



BOROUGH OF TELFORD & WREKIN

Environmental Enforcement Fixed Penalty Notice Policy 2017

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1. Introduction

- 1.1 The purpose of this policy is to set out how the Council will enforce environmental offences through the use of Fixed Penalty Notices (FPNs). It also sets out the Council's fine levels for the non-payment of fixed penalty notices issued by Council Enforcement Officers.
- 1.2 The Council will use fixed penalty notices as part of an overall approach to protecting and improving the environment, and ensuring the safety and well-being of our communities. This policy is strongly linked to the following corporate priorities:
- Ensure that neighbourhoods are safe, clean and well maintained.
 - Improve the health and wellbeing of our communities and address health inequalities
 - Protect and support our vulnerable children and adults
- 1.3 In the use of FPNs the Council will always seek to follow the enforcement principles described in its Corporate Enforcement Policy.
- 1.4 A FPN is a means to give a person who has committed a relevant offence the opportunity to pay a fine and in so doing discharge their liability to conviction. As such it is intended as a means by which Courts are prevented from being overloaded with minor offences by first time offenders.

1.5. This policy covers such enforcement action for those offences that could be broadly described as environmental or related to cleaner or safer neighbourhoods. As such it covers:

- Dog control including dog fouling
- Littering
- Fly tipping
- Failure to produce a Waste Carriers Licence when required to do so
- Failure to furnish Waste duty of care documentation when required to do so
- Nuisance Parking
- Abandoning a vehicle
- Graffiti and Fly-posting
- Offences in relation to waste receptacles
- Consuming alcohol in public spaces
- Breach of Public Spaces Protection Order or Community Protection Notice

1.6 Enforcement Officers in Telford & Wrekin are employed directly by the Council. They carry a photo ID that shows their job title and name and a copy of their authorisation under delegated authority to enforce the relevant legislation. The ID includes a phone number you can call to check the officer is genuine.

2. General Principles

2.1 Where legislation permits the use of fixed penalty notices, the Council will consider the use of them as an alternative to prosecution. Examples of where they may be appropriate are:

- To deal quickly and simply with less serious offences
- To divert less serious cases away from the court process
- To deter repeat offences

- 2.2 Before a fixed penalty fine is administered the authorised officer will ensure:
- there is evidence of the offender's guilt sufficient to sustain a prosecution (any subsequent decision to prosecute will be in accordance with the Code for Crown Prosecutors)
- 2.3 Where legislation gives the local authority flexibility to set the level of a fixed penalty charge the level of the charge has been set by the Council. In setting the level of the fixed penalty charges the Council has had regard to:
- any Government guidance on the level at which the fixed penalty charge should be set,
 - the likely level of fine which a court would impose for a similar offence,
 - the need to deter offenders from opting for prosecution because they believe that the court would impose a lower level of penalty,
 - the cost of bringing a prosecution where fixed penalties were not paid.
- 2.4 The table within this appendix – Level of Fixed Penalty Fines sets out the level of fines the Council has decided is appropriate for each particular offence listed.
- 2.5 Where a fixed penalty fine is not paid within the specified time limit (usually 14 days) then the case will be considered for prosecution.
- 2.6 There is no appeals procedure for a person in receipt of a FPN because a person served with a FPN who believes they did not commit the offence has the right for their case to be heard in court. The Council considers it appropriate that the magistrates court should determine such matters.
- 2.7 Normally the Council will only issue FPNs to first time offenders for those offences shown in this appendix. 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.

2.8 Fixed penalty notices shall not be issued to persons who are not resident within the United Kingdom.

2.9 In considering the suitability of the issuing of a fixed penalty notice Officers will also take into consideration whether it is appropriate and proportionate to do so in the particular circumstances

2.10 Examples of when a fixed penalty notice may not be appropriate may be when the offender is elderly, vulnerable or a young person (see paragraphs 3 and 4 below), or the individual has taken all reasonable steps to ensure they have engaged a registered waste carrier to dispose of household waste which has later been found fly-tipped.

2.11 In cases where the nature or extent of the offence is so serious that the issue of a fixed penalty would not be considered proportionate then prosecution will be considered for a first time offence. Issues that will be considered relevant when making this decision include:

- where there is evidence of widespread and systematic offending,
- non-co-operation or obstruction of an investigation (any such allegation may also lead to an additional offence of obstruction where the legislation allows)
- intimidation of witnesses.

2.12 Any fines collected through the FPN procedure will only be spent on related functions of the Council.

2.13 In order to achieve good quality control (i.e. verification of name and address, repeat offender check etc) and to minimise the risk of a confrontational situation and the associated hazards, the majority of fixed penalty notices shall generally be served through the mail. The option to serve a fixed penalty notice on the spot shall be retained.

