



Name of Policy: **Fixed Penalty Notice Enforcement Policy**

Date of Inception: **12.06.15**

This is a Policy or Procedure document of Newquay Town Council and as such must be fully adhered to by both councillors and employees.

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1 INTRODUCTION

- 1.1 The Clean Neighbourhoods and Environment Act 2005 provides local authorities with an extended range of fixed penalty notices to address low-level environmental crime and anti-social behaviour that has a detrimental impact on our neighbourhood.
- 1.2 Fixed penalties can provide local authorities with an effective and visible way of responding to low-level crime, and the Government wishes to encourage their use.
- 1.3 Experience has shown that the public generally welcomes the use of fixed penalties, provided that they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems.
- 1.4 Fixed penalty notices are one of a number of enforcement tools used to tackle environmental crime and as a means to change offending behaviour, and are used as an alternative to prosecution.
- 1.5 Under the six district councils in Cornwall environmental crime was dealt with by different Council Service departments. Under the new unitary authority it has been recognised that no one service has the resources to provide the function in its entirety, and the service will continue to be provided and extended in each area through collaborative working between services. This includes Town/Parish Councils who can enforce on behalf of Cornwall Council.
- 1.6 The Environmental Crime Working Group consists of representatives of the Public Health and Protection Service, the Waste Service and the Environment Service and has the remit of ensuring that there is a consistent approach to the enforcement of Environmental Crime throughout Cornwall Council. Newquay Town Council works closely with Cornwall Council to ensure parity between the two authorities.
- 1.7 The relevant government guidance, referenced in the Bibliography, was used in the production of this document.

2 AIM OF POLICY

- 2.1 The aim of this policy is to apply the general principles of enforcement in respect of fixed penalty notices to ensure that any enforcement action is transparent, accountable, proportionate, consistent and targeted.

3 OBJECTIVES

- 3.1 To comply with a consistent Cornwall wide enforcement regime to address low-level environmental crime.
- 3.2 To provide a cost-effective and timely enforcement service that reduces the burden on the Courts and reduces the time between the offence and the penalty.
- 3.3 To increase public awareness of environmental offences in Newquay.

4 JOINED UP WORKING

- 4.1 Newquay Town Council Enforcement Team shall work in close partnership with Cornwall Council as well as, external bodies such as the Devon and Cornwall Constabulary, other Town and Parish Councils within the district.

5 TARGETING OF OFFENCES

- 5.1 To ensure best use of resources, Newquay Town Council is working with residents, Devon & Cornwall Constabulary, other Newquay Town Council directorates, Cornwall Council's Environmental Crime Team and external agencies to target problem areas in Newquay.

6 DELEGATION

- 6.1 All Officers who issue fixed penalty notices shall be authorised under delegated authority from Newquay Town Council, and a copy of the authorisation shall be held by the Town Clerk and Community Protection and Enforcement Manager.

7 OFFENCES

- 7.1 The relevant environmental offences enforced by authorised officers are detailed in the environmental protection fees and charges section on the Newquay Town Council website.

8 APPROPRIATE USE OF FIXED PENALTIES

- 8.1 Fixed penalty notices shall only be used for the offence for which they were created.
- 8.2 Littering fixed penalty notices may be issued for fly-tipping offences in respect of small unauthorised deposits of controlled waste, equating to up to one standard sized refuse sack of waste. An element of discretion may be used by the investigating officer.

- 8.3 A fixed penalty notice shall only be issued where there is sufficient admissible evidence to support a prosecution, including offences directly witnessed by an authorised officer, or where there is reliable witness testimony.
- 8.4 A fixed penalty notice shall only be issued where the enforcement officer is confident that the correct identity details have been provided. Failure to supply a name and address, or to supply false details, to an authorised officer is a criminal offence and Newquay Town Council will work with Devon & Cornwall Constabulary, where relevant, to ensure that correct details are obtained.
- 8.5 All reasonable efforts will be made not to issue fixed penalty notices to 'vulnerable' persons. A vulnerable person is defined for the purpose of this policy as someone who leads a 'chaotic' lifestyle, such as the homeless, or those that suffer from a mental impediment.
- 8.6 Fixed penalty notices shall not be issued to persons who are not resident within the United Kingdom.
- 8.7 Where the offence that has been committed is considered to be too serious in scale or effect, in accordance with published government guidance a fixed penalty notice may not be appropriate.
- 8.8 A fixed penalty notice shall not be issued where the offence committed is so small or trivial in its effect that the action may not be in the public interest, in accordance with published government guidance.
- 8.9 A fixed penalty notice shall not be issued where the offence has been committed by someone that has previously received a fixed penalty for the same offence in the last 12 months. Prosecution proceedings shall be instigated directly in respect of repeat offenders.
- 8.10A fixed penalty notice shall not be issued where false identity details have been provided by the offender, and where the enforcement officer later determines the correct details. In this event, the use of a fixed penalty notice is inappropriate and as such prosecution proceedings should be instigated directly.

9 SERVICE OF FIXED PENALTY NOTICES

- 9.1 In order to achieve good quality control (i.e. verification of name and address, repeat offender check etc) and to minimise the risk of a confrontational situation and the associated hazards, the majority of fixed penalty notices shall generally be served through the mail. The option to serve a fixed penalty notice on the spot shall be retained.
- 9.2 A fixed penalty notice may be served up to a maximum of three months after the date of the offence, where there is a justifiable reason for the delay.

10 YOUNG PEOPLE

- 10.1 Fixed penalty notices will only be issued to anyone over the age of 18.
- 10.2 Any person under the age of 18 who commits a relevant environmental offence shall receive an official warning letter.
- 10.3 Young people will be educated in respect of environmental quality issues through schools liaison events.

