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# Local environmental enforcement – Guidance on the use of fixed penalty notices



Department for Environment, Food and Rural Affairs  
Nobel House  
17 Smith Square  
London SW1P 3JR  
Telephone 020 7238 6000  
Website: [www.defra.gov.uk](http://www.defra.gov.uk)

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# Local environmental enforcement – Guidance on the use of fixed penalty notices



# Ministerial Foreword



Dropping litter, daubing a wall with graffiti, pasting up an illegal advert and not clearing up after a dog has fouled are just a few examples of environmental crimes, which today continue to blight too many of our communities.

Yes, in the bigger scheme of things they are not serious crimes, yet they are crimes that affect us all; at best making places appear shabby and run down and, at worst, unsafe to be in. Where local environmental quality issues are a problem, the Government wants action to be taken, including the ultimate sanction of penalising offenders who continue to believe that they can treat our streets, parks and open spaces with anything less than respect.

This is why the Government extended and amended the powers available to local authorities, and others, through the Clean Neighbourhoods and Environment Act 2005, to tackle environmental crime.

In particular, the Act has extended the use of fixed penalty notices across a range of environmental offences, this, to enable local authorities to deal more efficiently with first-time offenders; and those who commit offences at the more minor end of the scale. By using the powers, local authorities will be able to send out a powerful message to the wider community that such crimes will not be tolerated – a message proven to be welcomed by the overwhelming majority.

However, the use of fixed penalty notices is not without risks; risks that have been only too well illustrated in recent years. At the top of this list are poor payment rates and a reluctance of some authorities to pursue prosecution, should a fixed penalty notice go unpaid. Unchecked, these risks could undermine the credibility of fixed penalty notices.

This guide, 'Local environmental enforcement – Guidance on the use of fixed penalty notices', has been published to set out Defra's view on the appropriate use and enforcement of fixed penalty notices.

The guide provides advice on the use of fixed penalty notices – some general principles – but above all else, it highlights to local authorities that if they are to issue fixed penalty notices they need to do so within a framework that assumes offenders will be prosecuted, should they choose not to pay a notice that has been offered to them.

Its intention is to help local authorities, who are looking to use the powers for the first time, to adopt them in a planned and considered way. At the same time, it is intended to help those already using the fixed penalty notice powers to ensure that they are used in a way that minimises risk and builds credibility in the system. Yet, above all else, for those both new to fixed penalty notice enforcement and those experienced in the field, the intention is to ensure that fixed penalty notices are used in such a way so they help achieve the broader aim that we are all seeking to realise; namely, cleaner, safer and greener places for all.

And above all else, it must not be forgotten that the use of fixed penalty notices brings with it a great deal of responsibility; responsibility to ensure that the powers are used correctly, proportionately and legally – a responsibility that local authorities prove capable of day in, day out, in their effort to provide quality services for their residents.

A handwritten signature in black ink, appearing to read 'Ben Bradshaw', with a stylized, flowing script.

Ben Bradshaw MP

Minister for Local Environment, Marine and  
Animal Welfare

# Foreword – Local Government Association



The Clean Neighbourhoods and Environment Act 2005 provided authorities with an extended range of fixed penalty notices to tackle the environmental crime and anti-social behaviour that can blight our local neighbourhoods. Fixed

penalty notices send an instant and powerful message to the minority who persist in damaging our local environments.

Local authorities are determined to provide clean and safe streets and public spaces. They share the concerns of the majority of residents that attitudes and behaviour towards the local environment must improve. Education and awareness campaigns can be very effective, but they need to be backed up by an enforcement policy that addresses the most persistent environmental offences. This enforcement regime must work and be seen to work to achieve our common aim – to change irresponsible attitudes and behaviour over the long term.

Local government had asked for many years for stronger powers to tackle environmental crime and warmly welcomed the new fixed penalty notices. Many authorities have enthusiastically embraced these new powers and have invested heavily in staff, training and systems to ensure they are used successfully.

The LGA has worked closely with Defra to gauge any difficulties that authorities have experienced in issuing or following up the notices. We are very keen that all authorities have the support of clear and detailed guidance to help them develop the most effective enforcement policy and practice in their local area. This new enforcement guidance provides very useful advice and case studies. This will give further help to those enforcement teams who are already proactively prosecuting those who commit environmental crimes and encourage and inspire those authorities currently developing a fixed penalty notice policy. The LGA welcomes the new guidance and will be working with member authorities to recommend this very useful advice so that we can look forward to a steady increase in payment rates of fixed penalty notices and the successful prosecution of non-payers.

A handwritten signature in black ink that reads "Paul Bettison". The signature is fluid and cursive, with the first name "Paul" being larger and more prominent than the last name "Bettison".

Cllr Paul Bettison

Chairman, LGA Environment Board







# Acknowledgements

Defra would like to acknowledge the help, support and advice of the following authorities and bodies in the drafting of this guidance:

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Local Government Association

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Copeland District Council

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Gedling Borough Council

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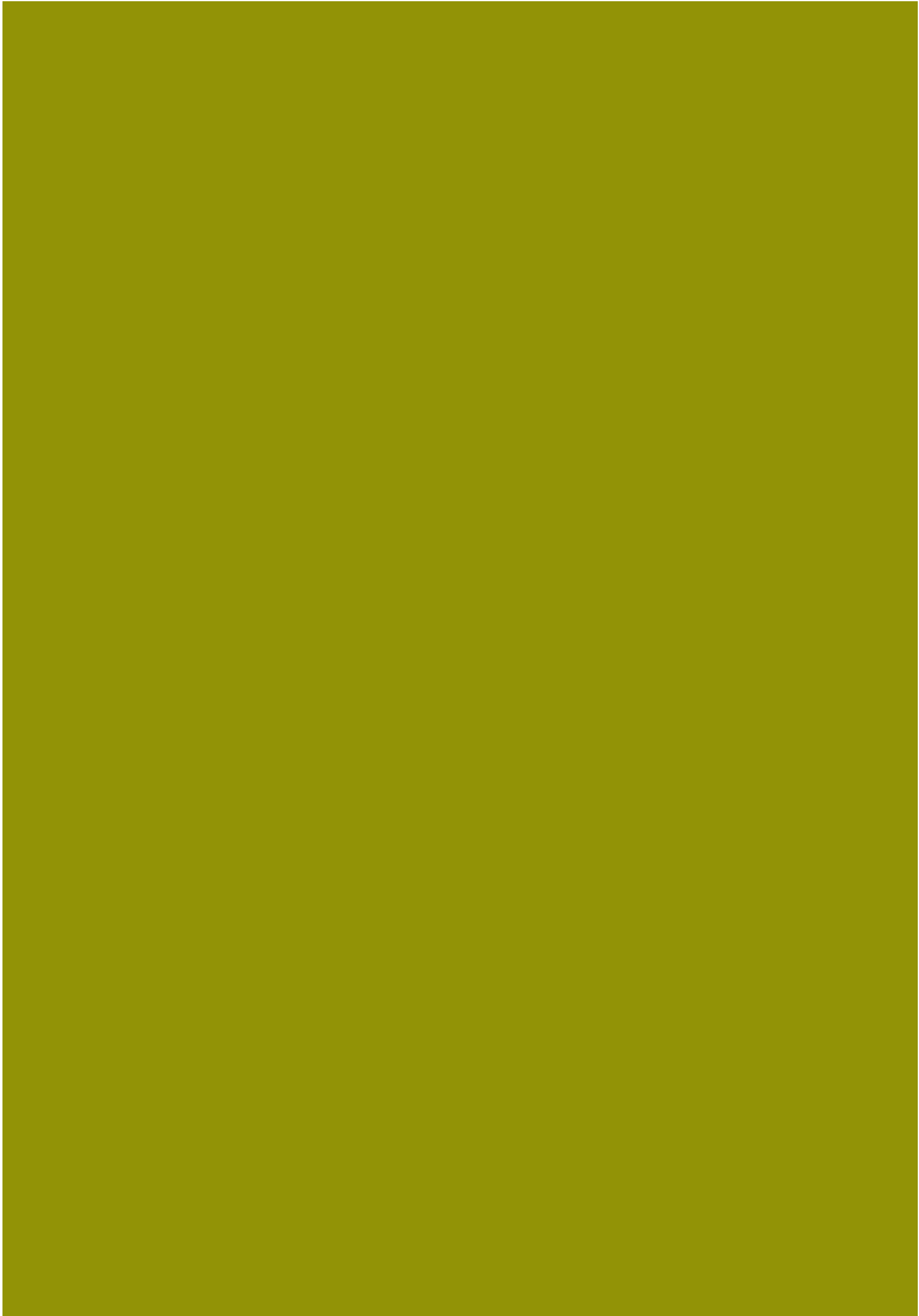
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Wear Valley District Council



# Contents

<b>Section One – Overview</b>	<b>13</b>	<b>Section Four – Using fixed penalty notice enforcement against young people</b>	<b>59</b>
Introduction	14	Introduction	59
The bigger picture	14	Fundamental principles	60
Signposting	15	Agreeing an approach to young people	61
<b>Section Two – The role of the enforcement strategy and the operational policy</b>	<b>17</b>	Some rules to follow on enforcing against young people	63
Introduction	17	To issue or not to issue a fixed penalty notice?	64
The enforcement strategy	17	Working with the youth offending team	65
The operational policy	28	The youth court	65
Final thoughts	32	<b>Section Five – Pursuing the non-payment of fixed penalty notices</b>	<b>69</b>
<b>Section Three – Undertaking fixed penalty notice enforcement</b>	<b>33</b>	Introduction	69
Introduction	33	Defining good payment rates	69
Doing the job and the need for training	33	The principles of payment	70
The importance of evidence	37	Appeals process	71
Cautioning	40	Alternative payment options	73
Identifying offences – the right fixed penalty notice for the right offence	44	Reminder letters and final demands	75
When not to issue fixed penalty notices	46	Back office systems	76
Getting the right identity	51	Pursuing offences in the magistrates' court	77
To issue fixed penalty notices on the spot or through the mail?	52	Final thoughts	82
Using the Driver and Vehicle Licensing Agency (DVLA) Web Enabled Enquiry System (WEES) to gain offender details	54	<b>Section Six – Recording and reporting</b>	<b>83</b>
Litter from vehicles	54	Introduction	83
Quality control	57	Why the fixed penalty notice return is so important	83
		Ensuring the right information in the form	83

<b>Section Seven – Further information</b>	<b>85</b>
Government contacts	85
General contacts	86

## **Annexes**

Annex 1 – Fixed penalty notices – index of legislation	87
Annex 2 – Legislation and supporting publications	91
Annex 3 – Legislative request for information relating to fixed penalty notices – the form	93



# Section One – Overview

## Summary – What this guide will cover

This guide has been written for local authorities that are already using, or plan to use, the fixed penalty notice powers in the Environmental Protection Act 1990; Anti-social Behaviour Act 2003; the Clean Neighbourhoods and Environment Act 2005 and other relevant legislation.

Its aim is to explain some of the principles that underpin the appropriate use of 'local environmental' fixed penalty notices – how their use should be planned and managed, on what basis they should be issued and when they should not, and importantly, how the non-payment of fixed penalty notices should be monitored, managed and dealt with.

This document is only a guide to the law and practice in this area. It may not be comprehensive. It does not constitute legal advice. It should not be taken as an authoritative statement of the law. If in doubt, you should seek your own legal advice.

Further, this guide should be read alongside the guidance already published in support of the relevant Acts, namely the publication 'Clean Neighbourhoods – Guidance on the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and related legislation' and in particular the section titled 'Fixed Penalty Notices'.

**Section One, 'Overview'**, sets this guide in context and gives a fuller introduction.

**Section Two, 'The role of the enforcement strategy and the operational policy'**, explains the need for both a 'strategic' enforcement strategy and an 'operational' policy and what should be covered in each.

**Section Three, 'Undertaking fixed penalty notice enforcement'**, gives further advice on doing the job of fixed penalty notice enforcement and explains when, in Defra's view, it is and isn't appropriate to use fixed penalty notices.

**Section Four, 'Using fixed penalty notice enforcement against young people'**, offers advice on the main issues and rules to consider and follow when using fixed penalty notice enforcement against young people – those aged under 18.

**Section Five, 'Pursuing the non-payment of fixed penalty notices'**, explains why it is considered so important that the non-payment of fixed penalty notices is vigorously pursued; and why local authorities should be prepared to take cases of non-payment to the magistrates' courts to pursue conviction for the original offence.

**Section Six, 'Recording and reporting'**. Each year Defra requires a return, under statute, from each local authority on the number of fixed penalty notices issued and paid, along with other relevant information. This section provides guidance on the information that is required in the return form, a copy of which is included in Annex 3, at the end of this guide.

**Section Seven, 'Further information'**, includes contact details of relevant Government departments and other organisations.

## Introduction

Environmental enforcement is nothing new to local authorities, for many years they have been using a range of laws to tackle environmental blight. These years of experience have seen local authorities build a bank of knowledge; it has seen them develop practical experience; and it has seen them innovate – all to tackle environmental blight in the community.

However, from time to time new pieces of legislation are brought forward, new laws are made and new powers are given to local authorities and others. This is the case with the Clean Neighbourhoods and Environment Act 2005.

It is hoped that this guide will help local authorities develop and improve their strategies for issuing fixed penalty notices for environmental offences, improve payment rates and ultimately maximise their contribution to improving local environmental quality.

At all times it must be remembered that the crimes for which a fixed penalty notice can be issued are just that – they are crimes. A high degree of responsibility rests with those authorities that adopt the powers and issue fixed penalty notices for any of the offences for which they can now be used.

The overriding principle that this guide will keep referring back to is that if a fixed penalty notice is issued for an offence, there must be appropriate and sufficient evidence, to a criminal standard of proof, to support the prosecution of the original offence in the magistrates' court, should a fixed penalty notice go unpaid. In the view of Defra this is 'non-negotiable'.

Further, should a fixed penalty notice go unpaid, the assumption should be that the final action of the issuing authority, unless there is very good reason otherwise, will be prosecution of the alleged offender for the original offence in the magistrates' court. A lack of resources to do this should never be considered to be a valid reason.

It also needs to be remembered that there is no one definitive way of using fixed penalty notices and the relevant powers. This guide sets out what Defra considers to be safe and appropriate at this time. However, at all times authorities should ensure that they are 'acting in the public interest'.

It is also worth saying what this guide is **not**. This guide does not purport to be legal advice, it is not a detailed account of how each of the new powers should be used, nor a commentary on the new legislation. Such a document would be far too cumbersome and would repeat a lot of the information that has already been published by Government, and others, in particular in the publication '*Clean Neighbourhoods – Guidance on the Environmental Protection Act 1990, Clean Neighbourhoods and Environment Act 2005 and related legislation*', published in March 2006.

## The bigger picture

The use of fixed penalty notices is just one element of local environmental enforcement; it is one of the tools that can be used to tackle environmental crime. It follows that there are other ways an authority can improve local environmental quality and reduce environmental crime. Education, campaigns and improvements to streetscene services are just three examples.

Whilst this guide talks specifically about fixed penalty notices, it must be remembered that any strategies that are developed around their use are integral and complimentary to wider strategies that are developed to improve local environmental quality.

## Signposting

### Fixed penalty notices – index of legislation – Annex 1

At Annex 1 of this guide is a table, *'Fixed penalty notices - index of legislation'*, this is a summary of the offences for which fixed penalty notices can now be offered, along with signposting to the relevant legislation and sections. (The table has been adapted from the *'Fixed Penalty Notices'* publication, which is part of the Defra *'Clean Neighbourhoods'* suite of publications).

Any authority looking to use the relevant powers should satisfy themselves that they have a clear understanding of the powers and how they can be applied lawfully.

### Legislation and supporting publications – Annex 2

The fixed penalty powers referred to in this guide originate from a range of legislation. Any practitioner looking to use the powers for the first time, or who is reviewing their practices, should ensure that they have a full understanding of the relevant primary legislation, any relevant regulations and supporting guidance.

Annex 2 provides details of where some of these key documents can be found.









## Section Two – The role of the enforcement strategy and the operational policy

This section will set out:

- why the enforcement strategy is so important;
- what to consider when developing an enforcement strategy;
- the role of the operational policy; and
- what to consider for inclusion in such a policy.

### Introduction

Local environmental enforcement is a serious business; it involves local authority staff, or their agents, working in the community to identify and 'bring to book' those that might have committed environmental crimes. It is for this reason that any authority planning to use the powers (or when reviewing their current use) needs to ensure that it has an effectively planned, resourced and endorsed enforcement strategy in place, alongside an operational policy that translates the aims of the enforcement strategy into a set of rules for staff to follow when using the relevant powers.

This section sets out some of the considerations that should be taken on board when an authority is developing or evolving both its enforcement strategy and its operational policy.

### Enforcement strategy versus the operational policy

This guide makes reference to both an enforcement strategy and an operational policy any authority should develop; both of which have an essential role in guiding the use of fixed penalty notice enforcement in an authority's area.

This section starts by discussing some of the issues that should be considered when developing the enforcement strategy. In essence, this is the higher level strategy, which sets the 'goalposts' and provides the framework in which an authority's fixed penalty notice enforcement work will operate.

However, such an enforcement strategy must not be confused with any operational policy, which will be discussed in detail, later in this section. The operational policy is developed and takes its direction from the enforcement strategy. In essence, it is a translation of the enforcement strategy into a day-to-day operational policy for officers and frontline staff, tasked with issuing and managing all stages of a fixed penalty notice.

### The enforcement strategy

#### Why is an enforcement strategy so important?

Like all enforcement activities, a fixed penalty notice enforcement strategy must not exist in isolation; it must be developed and integrated with its wider environmental enforcement strategies and other strategies, of both the authority and its partners, including any relevant corporate strategies. Only in this way can such a strategy appropriately, properly and responsibly tackle environmental crimes.

In order to be effective, it must set out the resource that will be allocated to fixed penalty notices and address the wider, higher level issues that govern their use.

Experience to date, is that those authorities who take an 'ad hoc' and unstructured approach to the use of fixed penalty notices do not fully realise the benefits of a planned and strategic approach. They do not see the behaviour change and resulting improvements to local environmental quality that a more considered approach will realise.

At its worst, an authority will issue fixed penalty notices (for example, for litter) but take no action against offenders that fail to pay. Any authority that takes such an approach is on borrowed time, as word will get out and payment rates will drop. In the worst cases, fixed penalty notices will be considered by large sections of the community as nothing more than 'optional'.

In sharp contrast, 'good' enforcement has been shown to be a powerful vehicle for delivering the improvements to local environmental quality. Integrated with an authority's education and campaigning strategies, when well planned and proportionate, it has been shown to deliver changes in behaviour. Hence the importance of taking time to consider, develop and plan a strategy for the use and enforcement of fixed penalty notices as part of this effort.

### Using fixed penalty notice enforcement for the first time – initial thoughts

Most authorities that are planning or reviewing their enforcement strategies will already have the political endorsement for their work in this area. However, for those readers whose authorities do not have a history of environmental enforcement

and who are at the stage where they are exploring the possibility of using fixed penalty notices and the relevant powers for the first time, what follows is a brief description of some initial considerations.

### Assessment of need

The most important consideration for any local authority looking to use the fixed penalty notice powers for the first time is to assess the need. If there is little evidence that litter, graffiti or flyposting is a problem (BVPI199 scores will help here), if there are few complaints about nuisance or abandoned vehicles, if the overwhelming majority of dog owners are responsible and, if the majority of businesses appear to be complying with the duty of care, then one must consider whether committing additional resource would yield additional results.

As with all powers that are given to local authorities in this area, they are powers and not duties, it is for the local authority to decide if it wants to use them or not.

### Consultation

As part of its ongoing consultations, a local authority might wish to seek the views of its residents and local businesses on proposals to put uniformed officers on the street to issue, alongside other duties, fixed penalty notices.

Consultation will help an authority's elected members and senior officers decide the appropriateness and level (within the ranges given in Annex 1) at which to set fixed penalty notice fines.

## Debate and approval

Any decision to develop and implement an enforcement service that makes use of fixed penalty notices, properly sits with the elected members of an authority. Before officers develop any detailed enforcement strategies it is important that they have the initial approval of an authority's political leaders.

## Developing a strategy to support fixed penalty notice enforcement

This section is not intended to give a comprehensive definition of what to include in an enforcement strategy. Its intention is to highlight some of the considerations that should be taken on board when developing or reviewing such a strategy.

Any authority referring to this outline shouldn't feel bound by what follows; it should add to it where it thinks it is important and ignore those elements it does not feel are appropriate to its circumstances.

