

CALNE TOWN COUNCIL

FIXED PENALTY NOTICE ENFORCEMENT STRATEGY (Revision 2, Dec 2015)

1. Aim of the Enforcement Strategy

- 1.1. The aim of this strategy is to contribute to Calne Town Council's long term vision "to make Calne a modern, distinctive, economic and vibrant town". As such, it recognises that Calne must work towards becoming cleaner, greener and more accessible.

2. Background

- 2.1. In 2002 the government started a process that reviewed enforcement issues affecting local environmental quality. This resulted in a new piece of legislation being introduced, the Clean Neighbourhoods and Environment Act (2005) (CNEA). This Act extends and dramatically improves the powers that Local Authorities have to tackle environmental crimes. The CNEA was written following an extensive review of all the legislation currently used to deal with local environmental quality, and through consultation with current service providers.
- 2.2. Wiltshire Council has a direct duty to enforce relevant legislation like the CNEA. This may involve dealing with individuals or householders as well as commercial and business employers or employees.
- 2.3. Within Calne, public consultation and satisfaction surveys have highlighted discontent amongst residents regarding the issues of dog fouling and depositing of litter in the town. Whilst Calne Town Council resources support the direct provision of waste collection, recycling and street cleansing services, as well as publicity campaigns and advice, there remains an issue with some dog owners refusing to take responsibility for cleaning up after their animals, causing environmental health issues in the town, inconvenience and annoyance.
- 2.4. In 2014, Calne Town Council sought to address this problem by training a number of authorised officers to have delegated responsibility to issue fixed penalty notices as an enforcement activity where education and informal actions proved insufficient.
- 2.5. Experience from other local authorities has shown that the public generally welcome their use, provided they are issued sensibly, enforced even-handedly and are seen as a response to genuine problems. The Government has, and continues to, encourage their use.
- 2.6. This Fixed Penalty Notice Enforcement Strategy has been adopted by Calne Town Council under the Enforcement Concordat, Regulators Code and Code of Practice for Crown Prosecutors.

- 2.7. It has been produced having regard to DEFRA guidance on the use of fixed penalty notices under the provisions of the Clean Neighbourhoods and Environment Act 2005.
- 2.8. This strategy should be read in conjunction with legislation, corporate policies and service procedure guides and statements.

3. Introduction

- 3.1. Arising from the introduction of such environmental legislation like the CNEA, it is considered a necessity to develop an Enforcement Strategy to deal with environmental crimes in Calne such as depositing of littering and offences under Dog Control Orders.
- 3.2. Members of staff are trained, and given delegated authority, to undertake enforcement activities in relation to the above activities. This strategy applies to those trained team members who assist in achieving the goals and priorities of the Town Council (and Local Authority) by protecting the environment for residents, workers and visitors to the town.
- 3.3. This policy outlines the practical application of the issue of fixed penalty notices, which will ensure a 'firm but fair' approach by Council officers. The processes identified in this document will assist officers in their decision making process.
- 3.4. All authorised officers will follow this policy, as far as reasonably practicable. Any departure must be approved by the appropriate line manager (which may be after the event). The departure must be justifiable, in responding to imminent risk or urgency.

4. Principles of Good Enforcement

- 4.1. This policy takes into account the "*Principles of Good Enforcement*" as outlined in the "*Enforcement Concordat*". *Enforcement Concordat, Department of Trade and Industry (DTI) 2003*.

These outlined principles include:

- Standards: setting clear standards
- Openness: clear and open provision of information
- Helpfulness: helping by advising on and assisting with compliance
- Complaints about the service: having a clear complaints procedure
- Proportionality: ensuring that enforcement action is proportionate to the risks involved in the process
- Consistency: ensuring consistent enforcement practice

4.2. Consideration of these principles brings significant benefits to the Town Council, residents and businesses as a whole. By facilitating compliance, authorised officers can achieve higher compliance rates and reduce the number of costly prosecutions they have to undertake. This will allow officers to target those who flout the law or act irresponsibly.

5. Advice and Education

5.1. Where possible and appropriate, problems which have been identified will be dealt with by assistance, advice and guidance to achieve compliance with legal duties and best practice. Enforcement action will only be conducted as a last resort or following a significant breach of legislation.

5.2. It is the Town Council's intention to increase the awareness of businesses and members of the public in relation to their responsibilities and obligations under the relevant environmental legislation.

5.3. Both oral and written advice will be conducted as back up to other media which may be used to educate those persons affected by the requirements of the relevant legislation.

5.4. The aim is to achieve a general awareness of legislation to assist with compliance. However, this may not be used in an area where a serious or significant contravention has already been identified.

6. Enforcement Options

6.1. Calne Town Council recognises the importance of achieving and maintaining consistency in its approach to making decisions that concern standards of enforcement action.