2.14 A fixed penalty notice may be served up to a maximum of three months after the date of the offence, where there is a justifiable reason for the delay.

3. Vulnerable Adults

3.1 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, are mentally or physically impaired in any way, clearly unable to pay e.g. homeless, or otherwise the issue 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 such. In any event, the evidence should be brought to a line manager for discussion before a decision on issuing a fixed penalty is made.

4. Children and young persons

4.1 Under 10 year olds

- In the case of children below the age of criminal responsibility i.e. 10 years of age, we will not take any formal enforcement action. Where we consider it appropriate, we will report the event to the child's parents or guardians, either directly, or through any supporting service the family may have.

4.2 Between 10 and 15 years old

- An informal verbal warning would normally be issued for a first offence, this should also include on the spot education including an explanation that what they have done is wrong and that it should not be repeated.
- Where it is considered appropriate the officer should also report the event to the child's parents or legal guardian, either directly or through any supporting service the family may have.
- In most such cases a FPN will not be issued but the record of the incident should be brought to a line manager for discussion. A FPN may be issued by first class post if a responsible person (parent or legal guardian) can be

identified and it is deemed appropriate and proportionate by the line manager following consideration of the facts. Any FPN issued to an offender between 10 and 15 years old will be sent with a covering letter addressed to the offender and copied to the parent/guardian.

- It is not appropriate to issue an on the spot FPN

4.3 Between 16 and 17 years old

- Where it is identified that the offender is 16 or 17 years old, if it is appropriate immediate on the spot education should be carried out to explain that what they have done is wrong and that it should not be repeated.
- A FPN may be issued on the spot if the name, address and date of birth of the offender have been obtained together with the name and address of a parent or legal guardian. The offender should also be advised that details of the offence may be shared with the local Youth Offending Team.
- If a FPN is not issued on the spot, a record of the incident should be brought to a line manager for discussion, again if the name, address and date of birth of the offender have been obtained together with the name and address of a parent or legal guardian and the offender has been advised that details of the offence may be shared with the local Youth Offending Team. If it is deemed appropriate and proportionate by the line manager following consideration of the facts a FPN may be issued by first class post to the offender together with a covering letter addressed to the offender and copied to the parent/guardian.
- No offender between 16 and 17 years old should the need arise, be interviewed under caution without an appropriate adult being present.
- If there is any doubt as to the offender's age, in other words there is a belief that they may be under 16, then the procedure for those aged between 10 and 15 years old should be followed.

5. **Non-Payment of Fixed Penalties**

- 5.1 When a fixed penalty fine is not paid in full within the required time period specified on the notice (in most circumstances 14 days) then a prosecution for the offence will normally proceed. A recipient is still liable to prosecution if they pay the FPN after the required time period. The Council always seeks its full costs against the offender in prosecution proceedings.
- 5.2 A lower discounted fine (typically a reduction of 20%) will also be specified on the notice together with a shorter payment period. This amount only applies to those who make the discounted payment in full within the shorter time period specified in this appendix – Level of Fixed Penalty Fines (normally 7 days). The lower amount will not be accepted for any payments not received within the shorter time period and in such cases the full fine amount will be expected to be paid within the 14 days from service of the notice.

6. Payment Options

- 6.1 Telford & Wrekin Council handles the processing of payments for Fixed Penalty Notices. Payments can be made either:
- Over the phone on TEL; 01952 384384 quoting the code next to the relevant offence on the Fixed Penalty Notice.
 - Online at; the http://www.telford.gov.uk/https://www.civicaepay.co.uk/Telford/Webpay_Public/Webpay/Default.aspx?fund=FP.
- 6.2 Telford & Wrekin Council accepts that for certain individuals the payment of fixed penalties may be difficult. Consequently, persons who provide written confirmation explaining the reasons as to why payment may be difficult will be provided with the opportunity to make such payments in three equal monthly instalments.
- 6.3 Clearly, Telford & Wrekin Council considers legal action as a serious step and wishes to avoid such action if at all possible, however in correspondence individuals will be informed that failure to make, or to continue with payments by

dates specified, may result in this Authority proceeding with legal action in this matter.

- 6.4 In such instances individuals will be provided with 14 days to make payment of the full outstanding amount, with prosecution being the normal course of action where this amount fails to be received.

7. Recording and Reporting

- 7.1 Full and accurate details of each fixed penalty notice shall be recorded at all stages from issue to closure and retained on file by the Council for a period of 2 years plus current year
- 7.2 This record shall be assessed on a regular basis to help determine whether or not procedural amendments are required.
- 7.3 Accurate details of all environmental fixed penalty notices issued shall be reported by Telford & Wrekin Council to the appropriate Government department(s) when requested, to the Council and its Cabinet, and the media.