The advice is developed under the following headings:

- Enforcement statement, consultation and political support;
- Objectives;
- Strategic fit;
- Joined up working;
- The powers (to be used);
- Delegation scheme;
- Levels of fixed penalty notice fine;
- Targeting of offences;

- Key policies;
- Budget;
- Delivery – structure and staffing;
- Training;
- Management systems;
- Use of receipts;
- Targets;
- Reporting – to Government and locally; and
- The review process.

## Enforcement statement, consultation and political support

It is recommended that all local authorities that use, or plan to use, the relevant powers to tackle environmental crime in their areas, develop and publish an 'enforcement statement'.

In effect, a local authority's published enforcement statement is a distilled version of its enforcement strategy.

It is a high level document that sets out 'environmental priorities' and all of the considerations and actions that the authority will take in pursuit of those who commit environmental crimes and what the public, including any offenders, can expect in terms of 'service'.

It is considered good practice to consult the public on any enforcement statement.

As a framework, anyone looking to develop an enforcement statement (and strategy) should refer to the '*Concordat on Good Enforcement*' (the Enforcement Concordat) published by the Government in 1998 ([www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf](http://www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf)).

The Concordat, a non-statutory voluntary code of practice, sets out a number of 'Principles of Good Enforcement', which are described in the box below. It encourages authorities to sign up and comply with the principles it promotes.

However, readers need to be aware of the Legislative and Regulatory Reform Act 2006. Part 2 of this Act creates a power to put on a statutory footing a code of practice for regulators.

The Government has announced that it intends to use this power to issue a Statutory Code – 'the Regulators' Compliance Code' to give effect to the Hampton enforcement principles. It is envisaged that this will come into effect in April 2008.

The current draft of the Code states: 'Where this Code applies, it supersedes the 1998 Enforcement Concordat'. All national and local regulators, whose regulatory functions are specified by order, will be under a duty to have regard to the Code in determining any general policy or principles relating to the exercise of those functions.

The Code could well have implications for authorities carrying out fixed penalty notice enforcement and, as a consequence, any enforcement statement. Authorities need to follow developments in this area and be aware of any new obligations that the statutory Code might place on them.

### Enforcement Concordat

The Enforcement Concordat is developed under the general heading 'The Principles of Good Enforcement' and the two sub-headings 'Policy' and 'Procedures'. It is these

broad policies and procedures that should be considered by an authority and be at the centre of any resulting enforcement statement and broader strategy.

### Principles of good enforcement: Policy

**Standards:** to develop clear standards, setting out the level of service and performance that can be expected from the authority, to say what it will do and to publish performance information to show how well it is doing;

**Openness:** to provide information in plain English to those that stand to be affected by the authority's enforcement work and its strategy;

**Complaints about the service:** to have a clear complaints and appeals procedure for those who may wish to challenge a decision of the authority, for example, to dispute a fixed penalty notice;

**Proportionality:** the action of the authority will be proportionate to the offence. For example, if it is policy that first time litter offenders will be offered a fixed penalty notice, yet repeat offenders will be prosecuted in the magistrates' court the statement should say so; and

**Consistency:** to ensure that the powers and the laws are applied in a consistent manner to ensure fairness to all.

### Principles of good enforcement: Procedures

This section in the Concordat talks of the need to ensure consistent procedures for dealing with alleged offenders, ensuring



that all communications are put in a timely manner and that any actions to be taken by the authority are explained clearly and simply.

Both the 'Policies' and 'Procedures' need to be developed as part of the enforcement statement and underpin the intent of the wider enforcement strategy.

#### **Nottingham City Council's commitment to the Enforcement Concordat**

*Nottingham City Council* is just one of nearly all authorities that has formally adopted the Government's 'Concordat on Good Enforcement'; and in doing so it has committed itself to the policies and procedures that it advocates.

Its commitment is set out in its published 'Enforcement Policy Statement'.

## **Objectives**

Any enforcement strategy, including a strategy for the use of fixed penalty notices, will need clearly defined and agreed objectives. These objectives need to state what offences are going to be tackled, which powers are to be used and to what end; ultimately, what the authority is hoping to achieve by using the powers and by issuing fixed penalty notices.

An obvious objective would be one that set targets for the reduction in the amount of litter found on the street, after a given period of time, following the introduction of fixed penalty notices for the littering offence.

Other objectives may be less obvious, and could include public awareness and an increased recognition that to drop litter is a criminal offence.

Regardless of the offence, if an authority is to use enforcement powers, with fixed penalty notices, it needs to be clear on what it hopes to achieve by their use. Without agreed objectives any enforcement strategy will risk being developed in a vacuum, which will weaken the effective use of the powers.

Further, authorities often face the claim that fixed penalty notices are just another way to raise revenue. Objectives run counter to this claim and work to spell out to the public just why the powers are being used.

## **Strategic fit**

Any strategy that sets out how a local authority plans to use environmental fixed penalty notice powers must not be developed in isolation. It needs to be part of a wider enforcement strategy, which in turn will be part of what is often a broader cleaner, safer, greener strategy for an authority.

Increasingly, an authority's enforcement activities, which fixed penalty notice powers are often at the forefront of, feed into a wider agenda, beyond just that of the authority. Local Area Agreements are now central to a local authority's priorities and through these agreements there are opportunities to recognise and develop the enforcement work of an authority. Further, the work of the authority to tackle environmental crime is of increasing relevance to Crime and Disorder Reduction Partnerships, whose remit includes 'other crime adversely affecting the environment'.

## **Joined up working**

For a fixed penalty enforcement service to be successful, its enforcement strategy will need to consider 'joined up working', how

the enforcement service will work with others, both internally (such as to other parts or departments of the authority) and externally (such as to solicitors), to deliver its enforcement work. For example, it is important to secure the commitment of a legal service provider to ensure that where prosecutions are required the resources and expertise are at hand.

### Joined up working – internal

**Leeds City Council** has established a cross-authority Environmental Enforcement Working Group, chaired by the Enforcement Division, made up of representatives from Planning, Highways Enforcement, Legal, Parking Enforcement, Neighbourhood Wardens, the Authority's Anti-social Behaviour Unit, the housing 'ALMOs' and Licensing and Environmental Health.

This has ensured that different parts of the authority, that have an interest in enforcement, have a forum to develop good practice and ideas, whilst making sure that the enforcement service is delivering a co-ordinated service, which achieves the Authority's agreed objectives.

The development of an approach to external joint working is equally important and as part of developing an enforcement strategy an authority will need to consider who externally has a role to play in turning any strategy into reality. Just as the enforcement strategy itself needs to be 'wired into' the wider landscape of strategies, so does the approach to its delivery.

There are often great benefits to be had by authorities joining up with each other to share

good practice, to develop joint approaches, to share intelligence and even to work together to develop an enforcement strategy.

For example, the police can be a key partner in supporting the frontline fixed penalty notice work that an authority might undertake (this is developed further in Section Three).

### The powers

Taking what has already been said under '*Objectives*', any enforcement strategy will need to be clear on the offences that it plans to tackle and the powers that it intends to use.

Being clear on what powers are to be used (deciding what offences are subject to fixed penalty notices and the level of the fines) sets the agenda for what else needs to be considered as part of the enforcement and other strategies; principally the operational policy.

Examples, which are introduced below, include the likely resources that will be required to effectively tackle a particular issue, training requirements, how the authority will manage the fixed penalty notices that are issued, and the list goes on.

In coming to a decision on which powers to use, any authority needs to be clear on the need to use the powers.

### Delegation scheme

Effective delegation is one of the key ingredients of an enforcement strategy. Including in an enforcement strategy a delegation scheme, that sets out who is responsible for certain decisions in the 'life cycle' of a fixed penalty notice, ensures that they can be effectively managed. It is important that any authority using fixed

penalty notice enforcement should seek advice on its constitutional and delegation arrangements.

## Effective delegation

### Examples of effective delegation

It is important that an authority's service has the delegated power to authorise its own officers and any contractors (should it use them) to issue fixed penalty notices.

Further, it is important that there is a nominated officer (or officers) with the authority to decide if there are any reasons, following a challenge from an alleged offender, for a fixed penalty notice to be cancelled before recourse to the court for the offence.

And finally, it is considered good practice that an authority has a nominated officer who has the final say as to whether an alleged offender is prosecuted, following non-payment of a fixed penalty notice.

Having an effective delegation scheme ensures that legal and other procedures are followed and that there is consistency in the decisions that are made in relation to appeals and prosecutions (see Section Five).

### Levels of fixed penalty notice fine

The options for setting the penalty level and options for early payment are detailed in the Defra publication '*Fixed Penalty Notices*', and summarised in Annex 1 of this guide.

The 2005 Act allows authorities to set their own level of fixed penalty notice 'fine', within boundaries, for some of the offences for which

a fixed penalty notice can be issued. Further, it allows discounts to be offered for early payment.

It is important that an authority clearly states the level of fine it intends to apply in their area for each of the relevant offences if they want to set the penalty at any level other than the default rate.

In deciding on the level of penalty, an authority might want to consider such issues as ability to pay and what level of penalty and early payment discounts neighbouring authorities have, or intend to set.

These decisions are important as they will have an impact on any service's budget, in that the revenue raised from fixed penalty notices will often be an income stream for the service that generates it.

It is worth noting at this stage that discounts for early payment are already proving their worth in improving payment rates and this option is further explored in Section Five.

### Targeting of offences

Having set out the objectives and powers that are to be used, any enforcement strategy will need to consider where to target geographically.

It will not always be the best use of resources to tackle offences across the whole of an authority area and the most efficient approach will be to target problem areas.

It is important that an authority comes to an informed decision, by using any intelligence and survey data that it might have at its disposal, as to where to target, so that any enforcement activity has the greatest impact.

## Key policies

Any enforcement strategy should detail the authority's key policies in relation to a number of headline issues. These can be further developed as part of the operational policy that is used by enforcement staff.

It is considered good practice for an authority to develop and agree policies as part of its enforcement strategy on the following:

**Second offences:** Should someone be caught committing an offence for a second time, an authority should have a policy as to whether a fixed penalty notice should be offered in such cases or whether any alleged offender should be prosecuted for the subsequent offence in the magistrates' court (see Section Three).

**The appropriate use of fixed penalty notices:** Whilst fixed penalty notices are appropriate for offences at the minor end of the scale, they will not be appropriate for every offence. This is particularly true in relation to the graffiti and fly posting offences, where anything other than a minor offence should be prosecuted in the magistrates' court. A policy to this effect, defining the boundaries could be included in the enforcement strategy (see Section Three).

**Vulnerable adults:** As above, this should state how the authority will approach the issuing of fixed penalty notices to vulnerable adults, such as the homeless, the mentally ill, etc. (see Section Three).

**Young people:** This should state the authority's position in relation to issuing fixed penalty notices to those aged under 18 (see Section Four).

**Appeals:** If the authority is to offer an 'informal' appeals process (there is no legal requirement for one), it should set out the grounds when an appeal will be considered and how it will be decided (see Section Five).

**Payment options:** If the authority is to offer deferred payment or payment by instalments for fixed penalty notices, it should set out in what circumstances these terms will be offered, along with its policy should someone default on any agreed payment scheme (see Section Five).

The above examples of policies that should be considered as part of any enforcement strategy, and the use of fixed penalty notices, should not be considered to be complete. It is for an authority to decide on what areas it needs to develop policy, to agree that policy, adding others as appropriate, to ensure that an authority's fixed penalty notice enforcement work is undertaken within a clear and agreed policy framework, with further detail added at the operational level in the operational policy.

## Budget

Using enforcement powers and issuing fixed penalty notices to penalise offenders will cost local authorities money. Even though legislation allows authorities to keep the receipts from any fixed penalty notices that are paid, receipts from these notices will not cover the full costs of running an enforcement service.

Given this, it is vital that all authorities consider their budgets very carefully as part of the enforcement strategy.

Obviously, any budget should include full details of projected income and expenditure.



When arriving at an expenditure budget, an authority needs to ensure that it includes all the costs associated with managing the use of fixed penalty notices and in particular the legal costs associated with prosecuting alleged offenders, following the non-payment of a fixed penalty notice.

Alongside other costs, expenditure will be made up of administration costs, staff costs, including enforcement staff and back office support, training, equipment and uniforms, signage and as has been mentioned, importantly, legal costs.

In short, an authority needs to budget across the whole 'life-cycle' of all fixed penalty notices and ensure that assumptions that there will be money in other department's budgets to pay for certain costs, such as taking prosecutions, are not made in isolation.

### **Delivery – structure and staffing**

Staffing is at the centre of any 'structure' to implement and manage the use of fixed penalty notices and as such needs to be recognised in any enforcement strategy. A clear delivery and staffing structure is one of the main components of the successful use of fixed penalty notices.

The strategy will need to set out who is to issue any fixed penalty notices, how these staff will be managed, how the back office support will be provided to ensure that any fixed penalty notices that are issued are tracked and managed, from issue to payment, or following non-payment onto prosecution and the legal staffing that will be required here.

In relation to the issuing of fixed penalty notices, an authority has a number of options; for example, it could authorise a dedicated team of enforcement staff, whose sole purpose is to enforce against environmental crimes, or it could authorise other staff, already in its employment, to take on the issuing of fixed penalty notices as an additional duty.

Looking outside the authority, with the agreement of the chief police officer, it could use police community support officers to issue fixed penalty notices for some of the offences, or it could authorise contracted external staff to undertake the work on its behalf.

Regardless of who is authorised to issue fixed penalty notices on behalf of an authority, it is essential that an authority keeps and maintains a list of those individuals (with the exception of police community support officers) who are authorised to issue fixed penalty notices.

Any delivery structure will need to be fully supported, particularly in terms of management, but also importantly, the staffing resource that will be required to manage the administration of any fixed penalty notices that are issued.

Too often the legal resources that are required for a successful strategy are overlooked. It is essential, if the fixed penalty notice powers are to be used properly, that there is a sufficient allocation of legal resources.

## Legal options

Broadly speaking, an authority has three options open to it with regard to how it commissions the legal support it is likely to need when taking prosecutions in the magistrates' court. These are explained below:

***The 'in-house' team*** – Almost all local authorities have their own legal services team that deals with a number of legal issues. Such a team, if it has the appropriate knowledge, will be well placed to take on environmental enforcement cases. However, without the right service level agreement, prosecution of environmental offences might not be high on their list of priorities.

***The 'in-department' team*** – Those authorities that have often been the most successful at taking prosecutions are those that have their own legal resource as part of the enforcement set up. This gives the service head greater control over the authority's prosecutions and a greater say in which prosecutions are pursued in the magistrates' court.

***An external provider*** – A number of authorities use the services of an external legal provider, particularly to take prosecutions on its behalf in the magistrates' court. Whilst not a cheap option, the authority does have the advantage of being a client and this ensures that the prosecutions it wants to see taken to the magistrates' court, are taken.

## Training

It is essential that staff are well trained in order to deliver a professional and efficient enforcement service. This includes not just the frontline staff, but the managers, back office administrators and those responsible for taking prosecutions in the magistrates' court.

However, concentrating on frontline staff, training will need to go a lot further than that which purely explains the laws and the procedures that staff will be expected to follow, though this will always be central. Other training that will need to be considered includes, but is not limited to, that which addresses health and safety, customer care, interpersonal skills and dealing with vulnerable persons (see Section Three).

If an authority is using contractors or police community support officers to issue fixed penalty notices on its behalf, it will also need to ensure that they have the same level of training as that provided to their own staff, to ensure an equal level of service and standards.

Any training required will need to be clearly identified and costed, along with a delivery plan, in any enforcement strategy. This is essential to underpin the professionalism of any enforcement service.

## Management systems

Given that the offences for which fixed penalty notices can be issued are criminal offences, it is vital that any authority using these powers ensures that it has proper and robust management systems in place to make sure that their administration is managed to the highest standards. The enforcement strategy needs to set out how this will be achieved.

In practice, this means having systems for managing and tracking fixed penalty notices, along with those for the collection and storage of evidence and interview notes along with any other information that could be needed should a case be referred to the magistrates' court for prosecution.

In relation to the management and tracking of fixed penalty notices, an authority will need to log and manage all fixed penalty notices from issue through to payment or prosecution.

Many authorities do this through an Excel based system. Others use one of the various 'case management software systems' that are currently on the market.

### Use of receipts

An enforcement strategy needs to set out how an authority plans to use the receipts from any fixed penalty notices that are paid. The Defra *'Fixed Penalty Notices'* publication sets out what an authority can spend this income on and the greater freedoms that have been afforded those authorities that are 'high performing'.

### Targets

The enforcement strategy should include relevant 'local' targets to monitor its performance in delivering its agreed enforcement objectives, for example, its contribution to decreasing amounts of litter.

However, the setting of targets for fixed penalty notices is a complicated area. An authority might want to set targets for the number of fixed penalty notices that it issues for a particular offence in a given year. This is problematic, in that if fixed penalty notices work, in the short term, following their introduction, there will be an increase in the

number of notices issued. In time, numbers will plateau, before they decline as they prove their worth and the behaviour of offenders is changed.

It therefore follows that to set targets based on year-on-year increases on the number of fixed penalty notices issued is unlikely to be appropriate, particularly if it cannot be shown to relate to the achievement of the enforcement strategy's objectives.

However, where targets have real value, particularly in the context of this guide, is where they drive improvements in payment rates.

Defra would encourage authorities to monitor the percentage number of fixed penalty notices that are paid and to set themselves targets for improvement, to achieve a minimum payment rate of 75 per cent (see Section Five).

### Reporting – to Government and locally

Building on what has been described under *'Management systems'*, any enforcement strategy should set out how an authority plans to keep up-to-date records of its enforcement activity, particularly in relation to the number of fixed penalty notices that have been issued, the receipts from them and the number of cases that have been pursued through the courts, following non-payment.

There are two reasons for this. Firstly, this information is legally required on an annual basis by Defra for monitoring purposes. Section Six of this guide sets out in greater detail what is required and Annex 3 includes an outline version of the form that needs to be filled in annually by each authority.

Secondly, this is important local management information that allows an authority to monitor its budget and also to tell residents about what it has managed to achieve in terms of environmental enforcement.

By using the media an authority can communicate this information and further inform the public of the tough stance that it takes; further educating the public and, ultimately, changing behaviour.

### Using the media – Barnsley Metropolitan Borough Council

*Barnsley Metropolitan Borough Council* has an arrangement with its press office where, following a successful court prosecution, the press office issues a media release to the local media, giving details of the prosecution and the fines and costs awarded. It always 'names and shames' successfully prosecuted offenders.

This serves two functions. Firstly, it informs the public of the action that the authority is taking to crack down on those who commit environmental offences; and secondly, it raises awareness amongst those that might commit offences of the consequences of committing environmental crime, so helping to encourage behaviour change.

### The review process

It is important that the enforcement strategy, and the use of fixed penalty notices, is reviewed on a regular basis.

Obviously this is important from a budgeting point of view, to ensure that the budget for any enforcement service stays on track. Yet

of greater importance, the authority needs to ask itself whether the issuing of fixed penalty notices is having the desired effect – for example, are they reducing litter and dog fouling on the streets where the powers are being used?

Through regular reviews problems can be identified, changes to the way that an authority uses and administers the powers and fixed penalty notices can be made and achievements celebrated.

### The operational policy

The operational policy comes out of the enforcement strategy discussed above. It translates the overarching enforcement strategy into the framework within which authorised officers and managers work.

What follows gives an overview of some of the issues that should be considered when drawing up an operational policy. As with the enforcement strategy, what follows is not a complete list and should be developed so as to take account of local circumstances. Many of the issues that are identified below are developed in later sections of this guide and should be referred to accordingly.

### An operational policy – who is it for?

Any operational policy is first and foremost for those officers authorised to issue fixed penalty notices on behalf of an authority and those that might manage such a service, or elements of it.

It is important that the language used is appropriate and that it is clear and easy to understand (for staff and the public) without scope for misinterpretation.

## An operational policy – what to include

The list of what to include in an operational policy is by no means complete. What follows is intended to be a starting point for authorities, based on what a number are already doing. The advice in this section is developed under the following headings:

- Overview;
- Working practices;
- A description of the offences, fines and relevant legislation;
- When to issue and when not to issue;
- How to issue;
- The collection of evidence;
- Dealing with false details;
- Dealing with agitated or threatening behaviour;
- Dealing with appeals; and
- Managing and maintaining information.

### Overview

The overview is just that – a commentary setting in context the role of the operational policy in relation to fixed penalty notice enforcement – what it is and what it isn't, who it is written for, how it should be used, who is responsible for its 'maintenance', etc.

### Working practices

Such a section should set out some of the basic 'headline principles' that will be followed when fixed penalty notice enforcement is being undertaken. It could cover a range of issues, including:

- authorisation;
- professional approach;
- working in pairs (if appropriate); and
- uniform.

Authorisation is important, in that only officers who have been authorised in writing can issue fixed penalty notices on behalf of an authority. Who can and cannot be authorised to issue the different environmental fixed penalty notices on behalf of a local authority is set out in the Defra publication '*Fixed Penalty Notices*'.