6.2. In making the decisions authorised officers will consider:

- The seriousness and prevalence of the offence
- Any explanation offered by the defendant
- The age of the defendant
- The past history of the offender
- The likelihood of the offender being able to establish a defence
- The action type as to which action is deemed appropriate or effective
- Whether there has been flagrant disregard for the condition of the local environment
- Advice from the legal advisers

6.2. Having considered all the relevant information and evidence, one or more of the following options for action are available to officers:

- No action
- Informal action
- Formal action – issuing of Fixed Penalty Notices, Formal Caution or Prosecution

6.3. No Action

Where an investigation reveals at the time of the inspection that no offence has occurred or that an offence has occurred but no offender can be identified.

6.4. Informal Action

To facilitate compliance with the legislation, informal action may be used to address issues in the form of offering advice and recommendations for action, either verbally or by letter. Such action may be appropriate in the following circumstances:

- When an offence was committed by genuine mistake or accident
- Where the offence has been committed by a child, young person or vulnerable adult
- When there is insufficient evidence for formal action

6.4.1. In addition to the above circumstances, officers will assess each case individually and use their own discretion as to the required course of action.

6.4.2. When giving verbal advice, officers will ensure that breaches of legislation are made clear and understood by recipients.

6.4.3. Officers will ensure that when writing advisory enforcement letters that they contain all information necessary to identify any breach of legislation, indicating specific legislation contravention.

6.5. Formal Action

Authorised officers will consider the use of formal action in accordance with the relevant legislation, working practices and guidance.

6.5.1. Fixed Penalty Notices will be issued under specific legislation. If a fixed penalty notice is not paid within the prescribed period then prosecution will normally be the next course of action.

- 6.5.2. The following circumstances are likely to warrant the use of a fixed penalty:
- An authorised officer has witnessed an offence
 - An authorised officer believes that there are reasonable grounds for believing that an offence has been committed
 - There is a suitable witness or witnesses to the offence and the offender can be clearly identified
 - The alleged offender has not previously received a fixed penalty notice for the same offence
- 6.5.3. Where the circumstances warrant it, and alternative actions such as informal action are considered inappropriate, considerations for prosecution taken into account will be:
- Failure to pay or accept a Fixed Penalty Notice
 - When an authorised officer is deliberately obstructed from carrying out their duties
- 6.5.4. When circumstances have been identified warranting prosecution, all details regarding the incident will be considered in a consistent, fair and objective manner. Any decisions will be made in conjunction with the Town Clerk and the Council's legal adviser.

7. Code of Conduct (Public Interest & Evidential Tests)

7.1. Evidential Tests

- 7.1.1. Officers must consider the evidential burden in bringing a prosecution. The test for evidential burden is that the Council must show to the Court that the defendant's guilt can be proved 'beyond reasonable doubt'.
- 7.1.2. This test should be in the mind of officers when considering evidence accumulated throughout the course of an investigation with the aim of strengthening the Council's case.
- 7.1.3. To assist in achieving the evidential burden officers must consider the application of the following;
- Seeking out as many witnesses as possible and achieving written statements
 - Following up any defence put forward and recording the further investigation.
 - Photographs taken on site visits are vital and are a useful tool to support the investigation. An officer should consider if photographs taken go far enough to prove the offence.
 - Making detailed site reports (as contemporaneous as is reasonably possible) in officers notebooks listing times, dates, places, comments made by other persons and by the officer detailing any conversations.

7.1.4. The ultimate aim of producing quality evidence is to assist the Council's legal adviser in determining that there is enough evidence to provide a "realistic prospect of conviction" against each defendant.

7.2. Public Interest Test

7.2.1. It is not the rule that every criminal offence must be automatically prosecuted.

7.2.2. The Council must consider if bringing a prosecution is in the 'Public Interest' to prosecute.

7.2.3. The Council must consider a range of factors set out below, balancing a 'for and against' before coming to a decision.

7.2.4. Public interest factors that can affect the decision to prosecute usually depend on the seriousness of the offence or the circumstances of the suspect.

7.2.5. Some factors may increase the need to prosecute but others may suggest that another course of action would be better.

7.2.6. A prosecution is likely to be needed:

- If there is a failure to pay or accept a Fixed Penalty Notice;
- When an authorised officer is deliberately obstructed from carrying out their duties.

7.2.7. A prosecution is less likely to be needed if:

- The court is likely to impose a nominal penalty;
- The offence was committed as a result of a genuine mistake or misunderstanding (these factors must be balanced against the seriousness of the offence);
- The loss or harm can be described as minor and was the result of a single incident, particularly if it was caused by a misjudgement;
- There has been a long delay between the offence taking place and the date of the trial, unless:
 - the offence is serious;
 - the delay has been caused in part by the defendant;
 - the offence has only recently come to light; or
 - the complexity of the offence has meant that there has been a long investigation;
- A prosecution is likely to have a bad effect on the victim's physical or mental health, always bearing in mind the seriousness of the offence;

- The defendant is elderly or is, or was at the time of the offence, suffering from significant mental or physical ill health, unless the offence is serious or there is real possibility that it may be repeated.
- The defendant has put right the loss or harm that was caused (but defendants must not avoid prosecution or diversion solely because they pay compensation); or
- Details may be made public that could harm sources of information, international relations or national security.