11 APPEALS

- 11.1 The appeals process for a Fixed Penalty Notice is handled by Cornwall Council. There is no statutory right of appeal. However, all recipients of a fixed penalty notice for an environmental offence shall be offered the opportunity to appeal to Cornwall Council through a non-statutory appeals process.
- 11.2 Full details of all appeals and decisions shall be recorded and used in future decisions to ensure consistency in similar situations.
- 11.3 Where an appeal is refused the appellant shall be informed by Cornwall Council within 3 working days of the decision and the original payment terms, including the opportunity to pay the charge at the discounted rate, shall apply from the date of letter notifying the offender of the results of the decision.
- 11.4 Where an appeal is upheld the appellant shall be informed by Cornwall Council within 3 working days of the decision and the fixed penalty notice shall be withdrawn or cancelled depending on the circumstances.

12 CANCELATION OF FIXED PENALTIES

12.1 Cornwall Council may cancel Fixed penalty notices in the following circumstances:

- 12.1.1 Where a person issued with a fixed penalty notice falsely provides the identity details of another person, and that person then successfully challenges the notice on that basis; or
- 12.1.2 Where further information comes to light about the personal circumstances of the recipient of a fixed penalty notice, who it later transpires is 'vulnerable'.
- 12.1.3 Fixed penalty notices may not be cancelled, but may be withdrawn where there are relevant extenuating circumstances as determined by Cornwall Council via the non-statutory appeals process.
- 12.1.4 For the purpose of reporting, a withdrawn fixed penalty notice shall count as an unpaid fixed penalty notice for which no further action has been taken.

13 LEVELS OF FIXED PENALTIES

13.1 Cornwall Council is permitted to set its own level of penalty for the specified environmental offences within a range prescribed in the current Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations. Newquay Town Council cannot set its own level of penalty and therefore abides to the levels set by Cornwall Council.

13.2 Cornwall Council is also permitted to set its own level of penalty discount for early payment, the minimum value of which is prescribed in the current Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) Regulations. Newquay Town Council cannot set its own level of penalty discount and therefore abides to the levels set by Cornwall Council.

13.3 Payment of either the full or discounted fixed penalty charge within the specified time period will discharge the offender's liability to conviction for the offence.

13.4 The full charge shall be paid within 14 days following the date of the fixed penalty notice. The discounted charge shall be paid within 10 days following the date of the fixed penalty notice.

13.5 The fixed penalty charges are detailed in Table A1 of Appendix A

13.6 The level of fixed penalties for environmental offences may be subject to review within the prescribed limits at any time.

14 PAYMENT OPTIONS

14.1 Cornwall Council handles the processing of payments for Fixed Penalty Notices. Payments can be made either;

14.1.1 In person at your local Cornwall Council One Stop Shop

14.1.2 Over the phone on 0300 1234 100 quoting the code next to the relevant offence on the Fixed Penalty Notice

14.1.3 By post if sending payment via cheque at; Public Protection & Business Support, Cornwall Council, Dolcoath Avenue, Camborne, TR14 8SX

15 PROSECUTION

15.1 Where the fixed penalty notice remains unpaid, or partially paid, prosecution proceedings will be instigated by Cornwall Council.

16 USE OF RECEIPTS

16.1 Fixed penalty receipts for environmental offences may only be used to meet the cost of undertaking specific functions or enforcement action under the relevant legislation.

16.2 Fixed penalty receipts for environmental offences may not be spent on any other function unless the Local Authority has been categorised as 'excellent' or 'good' under Comprehensive Performance Assessment.

16.3 Newquay Town Council retains 80% receipts of any Fixed Penalty Notices issued by one of its Enforcement Officers.

16.4 Fixed penalty receipts for environmental offences may not be spent on any other function unless the Local Authority has been categorised as 'excellent' or 'good' under Comprehensive Performance Assessment.

17 RECORDING AND REPORTING

17.1 Full and accurate details of each fixed penalty notice shall be recorded at all stages from issue to closure.

17.2 This record shall be assessed on a regular basis to help determine whether or not procedural amendments are required.

17.3 Accurate details of all environmental fixed penalty notices issued shall be reported by Cornwall Council on the annual fixed penalty notice return form to DEFRA by its nominated officer.

18 MONITORING AND REVIEW

Fixed Penalty Notice Enforcement Policy

18.1 This policy shall be reviewed regularly, or at such time as deemed appropriate.

18.2 This policy shall be published on the website, allowing members of the public and businesses to have the opportunity to comment on the policy and to provide feedback.

18.3 A record of amendments to the Policy shall be maintained within this document.

A1 - Fixed Penalty charges

Description of offence	Legislation	Section	Amount	Discounted amount
Litter	Environmental Protection Act 1990	s.88(1)	£80	£50
Breach of street litter control notice.	Environmental Protection Act 1990	s.94A(2)	£110	£60
Breach of dog control order	Clean Neighbourhoods & Env, Act 2005	s.59(2)	£80	£50

BIBLIOGRAPHY

DEFRA (2006), *Fixed Penalty Notices – Guidance on the Fixed Penalty Notice provisions of the Environmental Protection Act 1990, the Clean neighbourhoods and Environment Act 2005 and other legislation*, Defra publications, London. Available for viewing on-line at:

<http://www.defra.gov.uk/ENVIRONMENT/localenv/legislation/cnea/fixedenforcementnotices.pdf>

DEFRA (2006), *Getting to grips with the Clean Neighbourhoods and Environment Act 1995 – a parish council guide to Environmental Enforcement*, Defra publications, London. Available for viewing on-line at:

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