The operational policy should set out who has been authorised and which offences they have been authorised to issue fixed penalty notices for. It should also explain that an individual authorised officer needs to carry with them, at all times, their 'letter of authorisation'. However, the form of this is open to the authority that is authorising enforcement officers. For example, it doesn't have to be a letter and could, and often is, a warrant card – a card that identifies the officer, with a photograph, and in an appropriate form of words, sets out their authorisation.

Any section of the operational policy on the subject of a 'professional approach' should set out the standards that an authority expects its staff to maintain, backed up with training, when they are undertaking enforcement work. This, given that enforcement officers are the face of the authority undertaking what can often be a challenging role.

An operational policy is a good place to set out the detail of how an authority actually undertakes its enforcement – if the policy is to work in pairs it should say so, also, if it is policy for an authorised officer only to

undertake fixed penalty notice enforcement in the company of a police community support officer, again it should say so.

Further, the wearing of a uniform, including a high visibility jacket is considered to be good practice except where there are compelling reasons for 'covert' enforcement. It legitimises what the enforcement officer is doing and shows the community the authority is tackling problem behaviour.

### **A description of the offences, fines and relevant legislation**

Such a section should set out the powers that have been adopted by the authority; this is to say the offences that are to be punished with a fixed penalty notice.

Under the relevant legislation, Act of Parliament and section (for example for the littering offence, 'Environmental Protection Act 1990, section 87') it should include a description of the law along with an interpretation of what it means. For example, what needs to take place for an offence to be committed and what an authorised officer needs to have satisfied themselves with before challenging an alleged offender and certainly before issuing a fixed penalty notice.

It is also considered helpful to outline what would not constitute an offence; again in the case of litter, a small fly tip, or when the offence is considered to be more serious.

### **When to issue and when not to issue**

This section of the operational policy is the place to build on any 'description of the offences, fines and relevant legislation', outlined above, and gives a fuller commentary of when a fixed penalty notice should and should not be issued.

For example, it should outline the circumstances when a fixed penalty notice is considered appropriate, such as when:

- an offence has clearly been committed and there is sufficient supporting evidence to support prosecution should the fixed penalty notice go unpaid;
- the alleged offender is compliant and understands why they have been challenged;
- the issuing enforcement officer believes that the alleged offender has offered their correct name and address; and
- there are no aggravating circumstances.

It should also set out when it is not appropriate to issue a fixed penalty notice, for example:

- when the person alleged to have committed an offence is aged under ten, or under the age at which an authority issues fixed penalty notices;
- if the alleged offender, when approached, is obstructive and non-cooperative;
- when it is suspected that an alleged offender has failed to offer their correct name and address; and
- when an alleged offender seems confused, either through some form of impairment or through drugs or alcohol. In this instance any enforcement officer is advised to seek support from the relevant agency and the issuing of a fixed penalty notice should be seen as very much a secondary issue.

(Further detail is set out in Section's Three and Four).



## How to issue

The operational policy should describe how fixed penalty notices are to be issued – either on the spot or through the mail (see Section Three).

## The collection of evidence

The operational policy should set out how evidence is to be collected, managed and stored to ensure that it is done so in line with the requirements of the Police and Criminal Evidence Act (PACE) 1984 and relevant Codes.

This is essential in order to support any subsequent prosecution of an alleged offender, should a fixed penalty notice go unpaid (see Sections Three and Five).

This part of the operational policy should also set out when a 'caution' should be used (given an authority's working practices) and the circumstances and the timing of its use (see Section Three).

## Dealing with false details

There may be times when an enforcement officer suspects that someone they challenge is giving false details. It is considered important that the operational policy sets out the authority's policy for dealing with such circumstances (see Section Three).

## Dealing with agitated or threatening behaviour

It is vital that any authority considers fully the health and safety issues that surround environmental enforcement. Alongside this, it should ensure that it has full and robust procedures for dealing with conflict issues and these should be clearly stated in the operational policy.

## Dealing with 'appeals'

There will be times when someone alleged to have committed an offence, and issued with a fixed penalty notice, will want to challenge it. There is no requirement for an authority to offer an appeals process, however, such a process is considered pragmatic and the operational policy is the place to set out how any such system operates so that the public can be informed.

Section Five offers further advice on an appeals process.

## Managing and maintaining information

It is vital that any enforcement service has robust systems to deal with the administration that supports fixed penalty notice enforcement. The operational policy should set out how these 'administrational systems' work on a day-to-day basis, how they should be used and maintained, along with a description of who is responsible for doing what in relation to their maintenance and that the agreed procedures comply with the relevant Codes (see Section Five).

### An operational policy – The North East example

Five Authorities in the North East: *Newcastle City Council, North Tyneside Council, Blyth Valley Borough Council, Gateshead Council and South Tyneside Council*, have come together to produce an operational policy, entitled 'Fixed Penalty Notices for Environmental Offences – Policy and Operational Guidance'.

This is considered a good approach as it serves to share a common way of working across a wider geographical area and, further, by pooling knowledge, it helps ensure that the resulting strategy is one that is considered and developed on the back of a wider breadth of understanding.

The outcome is an agreed approach to issuing and managing fixed penalty notices for a range of offences. It sets out under what circumstances fixed penalty notices will be issued, how disputes are managed, an agreed level of fines for each of the relevant offences across the authorities and the approach that is taken when dealing with young offenders. It also sets out the relevant legislation and a commentary on when it is and is not appropriate to issue a fixed penalty notice.



## Final thoughts

What has been described in this section is very much an overview of what can be included in both the enforcement strategy and an operational policy.

Ultimately, it is an authority's members that will decide the strategic approach (the enforcement strategy) and it is for officers to translate this into the operational policy; the 'user' guide that translates the higher level policies into action on the ground.

## Section Three – Undertaking fixed penalty notice enforcement

This section sets out:

- some of the practicalities of doing the job and the need for training;
- the importance of evidence;
- the use of the caution;
- the need for the right fixed penalty notice to be used for the right offence;
- when not to issue fixed penalty notices;
- advice for getting the right identity and what to do if this is not forthcoming;
- the pros and cons of issuing fixed penalty notices 'on the spot' or through the mail;
- how the Driver and Vehicle Licensing Agency (DVLA) Web Enabled Enquiry System (WEES) can be used to obtain offender details;
- strategies for dealing with litter from vehicles;
- the need for reliable and robust back office systems; and
- the need for quality control across the whole fixed penalty notice system.

### Introduction

When to and when not to issue a fixed penalty notice is very much at the heart of the fixed penalty notice enforcement system.

In reaching a decision an officer needs to answer a number of questions:

- (1) Does the officer believe that an offence has been committed?;
- (2) If so, is it an offence for which a fixed penalty notice could be issued;
- (3) Is there sufficient evidence to support a successful prosecution?;

- (4) Does the nature of the offence warrant a fixed penalty notice to be issued or is prosecution in the magistrates' court a more appropriate response?

Depending on the individual circumstances there may be other relevant questions to consider, such as is the person to be issued with a fixed penalty notice of "sound mind?"; or are they old enough?

This section sets out some of the considerations that need to be taken on board and addressed by an authority and so provide the 'operational framework' within which their authorised officers will need to work when undertaking fixed penalty notice enforcement. This section also outlines Defra's view on when it is and is not appropriate to issue fixed penalty notices.

### Doing the job and the need for training

When it comes to 'doing the job', there are a number of issues that need to be fully considered at the outset by an authority and its managers, to ensure not only safe working practices, but also that the highest standards are adhered to by those authorised to issue fixed penalty notices.

This section provides some initial thoughts under the following headings:

- The right person for the job;
- Equipping staff to do the job;
- Health and safety;
- Staffing of patrols; and
- The need for training.

## Non-authority authorised enforcement staff

Prior to the Clean Neighbourhoods and Environment Act 2005, legislation already existed that allowed 'others' (e.g. police community support officers) to issue fixed penalty notices for some environmental offences on behalf of an authority.

The 2005 Act has extended this and now authorities can authorise contractors to issue fixed penalty notices on their behalf for a greater range of the environmental offences, including litter, graffiti, fly posting, distribution of free literature and dog control order offences.

Given this, if local authorities are to use contractors to undertake fixed penalty notice enforcement work on their behalf, they need to ensure that such contracted staff are also the right people to do the job, that their health and safety has been considered, that they are suitably equipped and that they have been properly trained. If an authority chooses to ignore these issues then it will be their reputation at stake, at the very least.

## The right person for the job

Getting the right people to do enforcement work is vital. Below is a list of some of the qualities that are considered to be a minimum requirement for any enforcement officer:

- a thorough knowledge of relevant law;
- confident with people;
- good communication skills;
- the ability to record accurate detail;

- thorough;
- presentable;
- assertive, without being aggressive;
- a belief in what he or she is doing;
- someone who can cope with verbal abuse and challenging situations; and
- the ability to be the public face of the authority.

This list is by no means exhaustive, and a good degree of that almost impossible to measure skill 'commonsense' is also vital; however, anyone being considered to undertake enforcement work should be able to demonstrate competence in the areas identified above.

Regardless of who is recruited to take on the role, he or she will need to be of suitable character to do the work. As a minimum, he or she should be able to provide an enhanced Criminal Records Bureau Certificate.

## Equipping staff to do the job

It is important that enforcement staff have the right equipment to do the job. Some of the possible equipment needs of an enforcement officer are set out below:

- uniform;
- high visibility jacket;
- fixed penalty notice book;
- PACE evidence recording notebook;
- mobile phone;
- identification;
- camera;
- map (A-Z 'type' where available); and
- torch.

## Health and safety

Enforcement work, the issuing of fixed penalty notices, passes in the majority of cases without incident.

However, it is not without its risks and there is always a chance that an enforcement officer, in the course of his or her work, could be subject to verbal abuse, the threat of violence or violence itself. Thankfully, such occurrences are rare. However, where the person undertaking enforcement work on behalf of the authority is an employee of the authority, the authority has a duty of care to ensure his or her health and safety at all times.

As a result, the authority will need to undertake a full risk assessment of the work involved and ensure that there are proper and robust procedures in place to ensure that staff know how to respond in any hostile situations.

It is not, however, for this guide to stipulate what an authority should do in this respect, as this responsibility rests with the authority.

## Staffing of patrols

Whilst health and safety is the responsibility of the authority, or the direct employer in the case of contracted staff, there are a number of approaches that any authority will want to consider so as to minimise risk for its enforcement staff, but alongside this, to also improve the enforcement service that it offers out on the street.

In essence, the staffing of patrols is about how an authority deploys its enforcement staff. Many authorities do not allow enforcement patrols to be undertaken by an enforcement officer working on their own; often they work in pairs. The reason for this goes beyond the obvious health and safety implications and

includes the following:

- allows enforcement officers to back each other up;
- allows for the interviewing of any witnesses at the same time as that of an alleged offender;
- there is less chance of an alleged offender denying that they committed an offence if they have been witnessed by two officers;
- it is a better way of doing things, particularly if enforcing against young people; and
- protects officers from any malicious accusations.

Increasingly authorities are turning to the police to 'beef up' their enforcement work; patrolling alongside police community support officers and the police themselves. This brings with it, not only the additional security of a uniformed officer of the law, but also access to additional resources, for example, should the identity of an alleged offender need to be checked.

Two examples of local authorities working with the police are given in the box below.

### Working with the police – Birmingham and Southwark

#### Birmingham City Council

As with most parts of the country, Birmingham has challenging neighbourhoods; the very neighbourhoods where local environmental quality is often at its poorest. The Authority is mindful of its need to ensure their enforcement officers attain high repayment rates for fixed penalty notices. This is achieved by using



fixed penalty notice income to purchase uniformed police officer time where it cannot be covered on duty time.

This allows Birmingham's enforcement officers to go out on foot patrol with a police officer and obtain the correct details of offenders and deal with any wider potential breach of the peace issues.

The police also benefit from this arrangement, as those that are involved in environmental crime might also be those that they want to talk to in connection with other offences. It is no exaggeration to say that joint patrols have led to a number of arrests of individuals who were initially approached after dropping litter.

### London Borough of Southwark

For a couple of years now in Southwark, the authority has been using the income that it generates from fixed penalty notices to plough back into the cost of having a police secondment attached to the authority's enforcement service.

The police secondment works across the authority's enforcement service and with a fully equipped police vehicle, complete with number plate recognition, is often at the forefront of its enforcement work.

Yet alongside this, the police secondment works the beat with the authority's enforcement officers, providing them with the security and back up that occasionally might be required when dealing with a member of the public that might want to question the legitimacy of an enforcement officer. For example, if an alleged offender is slow in providing their details, a quiet

word from the police officer can quickly sort this out. And as with Birmingham, this arrangement has helped catch criminals wanted for other offences.

### The need for training

The job of enforcing against environmental crimes requires a thorough understanding of the relevant legislation as well as an ability to follow certain guidelines when gathering evidence. Yet more than this, it requires an ability to deal with members of the public in circumstances that have the potential of becoming strained. Because of this, and the requirement for enforcement work to be undertaken in a fair and consistent manner, to high standards, the need for full, ongoing and relevant training cannot be emphasised enough.

### Fixed penalty notice enforcement course

To support the training need, Defra has funded the development of a four day training course for enforcement officers and managers to introduce the concepts and the skills that are required to undertake fixed penalty notice enforcement. This course is being delivered on Defra's behalf by ENCAMS, the charity that runs the 'Keep Britain Tidy Campaign'. More information is available through their website [www.encams.org](http://www.encams.org)

Any training for enforcement officers needs to go beyond the obvious, namely the law and procedures, as set out in any operational policy. It also needs to cover such issues as health and safety and dealing with the public.



Training also needs to go beyond frontline staff; those with a role in managing and administering any systems that support fixed penalty notice enforcement will also require training, as will an authority's legal team, who will ultimately have responsibility for pursuing prosecutions in the magistrates' court.

Whatever training an authority decides to offer, it can equally be delivered 'in-house' or by an external provider.

### Training – the Barnsley Metropolitan Borough Council experience

Fixed penalty notice enforcement is a high priority for *Barnsley Metropolitan Borough Council*, as is the requirement to ensure that it is done to high standards.

To underwrite this commitment, the authority offers a range of training courses, backed up with 'on the street' practical training to ensure that its staff have the skills to do the job. The courses offered include:

- The requirements of the Police and Criminal Evidence Act;
- The requirements of the Criminal Procedure and Investigations Act;
- Investigative interviewing;
- Evidence gathering;
- Courtroom procedures;
- Procedural training on:
  - Littering;
  - Fly-tipping;
  - Dog fouling;

- Abandoned vehicles;
- Dealing with young persons; and
- Taped interviews.

- Customer care;
- Violence and aggression;
- First aid; and
- Risk assessments.

Some training is bespoke external training from providers, but much is tailored in-house training. This is for not only their own enforcement staff, through the normal induction process, but also for other staff who are involved in the wider roles of improving the Borough.

In addition, Safer Neighbourhood Team wardens and police community support officers are trained in environmental crime enforcement by the Enforcement Team, and a written test is required to be completed and passed before staff are deemed competent to undertake the enforcement role.

### The importance of evidence

Evidence is everything when it comes to fixed penalty notice enforcement; a fixed penalty notice should not be issued unless the issuing enforcement officer believes that there is sufficient evidence to support a successful prosecution.

A fixed penalty notice is a means to give someone, alleged to have committed an offence, such as dropping a piece of litter, the opportunity to pay a fine and so avoid the prospect of being prosecuted in the magistrates' court for the original offence.

If it is not paid, and there is no good reason for this, then it is for the authority responsible for issuing the fixed penalty notice to see that the alleged offender is then summonsed and prosecuted in the magistrates' court.

It is vital that any authority that uses fixed penalty notice enforcement does so with the mindset and approach that assumes every fixed penalty notice will go unpaid.

By taking this approach an authority can ensure that for every fixed penalty notice that is issued there is enough supporting evidence, to support a successful prosecution in the magistrates' court.

### The two golden rules of fixed penalty notice enforcement

**Rule one** – assume every offence for which a fixed penalty notice is issued will end in the magistrates' court.

**Rule two** – where there is not sufficient evidence a fixed penalty notice should not be issued.

Having accepted the importance of evidence, it then follows that the evidence that is collected is the right kind of evidence; namely evidence that can be used to support prosecution should a fixed penalty notice go unpaid.

This section of the guide will set out a number of considerations on the key issues in relation to evidence. However, as with the rest of the guide, what is detailed here is no substitute for the full training of staff who are, or are going to be, on the frontline issuing fixed penalty notices.

### Getting the right evidence

A number of fundamental principles are set out below under the headings:

- Points to prove;
- Witness statements; and
- Other supporting evidence.

### Notebooks

The most important tool to be used when gathering evidence is the enforcement officer's notebook. These can be used for recording all, or certainly most, of the details of an alleged offence. That said, there are a set of rules that need to be followed.

Any notebook should carry a clear number (so as to aid record keeping), be bound and have numbered pages. Further, any entries in a notebook need to follow the guidelines below:

- all notes should be made with a ball point pen;
- notes should be legible;
- any amendments that are made should be crossed out with a line so that they can still be read;
- no gaps or spaces should be left, and where they exist they should be crossed out with a line; and
- all witness statements should be signed by both the enforcement officer and any person giving a statement.

At all times it should be remembered that a notebook can, and in all probability will, be seen by others, particularly if a case progresses to the magistrates' court.

## Points to prove

The best evidence that can be collected is that which is collected and entered in an approved notebook by an authority's own enforcement officers, having witnessed an offence themselves.

The points to prove (to be addressed in full, in advance of a fixed penalty notice being issued) go beyond the basic background information that should be recorded as a matter of course with any offence, including:

- a description of the offence that is alleged to have taken place;
- the view of the enforcement officer that witnessed the offence;
- the date;
- the time;
- the name and address of the offender;
- the age of the offender;
- a description of the offender and whether they will be recognised again; and
- the weather and light conditions at the time.

By going through a set of points to prove, essentially an extended set of questions, an enforcement officer gathers the information required to prove each strand of an offence. It also effectively rules out any defence that could be used at a later date, should an alleged offender be summonsed to court for an offence they are accused of.

The information that is gained in response to the points to prove can then be used in any subsequent witness statement.

Taking litter as an example, the points to prove include:

- Was a person witnessed littering?
- Did they drop, throw down or otherwise deposit litter?
- What was littered?
- Was the person identified as the person who dropped the litter?
- Was the location where they dropped litter an area where it is an offence to litter, for example, an area which is open to the air?
- Having littered, did they leave it?
- Did the person who was witnessed littering have the permission of the landowner to do so?
- Was the person of a suitable age to be issued with a fixed penalty notice?

## ENCAMS offence charts

As part of ENCAMS Cleaner Safer Greener Network, a membership service for local authorities and other land managers (membership fees apply), members have online access to a range of 'offence charts' for all of the environmental offences now covered by fixed penalty notices. These have been developed by an environmental solicitor to help those that use them prepare their cases in the right way and address all of the relevant points to prove.

## Witness statements

There may be times when a third party, another person, might have witnessed an offence. If this is the case an enforcement officer is advised to take a statement, in a notebook, to record any evidence that they might be able to provide in support of an alleged offence. A witness should sign any statement that they might provide and also give their contact details should any follow-up be required.

Further, they should be informed that should a case progress to the magistrates' court they might be called to give evidence. If this is something that they are not prepared to do it would be unwise to rely solely on their evidence to support the issuing of a fixed penalty notice.

## Other supporting evidence

There may be cases when other evidence might be useful to collect at the time of the offence. This includes any photographs, for example, of fly-posting, graffiti, an abandoned vehicle, etc. Any photographs will need to be stored appropriately and in accordance with relevant guidelines if they are to be used to support a prosecution.

Further, an enforcement officer's notebook can be used to record a drawing, which might be relevant and help support any subsequent prosecution. However, as with writing in a notebook, any drawing will also need to be completed in a ballpoint pen.

### Incident reporting 'booklets'

*Gedling Borough Council*, in common with a number of other authorities, has produced an 'Environmental crime reporting

booklet'. This is for use by non-enforcement staff to report incidents of littering, fly tipping and dog fouling.

The A6 size booklet includes a brief description of the offences along with space for the person reporting the incident to write in their details; details of the incident itself; details of the person alleged to have committed the offence; space for a description of the dog, if it was a fouling offence; litter offence details, if relevant; along with car registration details, again if relevant; and space for a further account of the offence that was witnessed.

Once complete, the booklets are returned to the authority's environmental enforcement section, and are then investigated by enforcement staff. The normal procedure is for an enforcement officer to interview the alleged offender and, if there is sufficient evidence, a fixed penalty notice is issued.

