus ticket then drops it, spits out gum, removes a sandwich from a bag and drops the bag, or throws a can into a side street) and walks away. The offence may also be made out by reason of the persons behaviour (i.e. ripping or screwing something up and throwing it down while in a queue of people and not making any attempt to retrieve it within a notable period of time), or because of where the item was thrown (i.e. into a river or fenced area or from a car or bridge).

- iv The offence does not rely on any requirement to ask a person who has deposited litter, to pick it up. However, where it appears that someone has dropped something inadvertently, or the officer cannot reasonably conclude that the litter has been left, (s)he should consider asking the person to pick it up. If the person refuses, it would constitute leaving, and there would be grounds to issue an FPN.
- v Where the litter is thrown/deposited from a vehicle and the offender is not dealt with at the time (i.e. because the vehicle is moving), the identity of the registered keeper will be obtained from the DVLA. A Section 108 (EPA 1990) Notice will be sent to the registered keeper. A FPN will then be issued by mail where the individual who left the litter can be identified, e.g. by CCTV image, visual recognition, admission or statement by the keeper (remembering that a person's spouse may not be compelled to give evidence). Aggravated littering such as smashing glass bottles may be more appropriately dealt with by summons.

8.3 Public Space Protection Order- Dog Control Offences

- i In December 2018 the Authority introduced a Public Space Protection Order which created three new offences within the Authority's area. The first, relates to failing to remove forthwith dog faeces from land open to the air to which the public have right of access. The provisions of this offence do not apply to the registered blind or sight impaired, those who have a disability which affects their mobility, manual dexterity, physical co-ordination or ability to lift, carry or otherwise move everyday objects. A person would also not be guilty of an offence if they had reasonable excuse or the permission of the land owner to allow the act on their land.
- ii The second is a dog exclusion offence and creates an offence of taking dogs onto land identified as an exclusion area. Again the person would not be guilty of an offence if they had reasonable excuse or the permission of the land owner to allow the act on their land and the exclusion provisions of the Order do not apply to a dog trained by a registered charity to assist a person with a disability and upon which a disabled person relies for assistance. Areas of exclusion have been widely consulted upon and are available for viewing on the Authority's website.
- iii The third offence is that of not keeping a dog on a lead on land designated as a dogs on leads area under the Order. Again, the person would not be guilty of an offence if they had reasonable excuse or the permission of the land owner to allow the act on their land. Areas declared to be dogs on leads only areas have been widely consulted upon and are available for viewing on the Authorities website. Nothing in the Order shall apply to the normal activities of a working dog, whilst the dog is working.

- iv Being unaware that a dog has defecated is not a defence. A person who habitually has a dog in his/her possession shall be taken to be in charge of the dog at any time unless at that time some other person is in charge of the dog. Therefore, a FPN may be issued to the owner or tenant of the house in the case of a stray.

9. Dealing with offenders who refuse to give details or who give false details

9.1 Offences involving obstruction of officers will normally dealt with by way of prosecution. In terms of fixed penalty offences, officers should note the following guidance:

- i If the 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 a FPN
- ii If the offender gives correct details only after being required to do so by a police officer – the offender should be reported for summons for the original offence and offence of failing to give/giving false details (where appropriate).
- iii If the offender refuses to give details and walks away – where appropriate, the Enforcement Officer should call the Police and follow the offender for a reasonable period of time or until the Police arrive.
- iv If the offender gives false/inaccurate details, and the FPN is issued at time of the offence and is subsequently paid – then there will be no further action in respect of giving false details as the offender has not objected to the offence and the FPN has been paid.
- v If the offender gives false/inaccurate details, and an FPN is issued at the time of the offence and not paid, and enquiries identify the accurate details of the offender, then the offender should be reported for summons for the original offence and the offence of giving false details (where appropriate).

10.0 Corporate Complaints Procedure

Complaints about the service (e.g in relation to the conduct of officers) are dealt with in accordance with the Authority's corporate complaints policy. Further information is available on the Authority's website www.torfaen.gov.uk.

End

Annexe – Environmental Enforcement Flowchart