8. Monitoring and Review

- 8.1 This policy shall be reviewed regularly, or at such time as deemed appropriate.
- 8.2 This policy shall be published on the Council's website, allowing members of the public and businesses to have access.
- 8.3 A record of amendments to the Policy shall be maintained within this document.

9. Levels of Fixed Penalty Fines

FIXED PENALTY POWER	DESCRIPTION OF OFFENCE	LEGISLATIVE GUIDANCE			ADOPTED BY TELFORD & WREKIN	
		RANGE OF FULL FIXED PENALTY	DEFAULT PENALTY	MINIMUM DISCOUNTED PENALTY	AMOUNT	AMOUNT IF EARLY PAYMENT RECEIVED
Section 4: Dogs (Fouling of Land) Act 1996	Dog fouling on designated land (Section 2)	£50 - £80	£75	£50	£80	£50 (if paid within 7 days)
s.2A(1) Refuse Disposal (Amenity) Act 1978	Abandoning a Vehicle (Section 2)	N/A	£200 (specified amount)	£120	£200	£120 (if paid within 7 days)
Section 33ZA: Environmental Protection Act 1990	Fly tipping (Section 33)	£150 - £400	£200	£120	£400	£200 (if paid within 10 days)

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		RANGE OF FULL FIXED PENALTY	DEFAULT PENALTY	MINIMUM DISCOUNTED PENALTY	AMOUNT	AMOUNT IF EARLY PAYMENT RECEIVED
Section 34A: Environmental Protection Act 1990	Failure to furnish duty of care documentation (as respects waste). If a person, who is subject to a duty imposed by Sections 34(1); (2E); (2F); (2I); (2K); or (2L); fails to comply with regulations in accordance with Section 34(5).	N/A	£300 <small>(specified amount)</small>	£180	£300	£180 (if paid within 7 days)

FIXED PENALTY POWER	DESCRIPTION OF OFFENCE	LEGISLATIVE GUIDANCE			ADOPTED BY TELFORD & WREKIN	
		RANGE OF FULL FIXED PENALTY	DEFAULT PENALTY	MINIMUM DISCOUNTED PENALTY	AMOUNT	AMOUNT IF EARLY PAYMENT RECEIVED
Sections 46A; 46B; 47ZA & 47ZB Environmental Protection Act 1990	Offences in relation to receptacles for:					
	i) Household waste (Section 46)	£60 - 80	£60	£40	£80	£50 (if paid within 7 days)
	ii) Commercial & industrial waste (Section 47)	£75 - 110	£100	£60	£100	£70 (if paid within 7 days)
Section 88: Environmental Protection Act 1990	Littering (Section 87)	£50 - £80	£75	£50	£80	£50 (if paid within 7 days)

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Schedule 3A paragraph 7: Environmental Protection Act 1990	Unauthorised distribution of literature (Schedule 3A(1))	£50 - £80	£75	£50	£75	£50 (if paid within 7 days)
s.44 Anti-social Behaviour Act 2003	Graffiti, fly posting and other relevant offence (Section 43)	£50 - £80	£75	£50	£75	£50 (if paid within 7 days)
Section 6: Clean Neighbourhoods and Environment Act 2005	Nuisance Parking – exposing vehicle for sale on a road (Section 3)	N/A	£100 (specified amount)	£60	£100	£60 (if paid within 7 days)

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Section 6: Clean Neighbourhoods and Environment Act 2005	Nuisance Parking – repairing vehicles on a road (Section 4)	N/A	£100 (specified amount)	£60	£100	£60 (if paid within 7 days)
Section 68: Anti-Social Behaviour, Crime & Policing Act 2014	Consumption of alcohol in breach of a prohibition in order (Section 63)	Up to £100	Up to £100	N/A	£100	£60 (if paid within 7 days)
Section 68: Anti-Social Behaviour, Crime & Policing Act 2014	Failure to comply with a public spaces protection order (Section 67)	Up to £100	Up to £100	N/A	£100	£60 (if paid within 7 days)

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Section 52: Anti-Social Behaviour, Crime & Policing Act 2014	Failure to comply with a Community Protection Notice (Section 48)	Up to £100	Up to £100	N/A	£100	£60 (if paid within 7 days)
Section 9 and Schedule 1: Health Act 2006	Failure to display a no-smoking sign when required (Section 6)	N/A	£200 (specified amount)	£150 (specified amount)	£200	£150 (if paid within 15 days)
Section 9 and Schedule 1: Health Act 2006	Smoking in a designated smoke free place (Section 7)	N/A	£50 (specified amount)	£30 (specified amount)	£50	£30 (if paid within 15 days)

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Section 9 and Schedule 1: Health Act 2006	Failing to prevent smoking in a designated smoke free place – including vehicles (Section 8)	N/A	£50 (specified amount)	£30 (specified amount)	£50	£30 (if paid within 15 days)