Such an approach means that the authority can extend its 'reach' by having a greater number of staff out on the ground equipped to report environmental crimes that they might witness.

Staff that report incidents through this system are kept up-to-date with how the investigation is going and are told of the outcome of any reports that they make.

## Cautioning

The use of the 'caution' is one of the enforcement officer's key tools for gathering evidence from someone alleged to have committed an offence, as any information obtained under caution becomes evidence that can be used in the magistrates' court, should a fixed penalty notice go unpaid.

This section sets out some of the rules for using the caution and some of the considerations that will need to be taken on board by an authority in developing its operational policy and guidance for its enforcement officers.

Advice is set out under the headings:

- When to caution and when not to;
- Interviews under caution; and
- Correspondence under caution.

## What is a caution?

A caution, in the context of gathering evidence to support the issuing of a fixed penalty notice, is the means by which an enforcement officer can question an alleged offender and so gain information that is then admissible in court.

Put simply, if an enforcement officer wants to question an alleged offender, over and above asking for name, address, date of birth and in the instance of dog fouling, to confirm if a dog is with a particular person, and then wants to use any answers that are forthcoming as a result of the 'interview', say to pursue a prosecution in the magistrates' court, then this information needs to have been obtained under caution.

In essence, this means formally cautioning an alleged offender by reading out the following text:

***"You do not have to say anything. But it may harm your defence if you do not mention, when questioned, something which you later rely on in court. Anything you do say may be given in evidence."***

But more than just reading out the caution, it is important that the person that is to be questioned has understood the caution. This must be asked, and if they do not, the caution broken down into its three main parts and each explained simply.

Such 'interviews under caution' need to be carried out in line with the Police and Criminal Evidence Act (PACE) 1984 and the relevant Codes of Practice.

When undertaking fixed penalty notice enforcement on the street the most relevant Code is Code C.

All enforcement staff need to fully understand the principles and rules that govern the use of the caution and further training to achieve this is very much considered an essential element of any enforcement officers training.

## When to caution and when not to

There is a degree of debate, amongst local authorities, as to when to caution an alleged offender, and further, if an enforcement officer needs to caution such an offender at all.

It is Defra's view that it is considered good practice, having approached an alleged offender, for example someone who has failed to clear up after their dog has fouled, and having obtained their name and address (and date of birth if appropriate) to caution them (as given above) in all but the most straightforward of offences.



There are a number of reasons for such an approach, including:

- ensuring that any answers or comments that are made by an alleged offender can be used in the magistrates' court should any offence end in prosecution;
- giving the enforcing officer, in the eyes of an alleged offender, a sense of authority;
- giving the 'interaction' a level of seriousness; and
- enabling an alleged offender to give any defence as to why they should not be issued with a fixed penalty notice (for example, if they are registered blind and they failed to clear up after a dog in their control has fouled).

Whilst it is 'good practice' that the use of the caution is the right way to proceed when questioning an alleged offender about an offence, there are times when a caution might not be required, or it would be inappropriate. For example, if the offence is clear cut (there are no defences that could be offered) or when the person that has committed an offence appears to be a young person, under 17 years of age (see Section Four).

In reality there are occasions when an offence might be described as being clear cut, this is to say where there is no legitimate defence available to someone that might have committed the offence. One example, however, might be when someone is clearly seen to throw down a piece of litter in a public place, such as on the highway where they would not have the permission of the landowner, the authority, to do so.

If such an act is witnessed, the testimony of the enforcing officer can rightly be argued to be enough to support any subsequent prosecution in the magistrates' court, should the fixed penalty notice go unpaid.

However, if an enforcement officer wanted to be absolutely sure of their case they could caution and ask the alleged offender if they had in fact dropped the piece of litter that they had been witnessed dropping.

With regard to young people, the reason that it is inappropriate to interview a young person (aged under 17) under caution occurs when there is not an appropriate adult with them. This is to say such a young person needs to be interviewed in the presence of a responsible adult – normally their parent or guardian (this is more fully explained in Section Four).

The use of cautions needs to be considered and covered in any operational policy developed by an authority.

### Interviews under caution

When interviewing an alleged offender 'under caution' there are a number of rules that must be followed and any answers or comments that are given need usually to be properly recorded, in a notebook, so that they can be used in evidence should they be required. It is not for this guide to go into this level of detail and it is a responsibility of any authority using the fixed penalty notice powers to ensure that their staff are properly trained in the use of the caution and any subsequent recording of evidence.

## Some good questions to ask when used following a caution

There are some questions that should always be asked when interviewing an alleged offender under caution – if they elicit the ‘right’ response they can prove an alleged offender’s guilt beyond any reasonable doubt. Further, such questions can be used to rule out any defence that might later be used in the magistrates’ court. Some examples are given below:

### *Litter*

- “Why did you just drop that cigarette Sir?”
- “Why didn’t you put that crisp packet in the bin just over there?”

### *Dog fouling*

- “Is your dog an assistance dog Madam?”
- “Do you have any bags or other device for clearing up after your dog has fouled with you today?”

### *Graffiti*

- “Do you have the permission of the owner of this building to spray your name on it?”

### *Fly-posting*

- “Have you been paid to put up these posters?”
- “Do you have the permission of the landowner to put up these posters?”
- “Do you have permission from the authority to put up these posters; can you show it to me?”

## *Nuisance vehicles and abandoned vehicles*

- “Are you the person who is selling these two vehicles?”
- “Are you the registered keeper of this vehicle that has been abandoned?”
- “If you claim that the car is no longer yours can you let me have the details of the person that you sold it to?”

## Correspondence under caution

There may be times when investigating an offence that further information and/or evidence might be required prior to the issuing of a fixed penalty notice. The normal course of action, as has been set out, is to interview an alleged offender at the time they are witnessed committing an offence. However, this might not always be possible, for example if someone is witnessed throwing something from a travelling vehicle.

In such an instance the best course of action will always be to interview the registered keeper in person; however, as said, this might not be possible, so it might be decided to write to the keeper and in the letter to put to them a number of questions to ascertain who was driving the vehicle and who might have committed the witnessed offence.

For any reply to be admissible in the court the letter that is sent in the first instance needs to contain a caution, this is suggested below:

*‘You do not have to reply to me but it may harm your defence if you do not tell me in the answers to the questions asked in this letter, something which you later rely on in court. Anything you do write in reply may be given in evidence. If you do not understand what this means, please contact...’.*

There are two important considerations that need to be taken on board when using correspondence under caution, these are:

- interviews in person are always preferable and correspondence under caution should be used as a last resort; and
- no fixed penalty notice should be issued until there is sufficient evidence to support a prosecution. The point here is that there should be very few circumstances in which an authority writes to an alleged offender for further details after a fixed penalty notice has been issued.

### The recording and storing of evidence

All evidence that is collected, including that which is recorded in notebooks, duplicate copies of fixed penalty notices, photographs, witness statements, etc. needs to be properly stored and maintained. This means that all evidence needs to be properly logged and securely stored in accordance with relevant national guidance, Codes and the appropriate practice of an issuing authority.

This is important as any evidence could be required in a prosecution (this theme is developed further in Section Five).

### Identifying offences – the right fixed penalty notice for the right offence

Ensuring that the right fixed penalty notice is issued for the right offence is at the heart of the fixed penalty notice enforcement system.

The question that has to be asked is how can an authority successfully prosecute, following the non-payment of a fixed penalty notice, if the offence that it was issued for in the first place wasn't an offence for which the fixed penalty notice could be applied?

The answer is simple, it cannot.

The Clean Neighbourhoods and Environment Act 2005 extended the offences for which a fixed penalty notice can now be offered, in response to local authority demands for a more flexible approach to deal with certain environmental crimes in a quick and efficient manner.

The other reason that the fixed penalty notice regime was extended was to ensure that there were fixed penalty notices available for specific offences and to counter the emerging practice, at the time, of using certain fixed penalty notices for offences that they were not intended to be used for.

The message here is simple, fixed penalty notices should only be used for the offence for which they were created. To fail to abide by this rule makes prosecution for the original offence, should a fixed penalty notice go unpaid, problematic and could be open to challenge in the court. Which in turn could create problems for an authority if it had employed such practice over a period of time.

## Using the litter fixed penalty notice for the wrong offence

Set out in the table below are some examples of when, in the past, litter fixed penalty notices have been used for the wrong offence, or when there was no evidence that the person to whom the notice was issued actually committed the

offence in the first place. Defra is keen to see that such practice does not continue.

The first column illustrates the offence for which litter fixed penalty notices have been wrongly issued. The second column describes what is considered, for illustrative purposes, to be the more appropriate form of action.

## Litter fixed penalty notices for the wrong offences

Description of offence	More appropriate form of action
<ul style="list-style-type: none"> <li>Domestic bins put out at the wrong time.</li> </ul>	<ul style="list-style-type: none"> <li>To use a fixed penalty notice available under section 47ZA of the Environmental Protection Act 1990 for offences committed under s.46.</li> </ul>
<ul style="list-style-type: none"> <li>Small scale fly tip of a fridge and/or a few black plastic bags.</li> </ul>	<ul style="list-style-type: none"> <li>Gather evidence and pursue prosecution for the offence of illegal deposit of waste, for which a fixed penalty notice is not available.</li> </ul>
<ul style="list-style-type: none"> <li>To pursue the registered keeper of a vehicle after litter was witnessed being deposited from a passenger window.</li> </ul>	<ul style="list-style-type: none"> <li>Investigate the offence and if there is sufficient evidence to prove a case against the individual who committed the offence (a passenger), then issue a fixed penalty notice to them under s.88 of the Environmental Protection Act 1990.</li> </ul>

## Was it dropped or did it fall? Intentional versus unintentional littering

The essence of the question posed above is, does the unintentional dropping of a piece of litter constitute an offence? If a strict interpretation of the littering offence is applied, as described in section 87 of the Environmental Protection Act 1990 (i.e. 'any individual who throws, drops or otherwise deposits litter....') then yes an argument could be made that if something, for example, falls out from someone's pocket, then according to the letter of the law an offence has been committed.

However, Defra's view is that a fixed penalty notice should only be issued where there is evidence of intent; this is to say that someone clearly meant to drop the litter in the first place. Ultimately this comes down to what is or isn't in the public interest and it is Defra's view that it is not in the public interest to issue a fixed penalty notice where there is not clear evidence that the individual intended to cause litter.

A practical way to deal with such situations, where there is doubt over intent, is for the enforcement officer to challenge the person and to state that they have seen them drop something and to ask them to pick it up. Should the individual refuse to pick up the litter then there would be more sustainable grounds for issuing a fixed penalty notice and pursuing prosecution, should the fixed penalty notice go unpaid.

## When not to issue fixed penalty notices

Fixed penalty notices should not be issued where there is not enough evidence to support prosecution in the magistrates' court for the original offence, should a fixed penalty notice go unpaid. Alongside this, there are other circumstances when it is considered inappropriate to issue fixed penalty notices, these include:

- when the person in question is in some way 'vulnerable', such as the mentally impaired;
- when the offence that has been committed is considered to be too 'serious' in scale or effect to merit a fixed penalty notice;
- when the offence that has been committed is so small or trivial in its effect that action might not be in the public interest;
- those exempted within the law, for example the dog fouling offence, such as the blind or disabled people (not including the deaf) in respect of a dog on which they rely for assistance;
- when the offence is committed by someone that has previously received a fixed penalty notice for the same offence;
- when the person challenged is either non-cooperative, aggressive or violent; or
- when the offence is committed by a child under the age of ten.

In developing its operational policy an authority will need to consider how it proposes dealing with such circumstances, where the most pragmatic course of action will not



always be to issue a fixed penalty notice. In doing so, the authority can offer guidance to its enforcement officers on how to deal with such events.

Some further thoughts are set out below.

### Dealing with the vulnerable

In essence, the vulnerable, for the purpose of this guide, are those that might lead 'chaotic' lifestyles, for example the homeless, or those that suffer from a mental impediment.

In relation to this 'group' any authority using fixed penalty notice enforcement will need to ask itself what is to be gained by issuing a fixed penalty notice to such an individual? In all probability it will go unpaid and prosecution in the magistrates' court would be at best problematic and at its worst, not in the public interest.

In relation to those that might be homeless, it is very unlikely that they will have the money to pay a fixed penalty notice. Nor will they have a permanent address to which correspondence can be sent to pursue prosecution, should the fixed penalty notice go unpaid. That said, should an authority succeed in bringing a case in the magistrates' court, given the circumstances, the magistrates might question the interests of pursuing such a case and discharge the accused.

A better approach might be to ask any such offender to rectify their actions, such as picking up any litter that they might have dropped, and use the opportunity to educate and offer further 'wider' support that might be appropriate to the individual in question.

In relation to those that might suffer from a mental illness, the authority has to again ask itself, is it in the public interest to pursue action against such individuals? If they don't the magistrates might well ask this question, as could the media.

### When the offence is too large/serious in its effect on the community

Fixed penalty notices should only be used for relatively minor offences. Where an offence is considered to be anything more than minor the authority should consider taking action in the magistrates' courts.

The reason for this is that for some of the environmental offences, offenders might consider a fixed penalty notice as more of a 'tax' than a penalty; and as a consequence might not address their offending behaviour.

To this end, an authority will need to define what constitutes a more 'major' offence as opposed to a 'minor' offence. Some examples are set out in the box overleaf.

## Examples of when a fixed penalty notice is not always considered to be appropriate

Offence type	Offence description
<b>Littering</b>	<ul style="list-style-type: none"> <li>• The deliberate smashing of a glass bottle</li> </ul>
<b>Graffiti</b>	<ul style="list-style-type: none"> <li>• When the act involves the etching of a surface, making the cost to repair the damage high</li> <li>• A large mural or tag – again making the costs of repair high; or</li> <li>• Racially and/or religiously offensive graffiti.</li> </ul>
<b>Fly posting</b>	<ul style="list-style-type: none"> <li>• Large scale commercial fly posting, which is commercially motivated and expensive to remove and repair; and</li> <li>• That which involves multiple posters.</li> </ul>
<b>Failure to produce authority (waste transfer notes)</b>	<ul style="list-style-type: none"> <li>• Where the offence constitutes large amounts of waste, from a medium to large enterprise, covering a longer period of time.</li> </ul>

## Summary offences versus indictable offences

In practice, the overwhelming majority of environmental offences are 'summary offences', this is to say they are criminal offences that are tried summarily, in front of the magistrates.

On very rare occasions a few of the environmental offences will be considered to be indictable offences. An example of this would be a graffiti offence where the cost of the 'criminal damage' exceeded £5,000 and where the maximum penalty for those aged 18 or over is ten years imprisonment if tried by a jury in a crown court.

Any authority prosecuting indictable offences should take its own legal advice before pursuing such offences and seek to involve the police.

## When the offence is small

This is probably the hardest area for an authority to define, i.e. when an offence is so small that it would not be in the public interest to issue a fixed penalty notice or to prosecute in the magistrates' court.

Such circumstances are only likely to arise in relation to minor littering offences. Some examples are given below:

- A dropped crisp;
- Some bread that is dropped on the ground to feed some ducks; or
- A piece of orange peel.

Ultimately, it is for the authority to decide where the line is drawn, however any authority should be mindful of how the public might perceive enforcement against the circumstances illustrated above, which along with the media might not be sympathetic.

## Repeat offenders

Unfortunately, there will be those that having received a fixed penalty notice fail to modify their behaviour. This is to say they go on to commit a further offence. Defra's view is simple – a fixed penalty notice is a 'once only offer'.

The reason that this is important is that fixed penalty notices are more than just a fine, they are a means to change offending behaviour. If someone commits a further offence, having previously been issued with a fixed penalty notice, then it can be argued that the original fixed penalty notice has failed to have the desired affect. It therefore follows, that on being caught for a second offence, the only sensible action for the enforcing authority is to take enforcement up a level and prosecute the alleged offender in the magistrates' court.

It is very important that enforcement officers have ready access to enforcement records so that the appropriate checks can be made.

If an authority does not issue its fixed penalty notices on the spot, but does so through the mail, at a later date, having obtained the details of the alleged offender and gathered any supporting evidence, then the authority has the advantage of being able to undertake checks back in the office, including previous offences.

If an authority issues its fixed penalty notices in the field, that is 'on the spot', then finding out about an alleged offenders previous record is less easy as access to information needs to be that much more immediate.

Technology can offer solutions, such as handheld devices that many enforcement authorities use, which can check an individual's details against a database of known offenders.

Whichever approach is used, if there is no such history an alleged offender can be issued with a fixed penalty notice in the normal way. However, if they have had a fixed penalty notice for a similar offence in the past, then the authority can instead prepare the case for prosecution in the magistrates' court and inform the alleged offender of the decision and then issue a summons in the normal way.

(A fuller description of the 'pros' and 'cons' of issuing fixed penalty notices 'on the spot' or through the mail is given later in this section).

## Fixed penalty notices for the non-cooperative, aggressive or violent

There will be occasions when people that are challenged over an offence react by being non-cooperative, and on rare occasions, by being aggressive or violent.

It is Defra's view that fixed penalty notices are a convenient way for an alleged offender to dispose of any liability for an offence that they have committed. Authorities are under no obligation to offer a fixed penalty notice to anyone that has committed an offence if they feel it is inappropriate in the particular circumstances of the case. It should not be thought of as a precursor to prosecution in the magistrates' court.

It therefore follows that if someone who is challenged is non-cooperative, and/or aggressive or violent, a fixed penalty notice may not be appropriate.

## Dealing with the non-cooperative, aggressive or violent

<p><b>The non-cooperative</b></p>	<ul style="list-style-type: none"> <li>• If someone is non-cooperative, for example is unwilling to give their details, they should be reminded that failing to do so constitutes a further offence and should they fail to cooperate that they will be prosecuted in the magistrates' court for the offence that they are alleged to have committed, along with the further offence of failing to provide their details.</li> <li>• If they then cooperate, it is considered appropriate to issue a fixed penalty notice.</li> <li>• However, if they don't, the details of the offence should be recorded, enquiries as to their identity undertaken, and prosecution pursued where possible.</li> </ul> <p>(Further advice on dealing with 'identities' is given below)</p>
<p><b>The aggressive</b></p>	<ul style="list-style-type: none"> <li>• Those who are aggressive – that is use offensive or threatening language or behaviour – should not be offered a fixed penalty notice.</li> <li>• If their identity can be secured, without the enforcing officer putting themselves at risk, this should be obtained.</li> <li>• The details of the offence, along with a full account of the exchange that took place when challenged, should be recorded in the notebook and prosecution pursued in the magistrates' court where the events of any 'confrontation' should be put before the court so that the magistrates are aware of the aggravating circumstances.</li> </ul>
<p><b>The violent</b></p>	<ul style="list-style-type: none"> <li>• It should be rare for an alleged offender who is violent towards an enforcement officer to be offered a fixed penalty notice.</li> <li>• In the first instance, the enforcement officer should secure their own safety, then the police should be involved.</li> <li>• If an alleged offender is later 'caught' by the police the authority can take prosecution for the alleged original offence in the magistrates' court, where the full circumstances of the offence, including any confrontation, can be put before the magistrates.</li> </ul>

## When the offence is committed by a child under the age of ten

Enforcing against children and offering fixed penalty notices to those aged under ten, is simply not an option. A child under ten is below the age of criminal responsibility, and in the eyes of the law has committed no offence.

However, it might be appropriate for the authority to get in touch with the child's parent or guardian to make them aware of any 'wrongdoing', so that they might be able to educate the child.

## Getting the right identity

A further change brought in by the Clean Neighbourhoods and Environment Act 2005 is the power to require the name and address of an alleged offender. In practice this makes it an offence for a person, who an enforcement officer proposes to give a fixed penalty notice to, to fail to give their name and address when required to do so, or for them to give false or inaccurate name or address details.

This power applies to all of the relevant fixed penalty notice powers and was brought in to close a loophole where anyone offered a fixed penalty notice in the past could give false details, safe in the knowledge that they were not committing an offence.

However, the question that still arises is how does an enforcement officer know whether someone is giving them false details or not and what should they do if they suspect this to be the case?

It is Defra's view that a fixed penalty notice should only be offered where the enforcement officer is confident that the correct details have been provided.

If there is any doubt over someone's identity they should not be offered a fixed penalty notice at that time. Rather, the enforcement officer should see if it is possible to verify the individual's identity, either at the time or at some later time.

If, following further enquiries, it turns out that the alleged offender was providing the correct details then a fixed penalty notice can be issued through the mail.

However, if it transpires that they were providing false details and the enforcement officer is subsequently able to find out their identity, then rather than issuing a fixed penalty notice, a more appropriate course of action is likely to be to prosecute them in the magistrates' court for the original offence in addition to the offence of refusing to provide name and/or address or failing to provide accurate name and address details.