7.2.8. The above list is not exhaustive and the Council should consider each case on its merits.

8. Authorisation

- 8.1. Only officers who are authorised by the Council may undertake certain aspects of environmental enforcement action; to include the signing and serving of notices. Such authorisation is given through a scheme of delegation.
- 8.2. Action taken under legislation to which this policy applies will only be conducted by such authorised officers who are suitably experienced, trained and competent. Authorised officers will carry identification as proof of their authorisation and to what legislation their authorisation relates.
- 8.3. The Council recognises the varying levels of complexity in enforcement and may vary the powers conferred upon authorised officers, depending on their experience, training and competency.

9. Offences

9.1. Offences included within the scheme are:

- Failure to remove dog fouling Fine £75
- Allowing a dog into an Exclusion Zone. Fine £75.
- Failure to keep dog on a lead. Fine £75.
- Failure to put dog on a lead when directed by an Enforcement Officer. Fine £75.
- Depositing Litter. Fine £75. Reduced to £50 if paid within 10 days of issue.

10. Juvenile Offenders

- 10.1. If issuing FPN's to juveniles (juveniles are aged 10–17) the officer should:
- Never touch a young person
 - Approach from the front, not behind.
 - Identify themselves and offer formal ID.
 - Ideally work in pairs.

- 10.2 For Juveniles aged 10–15, FPN’s can be issued if:
- The officer knows the offender
 - The offender’s school has agreed to the use of FPN’s
- The offender’s parents, guardian or school must be told as soon as possible.
- 10.3 If the offender is not known or their school has not agreed to the use of an FPN, then the details of the young person, their parents or guardian are to be taken to make further enquires.
- 10.4 If it is decided that an FPN is suitable, then it is to be issued with a parent or guardian present.
- 10.5 If the FPN has to be issued in writing, then the offender’s parent or guardian is to be notified at the same time.
- 10.6 For Juveniles aged 16–17, the officer must get all the following from the offender:
- Name
 - Address
 - Age
 - Date of birth
- 10.7 The offender must then be told that this information will be shared with their local youth offending team.
- 10.8 If an offender aged under 17 is to be interviewed under caution then it must be carried out with an appropriate adult present.

11. Identification

- 11.1 It is an offence if the offender does not give his/her name, or false details are given to an officer when asked. The offender could be arrested by the police and prosecuted if correct details are not given.

12. Non-payment

- 12.1 On the working day immediately after the due date for payment of the fine and no payment has been received, the Town Clerk will be advised. The Town Clerk will then instruct that the matter be referred for prosecution.

13. Appeals

- 13.1 Appeals are not allowed against fixed penalty notices. If the offender chooses not to pay the FPN, then he/she is choosing for the case to be heard in court. If found guilty, then a larger fine and a criminal conviction may result.

14. Fixed Penalty Receipts

- 14.1 As Calne Town Council has approved Quality Council status, or equivalent, then receipts will be used for the purpose of offsetting costs accrued in the implementation and running of this scheme.

15. Legislative Compliance

- 15.1. When required, all authorised officers will comply with Codes B, C and E of the Police & Criminal Evidence Act (1984) (PACE) as amended by the Police and Criminal Evidence Act 1984 (Codes of Practice) (Revisions to Codes A, B, C, E, F and H) Order 2013 which are linked to environmental enforcement.

16. Shared Enforcement Role

- 16.1 Authorised officers, where appropriate, will share information with other officers within the Town Council, Wiltshire Council and with external agencies e.g. The Environment Agency, Wiltshire Police, MOD Police. This will assist in the co-ordination and partnership working to tackle environmental crime and reduce overlap.

17. Equal Opportunities

- 17.1 The Council recognises there is diversity within the community and care will therefore be taken to ensure its enforcement actions are clearly understood by providing written information in an appropriate language wherever possible. The Council can commission an interpreter service covering many languages if those involved have difficulty in speaking or writing English.

18. Complaints Procedure

- 18.1 The Council has a formal complaints procedure which ensures that any complaint is dealt with quickly, consistently and helpfully. Complaints can be conducted in writing, by telephone or email.

19. Reports to the Town Council

19.1 A report on the progress of the FPN operation will be presented to the Amenities Committee at a six monthly interval for the first year of operation and thereafter an annual report unless the Committee requests otherwise.

20. Statistics Reporting

20.1 An annual return at year end or other date specified, must be submitted to government to include the following information:

- Number of FPN's issued.
- Number of FPN's paid.
- Number of FPN's withdrawn.
- Number of successful prosecutions
- Number of unsuccessful prosecutions.

21. Monitoring and Review of the Policy

21.1 This policy will be monitored and reviewed to ensure that any changes of legislation, guidance or other circumstances are considered which may affect the principles contained within this document. This process may also include consultation with the groups affected by this document; including local issues to ensure best practice.