By attempting to mislead an enforcement officer they would have effectively lost the 'convenience' of a fixed penalty notice.

This is important, as by pursuing those that refuse to give details or who give false details, through action in the magistrates' court, the authority is seen to take a hard stand on such offences and a powerful message can be sent to the wider community that such subterfuge will not be tolerated.

It is accepted that such an approach will mean that some offences go unpunished, in that if someone has given false details and subsequent enquiries fail to identify their true identity, the prospects of prosecution are low. However, such a position is better than issuing a fixed penalty notice that will go unpaid and for which there are no prospects of following up.



## Getting, checking and verifying someone's details

Issuing a fixed penalty notice relies on getting the alleged offenders correct details. There are a number of approaches that can help with this:

### ***Barnsley Metropolitan Borough Council***

– Enforcement officers always ask for an alleged offender's home postcode first, as this is often harder to make up and if they do go on to give a false name and address there is every chance that the postcode was correct and follow up enquiries can be made. Details are also then checked by contacting the Authority's Council Tax Office for confirmation of address and occupiers at that time.

Further, an enforcement officer can ask an alleged offender if they have any identification on them – however, this does not have to be provided. That said, if an alleged offender seems unwilling to provide a form of identification then this should serve to alert the enforcement officer to consider using some other means to check an alleged offender's identity. Some further options are given below.

***Newcastle City Council*** – Has a system where an enforcement officer can phone into the office to check someone's details against the electoral register or with council tax records. Other authorities, through the use of palm tops, have instant access to such information or that which might be provided through an electronic telephone directory.

***Gedling Borough Council*** – When they are enforcing around a school, enforcement

officers go into the school and check a young person's identity with the staff at the school.

At the end of the day, getting and recording a good description of an alleged offender is vitally important. Particularly, if wrong details are given and investigations then lead to a later correct identification, so allowing prosecution, not only for the original offence, but also the second offence of providing false details.

## Getting a date of birth

Enforcement officers do not have the power to require someone alleged to have committed an offence to give their date of birth, regardless of age, in the same way that they do for name and address. However, it is sensible to ask for this information as some magistrates' courts have required the date of birth of an alleged offender before they will issue a summons.

## To issue fixed penalty notices on the spot or through the mail?

Depending on the circumstances of the case, a fixed penalty notice may be issued on the spot or through the mail.

Both approaches have advantages and disadvantages; this section of the guide explores these further. However, there is an argument that enforcing authorities should retain the ability to issue fixed penalties by mail if their normal means of operation is to issue fixed penalty notices on the spot, particularly in light of the identity issues that have already been referred to.

## On the spot versus through the mail – The advantages and disadvantages of both approaches to issuing fixed penalty notices

	Advantages	Disadvantages
<b>On the spot</b>	<ul style="list-style-type: none"> <li>• Immediate response</li> <li>• More efficient</li> <li>• Keeps enforcement staff out on the frontline rather than back in the office dealing with paperwork</li> <li>• A visible response</li> </ul>	<ul style="list-style-type: none"> <li>• Harder to check for previous offences</li> <li>• Harder to verify identity</li> <li>• Greater scope for error</li> <li>• Reduced opportunity for quality control</li> <li>• Could be more confrontational</li> </ul>
<b>Through the mail</b>	<ul style="list-style-type: none"> <li>• Better quality control</li> <li>• Evidence can be checked before fixed penalty notice is issued</li> <li>• Names and addresses can be fully checked before fixed penalty notice is issued</li> <li>• More opportunity to check for previous offences</li> <li>• An enforcement officer can withdraw more readily from a situation if it looks like it might become confrontational</li> </ul>	<ul style="list-style-type: none"> <li>• More resource intensive and therefore more expensive</li> <li>• Risk that those who may have committed an offence might not understand the consequences of their actions at the time of challenge</li> </ul>

Regardless of the approach taken by an authority they should be aware of the shortcomings of each and ensure that they put systems in place to mitigate these.

In relation to issuing fixed penalty notices on the spot, this means making sure that there are proper systems in place to check someone's identity and also to see if they

might have committed any similar offences in the past. However, most important is the need to ensure that enforcement work on the street is being done to an appropriately high standard and that the quality controls that are more a part of the 'through the mail' method of working are equally vigorously applied when fixed penalty notices are issued 'on the spot'.

## Using the Driver and Vehicle Licensing Agency (DVLA) Web Enabled Enquiry System (WEES) to gain offender details

The WEES provides authorised local authorities round the clock access, through an authorised officer, to the DVLA's vehicle keeper database.

Originally conceived to help authorities better deal with abandoned vehicles it has now been enhanced to allow enquiries to assist the investigation of other environmental offences, where a vehicle is involved.

The system can be used to get vehicle keeper details where a vehicle is:

- abandoned; or
- causing a nuisance.

Or used in connection with:

- fly-tipping;
- littering;
- dog fouling; or
- fly-posting.

Where a vehicle is causing a nuisance this includes those that are being repaired or sold on the road. The definition of fly tipping also includes litter that is thrown from a car.

In the case of dog fouling, if the owner of a dog fails to clean up after it has fouled, and then returns to a car, the vehicle keeper details can be requested through the WEES so as to help with any investigation.

The WEES also has a category of offence titled 'Damage to street furniture'. This does not cover graffiti.

It is important to remember that having obtained a vehicle keeper's details, in the absence of other evidence, this information is not enough to then issue a fixed penalty notice to the registered keeper, as it may not have been them that committed the offence in question.

## Litter from vehicles

Enforcing against those that throw litter from a vehicle is not impossible but it does require a certain amount of diligence.

It is not appropriate to issue a fixed penalty notice to the registered keeper of a vehicle based only on the details obtained through the DVLA's WEES. The reason is simple, they may not have been driving the vehicle or, if the litter was seen coming from a passenger window, it is less likely that the driver would have been the person throwing the litter from the vehicle.

The only circumstances when it is going to be appropriate to issue a fixed penalty notice to someone alleged to have thrown litter from a car is when they have been properly identified as responsible for the litter, or if at some later date they admit to the offence under caution.

## Building a case against litter from a vehicle

### *Scenario one – an enforcement officer clearly sees a person throw a crisp packet from a car window*

In this scenario, the enforcement officer has been able to get a good 'look' at the person that has thrown the crisp packet. This means that they are able to record a good description of the appearance of the alleged offender, in their notebook, along with a description of the car (make, model and colour), its registration number, the time and location of the alleged offence (the road name and number, e.g. the B253), a description of what was alleged to have been thrown from the vehicle (in this case a crisp packet) and any other relevant detail.

Having returned to the office, through an approved officer, the WEES can be checked and the registered keeper's details can then be obtained.

Assuming that the vehicle's details match with those that were recorded at the time, the enforcement officer can then set about confirming the identity of the alleged offender. There are three pragmatic routes that can be taken to confirm the identity of an alleged offender. These are given below:

- for the enforcement officer, who originally witnessed the alleged offence, to visit the address of the registered keeper to see if they are the person they witnessed, or if they might be able to provide information as to who might have been driving the vehicle at the time of the alleged offence;
- for the enforcement officer to write to the registered keeper to invite them in for an interview;

- for the enforcement officer to write to the registered keeper 'under caution' (see earlier explanation under '*Correspondence under caution*') to gain further details in relation to the offence.

Of these approaches, the first, to visit the address of a registered keeper is always considered to be the best practice; in that the registered keeper may be present at the address and a visual identity will be able to be made there and then. This can then be followed with a caution and other supporting evidence gathered to address the 'points to prove'. Further, if they do not match the description of the alleged offender they might be able to provide details as to who might have been driving the car or a passenger that might have thrown the crisp packet out of the window – who can then be identified and interviewed.

The second option, to write to the keeper and invite them in for an interview, may also prove fruitful, however, they may decline the invitation or, having attended, they may not match the description of the person witnessed committing the alleged offence. In the latter case, the enforcement action is back to square one and should they not be able to provide details of who might have committed the offence then the case is effectively closed.

The third option, to write to the registered keeper under caution, is the least favoured option; however it might be considered appropriate if the registered keeper is not from the immediate area. This is to say, they respond to a letter admitting their guilt then a fixed penalty notice can be issued.

***Scenario two – an enforcement officer witnesses a crisp packet being thrown from a car, yet is unable to visually identify the person who may have done it***

Issuing a fixed penalty notice against an offender in this instance is always going to be more problematic. The only way that this can be achieved is if an enforcement officer can obtain an admission of guilt or gather other evidence that can support, beyond reasonable doubt, an allegation that a certain individual did commit an offence.

Any evidence can be obtained in the same way as set out under scenario one, however, this is always going to be harder and an authority is best advised to consider carefully, if in this instance, it is a wise use of resources to pursue an investigation.

In summary, before issuing a fixed penalty notice against someone who is alleged to have committed an offence, the enforcement officer needs to be confident of the identity of the alleged offender and that the relevant 'points to prove' have been covered, or that they have secured an admission of guilt.

Enforcement action can be taken against those that litter from a vehicle; however it is far more labour intensive than enforcement action that is taken on the street where alleged offenders can be directly challenged and full evidence collected at the time.

**Enforcing against litter from vehicles – the Gedling Borough Council experience**

**Gedling Borough Council** has taken a tough line on litter from vehicles and has shown that by following an agreed approach, with evidence very much at the heart, successful fixed penalty notice enforcement can be achieved.

If a person is witnessed dropping litter from a vehicle and an officer of the authority is able to get a good description of the alleged offender, having obtained the vehicle keeper details from the WEES, they will visit the address where the vehicle is registered and see if there is someone at the address that matches the description. If there is they will interview them.

Subsequently, a fixed penalty notice is issued through the post, after review by the enforcement manager, to the alleged offender.

If the registered keepers details are from an area outside of the Borough, rather than visit the address a letter 'under caution', detailing the alleged offence and the potential consequences, along with a series of questions, is sent to the keeper's address. If the registered keeper replies and admits the offence then a fixed penalty notice is issued; if not, the authority considers its next step.



## Quality control

The success of an authority's use of fixed penalty notices is dependant on the many factors that have been highlighted throughout this guide, from having the right strategic framework within which to operate, through to the right staff, who have been properly trained, resourced and equipped, to do the job – from issuing through to prosecution in the magistrates' court.

Any authority that undertakes fixed penalty notice enforcement will need to ensure high standards across the service. This, in relation to the issuing of fixed penalty notices, means that there must be robust quality control systems in place to ensure standards and consistency.

Poor practice or inconsistencies in application of the law will bring the authority into disrepute with their residents and undermine confidence in a service which aims to improve the quality of the local environment for all.



## Ensuring standards

**Gedling Borough Council** – All fixed penalty notices are issued through the mail with the service manager reviewing all cases before a fixed penalty notice is issued.

**Leeds City Council** – Sends a postal questionnaire to those that have been issued with a fixed penalty notice to get their views on the service that they received.

**Barnsley Metropolitan Borough Council** – As one of its quality assurance systems, the service manager shadows the work of its enforcement staff, from time to time.





## Section Four – Using fixed penalty notice enforcement against young people

This section sets out:

- some fundamental principles of using fixed penalty notices against young people;
- the need to agree an approach to enforcing against young people;
- some of the rules to follow on youth enforcement;
- the other options available to tackle environmental offending by young people;
- the need to work with the Youth Offending Team; and
- the role of the magistrates in the youth court.

### Introduction

Whilst issuing fixed penalty notices to those aged 18 and over is in most peoples' minds uncontroversial, the same could not be said when it comes to issuing to those aged under 18.

Further, taking enforcement action against young people doesn't follow a set pattern across the country; many local 'variables' come into play, such as the view of the local magistrates. For example, some will not want to give a criminal record to a young person for dropping a sweet wrapper or an authority's members might not support fixed penalty notice enforcement against those aged under 18.

In some instances, this will mean that enforcement against young people is at best problematic, however, in other areas, given a degree of co-ordination, enforcement against

young people can work, and should cases end in the courts, successful prosecutions can occur.

This section of the guide will offer advice under the following headings:

- Fundamental principles;
- Agreeing an approach to young people;
- Some rules to follow on enforcing against young people;
- To issue or not to issue a fixed penalty notice;
- Working with the youth offending team; and
- The youth court.

Further, this section of the guide will show how action is being taken by three authorities and how they are tackling environmental offending by young people.

The advice contained in this part of the guide, needs to be considered alongside Defra's publication, *'Issuing Fixed Penalty Notices to Juveniles'*.

An authority's approach to dealing with environmental crime by young people should then be brought together and set out in its enforcement strategy and its operational policy (Section Two) to help ensure that the use of the powers against young people are not only proportionate, and well applied, but are properly considered in the first place.

It may be the decision of an authority that it doesn't want to issue fixed penalty notices against young people, or that it only wants to issue them to young people aged 16 and

over. This is very much a political decision for the authority to make. If an authority decides that it will not take enforcement action against young people, then it should consider in greater detail how it plans to make young people aware of their responsibilities and how they might go about educating them so as to encourage them, for example, not to drop litter in the first instance.

### The alternatives to fixed penalty notice enforcement

Many authorities may decide that fixed penalty notice enforcement against those under 18 is not for them.

If this is the case then it needs to explore how else it plans to prevent environmental crime by this age group and what alternative action it might take, should an offence be witnessed. A few of the alternatives are highlighted below:

- schools based education;
- warning fixed penalty notices – issued, but without penalty, to those witnessed committing an offence; and
- letters to parents or guardians.

And for the more serious offences, such as graffiti, or persistent offending, in partnership with the youth offending team and police:

- Anti-social Behaviour Orders;
- Acceptable Behaviour Contracts; and
- formal reprimands and warnings.

### Fundamental principles

Enforcing against those aged under 18, and in particular issuing fixed penalty notices, is not as straightforward as dealing with those aged 18 and over – a whole new set of rules come into play.

Authorities have a duty to ensure that they are acting in accordance with the Children Act 2004; this requires children's service authorities, including local authorities, 'to discharge their functions having regard to the need to safeguard and uphold the welfare of children'.

Alongside this, it needs to be remembered that under the youth justice system prosecution is a measure of last resort. In practice, magistrates are often reluctant to give a young person a criminal record, particularly for the more minor of offences. This has been the reality for a number of authorities that have sought prosecution in the youth court for littering offences.

However, as the published Defra guidance on issuing fixed penalty notices to young people makes clear, an authority, in developing its approach to dealing with young people who may commit environmental crimes, should do so in partnership with the local youth offending team and the police.

However, as with the issuing of any fixed penalty notice, if an authority goes down the route of issuing them to young people and they go unpaid, prosecution in the youth court should always be the presumed next course of action, unless there is good reason not to do so.

This is important, as an authority should not be tempted to adopt a policy of just issuing fixed penalty notices and not following them up as this, ultimately, will undermine the system.

### Points to remember

- Parents and guardians are not responsible in law for paying a fixed penalty notice issued to a young person in their care. If, however, a young person is successfully prosecuted in the youth court and they are punished with a fine, the parent or guardian becomes responsible for payment.
- Under the youth justice system, prosecution is a measure of last resort; this can make prosecution of young people for minor environmental crimes in the court problematic.
- In developing and implementing fixed penalty notice enforcement against young people, an authority needs to agree practices and procedures with the local youth offending team.
- The youth offending team should be informed when a fixed penalty notice is issued to any young person aged 10-17 years old unless alternative arrangements have been reached with them.

- A fixed penalty notice should not be issued when a young person is suffering from a mental impairment or mental health problems, or where they are distressed or confused or if they appear under the influence of alcohol or drugs. In such circumstances the relevant support agency or the police should be contacted to deal with the initial problem. Any action over an alleged offence can be followed up at a later date, if appropriate.

### Agreeing an approach to young people

To use fixed penalty notice enforcement against those aged under 18 is very much a political decision for an authority – it is not something that Defra has a view on.

However, where Defra does have a view, is in ensuring that any enforcement against young people, where it is undertaken, is carried out in a way that does not damage the credibility of the system.

By way of general guidance, in developing an approach to undertaking fixed penalty notice enforcement against young people, it is considered sensible practice to develop separate approaches to those aged 10-15 years of age and those aged 16 and 17.



## Dealing with different age groups

Age group	Action
<b>All young people</b>	<p>On approach, following an alleged offence, the name address, age and date of birth of the alleged offender should be obtained, together with the name and address of his or her parents or legal guardian.</p> <p>They should be informed that this information will be shared with the local youth offending team.</p> <p>No caution should be given or interview be undertaken without the presence of a 'responsible' adult unless the young person is 17 (a further explanation is given below).</p>
<b>10-15 year olds</b>	<p>Where an offence is straightforward and 'clear cut' (such as a littering offence) and a formal interview is not required, a fixed penalty notice may be issued.</p> <p>However, in lieu of an alternative arrangement, it is considered to be good practice to consult the youth offending team before any fixed penalty notice is issued, see '<i>Working with the youth offending team</i>' later in this section. If this practice is accepted, the implication is that any fixed penalty notice would be issued at a later date, i.e. through the mail, after a discussion with the youth offending team.</p> <p>In all instances, a young person's parents or legal guardian of this age group should be informed at the earliest opportunity, ideally by letter, explaining the action taken, and to give the opportunity to discuss the case with a relevant officer of the authority.</p> <p>If the youth offending team is not consulted on the issuing of a fixed penalty notice, it should be informed that one has been issued and given the chance to comment, where appropriate, on any follow-up action that might be appropriate.</p>
<b>16-17 year olds</b>	<p>Once the age of the alleged offender has been ascertained, fixed penalty notices can be issued to this age group.</p> <p>However, if there are any doubts over the alleged offender's age, i.e. they could be aged under 16, the procedures set out above for 10-15 year olds should be followed.</p> <p>As with 10-15 year olds, where an offence is straightforward and 'clear cut' and a formal interview is not required, a fixed penalty notice may be issued, however, again it is considered good practice to issue a fixed penalty notice after consultation with the youth offending team.</p> <p>The local youth offending team should be informed of the offence and given the chance to comment, where appropriate, on the action to be taken.</p>

## Some rules to follow on enforcing against young people

At the heart of any enforcement against young people is the need to safeguard and uphold the welfare of the child.

This comes to the fore at the enforcement interface, when a young person is challenged, having been witnessed committing an offence. In practice, any authority is advised to carefully consider its approach when approaching/challenging a young person.

Some additional issues to consider when approaching young people are set out below, however, even though these considerations appear in this section they are considered to be relevant practice for all enforcement activities:

- enforcement staff should always be in uniform;
- an enforcement officer should never physically touch a young person;
- any approach should be made from in front of a young person and not from behind;
- at the earliest opportunity the enforcement officer should identify themselves and offer their formal identification; and
- when undertaking enforcement work against young people it is recommended to work in pairs.

Over and above this, as has been suggested previously, all enforcement staff must provide an enhanced Criminal Records Bureau Certificate.

## Interviewing young people under caution

Interviewing young people under caution brings with it additional responsibilities – namely young people aged under 17, or those that appear to be under 17, in the absence of clear evidence that they are older, should only be interviewed when there is an ‘appropriate’ adult present.

An appropriate adult is the young person’s parent or legal guardian; or if the young person is in care, an adult from the care authority.

This has clear implications for the issuing of fixed penalty notices, which will now be considered.

In the majority of instances where a young person under 17 might commit an offence, it is safe to assume that they will not be with their parent or guardian, or another responsible adult.

Given this, it will always be hard to caution and interview the alleged offender at the time of offence; and given the requirements for good evidence to support the issuing of a fixed penalty notice, in all but the clear offences (such as a littering offence) then a fixed penalty notice should not be issued until an interview has been conducted and suitable evidence collected. This is relevant for the other offences for which a fixed penalty notice might be appropriate, for example the graffiti and fly posting offences.

If an interview is required, good practice dictates that a fixed penalty notice should only be issued at the conclusion of an interview and in the presence of the young person’s parent or guardian.

## To issue or not to issue a fixed penalty notice?

Given that potentially every fixed penalty notice that is issued to young people could end in prosecution in the youth court, any authority that plans to issue fixed penalty notices to young people needs to consider their approach carefully.

It is important for an authority to think about the circumstances when it will issue fixed penalty notices, so that should prosecution be required they will be able to show that the action they are taking is an action of last resort.

To achieve this, an authority might want to consider the following additional steps, before and after issuing a fixed penalty notice:

- take a school assembly explaining the laws and the consequences;
- in the instances of a first offence, offer a warning (as in the practice illustrated in the Bolton case study); and/or
- if an offence is committed, such as littering, ask the alleged offender to pick it up (see box below, *'To pick up or not to pick up?'*).

Having issued a fixed penalty notice:

- allow payment in instalments (see Section Five);
- allow a longer payment window (see Section Five); or
- offer an alternative to the payment of the fixed penalty notice, such as a litter pick.

If the additional steps, which are set out above, are undertaken or offered, it is easier to argue in the youth court, should a prosecution be taken, that prosecution was in fact a last resort.

## To pick up or not to pick up?

Taking the littering offence, like an adult, any young person aged over ten has committed an offence when, for example, they drop a crisp packet while walking through a park. This is regardless of whether they knew that they were committing an offence or not.

In this instance, a local authority enforcement officer is acting within the law to issue a fixed penalty notice for the offence that they have witnessed.

However, whilst ignorance of the law is never a defence in the court, a more pragmatic approach that an authority might want to consider when enforcing against young people is to offer the young person an opportunity to pick up what they have dropped and to put it into a bin or otherwise ensure that it is disposed of properly.

In practice, the enforcement officer, having witnessed the crisp packet being dropped, could approach the young person, introduce themselves and then explain that by dropping the crisp packet they had committed an offence and that the authority had a policy of issuing fixed penalty notices to those that committed such offences.

It could then be explained to the young person that given their age they would be given the chance to put right what they had done; and if they agreed to pick up their crisp packet and put it in the bin, no further action would be taken.

Should the young person choose to ignore the enforcement officer, the officer then has the option to issue a fixed penalty notice, which if appropriate, could be commuted

to a final warning. If this is the action taken and the case ends up in court, following non-payment, then, arguably, there will be far better prospects for a favourable hearing in that the authority, through its enforcement officer, had shown leniency, only for the offer of an alternative course of action to a fixed penalty notice being ignored.

## Working with the youth offending team

Authorities that are, or might be considering, undertaking fixed penalty notice enforcement against young people are strongly recommended to develop their policies and procedures with the local youth offending team. By doing this a more joined up approach can be realised when tackling youth offending.

As a minimum, an authority should inform the youth offending team that they have issued a fixed penalty notice to a young person so that they can maintain that information on their system, should they wish to do so, unless alternative working arrangements have been agreed.

However, it is considered good practice for an authority to consult the youth offending team before they issue a fixed penalty notice to a young person, so as to give an opportunity to the youth offending team to offer advice as to whether they feel that a fixed penalty notice for a particular individual is appropriate. This is particularly relevant when it might transpire that a young person, who has committed an environmental crime, might already be involved with the youth offending team and the youth offending team might be better placed to offer an alternative course of action.

## The youth court

Unlike someone aged 18 and over, a young person, should they be prosecuted for an environmental offence, having not paid a fixed penalty notice, will be prosecuted in the youth court.

It is the role of the magistrates in the youth court to decide any punishment – however, for an authority to be successful in securing a prosecution they will need to demonstrate that they have taken all steps to keep the young person out of the court, these include those that have been described previously, under the heading *'To issue or not to issue a fixed penalty notice?'*.

Over and above this, it is considered good practice for an authority to meet the magistrates and/or the clerk of the youth court when preparing its own policy in this area and to get their views on the approach the authority plans to take in relation to issuing fixed penalty notices to young people. Such a meeting would be an opportunity for the authority to explain why it wants to enforce against young people and the steps that it proposes to take in order to keep them out of the court. Whilst, at the same time, to get an initial view from the magistrates of their opinion, should a young person go on to appear before them.

If it is the view, even informally, that they would not welcome a young person younger than the age of, say, 16 being brought before them for a littering offence, even if it could be shown that the authority had taken all reasonable steps to keep them out of court, then an authority might come to the conclusion that there is little benefit in issuing fixed penalty notices to young people that are aged under 16.

## Dealing with environmental offences committed by young people

What follows is an overview of the approach taken by three authorities, Barnsley, Bolton and Leeds.

### The Barnsley experience

The experience of **Barnsley Metropolitan Borough Council** in enforcing against young offenders has been positive and shows that with the right approach much can be achieved.

Barnsley's approach has been multi-faceted, in that it is borne out of a considered approach to education, informing young people of the law and the consequences of litter, along with getting the right people on side to make enforcement effective.

With regard to getting the right people on side, Barnsley started the process by engaging the local youth council to get the representative view of those who stood to be affected by any enforcement activity. The youth council gave their full support and agreed that those of secondary school age and over should be liable for their actions and should they be caught littering they should be subject to a fixed penalty notice, with the proviso that education and publicity took place beforehand.

Further, Barnsley also reached an agreement with the youth offending team, which sees them passing on details of every young person that is alleged to have committed an offence and issued with a fixed penalty notice. This gives the opportunity for early alternative intervention if the young person

is already known to them. If the notice goes unpaid, or a litter pick is not undertaken (see below), then the youth offending team is contacted again to discuss what further actions they feel should be taken. This enables the youth offending team to comment on any wider issues at play and if, in their view, prosecution is appropriate.

The director of education was also consulted, and a presentation made at a heads, chairs/vice chairs of governing bodies meeting.

It is a general rule that before any targeted enforcement work is undertaken near schools, staff from the enforcement team give an interactive presentation in each year group's school assembly. Each pupil also receives a double sided, full colour 'teenage-centred' and slightly risqué leaflet, to reinforce the messages.

Enforcement is then targeted in the area around the school for a few weeks, where the enforcement staff work with the school and the safer neighbourhood team staff. If someone is witnessed dropping any litter, they are approached by the uniformed enforcement officers. Their identity is then confirmed by a member of staff, if necessary.

Rather than handing out a fixed penalty notice 'on the spot', the enforcement officer sends it out by post. However, the young person is given a short letter to give to their parents, at that time – this aims to ensure that the parents are aware of what has happened immediately, rather than having to wait for the information by post, which may take a few days, and gives details of who they had been approached by. At the same time as the young person is sent their



fixed penalty notice and explanatory letter, a letter is sent to the parent or guardian of the young person concerned, explaining what has happened and what action is being taken (and also advising them that their child was given an explanatory letter to give to them at the time they were spoken to).

In both the letter to the young person and the parent or guardian it is explained that the fine that is to be paid is set at £75. However, Barnsley offers a number of alternatives:

- Payment in full within 14 days;
- Payment in instalments, at £5 a week for fifteen weeks; or
- The option of a two hour Saturday litter pick and completion of some written 'litter homework'.

The preferred option that is offered is to undertake a litter pick. This is managed by the safer neighbourhood team wardens. If payment is to be made instead, it is asked that this is made by the young person, rather than the parents paying it all at once.

If the fine is not paid or no litter pick is undertaken within three months, the case is referred to the youth offending team for guidance, and then if considered appropriate, the authority's solicitor, ahead of prosecution for the original offence in the youth court. The youth offending team may also consider alternative methods of dealing with the offence.

This approach has proved to be highly successful at diverting young people from the courts as the vast majority pay the fine or undertake a litter pick.

For those that don't, and where it is appropriate to take action in the courts, Barnsley has been very successful in obtaining appropriate fines and costs. This is because they can tell the magistrates of the lengths they had gone to, to educate and the alternatives that they had offered the young person, both financial and non-financial, which were not taken up.

### The Bolton experience

When **Bolton Metropolitan Borough Council's** Environmental Education and Enforcement Unit introduced the use of fixed penalty notices for littering and dog fouling offences it also brought in specific policy and procedures to deal with offending by 10-17 year olds.

The reasons for this were three-fold:

- the Authority determined that the education based approach taken for many years with this age group should be backed up with a firm but fair approach against all those that committed offences;
- young people up to 18 years of age have to appear in the youth court and any prosecution needs to show that it is a 'last resort'; and
- young people generally do not have the independent means with which to pay a fixed penalty notice.

Central to the Authority's approach are litter surveys around schools and a rolling programme of educational presentations in all of the Borough's secondary schools. In 2005, 10,000 pupils received a presentation on the litter laws and what was expected of them.

The Authority's enforcement policy allows enforcement officers to issue fixed penalty notices to 10-17 year olds. However, for first time, non-aggravated, offences, the fixed penalty notice is commuted to a 'final warning', providing the young person admits they have committed the offence and he/she and their parent/guardian signs an official form accepting the final warning.

If a young person commits a second offence, following a final warning, a fixed penalty notice is issued and payment is required in the normal way. Should the fixed penalty notice go unpaid (or if a further offence is committed after a fixed penalty has been paid) the Authority involves the local youth offending team and, taking their advice, a decision is taken whether to prosecute or not.

Whenever offenders are prosecuted for the offence, information about the previous enforcement actions and the Authority's litter education project are included in the legal file. This confirms to the magistrates in the youth court that three or more steps will have been taken to keep the young person out of court.

Of the 450 fixed penalty notices issued to juveniles for littering, the vast majority have been commuted to a final warning.

There have been 15 second or aggravated offences that required payment; three offenders have been dealt with directly by the youth offending team, adding to existing reparations; and three court cases have been taken to the youth court (two conditionally

discharged with minimal costs and one given £50 fine and £50 costs, payable at £5 per week). In each case the magistrates expressed their appreciation of the steps taken by the Authority.

Since the policy was introduced two years ago, there has been a significant reduction in the level of littering around Bolton's secondary schools. The system has gained the widespread support of pupils, parents, schools and the local media.

### The Leeds experience

More than 4,000 litter fixed penalty notices have been issued by **Leeds City Council** since January 2004. The original policy was only to give fixed penalty notices to people older than 16. However magistrates in the youth court criticised prosecutions of 16 to 18 year olds, whilst the public thought that those under 16 were 'getting away with it'.

A scheme has been developed with the youth offending team to provide young people, caught littering, with the option of paying their fixed penalty notice, or undertaking a three hour litter pick to discharge the offence. The offenders' age range was extended to 14-18 year olds. The magistrates in the youth court could then judge offenders in the knowledge that they had not taken the option to pay a fixed penalty notice or the alternative litter pick to discharge the offence.

The youth offending team provides the sessional support, coordination and organises the litter picks.

## Section Five – Pursuing the non-payment of fixed penalty notices

This section sets out:

- why pursuing non-payment is so important;
- Defra’s definition of good payment rates;
- the importance of an appeals process;
- the scope for alternative payment options;
- the role of reminder letters;
- the need for robust back office systems; and
- some thoughts on preparing and taking cases to the magistrates’ court.

### Introduction

Throughout this guide, the point has been made that should a fixed penalty notice go unpaid then the normal course of action will be prosecution for the original offence in the magistrates’ court.

Given this, the need for authorities that use fixed penalty notice enforcement to strive for high payment rates becomes very apparent.

This section explores some of the options open to authorities to secure the good payment rates that Defra wants to see achieved; and it offers advice, beyond the black and white, by looking at other ways of encouraging payment of a fixed penalty notice, even after the 14 day payment window has closed; so helping to keep cases out of the magistrates’ court.

That said, should a fixed penalty notice still go unpaid, after reasonable opportunity to pay has been given, it sets out some of the considerations that need to be taken on board by authorities in their vigorous pursuit

of alleged offenders, who fail to pay a fixed penalty notice, in the magistrates’ court.

Prosecution in the magistrates’ court is not a simple exercise and a detailed explanation of these processes, beyond the overview offered, is outside the scope of this guide. Any authority using fixed penalty notice enforcement should satisfy itself, through its own legal team, that it understands fully the processes and the requirements that the legal system places on it before pursuing fixed penalty notice enforcement.

Advice in this section is set out under the headings:

- Defining good payment rates;
- The principles of payment;
- Appeals process;
- Alternative payment options;
- Reminder letters and final demands;
- Back office systems; and
- Pursuing offences in the magistrates’ court.

### Defining good payment rates

As a definition, the ‘payment rate’ is the percentage of fixed penalty notices that are paid against the number that are issued. This is to say, in a given year, if an authority issues 100 fixed penalty notices and 90 are paid, it has a payment rate of 90 per cent.

In an ideal world every fixed penalty notice that is issued would be paid, however, in reality, this will not be the case. On occasion, there will be reasons where to pursue payment would not be in the public interest, for

example, when further information about the circumstances of an alleged offender came to light or when someone that had been issued with a fixed penalty notice had moved and a forwarding address cannot reasonably be obtained.

Given current payment rates and the good practice that is being demonstrated by many authorities today, Defra believes that as an absolute minimum, authorities should be obtaining a 75 per cent payment rate for the fixed penalty notices that they issue.

Today, almost 50 per cent of authorities that use fixed penalty notices are exceeding this target; therefore there is no reason why other authorities cannot do likewise.

### Fixed penalty notice discounts

The Clean Neighbourhoods and Environment Act 2005 introduced a power to allow local authorities to offer a discount for early payment of a fixed penalty notice. This applies to all of the relevant offences, with the exception of noise from licensed premises. The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations 2006 sets out the amounts below which the discounted penalties must not fall. This is summarised in Annex 1, *Fixed penalty notices – index of legislation*.

Evidence to date is that where discounts are being offered, they are working to encourage improved payment rates and are therefore strongly recommended.

## The principles of payment

High payment rates of fixed penalty notices are central to the success of an authority's fixed penalty notice enforcement work, as has been defined above.

When a fixed penalty notice is paid, it illustrates that the person to whom it was issued has hopefully accepted their wrongdoing. But beyond this, it saves an authority the time and resources of taking a prosecution in the magistrates' court.

Whilst being an obvious comment to make, it follows that a paid fixed penalty notice is always a better outcome for an authority than one that goes unpaid, with the original offence then having to be prosecuted in the magistrates' court; due to the time, effort and expense of preparing and subsequently prosecuting any case in the magistrates' court.

Hence there should be a motivation for authorities to work to keep cases out of the magistrates' court, where possible, by encouraging payment. However, when this becomes futile and it is an authority's view that a fixed penalty notice will not be paid, then it should take action for the alleged original offence in the magistrates' court, unless there is very good reason not to do so.

Where this is immediately relevant is in relation to the legislation that governs the use of fixed penalty notices, which allows those that have been issued with a notice 14 days to pay. However, this doesn't mean that at the end of the 14 days the authority that issued the fixed penalty notice cannot accept late payment – it can.

## Summary – the principles of payment:

- Payment of a fixed penalty notice is always preferable to prosecution.
- Accepting late payment of a fixed penalty notice is legal and is often a pragmatic solution.
- Without good reason, non-payment will result in prosecution.

## Appeals process

There is no obligation for an authority to offer an appeals process to someone that might want to dispute a fixed penalty notice. What is discussed here, in effect, is the possible role of a 'non-statutory' appeals process, should an authority decide that it would like to offer such a process.

Having issued a fixed penalty notice, there will be times when someone on the receiving end will want to question it. Any authority should welcome the challenge provided by an appeals process, as not only does it allow for the concerns of a member of the public to be heard, it also works as an assurance check on an authority's fixed penalty notice enforcement system, to ensure that it is fit for purpose.

It can be argued that the obvious place for any challenge to a fixed penalty notice will be the magistrates' court, however, it is considered good practice to offer an appeals process so that someone who wants to dispute a fixed penalty notice has the opportunity to do so prior to an offence appearing in the court. After all, someone challenging a fixed penalty notice may have legitimate grounds for contesting the imposition of the penalty.

Further, should an appeal fail, any letter will serve to remind the 'appellant' of the requirement to pay the fixed penalty notice or face prosecution in the magistrates' court.

It is also considered important that anyone who wants to take advantage of an appeals process is not disadvantaged by doing so. Where an authority offers a discount for early payment of a fixed penalty notice it should still be offered in the event of an unsuccessful appeal, providing that the appeal is lodged before the close of any relevant early payment window.

To ensure fairness it is important that should an authority offer a process to appeal a fixed penalty notice, this should be highlighted in any enforcement strategy and further fleshed out in its operational policy (Section Two).

Any appeals process should set out:

- how to make an appeal;
- who to make an appeal to;
- the grounds on which an appeal can be made; and
- what action should follow after an appeal has been considered.

## How to make an appeal

The normal process for any appeal will be in writing, where the person making the appeal should be invited to set out their arguments as to why they feel that they should not have been issued with a fixed penalty notice.

## Who to make an appeal to

It is good practice for all appeals to be considered by the service manager, or equivalents, who has/have delegated authority



to hear any such appeals. All appeals should be addressed to them and not the person that issued the fixed penalty notice.

### The grounds on which an appeal can be made

An authority should publish the grounds on which an appeal can be made. This should be available to the public, so that they understand the circumstances when an appeal will be allowed.

Such grounds will include, but are not limited to:

- when the person accused was not the person that committed the offence – this might be the case if someone challenged for an offence has given someone else's details;
- where the person issued with the fixed penalty notice brings forward evidence that could undermine any later prosecution;
- where a fixed penalty notice has been wrongly issued, for example where a dog control order didn't apply or the person had exception under the law;
- where the person issued with the fixed penalty notice is a child under the age of ten;
- if further evidence is provided that could lead to the conclusion that the person issued with a fixed penalty notice is in some way vulnerable and the enforcement of the fixed penalty notice would not be in the public interest; and
- it is for some other reason not considered to be in the public interest.

### What action should follow after an appeal has been considered

Having considered an appeal, the authority should write to the appellant and explain the outcome. If successful it should be explained that no further action will be taken; the fixed penalty notice will be cancelled.

In the event of an unsuccessful appeal any letter should explain as fully as possible why this is the case. Further, the letter should state the action that will follow should the fixed penalty notice go unpaid, any authority complaints procedure, should the person feel that they have been badly treated, along with an explanation of their right to have the accusation against them heard in the magistrates' court.

### A response to appeals

***Wear Valley District Council*** – Offers all alleged offenders the opportunity to appeal against a fixed penalty notice. Anyone wishing to make an appeal is informed that they need to put an appeal in writing to the service manager.

***Newcastle City Council*** – Has no formal appeals procedure, and anyone contacting the Authority is informed of this and also told that there is no obligation to pay a fixed penalty notice. However, the Authority does review the facts of each case that is questioned, yet it is of the view that the place to challenge an allegation is by offering a plea of not guilty and having the case heard in the magistrates' court.

Only in exceptional cases are fixed penalty notices withdrawn, for example, when someone challenged over an offence gave the details of another person who then challenged the fixed penalty notice.

## Alternative payment options

Given that the payment of fixed penalty notices is seen as being a success measure of an authority's fixed penalty notice enforcement regime, it follows that allowing a range of payment options, in certain circumstances, could be advantageous. Particularly if these work to secure payment and save an authority the time and expense of enforcing cases in the magistrates' court.

The reason that this guide considers alternative payment options is that given the way legislation is framed, in that there are only 14 days to pay a fixed penalty notice, for certain sections of the community this can be a challenge, particularly those that might be on limited income or on benefits.

Further, to apply the 14 day rule rigidly, and pursue action in the magistrates' court following default, for those in such circumstances, could lead to a convicted person getting a sympathetic hearing in the courts with a nominal penalty imposed and limited costs awarded to the authority.

It is therefore recommended that an authority considers its approach to alternative payment options carefully – that said, where a fixed penalty notice is issued the full amount of any penalty should be paid.

Before considering when and to whom an authority might want to offer alternative payment options, a consideration of the two options is given below.

## The two alternative approaches

In essence there are two approaches that may be offered as an alternative to full payment before the 14 days has expired, these are:

- payment by instalments; and
- deferred payment.

### Payment by instalments

Payment by instalments is just that; it is where an authority sets out and agrees a 'payment plan' for the payment of a fixed penalty notice, with a certain number of payments of an agreed amount being required on specified dates, until the full amount of the fixed penalty notice is paid. For example, someone could be allowed to make 15 payments of £5 on consecutive Mondays until the full amount of a £75 fixed penalty notice is paid.

If someone who was offered such a payment plan then defaulted, after making a number but not all payments, the authority would still have the option of taking a prosecution to the magistrates' court for the original offence. In such an instance it is suggested that an authority, in presenting a claim for 'costs' in the court following a successful prosecution, should deduct any amount that might have been paid in instalments prior to the payments stopping.

### Deferred payment

The second option is to allow a longer payment period, over and above the 14 days. In certain circumstances it might be appropriate to allow someone issued with a fixed penalty notice a month to pay the fine. Some authorities that offer this alternative argue its benefits over the instalments option as it is less expensive to administer.

Alternative payment options have been shown to work and assist those that might not have normally paid a fixed penalty notice, and as a result, end in the court.

However, they do need to be used with caution and if they are to be offered they must be clearly explained. In the case of payment by instalments it should be made clear that if someone defaults on one of their scheduled payments then the offer will be withdrawn and they will be expected to make full payment of the fine within 14 days or face prosecution in the magistrates' court.

In the case of deferred payment, it should be made clear that the offer is a once only offer, should the alleged offender fail to pay at the end of the extended period, a further extension is not considered appropriate in anything other than the most exceptional circumstances. This is to say, if payment is not received by the agreed date, then prosecution should follow.

### The six month rule

When offering alternative payment options, which involve deferred payment, an authority needs to be aware of the law in relation to prosecuting summary offences in the magistrates' court.

In essence, following an offence an authority has six months within which to commence proceedings by laying information in the magistrates' court if it wants to pursue prosecution for the offence. If it fails to do this within the six month period, then prosecution for the offence, following non-payment of a fixed penalty notice, cannot be taken.

### When and to whom to offer alternative payment options

In the interests of fairness and consistency, it is important that an authority sets out, if it proposes to offer alternative payment options, the circumstances when they will be offered.

If this is an option that an authority seeks to use then it is important that a couple of basic rules are followed. Namely, that a delegated officer has the authority to offer alternative payment options, such as the service manager, and that each request for an alternative way of paying a fine is considered on a case by case basis and is offered for genuine reasons and not just as a matter of course.

An authority might wish to consider alternative payment options in the following circumstances:

- when it is a young person (aged under 18) that has been issued with a fixed penalty notice;
- when someone is on benefits; and
- when there is a proven case of hardship.

A number of authorities have used alternative payment options to good ends and have improved their payment rates as a result, particularly amongst those that would not have been able to pay within the 14 days and

would have ended up in the magistrates' court for the original offence.

However, where they are used, and there is no obligation to use them, it is important that they are used with caution. If alternative payment options are offered and then disregarded, the original offence should be prosecuted in the magistrates' court and the court informed that the alleged offender was offered and accepted an alternative payment option, but then went on to ignore it.

### Alternative payment options and discounts

If, because of an individual's circumstances, they cannot pay any penalty within the standard 14 day period, an authority may agree an alternative payment scheme. If it does, it might also want to consider offering the same discount terms that it may offer to those that pay their penalties early. This helps to ensure that those who may be most disadvantaged by a fixed penalty notice are not unfairly penalised because of their circumstances.

### Reminder letters and final demands

Reminder letters and final demands are considered by many authorities to be an essential component of their strategy to secure payment of fixed penalty notices and so avoid the need to take prosecutions in the magistrates' court.

Once again there is no need for an authority to send reminder letters to chase payment at the close of the 14 day payment window, however, they have been shown to work and secure payment.

The reality is that too often, those that might receive a fixed penalty notice, for one reason or another, might not pay it in the 14 days that they have. Many might believe that the fixed penalty notice was a bluff and if they ignore it nothing further will happen. Others might not have fully realised the implications at the time they were issued with a fixed penalty notice; they might have been embarrassed or cross and so failed to take in what might have been explained to them.

Regardless of why, a reminder letter serves to inform someone issued with a fixed penalty notice and failed to pay it, what the authority plans to do should it go unpaid.

Some authorities, having sent a reminder letter follow this up with a 'final demand', in writing, should payment still be outstanding. Any such final demand should again set out the action that the authority plans to take should the fixed penalty notice not be paid within a given timeframe and the consequences of any such action.

Reminder letters have been shown to prove their worth and do work to improve payment rates and so negate the need for an authority to take action in the magistrates' court.

### The reminder letter – what it should include:

- A summary of the offence that was alleged to have taken place;
- The action that is required by the person issued with the fixed penalty notice (i.e. payment within seven days);
- How payment should be made;
- The action that may be taken should the fixed penalty notice remain unpaid; and

- A name and address that any appeals can be addressed to (this could be relevant if the person originally challenged and alleged to have committed the offence provided details that might not have been their own).

## Reminder letters – the experience

**Newcastle City Council** – Sends out reminder letters 15 days after the issuing of a fixed penalty notice. Of the reminder letters that are sent, 50 per cent of outstanding fixed penalty notices are paid, thus improving payment rates.

**Leeds City Council** – Sends out two reminder letters and is prepared to accept payment right up to the morning of the court appearance, if a further contribution towards the Authority's legal costs is made. The reason that the Authority accepts late payment is to protect against a defendant using this in mitigation and so risk lesser fines or the offence being discharged.

**Broxbourne Borough Council** – If, following the 14 day payment period, the fixed penalty notice is still outstanding a reminder letter is sent giving seven days to pay. If the fixed penalty notice is still not paid legal proceedings are considered.

## Back office systems

The need for an efficient and accurate back office system is central to the effective use and management of fixed penalty notice enforcement.

The reason that this is so key is because fixed penalty notice enforcement should be considered to be the first step in legal proceedings against those that commit environmental crimes. Given this, there need to be robust systems in place to ensure that each 'case' is properly indexed and logged and all information and evidence, along with any action that is taken in relation to a particular case, is properly managed.

Any system, as a minimum, should be computer based. Such a system can be designed so as to allow:

- the management of individual case details – logged against a unique case number;
- the recording of key dates, such as the date that a fixed penalty notice was issued;
- an index of key information in relation to an individual case, e.g. offence details, who issued the notice, the existence and location of any supporting witness statements, correspondence received, etc.;
- a log of any reminder letters that might have been sent;
- details of any appeals and the outcome;
- details of any alternative payment plans agreed;
- details of any payments received; and
- key dates for follow up action.

Many authorities use a standard programme such as Excel or Access to manage the administration of their fixed penalty notice enforcement. Others use one of the bespoke packages that are currently on the market that offer a range of additional features, so as to improve the efficiency of the service.



## Storing of evidence

Any evidence that is collected as part of an investigation needs to be stored in compliance with the Criminal Procedure and Investigations Act 1996. The essence of the 1996 Act requires an investigating authority to properly record, retain and maintain all materials, including statements, photographs, notices, etc. that are gathered as part of an investigation, regardless of whether they are used in a later prosecution or not. It also requires an investigator to follow up all reasonable avenues of inquiry, even those that serve to weaken the prosecution's case, and to disclose material to the defence.

Any working practices in this area will need to be developed in conjunction with an authority's legal team.

## The role of back office staff

Properly trained and resourced back office staff are as important as those out on the frontline issuing fixed penalty notices.

The efficiency of any service will be judged by the public that might come into contact with such a local authority service. Further, any information that is managed and maintained back in the office, such as evidence and witness statements, could be required in the magistrates' court should a fixed penalty notice go unpaid and the original offence ends in prosecution.

Any authority using fixed penalty notice enforcement will need to consider how it can ensure high standards across this part of its service so as to mitigate against any failings that could work to bring the service into disrepute with the public or the court.

## Pro forma letters

Much of the correspondence that an authority might use in support of its fixed penalty notice enforcement work will be standard in nature, in that a lot of the letters that are sent out to those that have been issued with a fixed penalty notice will be the same.

Common sense dictates that an authority has a set of pro forma letters that can be mail merged, with the details of an alleged offender, to cover the following scenarios:

- letters requesting further information;
- letters setting out alternative payment options (when agreed);
- reminder letters; and
- final demands.

All such letters should be reviewed on a regular basis and, as matter of course, be cleared by an authority's legal department or relevant legal advisor.

## Pursuing offences in the magistrates' court

As has been stated throughout this guide, the logical conclusion of any fixed penalty notice that goes unpaid is prosecution for the original offence in the magistrates' court, unless there is good reason not to.

There will be times, after the 14 day payment window has closed and after reminder letters have been sent (if used) that a fixed penalty notice remains unpaid.

It is at this time that an authority's commitment to the appropriate use of fixed penalty notice enforcement faces its hardest challenge. This is to say, it sets in motion the steps that need to be taken to pursue an alleged offender in the magistrates' court for the original offence.

Section Two, under the heading enforcement strategy, has explored some of the legal resource options open to an authority. This part of the guide takes this further and looks more in-depth at the operational issues that need to be properly considered in developing an authority's approach to taking prosecutions in the magistrates' court.

However, what this guide does not do is to set out the detailed steps that need to be taken to pursue a prosecution, namely the procedures for issuing a summons and building a prosecution in the magistrates' court. This is the place for an authority's own legal team to offer the detailed advice that will be required.

Thoughts in this part of the guide are set out under the following headings:

- To prosecute or not to prosecute?;
- Working with the legal team;
- After the decision to prosecute is taken; and
- Building a case for appropriate costs.

### To prosecute or not to prosecute?

The principle that underwrites good fixed penalty notice enforcement is that having issued a fixed penalty notice the authority has already accepted that prosecution, should the notice go unpaid, is the likely outcome.

This is further reinforced with the 'safety net' provided by any appeals process (if offered) and the inbuilt quality assurance systems that

are so critical to effective fixed penalty notice enforcement.

However, it is considered to be good practice for the final decision to prosecute to rest with a limited number of managers in an enforcement team, so that any decision to prosecute is balanced and consistent with the authority's accepted practice.

In coming to a final decision the manager, or the officer delegated, will need to satisfy themselves of the following:

- that there is a case to answer – this is to say that the authority has complied with the relevant statutes and that an offence has been committed;
- that there is enough admissible evidence to support a successful prosecution;
- that the prosecution is in the public interest, for example the authority is not taking a prosecution against a 'chaotic' individual; and
- that the action proposed is consistent with any adopted authority policy.

Ultimately, the decision to prosecute or not will be a test of an authority's enforcement strategy and its operational policy. If, at this stage, an authority is deciding not to proceed with a 'disproportionate' number of prosecutions, then there is clearly a failure in the system and the enforcement strategy and/or the operational policy may not be working effectively and which are in need of review.

That said, and assuming that an authority's practices are working properly, then once a fixed penalty notice goes unpaid the decision to prosecute should be a straightforward one, and a normal consequence of the enforcement process.

## Working with the legal team

It cannot be stated firmly enough, regardless of how an authority makes its legal arrangements, that there is a requirement for good working arrangements between the enforcement service and the legal team.

The legal team should be aware of the outcomes that the enforcement service are seeking to secure through the use of fixed penalty notice enforcement and any resulting prosecutions.

In an ideal situation the legal team should be seen as the 'enabler'; as the provider of a service that enables an enforcement service to take the ultimate sanction of prosecution.

Through agreement, they should help the enforcement service through the legal processes and should assist in the development and realisation of successful prosecutions and not act as a barrier to the ultimate sanction of an authority's enforcement service. However, there will be circumstances when the legal team will advise against prosecution; when they might have concerns about the strength of evidence or if they do not believe that a prosecution is in the public interest. Yet through the application of 'good' practice, such occurrences should be rare and should be minimised.

To assist in this process, regular meetings should be held between the enforcement and legal teams to assist in the sharing of good practice, to manage cases and so ensure that prosecutions are pursued in a considered and efficient manner.

## After the decision to prosecute is taken

Having decided that prosecution is the next course of action a 'prosecution' file will need to be handed over to the authority's legal team. This to allow for a further review of the case and the information and evidence that relates to it.

If the legal team are confident with the case put before them, normal practice will be for them to arrange for a summons from the magistrates' court to be issued to the alleged offender requiring them to appear at a given court on a given time and date.

### What is included in the prosecution file?

It is for an authority's legal team to provide guidance as to what should be included in a prosecution file and the format in which it should be provided, however as a summary, it is considered normal practice to include the following:

- case summary – an overview of the case that the authority is seeking to prosecute;
- the proposed charges – the offence that has been committed;
- summary of facts – what is alleged to have taken place;
- original notices – the carbon copy of any fixed penalty notice that was issued;
- a 'certificate' signed on behalf of the chief finance officer of the authority that states that payment of a fixed penalty notice was not received by a date specified in the certificate;

- a 'certificate' of service;
- statements – any witness statements taken in the course of investigating the offence;
- copies of any relevant correspondence;
- exhibits – a list of relevant exhibits, for example photographs of an alleged offender, a piece of graffiti, cars parked 'for sale' on the road, etc.;
- verified copies of any relevant designations – such as Dog Control Order Schedules and maps;
- schedule of costs – that the authority will seek to recover in the event of a successful prosecution;
- schedule of unused material – information that does not form part of the prosecution, such as copies of draft statements, exhibits and photographs not used, etc.;
- schedule of sensitive material – that lists material that is not in the public interest to disclose to the defendant; and
- disclosure officer's report and certificate – that confirms the information that is retained and available and that the relevant Codes on disclosure have been complied with.

### A certificate from the chief finance officer

This is to certify that the authority has not received payment of a fixed penalty notice by a date that is specified in the certificate.

This certificate needs to be signed by an authority's chief finance officer or an officer who has been delegated to do so.

### A certificate of service

This is a form that needs to be filled in by the officer that issued a fixed penalty notice (and attached to a copy of the original fixed penalty notice) so as to certify that the original fixed penalty notice was issued. The certificate of service needs to include:

- the original fixed penalty notice number;
- how the fixed penalty notice was issued (in person, at the time of the offence; through the mail; delivered in person to the address of the alleged offender, etc.); and
- at what time and on what date the fixed penalty notice was served.

This form then needs to be signed and dated by the issuing enforcement officer.

An alternative to the certificate of service is where a fixed penalty notice is designed so that these details can be recorded at the bottom and signed by the issuing officer.

Attached to the summons that is sent to a defendant by the magistrates' court is a notice that sets out the options, namely to plead guilty or not guilty. In addition, it is normally at this point that the defendant will be sent the evidence on which the prosecution intends to rely. In the event of a guilty plea the case will normally be dealt with on the date that is shown on the summons. The case can be heard in the absence of the defendant who will, if they do not attend the hearing, be notified by post of the outcome, along with any fine and costs, within a few days of the hearing.

In the event of a 'not guilty' plea the case will be adjourned to a later date, at which the defendant must attend. By this point any

relevant unused material from the prosecution file should have been made available to the accused.

A trial by way of full hearing of the evidence is then held where the magistrates hear the case that is put before them before deciding on any verdict; and in the case of a guilty verdict, any fine and costs are decided.

In the event of a full hearing, following a not guilty plea, witnesses to the offence will need to be available so that the prosecution can mount their case in the magistrates' court.

### Building a case for appropriate costs

In the event of a successful prosecution any fine that is issued and then paid, unlike a fixed penalty notice that is paid, goes to the court and not the authority that took the prosecution. It is then the responsibility of the court bailiffs to pursue any fine that is not paid. However, an authority, in the majority of cases, will want to make an application for costs, to cover part, if not all of its costs, associated with taking the prosecution.

Any application for costs should be set out on paper, broken down by the number of hours, or part of, and relevant charge per hour, for the magistrates' to consider. It can be broken down under the headings:

- Case preparation; and
- Legal services costs.

A fuller explanation is given below:

**Case preparation** – these costs are those that are associated with preparing a prosecution file, such as the making of statements and the pulling together of relevant material in the file.

**Legal services costs** – these relate to the legal costs of an authority, such as the costs associated with any case conferences and the issuing of a summons, through to representing the authority in the magistrates' court.

The complexity of the case that is to be prosecuted will dictate the amount of costs that can legitimately be claimed by an authority. However, costs claimed following a guilty plea in the magistrates' court for a littering offence vary between £80 where the services of an 'in-house' legal team are used, up to £300 where the services of an external provider are used.

The magistrates will use their discretion when awarding costs and they will take into account the defendant's ability to pay. It is not uncommon for the full costs not to be awarded. However, it can prove helpful to support any claim with a statement from the solicitor that explains not only the direct costs of the prosecution but also the wider costs to the community, such as the costs borne to clear up after the offending behaviour of the minority that commit environmental crimes. Such a statement can also serve to encourage a higher fine.

### The magistrates and the clerks

As has been mentioned in Section Four, explaining an authority's approach to environmental crime and fixed penalty notice enforcement, outside of the courtroom setting, can be worth doing.

The magistrates often have training days and it is worth trying to get onto any agenda so that an authority can explain not



only why it enforces against environmental crime, but also what it hopes to achieve by it and why it is so important; for example the cost to the community.

The Magistrates' Association ([www.magistrates-association.org.uk](http://www.magistrates-association.org.uk)) have published a guide for magistrates, 'Costing the Earth – Guidance for sentencers', which covers many of the relevant environmental crimes, associated legislation and sentencing criteria. They should be encouraged to refer to this, as appropriate.

However, as magistrates are volunteers it can often be hard to get time with them; this is why it can also be useful to get time with the court clerk, again to explain the authority's approach and the laws it is seeking to enforce.

## Final thoughts

Achieving high payment rates for fixed penalty notices is possible; many authorities bear testament to this fact. Further, as has been shown, there are a range of options available to authorities to provide a flexible approach to achieve the high payment rates that Defra wants to see realised.

These 'alternative approaches' come very much to the fore given the complexities of taking prosecutions in the magistrates' court. However, these 'complexities' should never be used as an excuse not to take prosecutions – failure to do so just undermines the fixed penalty notice enforcement system.

And finally, high payment rates are something to 'shout about', as are successful prosecutions. All authorities should take the opportunity to inform their residents, through the media and other channels, of their successes in this field – it works to change behaviour.



## Section Six – Recording and reporting

This section sets out:

- why the fixed penalty notice return form is so important;
- how to provide Defra with the information that is requested in the return form; and
- advice on completing the return form.

### Introduction

Each year the Secretary of State for Environment requires a return, under statute, from each local authority on the number of fixed penalty notices issued and paid, along with other relevant information. This section contains further guidance on compiling the figures for inclusion in the return form, a copy of which is included at the end of this guide in Annex 3.

### Why the fixed penalty notice return form is so important

In April of each year, every local authority receives the form 'Legislative request for information relating to fixed penalty notices'. Every authority is obliged to return to Defra details of the fixed penalty notices that it issued in the previous financial year.

From the outset it needs to be understood that the purpose of the return form is more than just to count the number of fixed penalty notices that are issued and paid. In essence, the whole point of the return form is to provide Defra with a range of information so that it can see:

- how the powers are being used;
- how widely the powers are being used;

- how authorities are performing – i.e. payment rates;
- the number of cases being prosecuted in the magistrates' court; and
- where improvements to the system and further guidance might be needed.

The final point on this list is perhaps the most important, as with all relevant powers that authorities have, Defra is keen to keep them under review and help encourage improvements where they can be made.

Yet it is also hoped that this information is of relevance to the authority itself. In that the information that is compiled in the return form should also provide useful local 'management' information. It allows service managers to see how they are performing, to see what their payment rates are, to identify how many cases are going forward for prosecution and to ensure that enough resource is allowed for follow up and prosecutions, as required.

It is important that service managers review this information on a regular basis.

### Ensuring the right information in the form

Any authority that uses fixed penalty notice enforcement, or plans to do so, needs to ensure that they have the right systems in place to capture the information that is requested in the form.

All of the information that is requested is straightforward. Where fixed penalty notices are being issued for the relevant offences that are identified in the return form, the appropriate number needs to be recorded

and stated in the appropriate box. Where an authority is not issuing fixed penalty notices for a particular offence, or none have been issued, all that is required is a return of 'none' in the first column 'No. of fixed penalties issued'.

The second column, 'No. of fixed penalty notices cancelled', has been added for the 2006/07 year. This column has been added so that authorities can report to Defra the number of fixed penalty notices, which after issue, it cancels in very clearly defined circumstances.

The circumstances when Defra considers it acceptable to cancel a fixed penalty notice, for the purposes of the return form, and include it in the column 'No. of fixed penalty notices cancelled' are:

- where one has been offered to a young person (aged under 18) yet is cancelled after they admit their guilt **and** have undertaken an alternative form of punishment (i.e. litter pick) **or** they have been issued and accepted a final warning;
- where the youth offending team requests that the authority takes no further action to pursue a young person alleged to have committed an offence;
- where the person named in the fixed penalty notice transpires not to be the person to whom the fixed penalty notice was issued – this is to say, where a person issued with

a fixed penalty notice gave false details (the details of someone else, at the time the fixed penalty notice was issued); or

- when further information comes to light about the personal circumstances of the individual issued with a fixed penalty notice who it transpires leads a 'chaotic' lifestyle, i.e. they are homeless, or they suffer from a mental illness.

It is not acceptable to cancel a fixed penalty notice in any other circumstance, for example:

- when they have been issued wrongly;
- when there is not enough evidence to support a successful prosecution;
- when they go unpaid; or
- when they are successfully challenged by the person issued with the fixed penalty notice in the first place.

The circumstances given above are more to do with how an authority runs its fixed penalty notice enforcement. These 'issues' are better addressed by amending practices to improve the issuing of fixed penalty notices in the first instance.

It is important to remember that where a fixed penalty notice is cancelled, it must not be 'subtracted' from the first column, 'No. of fixed penalties issued', in that even though it has been cancelled, it was still issued.

## Calculating the payment rate

An authority's payment rate will be calculated by working out the percentage of fixed penalty notices paid against those issued, less any number that were cancelled, as below:

$$\text{Payment rate (\%)} = \frac{\text{No. of fixed penalty notices paid}}{(\text{No. of fixed penalty notices issued} - \text{No. of fixed penalty notices cancelled})} \times 100$$

## Section Seven – Further information

### Government contacts

#### Anti-social Behaviour Unit (ASBU) – The Respect campaign

The Respect campaign, run by the ASBU is about central Government, local agencies, local communities and ultimately every citizen working together to build a society in which we can respect one another – where anti-social behaviour is rare and tackled effectively, and communities can live in peace together. The website provides information, advice and resources to help practitioners take effective action across England and Wales.

T: 0870 220 2000  
E: [respectactionline@bss.org](mailto:respectactionline@bss.org)  
W: [www.respect.gov.uk](http://www.respect.gov.uk)

#### CABE Space

CABE Space works with local authorities and other bodies responsible for public space to help them provide a better service. Through their work, they encourage authorities to think holistically about their green space and what it means for residents' health and wellbeing.

T: 020 7960 2400  
E: [enquiries@cabe.org.uk](mailto:enquiries@cabe.org.uk)  
W: [www.cabespace.org.uk](http://www.cabespace.org.uk)

#### Cleaner, Safer, Greener Communities

A website dedicated to providing information on subjects such as abandoned vehicles, litter and graffiti. It also addresses neighbourhood issues and what you can do to improve your local environment.

E: [cleanersafergreener@communities.gsi.gov.uk](mailto:cleanersafergreener@communities.gsi.gov.uk)  
W: [www.cleanersafergreener.gov.uk](http://www.cleanersafergreener.gov.uk)

### Communities and Local Government

The job of Communities and Local Government is to help create sustainable communities, working with other Government departments, local councils, businesses, the voluntary sector, and communities themselves.

T: 020 7944 4400  
E: [contactus@communities.gsi.gov.uk](mailto:contactus@communities.gsi.gov.uk)  
W: [www.communities.gov.uk](http://www.communities.gov.uk)

### Department for Environment, Food and Rural Affairs (Defra)

Defra is the Government department responsible for policy on the environment, food and rural affairs. Its remit is the pursuit of sustainable development – weaving together economic, social and environmental concerns. Defra leads on local environmental quality policy.

T: 08459 33 55 77  
E: [helpline@defra.gsi.gov.uk](mailto:helpline@defra.gsi.gov.uk)  
W: [www.defra.gov.uk](http://www.defra.gov.uk)

### Home Office

The Government department responsible for internal affairs in England and Wales. It works to build a safe, just and tolerant society, to enhance opportunities for all and to ensure that the protection and security of the public are maintained and enhanced.

T: 020 7273 3476  
E: [public.enquiries@homeoffice.gsi.gov.uk](mailto:public.enquiries@homeoffice.gsi.gov.uk)  
W: [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk)

### Improvement and Development Agency (IDeA)

IDeA was created by and for local government in England and Wales and is independent of central Government and

regulatory bodies. Its aim is to stimulate and support continual and self-sustaining improvement and development within local government. IDEa Knowledge provides information for local authorities to help them improve public services and also contains a useful database of all relevant legislation.

T: 0207 296 6600  
E: [knowledge@idea.gov.uk](mailto:knowledge@idea.gov.uk)  
W: [www.idea.gov.uk/knowledge](http://www.idea.gov.uk/knowledge)

## General contacts

### Association of Town Centre Managers (ATCM)

The ATCM is dedicated to helping town and city centres realise their natural roles both as prosperous locations for business and investment, and as focal points for vibrant, inclusive communities.

T: 0207 222 0120  
E: [info@atcm.org](mailto:info@atcm.org)  
W: [www.atcm.org](http://www.atcm.org)

### Crime Concern

Provides advice and help to a wide range of professional and voluntary agencies to support their work in reducing crime and the fear of crime within local communities.

T: 01793 863 500  
E: [info@crimeconcern.org.uk](mailto:info@crimeconcern.org.uk)  
W: [www.crimeconcern.org.uk](http://www.crimeconcern.org.uk)

### ENCAMS

The charity, which runs the Keep Britain Tidy campaign, and works to improve local environments from streets to beaches and local parks.

T: 01942 612621  
E: [enquiries@encams.org](mailto:enquiries@encams.org)  
W: [www.encams.org](http://www.encams.org)

### Local Government Association (LGA)

Aims to put local councils at the heart of the drive to improve public services and to work with Government to ensure that the policy, legislative and financial context in which they operate, supports that objective.

T: 020 7664 3000  
E: [info@lga.gov.uk](mailto:info@lga.gov.uk)  
W: [www.lga.gov.uk](http://www.lga.gov.uk)

### London Councils (formerly the Association of London Government)

A think-tank and lobbying organisation that promotes the interests of London's 33 Councils. It also runs a number of pan London services.

T: 020 7934 9999  
E: [info@londoncouncils.gov.uk](mailto:info@londoncouncils.gov.uk)  
W: [www.londoncouncils.gov.uk](http://www.londoncouncils.gov.uk)

### Magistrates' Association

The Magistrates' Association, with over 29,000 members, represents over 80 per cent of serving volunteer magistrates. 'Costing the Earth' is a publication published by the Magistrates' Association, which provides information and guidance on environmental offences.

T: 0207 387 2353  
E: [communications@magistratesassociation.org.uk](mailto:communications@magistratesassociation.org.uk)  
W: [www.magistrates-association.org.uk](http://www.magistrates-association.org.uk)



# Annex 1 – Fixed Penalty Notices – index of legislation

Description of offence	Act	Power to issue	Who can issue them	Amount	Amount with discount (minimum)	Supply of name/address details	Use of receipts
Nuisance Parking	Clean Neighbourhoods and Environment Act 2005 – section 3 (1) & 4 (1)	s.6(1)	s.6.(1) & (2)	£100	£60	s. 7	s. 8
Abandoning a vehicle	Refuse Disposal (Amenity) Act 1978 – section 2	s.2A(1)	s.2A(1) & 14	£200	£120	s.2B	s.2C
Litter	Environmental Protection Act 1990 – section 87 (1)	s.88(1)	s.88(1), (9) & (10)	Can be set locally between £50-£80. Default £75	£50	s.88(8A)-(8C)	s.96&97 CNEA
Street litter control notices and litter clearing notices	Environmental Protection Act 1990 – section 94(8) & 92C(2)	s.94A(2)	s.94A(2) & (7)	Can be set locally between £75-£110. Default £100	£60	N/A	s.96 CNEA
Unauthorised distribution of literature on designated land	Environmental Protection Act 1990 – Schedule 3A(1), para. 1(1) & (2)	Schedule 3A, para.7(2)	Schedule 3A, para.7(2) & para.8	Can be set locally between £50-£80. Default £75	£50	Schedule 3A, para.7(7)-(9)	s.96 CNEA
Failure to produce a waste transfer note	Environmental Protection Act 1990 – section 34A(2)	s.34A(2)	s.34A(2) & (14)	£300	£180	N/A	s.73A

Description of offence	Act	Power to issue	Who can issue them	Amount	Amount with discount (minimum)	Supply of name/address details	Use of receipts
Failure to produce waste carrier registration documents	Control of Pollution (Amendment) Act 1989 – section 5B(2)	s.5B(2)	s.5B(2) & 9(1)	£300	£180	N/A	s.5C
Waste receptacles	Environmental Protection Act 1990 – section 46 & 47	S47A(2)	s.47A(2) & (10)	Can be set locally between £75 - £110. Default £100	£60	N/A	s.73A
Dog Control Orders	Clean Neighbourhoods and Environment Act 2005 – section 55	s.59(2)	s.59(2),(11) & s.58	Can be set locally between £50 - £80. Default £75	£50	s.61	s.96 & 97 CNEA
Failure to nominate key-holder (within an alarm notification area) or to notify local authority in writing of nominated key-holder's details	Clean Neighbourhoods and Environment Act 2005 – section 73 & 74	s.73(2)	s.73(2) & (11)	Can be set locally between £50 - £80. Default £75	£50	s.76	s.75

Description of offence	Act	Power to issue	Who can issue them	Amount	Amount with discount (minimum)	Supply of name/address details	Use of receipts
Noise from premises (domestic and licensed)	Noise Act 1996 – section 4	s.8(1)	S8(1)	Dwellings: Can be set locally between £75 - £110. Default £100 Licensed premises: £500	£50  No discount	s.8B	s.9
Graffiti and fly-posting	Anti-social Behaviour Act – section 43	s.43(1)	s.43(1) & s.47(1)	Can be set locally between £50 - £80. Default £75	£50	s.43B	s.96 & 97 CNEA

(Note: When referring to the legislation in this table, it is important to remember that where the legislation refers to Acts prior to the Clean Neighbourhoods and Environment Act 2005, these pieces of legislation need to be read alongside the 2005 Act as they have been amended by it).

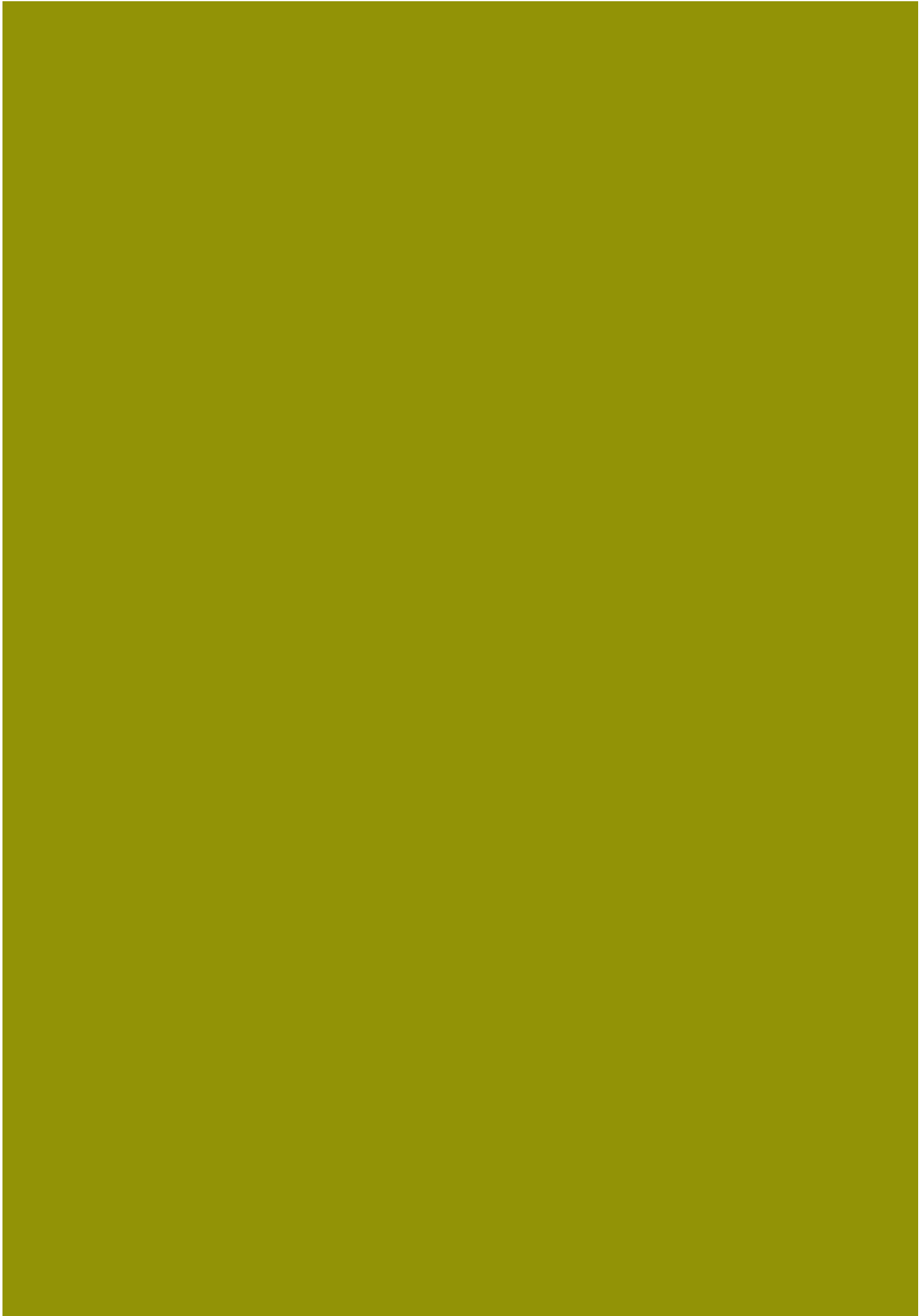
## Notes:

Power to issue	The power in legislation to issue a fixed penalty notice as an alternative to prosecution for the offence in the magistrates' court.
Who can issue them	This sets out who can be authorised to issue a fixed penalty notice for the offence. For example, an authorised officer of the authority, a contractor, a police community support officer, etc.
Amount	This sets the amount at which a fixed penalty notice should be set, any range it can be set within (if applicable) and the default rate, if a local fine isn't set.
Discount	This sets out the power to offer a discount for early payment of a fixed penalty notice. The amount given is the minimum rate at which a fine can be set if an early payment discount is offered.
Supply of name/address details	This is the power to require the name and address from a person that might have committed an offence.
Use of receipts	This sets out how an authority can use the receipts from any fixed penalty notices that it issues and are paid.

## Annex 2 – Legislation and supporting publications

Publication	Where a copy can be obtained
Clean Neighbourhoods and Environment Act 2005	View online at: <a href="http://www.opsi.gov.uk/acts/acts2005/20050016.htm">www.opsi.gov.uk/acts/acts2005/20050016.htm</a>
Explanatory Notes – Clean Neighbourhoods and Environment Act 2005	View online at: <a href="http://www.opsi.gov.uk/acts/en2005/2005en16.htm">www.opsi.gov.uk/acts/en2005/2005en16.htm</a>
Anti-social Behaviour Act 2003	View online at: <a href="http://www.opsi.gov.uk/acts/acts2003/20030038.htm">http://www.opsi.gov.uk/acts/acts2003/20030038.htm</a>
Environmental Protection Act 1990	View online at: <a href="http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm">http://www.opsi.gov.uk/acts/acts1990/Ukpga_19900043_en_1.htm</a>  Order  Online at: <a href="http://www.tso.co.uk/bookshop">www.tso.co.uk/bookshop</a>  Mail, telephone, fax and email:  TSO, PO Box 29, Norwich NR3 1GN Telephone orders: 0870 600 5522 Fax orders: 0870 600 5533 Email: <a href="mailto:book.orders@tso.co.uk">book.orders@tso.co.uk</a>
Guidance on the Clean Neighbourhoods and Environment Act 2005 (including the publication “Fixed Penalty Notices”)	View online at: <a href="http://www.defra.gov.uk/environment/localenv/legislation/cnea">www.defra.gov.uk/environment/localenv/legislation/cnea</a>  Mail and telephone:  Defra Publications Admail 6000, London SW1A 2XX





## Annex 3 – Legislative request for information relating to fixed penalty notices – the form

The form that is included overleaf is a copy of the current form that is sent to local authorities each year, which they are required to fill in and submit to Defra.

Each year the form is mailed out in April. All authorities are expected to fill in the required information for all fixed penalty notices that they have issued in the period 1 April to 31 March in the previous financial year, and to return the form to Defra by the end of May.

It is important to note that only one form from each authority should be returned to Defra and the officer responsible for filling out the form should ensure that they co-ordinate all of the relevant information from all 'departments' of an authority that might issue fixed penalty notices, so as to ensure a complete form.

Included in the form are notes to help the officer responsible for filling out the return form.

It is important to note that the form that has been included in this guide is for illustrative purposes only and may be changed by Defra.

Local Environmental Quality Team  
Nobel House, 17 Smith Square, London SW1P 3JR

**Fixed penalty returns for the period 1 April 2006 to 31 March 2007**  
**Legislative request for information relating to fixed penalties**



The Secretary of State for the Environment requests, under the powers contained in the Environmental Protection Act 1990 (as amended), the Clean Neighbourhoods and Environment Act 2005 and the Anti-social Behaviour Act 2003 (as amended) information on the use of fixed penalty notices for the

offences listed in this form for the period **1 April 2006 to 31 March 2007 only**. The Secretary of State also requests, under the Noise Act 1996, information on the use of fixed penalty notices issued for noise offences for the same period.

**Local Authority details**

Name of Authority	
Address	
	Postcode
Contact name	
Email address	
Telephone no.	

**Notes relating to the completion of the table on page 2.**

- |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ol style="list-style-type: none"> <li>1. In this column enter the total number of fixed penalty notices issued against the relevant offence, for the period of 1st April 2006 to 31st March 2007</li> <li>2. In this column enter the total number of fixed penalty notices that have been cancelled against the relevant offence. Note: The only circumstances when it is considered acceptable to cancel a fixed penalty notice (for the purposes of this return form) and include it in the column "No. of fixed penalty notices cancelled" is when: <ul style="list-style-type: none"> <li>• one offered to a young person (aged under 18) is cancelled after they admit their guilt and have undertaken an alternative form of punishment (i.e. litter pick) or when they have been issued and accepted a final warning;</li> <li>• the youth offending team requests that the authority takes no further action to pursue a young person alleged to have committed an offence;</li> <li>• the person named in the fixed penalty notice transpires not to be the person to whom the fixed penalty notice was issued – e.g. where a person issued with a fixed penalty notice gave someone else's details who then successfully challenges the notice on that basis; or</li> <li>• further information comes to light about the personal circumstances of the individual issued with a fixed penalty notice, who it later transpires leads a "chaotic" lifestyle, i.e. they are homeless, or they suffer from a mental illness</li> </ul> </li> </ol> | <p>(Where a fixed penalty notice is cancelled and included in the "No. of fixed penalty notices cancelled" it must not be "subtracted" from the first column, "No. of fixed penalties issued", in that even though it has been cancelled, it was still issued.)</p> <ol style="list-style-type: none"> <li>3. In this column enter the total number of fixed penalty notices paid of those issued in column 1</li> <li>4. In this column enter the number of cases that have been taken to court following the non-payment of a fixed penalty notice issued in column 1</li> <li>5. In this column enter the number of cases awaiting court action following the non-payment of a fixed penalty notice issued in column 1</li> <li>6. In this column enter the number of cases where no further action is to be taken following the non-payment of a fixed penalty notice</li> <li>7. In this column enter the total amount of fixed penalty notice income (£) generated from fixed penalty notices issued in column 1. This should only include fixed penalty income and not court "awarded" costs</li> <li>8. Include in this row only those fixed penalty notices issued for offences under the Dogs (Fouling of Land) Act 1996</li> <li>9. Include in this row only those fixed penalty notices issued for offences on land covered by a relevant Dog Control Order made under the provisions of the Clean Neighbourhoods and Environment Act 2005</li> </ol> |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

N.B. figures in the table on page 2 should include fixed penalties issued by any authorised officers, including Police Community Support Officers and persons accredited into community safety accreditation schemes.

	No. of fixed penalties issued (1)	No. of fixed penalty notices cancelled (2)	No. of fixed penalties paid (3)	No. of cases following non-payment taken to court (4)	No. of cases following non-payment awaiting court action (5)	No. of cases where a fixed penalty notice was not paid and where no further action (i.e. court proceedings) is to be taken (6)	Amount collected (£) (7)
<b>Nuisance parking</b> (s.6 Clean Neighbourhoods and Environment Act 2005 (CNEA))							
<b>Abandoning a vehicle</b> (s.2A Refuse Disposal (Amenity) Act 1978)							
<b>Litter</b> (s.88 Environmental Protection Act 1990 (EPA))							
<b>Street litter control notices</b> (s.94A EPA)							
<b>Litter clearance notices</b> (s.94A EPA)							
<b>Graffiti</b> (s.43 Anti-social Behaviour Act 2003 (ABA))							
<b>Fly-posting</b> (s.43 ABA)							
<b>Unauthorised distribution of literature on designated land</b> (Schedule 3A EPA)							
<b>Failure to produce authority (waste transfer notes)</b> (s.34A EPA)							
<b>Failure to furnish documentation (waste carriers licence)</b> (s.5B Control of Pollution (Amendment) Act 1989)							
<b>Offences in relation to waste receptacles</b> (s.47ZA EPA)							
<b>Dog fouling</b> (s.4 Dogs (Fouling of Land) Act 1996) (8)							
<b>Offences under Dog Control Orders</b> (s.59 CNEA)							
• Failing to remove faeces (9)							
• Not keeping a dog on lead							
• Not putting and keeping a dog on lead when directed to do so by an authorised officer							
• Permitting a dog to enter land from which dogs are excluded							
• Taking more than the specified number of dogs onto land							
Failure to nominate key-holder (within alarm notification area) or to notify local authority in writing of nominated key-holder's details (s.73 CNEA)							
Noise from dwellings (domestic) (s.8 Noise Act 1996)							

**Please return forms by 31 May 2007, either by:**

- Post – to the Local Environment Quality Team at the address at the top of page 1.
- Email – [local.environment@defra.gsi.gov.uk](mailto:local.environment@defra.gsi.gov.uk), stating in the subject line '[the name of your local authority] Fixed Penalty Return'.

PB12414

Nobel House  
17 Smith Square  
London SW1P 3JR  
[www.defra.gov.uk](http://www.defra.gov.uk)

